HMcpsi
H M Crown Prosecution Service Inspectorate

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

April 2002

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INTRODUCTION

Purpose

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

Background to the inspection

1.2 There are few offences that impact so severely on the victim. Whilst the number of reported rapes, 8,593,[1] represents only 0.17% of all recorded crime, the enormity of the effect on victims and on the fear of crime amongst women goes to the heart of quality of life. As with other aspects of personal crime, there is undoubtedly substantial under-reporting. The Rape Crisis Federation of England and Wales in its Annual Report, for example, suggests that only 12% of the 50,000 women who contacted their services in 1998 reported the crime of rape to the police.

1.3 Over recent years the percentage of successful prosecutions for rape offences has shown a marked decline. The rate of conviction for rape, after trial, has decreased from one in three cases reported (33%) in 1977 to one in 13 (7.5%) in 1999. Furthermore, only one in five (20%)[2] reported cases currently reaches the trial stage.

1.4 The increasing attrition rate has been widely publicised, as have general concerns about the handling of allegations of rape at all stages, including:

- difficulties in obtaining independent evidence to support allegations;
- the thoroughness of investigations;
- variations in assessment of the weight of factors in cases;
- the perpetuation of myths and preconceptions;
- the cross-examination of victims in court, in particular about previous sexual behaviour and medical history;
- the role of the prosecutor at court in relation to acting in the interests of justice and taking into account the interests of the victim;
- increase in "drug induced" offences; and
- increase in acquaintance rape offences.

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

2 Home Office Statistics

1.5 There have also been government initiatives, such as the policy paper "Living Without Fear" and proposals for the overhaul of sexual offences in England and Wales ("Setting the boundaries - reforming the law on sex offences").

1.6 It was against this background of increasing concerns that we agreed a joint inspection, in an attempt to identify causes of the increasing attrition.

Terms of reference and main aims

1.7 The inspection team's terms of reference were:

"HMCPSI and HMIC to carry out an analysis of investigations, decision-making and prosecutions of allegations of rape, from initial report through to case disposal. The review will cover all offences of rape, including allegations of male rape, as well as those involving children."

1.8 A detailed list of the issues we considered is set out at Annex A.

1.9 The main aims of the review were to:

- assess the quality of investigation of cases involving allegations of rape;
- assess the quality of advice, decision-making, case preparation and presentation at court of cases involving allegations of rape;
- assess the quality of any guidance as to policy and practice;
- scrutinise the treatment of victims and witnesses;
- ascertain, if possible, the reasons for the high attrition rate; and
- identify good practice and make recommendations to secure improvements in the practice of both police and CPS.

Acknowledgments

1.10 The inspection team comprised a staff officer from HMIC and two legal inspectors from HMCPSI. In addition, officers seconded from Devon and Cornwall Constabulary, Derbyshire Constabulary, Hampshire Constabulary, South Yorkshire Police and the Royal Ulster Constabulary assisted us throughout the inspection.

1.11 The Chief Inspectors and the inspection team are grateful for the co-operation and support of all those with whom they came into contact during the inspection - either in the preparation of material for the team's consideration, or in interview.

METHODOLOGY

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

Selection of sites

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

2.3 Files from the sites were examined, and six police forces/CPS Areas were visited: Greater Manchester, Humberside, London (Metropolitan Police), Northumbria, North Wales and Staffordshire.

Scope of the inspection

2.4 The inspection involved a detailed analysis of police and CPS practice and procedures, as well as the manner in which cases are handled and presented at court.

2.5 Cases involving allegations of rape against children were included in our review, as were allegations of male rape, but discrete samples were not requested. We also considered the ethnicity of both the victim and the suspect/defendant.

2.6 The issue of why victims are reluctant to report allegations of rape has already been the subject of much academic study, and therefore the review did not include a detailed consideration of the topic. It did, however, explore the possible causes with special interest groups, as well as considering the treatment of victims and the issue of why the attrition rate is so high.

2.7 We used the following approach to carry out our review:

- research of literature by an academic;
- discussion about the key issues, available guidance and policy, and any available data with CPS Policy Directorate;
- discussion about methodology and key issues with a project steering group;
- analysis by HMIC of 1,741 crime records from ten police forces;

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

Project steering group

2.8 The inspection benefited from the advice of a project steering group (PSG) comprising individuals with particular expertise and knowledge in relation to the investigation and prosecution of rape offences. The Chief Inspectors are grateful for their valuable contribution to the inspection. A list of the individuals is set out in Annex B.

2.9 The PSG assisted us in the scoping of the inspection, including methodology, during the course of the inspection and in the finalisation of the report.

Literature review

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

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

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

File examination

2.13 The ten police forces were asked to provide crime reports, which had been initially recorded as rape, from 31 December 2000 or before. We examined 1,741 crime reports, and produced a detailed analysis of the data.

2.14 We examined 65 advice files, 147 prosecution files and 18 joint advice and prosecution police files in more detail. The resulting data was also analysed. We refer to this sample as the "police file sample".

2.15 We had intended to examine the corresponding CPS files. However, the CPS was not able to provide us with all of the files. Some had been destroyed in accordance with the rules relating to retention and destruction. CPS Areas were not able to locate others, possibly because the CPS does not record cases by offence codes. We therefore examined 31 advice and 125 prosecution CPS files. This sample is referred to in the report as the "CPS file sample".

2.16 The documentary analysis provided a comprehensive database as a resource to the inspection. Annex C sets out some of the resulting data.

Interviews

2.17 We interviewed police and CPS staff at all levels at the six sites we visited. They were seen either individually or in small groups. We also interviewed FMEs and FSS staff.

2.18 In order to complete the picture, we also saw staff at dedicated sexual assault referral centres and local representatives of other criminal justice agencies. We did not consider it to be appropriate to interview victims themselves, and so we interviewed representatives of special interest groups, in order to seek the victim's perspective. A list is set out at Annex D.

Court observation

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

Structure of the report

2.20 We have set out our findings and the good practice we identified, and make recommendations and suggestions to improve matters under the following main headings:

- Victim care
- Investigation
- Review and decision-making
- The trial
- Guidance and training for prosecutors
- Recording procedures
- File process
- Preparing cases
- Victims
- Attrition

CONCLUSIONS, COMMENDATIONS, GOOD PRACTICE, RECOMMENDATIONS AND SUGGESTIONS

Victim care

3.1 We consider that the treatment afforded to rape victims throughout the investigative process is key to the prospects of securing a conviction. Interviews with police personnel revealed that in many cases the availability of trained staff to receive rape victims was problematic across the service. This was particularly evident where the level of trained staff is low and availability is spread across a large geographic area. It is most important at the outset of the process, where it is essential that the victim feels supported by the police.

3.2 The environment into which a victim is taken is not always conducive to securing the confidence of the victim. Whilst there is an inevitable delay in the brigading of the necessary expertise, we found that waiting areas, where they existed, were of poor quality and that, in some cases, there was an inordinate delay, sometimes for some hours, before the victim had access to specialist staff. Whilst we acknowledge that dedicated suites are not always feasible, we consider that forces should revisit their arrangements for rape victim care to ensure that they are both user friendly and fit for the purpose.

3.3 The training available to police personnel does not conform to a common minimum standard. As a consequence, a variety of training methods have developed resulting in a lack of consistency in approach by the service in general. We consider that National Police Training should re-visit this issue, together with the Association of Chief Police Officers (ACPO), in an effort to bring about a more concerted approach.

3.4 The training issue extends to the role of the forensic medical examiners (FMEs), many of whom are solely reliant on skills developed as part of 'on the job' training. A recent Home Office document has highlighted this issue, and we have recommended that forces review the role and the training of the FME to work towards the accreditation of each doctor to the level required by the Diploma of Jurisprudence. Given the rapid developments in forensic science techniques, it is essential that the Association of Police Surgeons (APS), together with ACPO, ensures that those tasked with this key investigative role operate from the necessary skill base. The need for this requirement becomes more acute when balanced against the perennial difficulties faced by the police service in the recruitment and retention of FMEs, particularly female doctors, which limits the choice for victims where the sex of the examining doctor is an issue.

3.5 The dedicated sexual assault referral centres were good examples of the benefits of the police working in partnership with other agencies, including the Health Service, Social Services and FMEs, to enhance service delivery to victims of serious sexual assaults. At the other end of the spectrum were those forces that continue to work in isolation of such arrangements, where the facilities for the care of victims are less satisfactory and which have the greatest potential to aggravate levels of attrition.

Recording procedures

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

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

Investigation

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

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

File process

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

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

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

Review and decision-making

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

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

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

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

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

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

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

Preparing cases

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

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

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

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

The trial

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

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

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

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

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

Victims

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

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

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

Guidance and training for prosecutors

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

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

Attrition

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

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

Good practice

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

Victim care

1 the provision of a designated and specialist medical examination facility;

2 the monitoring of all incidents of rape and development of crime pattern analysis on intelligence referrals by Northumbria Police;

3 the practice in the Metropolitan Police of only officers who have completed their probationary period and been trained in cognitive interview techniques undertaking chaperone/sexual offences investigation technique training;

4 the introduction by the Northumbria Police of a forum for police chaperones to share their experience and build up good practice;

Investigation

5 the use by the Senior Investigating Officer of a decision log documenting the rationale behind the lines of investigation and other management issues;

6 the practice of equipping first response staff with mouth swab and urine kits, to prevent loss of evidence;

7 the practice of operating a central submission policy for all forensic samples;

8 the provision of the statement of complaint to the Forensic Science Service, to inform the analysis of forensic submissions;

9 the capture of relevant data and its timely submission to the Serious Crimes Analysis Section by Staffordshire Police;

File process

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

Review and decision-making

11 the practice by prosecutors in Greater Manchester and North Wales of exploring the issues behind retractions, and asking the officer in the case to offer the victim further support and advice;

12 the protocol on how to handle cases involving witnesses with learning difficulties agreed between the police, CPS and Social Services Directorate in Merseyside;

Preparing cases

13 the agreement entered into by the police and CPS in London whereby there is revelation of certain documents to the CPS, and computerised disclosure schedules and a new joint training package have been developed;

14 the protocol on the disclosure of medical counselling notes agreed between the CPS and St Mary's Hospital in Greater Manchester;

15 the practice of providing a full note to the police (with the prosecutor's views on the case, and any further work that needs to be carried out) when preparing a case for committal, and its inclusion in the brief to counsel;

The trial

16 the practice in many Areas of sending the caseworker in the case to attend court to cover the trial;

17 the practice in one London Crown Court of time being set aside for any legal arguments, so that the victim can start giving evidence without any unnecessary delay;

18 the maintenance by CPS London of a formal list of counsel considered suitable for rape cases;

Victims

19 the practice of some counsel of speaking to victims, to explain proposed decisions;

20 the practice of one team in CPS Greater Manchester of providing the Witness Service with a copy of the witness list and brief details of the nature of the case at the time the instructions to counsel are prepared; and

21 the sending of a letter by the CCP in CPS Northumbria to all counsel's chambers in the area, reminding counsel of the need to introduce themselves to victims in allegations of sexual offences.

Commendations

3.37 We have commended the police and the CPS in relation to three matters in the report, in particular:

1 the practice of some prosecutors of making thorough review endorsements;

2 the publishing in Northumbria of a joint agency protocol governing the way in which social services' records are handled; and

3 the involvement of the police and the CPS in assisting in training of volunteers, both for the Witness Service and Victim Support.

Recommendations and suggestions

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

3.39 We recommend that:

Victim care

1 all forces carry out an immediate review of existing facilities for victim examination so that both victim care and the integrity of evidence are maximised;

2 ACPO reviews the role of the FME. Such a review should incorporate:

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

3 ACPO and National Police Training (NPT) review the training of officers who deal with rape victims, so that the appropriate skills and competencies are enhanced in officers at an appropriate level and are made available to victims across the service;

4 the role of rape victim chaperone should be risk assessed to ensure the welfare of the officers and to ensure a quality service to victims;

Recording procedures

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

File process

6 ACPO introduce realistic time scales for the submission of advice files for all offences;

7 ACPO and Chief Crown Prosecutors should agree protocols in relation to the submission of advice files in rape cases;

Review and decision-making

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

9 prosecutors make full records on files of review decisions in cases involving allegations of rape;

10
- all rape cases be allocated to specialist lawyers, who should be responsible for the case from advice stage to conclusion of any proceedings; and
- all decisions to drop or substantially reduce the prosecution case, or to advise the police to take no further action, be discussed with a second specialist lawyer before a final decision is taken;

11
- prosecutors insert a standard paragraph in instructions to counsel, requesting a written report in any case involving an allegation of rape which results in an acquittal;
- any written report is used to complete an adverse case report, setting out the factual and legal reasons for the acquittal; and
- the adverse case report is used to discuss with the police any lessons to be learned;

Preparing cases

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

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

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

The trial

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

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

Guidance and training for prosecutors

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

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

3.40 We suggest that:

Preparing cases

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

Victims

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

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

VICTIM CARE

Introduction

4.1 If the criminal justice system as a whole is to meet the needs of rape victims, the system must be seamless in its professionalism and sensitivity. This should be from the time an allegation is made to the conclusion of the issue, whether that end is judicial or administrative (that is, classification under Home Office Counting Rules).

4.2 The report examines the role of the police and CPS sequentially from initial victim complaint through preparation and submission of the prosecution (or advice) file to the CPS to its final conclusion. Whilst the various stages have been examined and are commented on, it is the totality which is the key to both the delivery of justice and the basis of confidence in the system for the victim.

Initial contact with police

4.3 The avenues of initial report are consistent with methods of reporting of other crime. Victims may telephone the emergency services or their local police station, or report in person to a police officer or at a police station. It is important that the person who handles the first report, not necessarily a police officer, treats the victim with sensitivity, is generous with their time and professionally attentive.

4.4 We believe a victim reporting to a police station, or brought to a station, should be provided with a waiting area that ensures respect for privacy and a generally sympathetic environment. The impression created by surroundings at this particularly traumatic time can be influential in a victim deciding whether to pursue the complaint. There is inevitably some delay as the necessary responses take time to arrange, but it is likely that time lapse will be exaggerated in the mind of a victim. We accept that it would be prohibitively costly to provide a bespoke facility in every police station. What is required is privacy in a calm environment, which additionally minimises the risk of forensic contamination. The inspection revealed examples of lengthy delays in the provision of service to victims. Whilst this was not the norm, we are of the view that every effort should be made to eradicate any unnecessary impediments, thereby encouraging more victims to report.

4.5 The inspection team found that victims from ethnic minorities find particular difficulty in bringing offences against them to police notice. In the Metropolitan Police Service (MPS), for example, 88 minority ethnic women informed the Haven Centre (a dedicated sexual assault referral centre) of offences against them between May 2000 and July 2001. Only four wanted police to be involved, whilst a further five only supplied information anonymously. In Northumbria, the Rape Examination Counselling Help Centre (REACH) has seen a limited use by minority ethnic victims despite being appropriately staffed to meet their cultural and language needs.

Medical examinations

4.6 The arrangements for the medical examination of victims are crucial both to their well being and to the evidence gathering process. Facilities provided are now on a sliding scale from the ideal to the less than adequate. The ideal offers a designated and specialist examination facility with a victim-based choice of the sex of the doctor carrying out any examination. The inspection revealed a number of examples of **good practice** facilities:

- St Mary's Hospital in Greater Manchester.
- The Juniper Centre in Leicestershire.
- The Haven Centre in London.
- The REACH Centre in Northumbria.

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

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

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

RECOMMENDATION ONE

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

Multi agency activity

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

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

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

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

Forensic medical examiners

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

4.15 The inspection revealed that:

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

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

4.17 The Home Office report 'Speaking Up for Justice' recommended that:

"Victims (both male and female) of rape or serious sexual offences should have a realistic choice of being examined by a female doctor".

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

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

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

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

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

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

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

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

RECOMMENDATION TWO

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

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

Selection and training of police officers

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

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

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

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

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

RECOMMENDATION THREE

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

Deployment of trained staff

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

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

Victim liaison

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

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

RECOMMENDATION FOUR

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

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

Victim Support

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

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

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

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

RECORDING PROCEDURES

The report

5.1 The Inspection included the analysis of 1,741 crime reports from forces where the initial allegation was one of rape. This study represents the largest as yet undertaken into allegations of this type of offence, revealing useful information which is certainly statistically reliable. The research of crime reports resulted in findings consistent with 'Rape - The Forgotten Issue?' Kelly (2001) in that there is a huge disparity in the way that forces record and subsequently classify allegations of rape. At the heart of the issue, as identified in the HMIC Thematic Report 'On the Record' (2000) is the threshold for crime recording which fluctuates between irreconcilable standards:

- Record where it is alleged a crime has been committed (prima facie).
- Record following the application of an evidential test to the circumstances (evidential).

5.2 Without an agreed standard across the police service, inter-force comparisons on recorded crime and crimes cleared-up is a matter of conjecture rather than certainty and relative performance a matter of debating the variables. We look forward to the introduction, with effect from 1 April 2002, of the national common standard of crime reporting and audit devised and agreed by ACPO. Such a standard, correctly applied, should bring greater consistency and allow better comparison of data.

5.3 One of the force areas originally asked to participate in the inspection process was unable to supply the data required, and information supplied from Derbyshire was added in its place. In addition, deficiencies in recording practice amongst forces resulted in incomplete data sets under particular headings for this category of offence. We were disappointed, therefore, that 26% of the examined reports failed to record information in at least one of the following categories:

- date of birth of victim;
- sex of victim;
- victim/offender relationship; and
- final result.

5.4 The missing information is readily available to investigating officers and its absence cannot fail to be noticed by their supervisors. This failure to record the obvious is unacceptable. Its omission prevents meaningful analysis by the wider police service or by an individual force. Some forces, including Greater Manchester and Staffordshire, have recognised the problem and introduced procedures to eliminate deficiencies. Other forces are advised to follow this lead.

Ethnicity issues

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

Crime report finalisations

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

Recorded rape reports - result of investigations

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

5.7 A Review of Police Forces' Crime Recording Practices [3] goes some way to explaining the revised April 1998 Home Office Counting Rules. It explains the 12 general principles and that as long as one of them is satisfied the police can count a recorded crime as detected. This range of detection includes charge, caution or summons of an offender, offences admitted by the offender and taken into consideration with other crimes when sentenced (TIC), and no further action (NFA) (detailing ten occasions where an offence might be deemed detected despite the absence of follow-up action).

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

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Apparent disparities

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

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

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

Integrity

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

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

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

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

RECOMMENDATION FIVE

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

INVESTIGATION

Policy log

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

A profile of rape

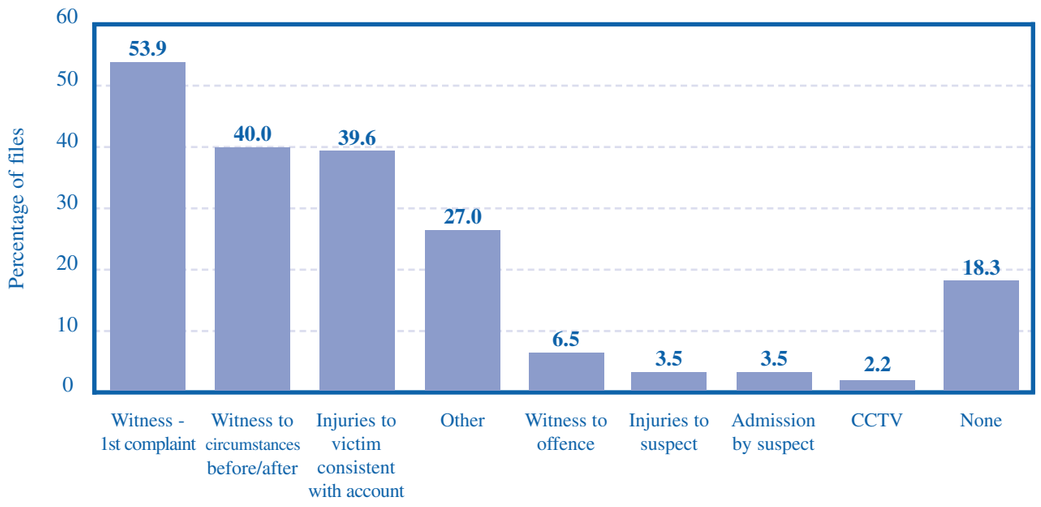
6.2 The common perception in the public mind of the rape of a woman is the picture of an offender, unknown to the victim, attacking her with force or the threat of force. Horrific as these cases are, they represent a minority of reported rape offences. It will be reassuring to the public that the inspection found the police service responds well in terms of resources in such cases.

6.3 The greater majority of cases are preceded by a previous mutual knowledge, and often a relationship of varying length of time between victim and offender and the matter of consent is the contentious issue. Of the 1,471 reports where relevant information was supplied, 14% (208) involved rape by a stranger. Only 12% (26) of these cases resulted in a prosecution whereas 57% (119) were classified as undetected. The remaining 30% (63) were finalised in the main by use of the 'no crime' category. We were surprised at the low level of detection rates despite stranger rapes normally attracting significant police resources. It is true that such offences can be amongst the most difficult to investigate. However, it is believed that continuing developments with police reform, National Crime Faculty resources, improved training, and advances in technology/forensic areas will result in continuing improvements.

6.4 The difficulties of investigating some of these cases to a conclusion that satisfies both the victim and justice should not be underestimated. Lack of supporting evidence is a problem in itself, often further complicated by alcohol or drug misuse. Much research has been carried out on the issue of drug related rape and more needs to be done to raise the awareness of the potential loss of evidence if steps are not taken for the early capture of body fluids from both victims and suspects. This added difficulty was highlighted recently in 'A Question of Evidence? Investigating and Prosecuting Rape in 1990's' Harris and Grace (1999).

6.5 We found that, on some occasions, the social status of the victim, and/or the circumstances of the offence, determined the level of response from both the police and the CPS. There were examples where the police and CPS had made value judgements on the credibility of the victim as a witness rather than giving emphasis to the actual evidence that he/she could provide. Value judgements on the status or character of a witness should not deny access to justice.

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

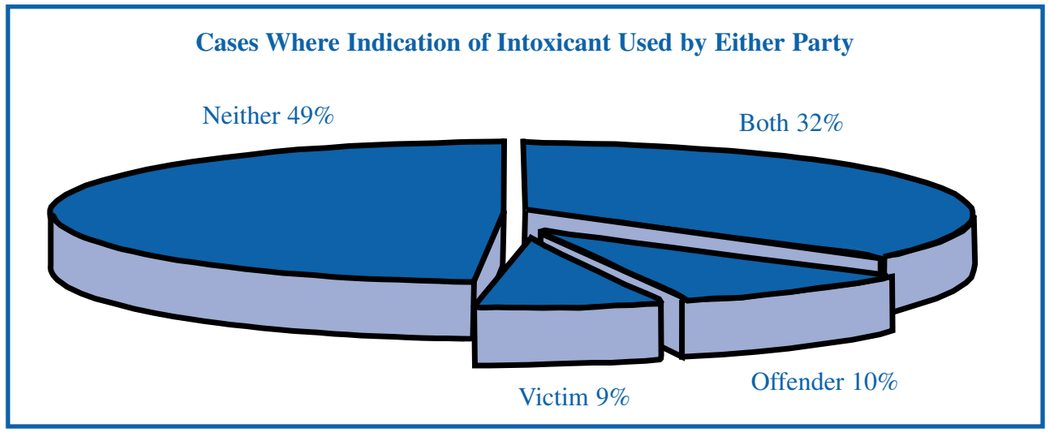


Explanation of terms used

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

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

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



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

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

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

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

Statement taking

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

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

Interviews of alleged offenders

6.14 A further important element of the investigation is the interview of the alleged offender. We were disturbed to find little evidence of the monitoring of the quality of interviews. Furthermore, we are aware that monitoring of interviews across all offences is extremely limited. This is a necessary management task if the appropriate standard is to be maintained and the necessary learning experience realised. The deficit was common across the ten forces, despite such monitoring being highlighted in 'PEACE' [5] training.

Resources

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

High number of complaints withdrawn

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

4 Burgess and Holstrom Study 1974
5 Planning and Preparation, Engage and Explain, Account, Clarification and Challenge, Closure and Evaluate (PEACE)

Instances of false allegation

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

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

Male rape

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

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

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

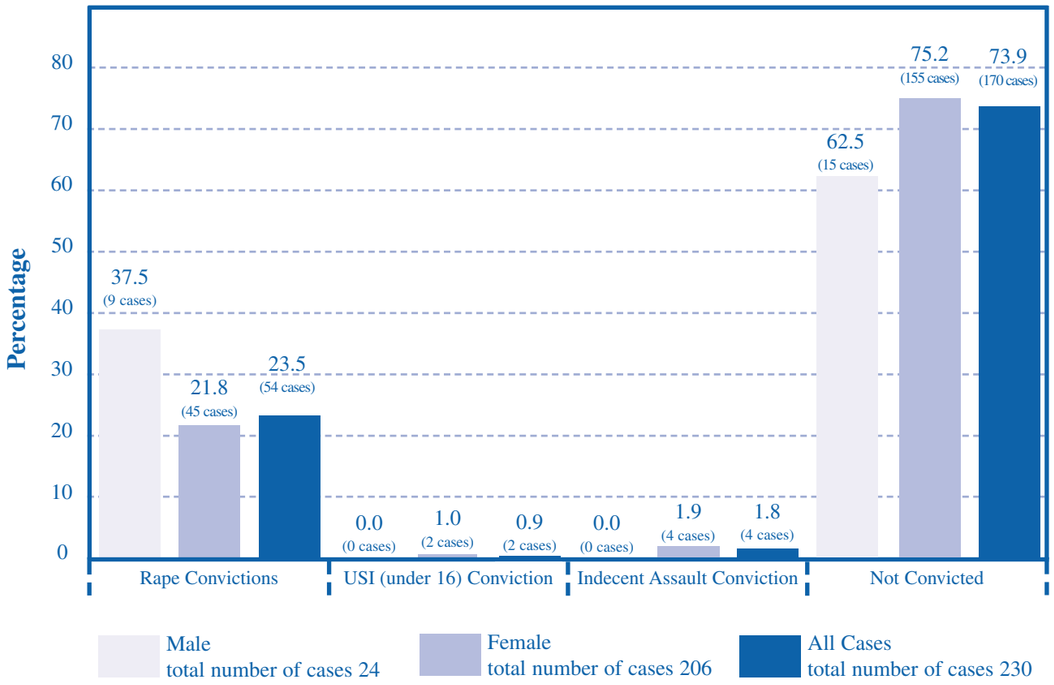
- not knowing that it is a crime;
- not wanting to tell;
- not knowing how to;
- fear of not being believed;

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

Convictions

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

Percentage of Convictions by Sex of Victim



Forensic issues

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

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

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

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

i) Lack of awareness of the importance of the order in which intimate samples are taken, and the need for sequential numbering when more than one sample per site is provided.

ii) Lack of understanding by officers of the differences between DNA1 [6] and DNA2 [7] examination kits. Evidence was found of some forces submitting DNA2 kits directly to the National DNA database custodian. Other instances were identified where DNA1 kits were submitted as evidential samples to the FSS laboratories.

ii) Variations in the quantity of samples submitted. Some forces adopt a 'submit everything' approach whilst others are more selective. It would be advantageous, in cases where selective submission is applied, for forces to make the FSS aware as to what else might be available for examination if required.

iv) Inappropriate assumptions by forensic medical examiners (FMEs) are based on 'sight' examination of samples taken. This can potentially deflect the accompanying investigator from the objective of acquiring best evidence from a victim.

v) An example which best illustrates a general lack of awareness is that in 80% of submissions to the FSS for examination where 'consent' is the issue, investigating officers are not requesting any evidential DNA samples to be cross-matched with existing samples on the National DNA Database for undetected offences. This is a lost opportunity.

vi) Identification of lubricants on intimate samples taken within two days is rarely requested. In the absence of semen, the presence of condom lubricant on an intimate swab could indicate penetration.

6 Samples routinely taken from detainees for all recordable offences
7 Samples taken for comparison with crime scenes

vii) Delays in the submission of samples to the FSS. In one force area, samples can take up to three weeks to reach the laboratory.

viii) Delays in the examination of samples upon reaching the FSS laboratory.

ix) In cases where the complaint is withdrawn by the victim early communication with the FSS should take place.

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

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

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

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

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

Intelligence

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

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

Supervision of investigations

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

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

FILE PROCESS

File monitoring

7.1 The professionalism that should be the feature of the investigation needs to be sustained in the compilation of the case file which is submitted to the CPS. The prospective success of a prosecution is enhanced by the submission of a quality file containing quality evidence, assembled from thoughtful taking of statements, tenacious interviews of the offender and the exploitation of forensic techniques.

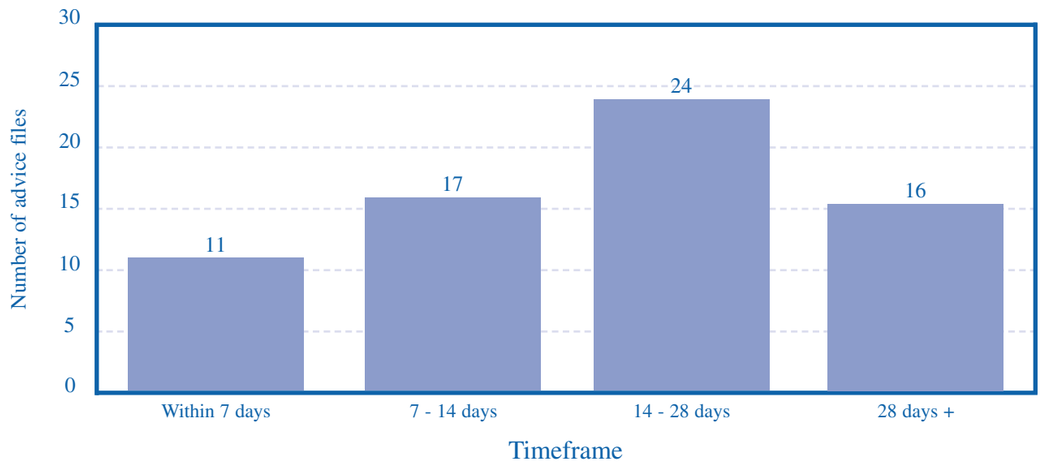
7.2 We were disappointed that too often the standard of supervision of the various aspects of the investigation was less than adequate. Indeed, in the worst cases not only was the investigative activity of constables left unsupervised, but also those officers were taking decisions that ought to be the responsibility of their supervisors. A lack of monitoring of the quality of statements was the norm rather than the exception. The paucity of supervision is reflected also in the preparation of files where too often the crown prosecutor is the first qualitative check. This is an abrogation of responsibility by supervisors.

7.3 The inspection identified notable exceptions to the trend. In Northumbria, rigour and professionalism mark the quality assurance of files. The Lambeth division of the Metropolitan Police has also introduced appropriate supervision of all files.

Timeliness of police requests for advice

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

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



RECOMMENDATION SIX

We recommend that ACPO introduce realistic time scales for the submission of advice files for all offences.

Timeliness of advice given by the CPS

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

Appropriateness of requests for advice

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

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

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

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

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

RECOMMENDATION SEVEN

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

REVIEW AND DECISION-MAKING

General

8.1 We examined the quality and timeliness of the decision-making by prosecutors at various stages in the progress of the cases within the CPS file sample, including cases where the police sought advice from the CPS before taking a decision.

8.2 Prosecutors are required to take all decisions in accordance with the principles set out in the Code for Crown Prosecutors (the Code) promulgated by the Director of Public Prosecutions under section 10, Prosecution of Offences Act 1985. The most fundamental aspect of the Code is the twin criteria for the institution or continuation of proceedings. First, there must be sufficient evidence to provide a realistic prospect of conviction. Secondly, once a case has passed the evidential test, the circumstances must be such that a prosecution would be in the public interest.

8.3 The decision whether to institute proceedings rests, other than in exceptional circumstances, with the police. On occasions, they request advice from the CPS before taking the decision. Following the institution of proceedings, the police submit a file to the CPS that should be subject to initial review to see whether it should be accepted for prosecution. In some cases this may lead to a decision to terminate the proceedings at the outset. Where a case proceeds, it must be subject to continuous review. The evidential position or surrounding circumstances may change during the life of any case, and the CPS must respond quickly and positively to review the case again and reassess it.

8.4 We examined not only the substantive decision whether to prosecute, but also a number of other decisions. These included whether to oppose bail; the identification of the correct charge; and the soundness of systems for recording decisions and reasons on files.

8.5 Assessing the quality of legal decision-making is difficult. Decisions frequently turn on legal or evidential issues that are essentially matters of professional judgement. It frequently occurs that different lawyers do, for perfectly proper reasons, take different views in relation to the same case. Our assessment in relation to quality of decision-making, therefore, considers whether the decision taken was one that was properly open to a reasonable prosecutor having regard to the principles set out in the Code and other relevant guidance. A statement that we consider that a decision was not in accordance with the Code therefore means that we consider it was wrong in principle, not merely that inspectors might have come to a different conclusion. Against this background, we set out our findings.

Quality of decision-making in advice cases

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

8.7 We were concerned that the prosecutor had not always sought further information where necessary. In ten cases, the initial file contents were insufficient to advise upon, and further evidence or information was sought in eight of those cases. This means that, in our view, the prosecutor gave advice in two cases prematurely.

8.8 The advice in one instance was to prosecute for an offence of indecent assault, instead of rape, in circumstances where there were difficulties in proving whether or not penetration had occurred. Further medical evidence should have been sought, in order to resolve the issue, when it may have been possible to charge the defendant either with an offence of rape or of having sexual intercourse with a girl under 16 years old ("unlawful sexual intercourse").

8.9 There were 16 other cases we examined (not forming part of the advice file sample), where the CPS had given pre-charge advice to prosecute. We considered that in 15 instances the advice was in accordance with the Code. However, the remaining case was dropped in the magistrates' court and we considered that the initial advice should have been to take no further action. The victim had said from the start that she would not support a prosecution, and this position did not change.

8.10 Whilst most of the decisions in the advice cases were in accordance with the Code, we were not always satisfied that they were made for the correct reasons, and in some cases the prosecutor appeared not to have considered all the relevant issues. In a few instances, the flawed reasoning was followed through in the written advice sent to the police. We consider the prosecutor's approach to review in more detail below.

Informal advice

8.11 The police view is that there has been an increase in informal requests for advice by telephone, and that this includes rape cases. The CPS view, however, is that prosecutors do not, and should not, give advice on rape cases over the telephone.

8.12 We saw two cases where informal advice had been given, and we considered that it was inappropriate for the prosecutor to have given advice without a file having been submitted. One case involved particularly difficult and sensitive issues. Neither case required an urgent decision.

8.13 We always urge prosecutors to assist police in urgent cases and suggest that any oral advice given is followed up in writing. Cases involving allegations of rape usually involve consideration of complex issues, and prosecutors should exercise caution in providing informal advice. It is particularly important, therefore, that the police prepare and submit a full file of evidence in all cases where they wish to seek advice from the CPS, unless there is particular urgency. It is equally important that prosecutors are in possession of all necessary evidence before they reach a decision.

RECOMMENDATION EIGHT

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

Quality of substantive decisions to prosecute

8.14 We considered the substantive decision to prosecute in 91 cases. Generally, we found that decisions were being made in accordance with the Code. The Code test relating to evidential sufficiency had been properly applied in 86 out of the 91 cases (94.5%). The public interest test had been properly applied in all relevant cases.

8.15 We considered the initial decision to proceed not to be in accordance with the Code in five cases: we were of the opinion that they should have been terminated at an early stage. Two cases resulted in judge ordered acquittals and two were jury acquittals, while the fifth was a judge directed acquittal. (Judge ordered acquittals are cases where a trial judge at the Crown Court, at the request of the prosecution, orders that an acquittal should be entered prior to the empanelling of a jury. Judge directed acquittals are cases where a trial judge in Crown Court proceedings rules, following the commencement of the evidence, that it is insufficient for the Crown to proceed and directs the jury to acquit.)

8.16 We have set out above our concerns that in some advice cases the reasoning behind the decisions is sometimes flawed, or that not all the relevant issues appear to have been considered. We have similar concerns in relation to some substantive decisions to prosecute. We are also concerned that, in some instances, we were unable to determine the reason for decisions, as there was either no review endorsement, or an inadequate one (a finding also made in the literature review). We consider these issues further below.

Selection of the appropriate charge

8.17 We found that the prosecutor generally identified the correct charges on which to proceed. In our sample, we considered that the appropriate charges had been selected in 85 out of 91 cases.

8.18 In six cases we considered that the prosecutor had selected the wrong charge. This resulted in the indictment having to be amended in four of the six cases. In two instances, this was because there was insufficient evidence to prove offences of rape, and lesser charges of unlawful sexual intercourse and indecent assault had to be substituted.

8.19 Another case involved a child victim, and a youth defendant who had been charged with an offence of rape. He had offered to plead guilty to an offence of unlawful sexual intercourse with a girl under 13 from the start. The reviewing lawyer noted that the rape charge was to be continued "at this stage". The case was transferred to the Crown Court. There were no changes or developments subsequently, and a plea to unlawful sexual intercourse was ultimately accepted.

8.20 A proper review of these cases in the first instance would have resulted in the correct charge being selected. Failure to determine the appropriate charges as soon as possible can cause delay, and unnecessary anxiety to both victims and defendants.

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

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

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

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

Quality of decisions to discontinue

Cases dropped in the magistrates' courts

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

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

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

Sent cases dropped in the Crown Court before preparation for trial

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

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

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

Judge ordered acquittals

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

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

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

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

Proposed approach to review of cases to be discontinued

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

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

Acquittals

Judge directed acquittals

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

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

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

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

Acquittals after trial

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

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

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

Trends in acquittals

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

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

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

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

Review endorsements

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

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

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

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

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

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

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

RECOMMENDATION NINE

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

The prosecutor's approach to review

The approach to allocation

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

General approach to review

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

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

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

Approach to the issue of the victim's credibility

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

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

8.61 We canvassed opinion on whether prosecutors should meet the victim when reviewing a case, in order to assist in their decision-making. Views varied in relation to the benefit, and whether it would help prosecutors to assess a victim's credibility and how they might give evidence. Some considered it might help; others did not. Concern was also expressed about the possibility of allegations of "coaching" being made.

8.62 Although we support the meetings with victims we describe in chapter 11, we are concerned that the risks of meetings used to assist in reviewing cases may outweigh the likely benefits. Not only is there the risk of allegations of coaching, but also regard must be had to disclosure issues and the possibility of the prosecutor becoming a witness. However, the difficulties are clearly overcome in Scotland and in Northern Ireland, where the prosecutor does meet witnesses in advance of trial, and the issue merits detailed consideration or research by the Home Office.

8.63 We also asked what use prosecutors make of the video recording of a child witness's interview. They told us that they use the video to assess the child's ability to give evidence, and his or her attention span. Importantly, they do not generally use the video as a means of assessing the child's credibility. Prosecutors thought that they would not use a video recorded interview of an adult to assess credibility either. We agree with this view, although a video recording could be of assistance in assessing how convincing a person is as a witness.

Approach to different types of evidence

8.64 The central issue in many rape trials is consent. In our file examination, we saw a number of cases in which the defendant claimed that not only did the victim consent, but also actively facilitated sexual intercourse. The victim naturally denied such an assertion, and the issue was really the relative credibility of the parties involved. However, time and time again, we saw prosecutors developing concerns as to whether the defendant could be said to be reckless, when there was no scope for a genuine, but mistaken, belief as to consent. A mistake in the analysis of the case confuses the question of what evidence should be sought, but, more importantly, it confuses the consideration of whether evidence of sexual history should be allowed. Prosecutors should be urged to differentiate between the two situations when considering cases.

8.65 We also noted, from our file examination and interviews, that prosecutors can tend to treat medical evidence as one of the more important factors in the case. The lack of injuries is often taken into account, yet research has shown that clear external or internal injuries occur in only about a quarter of reported rape cases. We also noted that prosecutors often readily accept a conclusion that the injuries or findings are consistent with a victim's account, and fail to consider whether it could also be consistent with other possibilities, in particular those suggested by the defendant in interview. The lack of a proper assessment of the medical evidence can then be effectively exploited in the cross-examination of the forensic medical examiner. We do not advocate that prosecutors should assume the role of medical experts themselves, but we think that they need more help to assess the weight of the available medical evidence, and to be knowledgeable enough to call for further evidence where necessary.

8.66 A victim's behaviour after the rape is another feature that prosecutors sometimes take into account. Examples of factors that are often taken as indicators that the victim is unreliable or not telling the truth are:

- the timeliness of a complaint;
- the failure to recall apparently important details;
- the failure to escape, despite having an opportunity to do so; and
- any lack of co-operation with the police.

8.67 In other words, prosecutors often assess a victim's behaviour against what they view as logical, common sense and natural responses to a crime. Rape is a violation of personal intimate and psychological boundaries, and the research evidence is that there are a range of responses from victims, from extremely distressed through to quiet and controlled. Some guidance on the topic could help prosecutors place what initially might be viewed as illogical or inexplicable responses into context, and to analyse and prepare the case accordingly. How this is conveyed to the jury is more problematic.

8.68 It is clear to us that prosecutors require detailed guidance on how to review allegations of rape and, in particular, what weight to attach to different types of supporting evidence. We deal with the guidance that is currently provided by CPS Policy Directorate, and make a recommendation about the issuing of further guidance or training, in chapter 12.

Inconsistency of approach

8.69 Many external interviewees expressed a view that, in some instances, prosecutors proceed with cases where there is insufficient evidence to satisfy the Code. They considered that public pressure is such that prosecutors feel that not proceeding with a case will only result in criticism, and that it is therefore easier to simply allow a case to take its course. We deal in chapter 11 with the difficulties victims face in court when giving evidence, and the ways in which this could be improved. But it is clear that it is a traumatic experience for a victim to give evidence about such intimate details, and it is not something that he or she should have to do if there is no realistic prospect of conviction. It is particularly important, therefore, that prosecutors proceed only with appropriate cases.

8.70 On the other hand, some external interviewees were of the view that some cases that are not prosecuted should be the subject of charges. It is always important that prosecutors do not drop cases where there is a realistic prospect of conviction. It is particularly important that they do not do so in rape cases, where a defendant may present a risk to the public.

8.71 Although we considered that most of the decisions made in the cases we examined were in accordance with the Code (based on our test of the "reasonable prosecutor"), there were some instances where inspectors might not have reached the same conclusion. This applied both to cases that were dropped, or pleas to lesser charges were accepted, as well as to some cases that were prosecuted.

8.72 We were therefore left with concerns that whether or not a rape allegation was proceeded with could depend on who the reviewing prosecutor was. In other words, we were not satisfied that all rape cases are being reviewed consistently.

Proposed approach

8.73 Prosecutors expressed the view that there was a risk that they would develop too narrow a focus if they dealt exclusively with rape/sexual offence cases. This was of particular concern to those who work in large CPS Areas, where the volume of rape cases could lead to prosecutors handling no other types of cases. There was also concern that it would result in other prosecutors not therefore developing the necessary skills to deal with rape cases in the future. These concerns could be tackled by a properly structured system of specialisation, rotation and training.

8.74 The counter view is that specialism is a good idea as it ensures that lawyers know what issues they should be taking into account and what evidence they should be looking for. Indeed, the literature review reveals that there is evidence from other countries that suggests that specialist prosecution teams decrease attrition. Their approach is to develop evidence which goes to the victim's credit and supports the complaint. This can include using expert evidence to explain aspects such as delayed reporting, lack of resistance and reactions to rape.

8.75 We agree with the proposition that specialism should increase the quality of review. We therefore consider that the way forward is for all allegations of rape to be reviewed by prosecutors who have received specialist training in the handling of sexual offences.

8.76 There are already many prosecutors who have been trained to handle cases involving child victims and witnesses. They will already have many of the necessary skills, and could develop the additional expertise we consider is required for handling rape cases. It would therefore be open to CCPs to provide additional training to these prosecutors, who appear to be well placed to undertake the work, or to ensure that other prosecutors receive training.

8.77 In the preceding paragraphs, we have dealt with our concerns about the quality of some decision-making and the difficult issues prosecutors have to consider. Some of those concerns would be met by the issuing of further guidance, and by the introduction of specialist lawyers. They would be further met if a second prosecutor saw/discussed all cases where consideration is being given to dropping a case, reducing a charge or advising the police to take no further action, before the final decision is made. This should increase consistency of review and thereby raise public faith in decision-making.

8.78 The second prosecutor should, of course, be a specialist lawyer. CCPs might want to consider the possibility of introducing a lead prosecutor in the Area or TU, to whom all difficult rape cases could be referred.

RECOMMENDATION TEN

We recommend that:

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

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

Custody/bail

8.79 We were pleased to note that in all cases where a defendant appeared at court in custody there was sufficient information to enable a decision to be made whether to oppose bail. Prosecutors generally made appropriate decisions, and did so in 59 out of 61 relevant cases in our file sample.

8.80 We considered that the prosecution should have appealed against the granting of bail in four out of the 20 cases where an unsuccessful application was made for a remand in custody. Applications were made in three of the four cases, with two being successful.

8.81 Some external interviewees suggested to us that retraction by a victim may be linked to a defendant being granted bail, and that there is a fear of intimidation. Indeed, we were given an example of a case where the defendant did assault the victim after he had been granted bail.

8.82 There were no instances of retraction following the granting of bail in our file sample, but in one case it appears that the victim tried to commit suicide after the defendant was granted bail. However, the victim did not retract her statement, and the case proceeded to trial.

8.83 The police had granted the defendant conditional bail in 14 cases. An appropriate decision was made as to whether an application should be made in relation to the conditions in all but one case.

8.84 National standards of witness care (agreed by the Trials Issues Group) provide for the provision of information by the police to the CPS in cases where witnesses are concerned about the possibility of a defendant being granted bail. They also stipulate that the police should notify any witnesses who have expressed such a concern if bail is granted.

8.85 Representatives of special interest groups told us that victims are not routinely being notified of bail/custody decisions. In view of their concerns about intimidation, it is particularly important that they should be appraised of the position. We take the issue of updating victims further in chapter 11.

Victim retraction

8.86 The victim made a statement retracting the complaint, or expressing a reluctance/unwillingness to give evidence, in 11 out of 91 cases. Ten cases were terminated (either in the magistrates' courts or the Crown Court), and the remaining case resulted in a plea to a lesser offence. The police submitted their comments on the veracity of the retraction statement, and gave their views, in only one case. The prosecutor considered compelling the victim to give evidence in two cases.

8.87 The prosecutor considered making an application to have the victim's statement read, in accordance with section 23, Criminal Justice Act 1967, in one case. Subject to certain conditions, this section enables a witness's statement to be read to the court if he or she is outside the United Kingdom, or is mentally or physically unfit to attend court, or is too frightened to attend court. (We were pleased to note that in CPS Staffordshire this section had been used in a case, not part of the sample, where the victim had died. The defendant was convicted.)

8.88 There were six cases in the CPS file sample that had to be dropped as a direct result of the victim having retracted, or having indicated an unwillingness to assist the prosecution. Apart from the one case referred to above, there did not appear to have been any real attempt to explore the reasons behind the retraction or to ensure that the officer in the case was satisfied that it was genuine.

8.89 Some prosecutors in Greater Manchester and North Wales explore the issues behind retractions, and will ask the officer in the case to offer further support and advice. We commend this as **good practice**. This is in accordance with CPS guidance on how to deal with cases involving domestic violence (see below), and we consider that such steps should be taken in every case where the victim retracts.

8.90 Other prosecutors consider seeking a witness summons if there is a history of abuse. In one case, community pressure had led to a retraction, yet the victims had given evidence after the prosecutor had obtained witness summonses. The defendant was convicted. The CPS has recently issued revised guidance on how to deal with cases involving allegations of domestic violence where the victim has retracted. Although we acknowledge that rape cases do not necessarily attract the same considerations, so for example it may not be appropriate to seek a witness summons, we think that consideration should be given to producing guidance in relation to rape cases where the victim has expressed a desire to retract. Issues to be included could be consideration about whether the retraction is genuine, and whether the victim requires further support and protection. We comment in more detail on what further guidance we consider should be provided by the CPS, and make a recommendation in chapter 12.

Cases involving child victims

8.91 We examined 56 cases where a child witness had been interviewed by way of video recording. Some cases were very well handled, with careful notes and assessments. In particular, we found that in 24 out of 26 cases the provisions to transfer proceedings to the Crown Court were used. They were not used in one case, and we could not ascertain whether they were in another case. A timely written application for adducing the video evidence, and to use a television link facility, was made in every case.

8.92 We found that the lawyer had viewed the video recording before making a decision, in accordance with CPS guidelines, in 32 out of the 56 cases. We could tell that the video recording had not been watched in seven cases, but were unable to ascertain the position in the remaining 17 cases. At worst, this means that in 30.4% of cases where a child's evidence was by way of video recording a decision was made without all the evidence being considered. At best, it means that there has been a failure to endorse the file properly. Either way, this is not a finding that demonstrates that all serious child victim cases are being handled properly.

8.93 We examined ten cases where the allegation was of abuse some years earlier (known as "historic" allegations). These cases are particularly difficult to review, involving additional issues, such as possible abuse of process arguments. They can also require careful selection of charges. Of the ten cases we examined, four resulted in a conviction. There were three guilty pleas, four judge ordered acquittals, and two acquittals and one conviction by juries.

8.94 We were disappointed to note a lack of detailed review endorsements, and a failure to analyse all the issues. We also noted that three indictments had to be amended to add counts, as the prosecutor had not included sufficient counts to ensure that the defendant's criminality was fully covered. Further guidance needs to be given to prosecutors, particularly in relation to the drafting of indictments. We deal with training and guidance in chapter 12.

Cases involving victims with learning difficulties

8.95 Prosecutors can find it difficult to be sure how to approach cases involving people with learning difficulties. This is due in part to the legal framework, which does not help a prosecutor reviewing these cases and determining which is the appropriate charge. It is also due to the difficulties in assessing a victim's credibility, which are exacerbated in cases where the victim is perhaps considered to be suggestible. Further, victims with learning difficulties also have increased needs when giving evidence.

8.96 We have set out in earlier paragraphs the care that prosecutors need to take when selecting the appropriate charge, and when considering whether or not to add alternative charges. This is particularly acute when a prosecutor is dealing with a case where medical evidence shows that a victim is unable to consent. Even when there is clear evidence of rape, prosecutors should always consider adding a charge under section 7, Sexual Offences Act 1956, which makes it an offence to have sexual intercourse with a woman who suffers from a state of arrested or incomplete development of mind.

8.97 We examined nine cases involving victims with learning difficulties. It was clear that prosecutors were not always aware of how to handle the issues involved, including how to approach the question of the victim's abilities. This is an area where prosecutors require guidance and training, and should be included in the revisions we propose in chapter 12.

8.98 We examined one case where the issues had been very carefully considered. The reviewing prosecutor had liaised with other CPS Areas about how to deal with witnesses with learning difficulties, and had considered the use of screens for the giving of evidence. The prosecutor quite properly decided that an expert should be instructed to ascertain whether or not the two victims were capable of giving consent and/or exercising any judgement, their general level of capabilities and whether they were capable of giving reliable evidence. In assessing those issues, the expert did a suggestibility test, following which he concluded that they were suggestible. Although there were other evidential issues, the inevitable result of the expert's report was that the case had to be dropped.

8.99 This case demonstrates the difficulty that can be encountered when trying to review cases where the victim has learning difficulties. We noted that the prosecutor had obtained a copy of a protocol CPS Merseyside has entered into with the police and Social Services Directorate. The protocol is aimed at ensuring that cases are dealt with speedily and properly. One of its key features is the preparation by the social services of a witness profile matrix. The matrix not only deals with such issues as the victim's functional skills and powers of concentration, but also includes advice to counsel on how to ensure that the victim is able to give his or her evidence. We commend the agreement of such a protocol as **good practice**.

8.100 We comment in more detail in chapter 11 about the new special measures to assist vulnerable or intimidated witnesses in giving evidence. One of the measures is the video recording of adults with learning difficulties. This will not only help the victim in giving evidence, but should also assist the prosecutor in assessing a victim's abilities more accurately.

Learning from experience

8.101 We could tell that an adverse case report had been completed in only nine out of the 23 judge ordered and directed acquittals we examined. However, their absence from the file does not necessarily mean that reports are not being routinely completed, as experience shows that they may be filed separately.

8.102 Six of the nine reports we examined contained full details of the factual and legal reasons for the acquittal. There were general lessons to be learned in the three remaining cases, and the failure to analyse the issues properly means that an opportunity to learn may have been lost.

8.103 This is of particular concern in view of our comments about a prosecutor's approach to review and the high attrition rate. The prosecution team, consisting of the officer in the case, the lawyer, the caseworker and counsel (and, in appropriate cases, the FME and/or the FSS), should be seizing every opportunity to see how performance could improve. This means that counsel should be instructed to ensure that written reasons for the failure are always provided in cases that result in an acquittal, with advice being given where appropriate. It also means that the prosecutor, caseworker and officer in the case should discuss the issues, in order to ensure that any weaknesses in investigation or prosecution process are used as learning points for the future.

RECOMMENDATION ELEVEN

We recommend that:

- **prosecutors insert a standard paragraph in instructions to counsel, requesting a written report in any case involving an allegation of rape which results in an acquittal;**
- **any written report is used to complete an adverse case report, setting out the factual and legal reasons for the acquittal; and**
- **the adverse case report is used to discuss with the police any lessons to be learned.**

PREPARING CASES

Introduction

9.1 Good quality decision-making is of limited value if the subsequent handling of cases is not thorough and professional. In this section, we consider the performance of the police and the CPS in relation to specific stages in the progress of cases, from the institution of proceedings through to their conclusion.

Disclosure of unused material

Police training

9.2 Following the introduction of the statutory disclosure requirement introduced by the Criminal Procedure and Investigations Act 1996 (CPIA), the police service trained its personnel, with some training being delivered jointly with the CPS. The training varied from force to force in both style and content, from distance learning packages to one-week courses. Whilst it is acceptable that the varying depth of knowledge required for different police roles is matched by equivalent depth of training, in general we found knowledge too shallow, particularly among non specialist officers. The more detailed training given to detectives was not always reflected in the standard of their disclosure practice. In the absence of a unified approach, local practice, even within forces, has developed in an ad hoc way.

9.3 Since the provision of the initial training some forces have failed to maintain training delivery to personnel involved in the investigative process. This has led to localised procedures being introduced, including an element of 'on the job' training.

9.4 This issue is key to the enhancement of the prosecution case, and a high quality approach is essential if conviction rates are to be increased. We acknowledge that the CPS has in conjunction with some forces introduced protocols aimed at improving the quality of disclosure data. However, this is not universal and we believe that a more structured approach across both the CPS and the police service is necessary.

RECOMMENDATION TWELVE

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

Primary disclosure

9.5 In the course of an investigation, the police may have collected information that is not subsequently used by the prosecution. Primary disclosure is the duty placed upon the prosecutor by the CPIA to disclose any such material to the defence if in his or her opinion the material might undermine the prosecution case. The prosecutor must also give to the defence a list of all the non-sensitive material that might be relevant to the case but which is not used as part of the prosecution case.

9.6 The police will submit a non-sensitive material schedule (MG6C) that will list all the non-sensitive material in their possession, as agreed nationally with the CPS. The prosecutor must consider this schedule, together with a police report on disclosure and any material submitted by the police, and make a decision about what, if anything, to disclose. The prosecutor must then endorse his or her decision on the MG6C, a copy of which will be sent to the defence. Copies of any undermining material will also be sent to the defence, or they will be notified about how the material can be viewed.

9.7 Primary disclosure was made in 77 out of 80 appropriate cases (96.3%). We were not able to ascertain the position in the remaining three cases. It was dealt with appropriately in 54 of the 77 cases (70.1%). This is slightly lower than the overall rate of compliance of 73.4% in our inspections of CPS Areas to date.

9.8 The main reason for considering that primary disclosure had not been dealt with properly was that the MG6C required amendment in order to enable a properly formed decision to be made. Where the prosecutor works off inadequate information about the nature and content of material held by police, there is a risk that disclosable material may be overlooked, as was the position in 14 of the 23 relevant cases. In other cases, we considered that material which was revealed to the CPS should have been disclosed.

9.9 The police and CPS in London have entered into an agreement whereby there is revelation of certain documents to the CPS, and computerised disclosure schedules have been developed. A new joint training package has also been developed. We understand that in some parts of London this has resulted in an improvement in the quality of the schedules. We consider this initiative to be **good practice**.

9.10 Some of our interviewees pointed out that although in rape cases any account by the victim before he or she makes a witness statement, or is interviewed on video, must be scrutinised carefully, this is not even listed in the MG6C in many cases. Since most contested rape cases involve a challenge of the victim's credibility, and can turn on details in his or her account, we consider that the police must list pre-statement notes on the MG6C, and the disclosure officer, and subsequently the prosecutor, must carefully consider their contents for disclosure purposes.

Secondary disclosure

9.11 Secondary disclosure is the procedure whereby a prosecutor must disclose any information in his or her possession where the information might assist the defence case.

9.12 Secondary disclosure was made appropriately in 29 out of 53 cases (54.7%) where the duty to make secondary disclosure arose. This is a much lower figure than that found in our inspection of CPS Areas to date (69%).

9.13 We found evidence to show that secondary disclosure was not made in 13 cases. We could not ascertain whether it had been made in 11 cases. At worst, this means that secondary disclosure was not made in 24 cases. At best, it means that poor record keeping has made it impossible for us to properly examine the CPS performance in this respect.

Disclosure of sensitive material

9.14 The police should notify the CPS of any material which they consider to be sensitive. They did so in 21 out of 24 relevant cases. They did not do so in one case, and we could not ascertain the position in the remaining two cases.

9.15 There was evidence of proper consideration being given to whether the material was sensitive in ten out of the 21 cases (47.6%). This is much lower than the level of proper consideration found in Area inspections to date (68.2%). The prosecutor dealt with the disclosure of sensitive material appropriately in each case in which it was undertaken.

9.16 We considered that the prosecutor had not dealt with sensitive material satisfactorily in 11 cases. In one case, the prosecutor had received sensitive material from the social services, and considered that the material contained information that might undermine the prosecution case. The prosecutor dealt with the material as though it were third party material (see below) and wrote to the defence, asking them to apply to the court for an order for disclosure. This was a misunderstanding of the law, as once any material comes into the possession of the police or the CPS the material is prosecution material.

Disclosure of third party material

9.17 Occasions arise when information relating to an investigation exists, but it is not in the possession of the prosecutor or the police ("third party material"). Common examples of third party material in cases involving offences of rape include a victim's general medical history, or social services file.

9.18 Third party material may sometimes have a bearing on the strength of the evidence in a case. If it does, consideration must be given to whether it should be made available to the prosecutor, in order to ensure that the strength of the prosecution case is assessed properly. The question of whether the defence is entitled to it under the CPIA should only fall to be considered once any informed decision to prosecute has been made.

9.19 The Attorney General's Guidelines on Disclosure, issued on 29 November 2000, made it clear that a prosecutor must be proactive in these matters. If the CPS or the police suspect that a third party has material or information which might be disclosable, if it were in the possession of the prosecution, then consideration must be given as to whether it is appropriate to seek access to the material. If it is considered appropriate, but the third party refuses access, the matter should be pursued and the prosecutor should seek other remedies afforded by law to gain access.

9.20 Our file examination confirmed the concern expressed by our external interviewees about the handling of third party material by the police and the CPS. Third party material existed in 26 cases in our file sample. Disclosure of the material was made voluntarily in four cases, and by court order in nine cases. We found that proper consideration was given to the issue in only 14 cases.

9.21 While the main issue is the timeliness of the disclosure, we are concerned that some prosecutors are taking a view that third party material is not their responsibility. In our file sample, the receipt and revelation of social services material led to the prosecution offering no evidence at the Crown Court in six cases. In another case, it led to the prosecution accepting pleas to less serious offences. The information in all seven cases should have been sought before the cases progressed as far as they did, because it undoubtedly played a crucial part in the prosecutor's decision on the strength of the case.

9.22 The reviewing lawyer in one case expressed his frustration that the police had failed to make the material available to him sooner. The prosecutor, being a specialist in cases involving child victims and witnesses, should have anticipated that the material was in existence, and should have asked the police to look into the matter much sooner.

9.23 We should point out that we found cases where third party material was handled well. In one case, the CPS initiated contact with the social services. They reciprocated by examining their records, and forwarding relevant documents to the judge to decide whether disclosure should be made, well before the commencement of the case.

9.24 One of the difficulties confronting an investigating officer is that a third party has no obligation to reveal to the police or the CPS the existence or contents of any material that may have a bearing on a criminal investigation. In rape cases, the most common reasons for the reluctance by a third party to produce material were that it was given and received on a confidential basis, and that the information often referred to intimate personal details. The police have a general duty to pursue all reasonable lines of enquiries, but they do not have a power to require a third party to produce material for inspection. A power to compel production only arises after the commencement of criminal proceedings, and then by order of the court.

9.25 In the CPS Inspectorate's Thematic Review of the Disclosure of Unused Material (Thematic Report 2/2000) some of the difficulties that could result were highlighted, and it was recommended that CCPs take steps to develop protocols with local organisations that commonly hold such material.

9.26 In CPS Northumbria, a joint agency protocol governs the way in which social services' records are handled and it has attracted much praise from all agencies. We **commend** it.

9.27 CPS Greater Manchester have developed a protocol on the disclosure of medical counselling notes with St Mary's Hospital. This has attracted favourable comments from several of our interviewees, and we commend it as **good practice**. Many CPS Areas have now developed protocols with social services departments. Unfortunately, this practice is by no means widespread, and the arrangements tend to be on a case by case basis. This will have contributed to the problems we outlined earlier.

9.28 The reluctance to reveal material in the possession of third parties is often fuelled by a perception that such material will be routinely disclosed to the defence who may then use it to make an unwarranted attack on the victim in cross-examination. This has led to one voluntary organisation involved in counselling rape victims deciding not to keep notes of the counselling, with the result that the prosecution only knows of the fact of counselling if the victim raises the issue.

9.29 Our file examination generally supported the contention that prosecutors do not make routine disclosure of previous medical history and counselling notes, and that they are only disclosed in so far as it is necessary in accordance with the CPIA. But we found isolated incidents where, in our view, the prosecution failed to balance the need to disclose against the intrusion into the victim's privacy by the disclosure.

9.30 In one case, counsel asked for the victim's medical notes because she suffered from depression, and asked the CPS to disclose them when they became available. The implication is, therefore, that there was no consideration of whether disclosure was necessary in the interests of justice. In another case, the CPS asked the police to seek consent to obtain the victim's historical medical records. It then disclosed to the defence the records going back many years. The reviewing lawyer considered that not everything had a bearing on the case, but that disclosure at the defence request must be complied with because the victim had given consent.

9.31 We disagree with this approach. Victims do not always understand fully their obligations and rights, and the ambit of what they consent to is not often clear. They will usually comply with any reasonable police request to support the prosecution. This should not be taken that the victim has no concern that the information may be disclosed, or that the prosecutor has no duty to protect that information.

9.32 The Attorney General's Guidelines do not advocate disclosure without a consideration as to whether the information might undermine the prosecution case, or might assist a known defence. They urge that consultation with the third party should normally take place before disclosure is made, as there may be public interest reasons which justify withholding disclosure and which would require the issue to be placed before the court.

9.33 In Greater Manchester, CPS lawyers are required under the protocol to check any notes revealed to them and they take decisions by reference to the statutory tests. The Clinical Director of the Centre has personally attended court to explain to the trial judge why disclosure was not thought to be necessary. This has resulted in fewer applications for disclosure being made.

RECOMMENDATION THIRTEEN

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

Previous sexual relationship

9.34 The disclosure of information about a victim's previous sexual relationship can cause anxiety to a victim. Many victims are aware that this action may be taken, and it can have an effect on the willingness of the victim to proceed with the case. However, we did not find any evidence of such information being disclosed unnecessarily.

9.35 On the other hand, we did see some evidence of detail about previous sexual history being included in the victim's statement, and we have already referred to the need for ACPO and the CPS to clarify what needs to be included. Prosecutors should be alert to the need to consider whether statements do contain unnecessary detail and, if they do, should edit those parts. Unless this is undertaken, and careful consideration is given to what is relevant and admissible, situations may arise where a victim is cross-examined in an inappropriate way.

The way forward

9.36 There is clearly a lot of work that needs to be done by both the police and the CPS, in order to improve their respective performance under the disclosure regime. In particular, the following points need addressing:

- retraining of police officers;
- improvement in quality of disclosure schedules;
- CPS compliance with primary and secondary disclosure;
- CPS consideration of sensitive material schedules;
- police/CPS handling of third party material; and
- ensuring applications by the defence for third party material are properly handled or dealt with.

9.37 ACPO and the CPS have set up working groups, which are currently considering the recommendations made in the Thematic Report 2/2000. We trust that they will draw upon our findings in this report.

Preparation of papers for the Crown Court

9.38 All adult defendants charged with rape must first appear at a magistrates' court. Until recently, they were then committed to the Crown Court for trial under section 6, Magistrates' Courts Act 1980. Since 15 January 2001, adults charged with rape are sent to the Crown Court under section 51, Crime and Disorder Act 1998. For certain cases involving children as victims, the prosecution may transfer the case to the Crown Court under section 53, Criminal Justice Act 1991.

9.39 Before a case is committed or transferred, the prosecutor must prepare a set of papers which contain, as far as possible, all the evidence to be called by the prosecution. For sent cases, where the aim is to enable them to progress to the Crown Court in a much shorter period of time, the preparation of papers will occur after the case has reached the Crown Court.

9.40 The approach to the preparation of case papers differs between the Areas we visited, and there is variation within the Areas. In some cases, lawyers prepare the committal bundle. In other Areas, lawyers and caseworkers share the tasks. A third approach is for the caseworker to prepare the bundles under the supervision of a lawyer. In all cases, the lawyer is responsible for the contents of the bundle, and we found evidence of lawyers checking the papers in 72 out of 78 cases in our sample. Generally, the lawyer who is responsible for the case papers will have overall responsibility for the case in the Crown Court. The quality of the papers served, and the time scale within which they are served, is not different to those for all types of cases.

9.41 Several of our interviewees suggested that more use could be made of photographs to illustrate marks or injuries. It is right that the taking and use of photographs of rape victims should be minimised, but these should not be ruled out when the level of intrusion is minimal, so that the evidence can be presented clearly.

Sent cases

9.42 Cases are sent to the Crown Court by the magistrates' courts on the first appearance, without consideration of any evidence. Regulations provide for time scales, and extensions, for the service of the prosecution case on the defence.

9.43 Normally, a case reaches the Crown Court within ten days of the first hearing at the magistrates' courts. The Crown Court judge then holds a preliminary hearing to determine the timetable for the future progress of the case. The legislation provides that papers must be served within 42 days of the preliminary hearing, unless a judge has granted an extension of time. The CPS has issued guidelines to prosecutors that the 42 day period should not be treated as the normal period for the service of papers, and that every effort should be made to speed up cases which are relatively straightforward or in which guilty pleas are expected.

9.44 Forty-two days are not normally sufficient to deal with rape cases, which usually involve medical and/or scientific evidence, two of the most common causes of delays, with the result that some police file preparation units are simply not able to cope with the time scale. However, in cases where the defendants are in custody, there is understandable pressure from court to speed matters up.

9.45 We noticed that in one of the Areas we visited, the prosecution sometimes asks for, and obtains, an adjournment in the magistrates' courts before sending a case to the Crown Court. The prosecution tends to do this when there are some doubts as to whether the case should proceed, and some short-term enquiry might inform the decision. This Area also benefits from a comparatively lengthy period between the magistrates' courts and the Crown Court hearings. In other Areas, applications for adjournments are almost always refused.

9.46 The CPS is conducting an evaluation of the implementation of section 51, Crime and Disorder Act 1998. This should provide guidance for Areas to address the issues involved. We comment further upon difficulties in relation to medical and scientific evidence below.

Indictments

9.47 The quality of indictments is variable. In the 82 cases in the CPS file sample, the indictment had to be amended in 28 instances (34.1%). Some amendments tended to reflect the difference between the reviewing lawyer's and counsel's approach to the case. Other amendments were major.

9.48 In the CPS file sample, indictments were amended on six occasions to reduce the level of the charge, and on three occasions to increase the level of the charge. In one Area we noticed that further counts were added to four indictments. All four indictments related to offences of historic abuse against children.

9.49 We came across other instances that suggested that more care should be taken in the preparation of indictments. In one case, the indictment charged rape and incest. Since the defence was that nothing had occurred at all, the incest count was unnecessary. In a second case, the age of the victim was not included in the count where this was an element of the offence. In other cases, counsel had to amend the chronology of the counts, or the order of the defendants in the indictment was wrong for tactical reasons.

9.50 Many of the amendments were necessary because the correct charges had not been selected. We have dealt with this issue in chapter 8, and with the fact that an early discussion with counsel to discuss the issues in the case should resolve many of the problems set out in the preceding paragraphs. We comment on the need to have conferences with counsel below.

Instructions to counsel

9.51 It is important that counsel instructed to appear in the Crown Court receive comprehensive instructions in a timely manner. The instructions should contain an adequate analysis of the evidence and issues in the case. This is particularly important in rape cases as the case can often turn on the detail in the evidence. It is also important that, where it is reasonably foreseeable that the defendant may offer pleas to less serious offences, or to only some of the counts on the indictment, counsel is instructed about what is acceptable to the Crown. This should avoid delays caused by the need to conduct detailed discussions on the trial date. Instructions also need to ensure that counsel focus at an early stage on any arrangements that may be necessary for vulnerable witnesses.

9.52 We examined the quality of instructions to counsel in 77 cases. In most instances, an attempt had been made to discuss the facts in the case, but this tended to consist of a recital of some of the facts, and did not provide an adequate analysis of the issues. The brief contained a summary that adequately addressed the issues in 35 of the 77 cases (45.5%). The acceptability of pleas was dealt with in only 11 out of 47 relevant cases (23.4%). This accorded with the concerns of some of our external interviewees, and with the position in relation to the quality of CPS instructions to counsel generally. We would have hoped that cases as sensitive as rape would warrant something more professional and polished.

9.53 One case we examined illustrated the problems that could be caused by inadequate instructions. The instructions had failed to point out the various pieces of evidence which could have corroborated the victim's account that she did not, in fact, consent. Nor did they set out that the issue in the case was the respective credibility of the victim and the defendant, rather than the latter's recklessness. The trial judge indicated to prosecution counsel that he would warn the jury of the danger of finding the defendant guilty without corroborative evidence. Counsel conceded that there was no corroboration of whether the defendant was reckless as to whether consent was given, and offered no further evidence. As the defendant's account was that the victim actively participated, which she denied, there was no room for any defence that the defendant acted under an honest but mistaken belief. Although counsel should have been aware of this, if it had been set out clearly in the instructions the case might not have been dropped.

9.54 Another example of poor preparation was a case where counsel was instructed to consider producing a defendant's previous conviction for rape as evidence of propensity. However, details of the conviction were not included in the papers, nor was there any discussion on the legal considerations involved. In another case, emotive and inappropriate language that cast aspersions on a victim's character formed part of the case analysis. Another set of instructions did not explain the origins of a count which was not initially charged, but had been added by examining justices at committal.

9.55 One counsel drew our attention to the practice of one prosecutor of providing a full note to the police when preparing a case for committal. The note outlines the prosecutor's views on the case, and any further work that needs to be carried out. This note is then included in the brief. Counsel considered that this helped to focus any future discussion with the CPS and the police. We commend this as **good practice**.

9.56 We would also expect instructions to counsel to include any unusual aspects of sentencing that might arise. The briefs we saw included instructions on the need to consider, in appropriate cases, the possibility of an Attorney General's reference to the Court of Appeal on an unduly lenient sentence. However, we saw one case where no reference was made to the fact that the defendant was subject to the provisions of the Crime (Sentences) Act 1997 (life sentence upon conviction of further offence of violence). This information should have been included.

Post committal advice from counsel

9.57 The CPS has agreed nationally with the Bar that once counsel has received instructions to prosecute, he or she should advise the CPS on any weaknesses in the case, and identify any further work that should be done. This does not occur as often, or in as timely a fashion, as it should, and there is some supporting evidence in our file sample of a failure by counsel to give early attention to instructions. This tends to defeat the purpose of setting a challenging target for the timely delivery of instructions to counsel.

9.58 We found that conferences with counsel are not held routinely, and that it depends on whether the reviewing lawyer or counsel requests one. The majority of counsel we spoke to thought that conferences are beneficial in most rape cases, and that there is a need for them in many cases.

9.59 We agree that conferences with counsel would be beneficial in most, if not all, cases involving allegations of rape. It would ensure that all the issues in the case were discussed at an early stage. This would include, for example, the question of what charges should be on the indictment, and the question of which, if any, special measures to give evidence should be applied for. It should also include consideration of any forensic science evidence, with the relevant scientist attending the conference, to assist in ensuring that the evidence is properly understood in terms of content, meaning and weight. However, the advantages gained in having a conference are reduced if ultimately counsel returns the brief. We deal with the issue of the high number of returned briefs later.

RECOMMENDATION FOURTEEN

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

Plea and directions hearings

9.60 The first effective hearing in the Crown Court, for committed or transferred cases, is known as a plea and directions hearing (PDH). The hearing provides an opportunity for the parties to identify the contested issues in the case, and for the Court to give directions to the parties on the progress of the case. However, the practice of some police officers of submitting prosecution evidence piecemeal, and beyond agreed time-scales, often renders the PDH ineffective.

9.61 The PDH is normally listed one month after a case is committed, or as directed by the judge in a preliminary hearing in a sent case. The prosecution and the defence should be ready to deal with a case at the PDH if the defendant pleads guilty. If the case is adjourned, the judge will usually give directions about the future management of the case. It is important that these directions are complied with in the time given by the judge, and we were pleased to see that directions were complied with in 33 out of 36 cases in our file sample.

9.62 Difficulties can occur if the counsel who appears at the PDH is not the counsel who has been instructed to prosecute the case. Not only are such counsel on occasions significantly more junior to those originally instructed, but also the opportunity to take key decisions in the case is missed. In one case in our file sample, counsel originally instructed to prosecute agreed with the CPS what would be acceptable pleas. A different counsel conducted the PDH, and agreed to accept pleas which did not accord with the agreement with the CPS. It proved impossible to correct the error, which resulted in the defendant receiving a comparatively light sentence.

9.63 This problem is widespread in all types of cases. We consider it to be particularly crucial in rape cases that the advocate who appears at the PDH is fully aware of all the issues in the case. This means that either it must be the lawyer in the case (if he or she is a CPS Higher Court Advocate), or counsel instructed to appear at the trial. This will require a commitment on the part of both the CPS and the Bar to ensure that the rate of returned briefs at PDHs is reduced.

SUGGESTION ONE

We suggest that the lawyer in the case (if a higher court advocate) or prosecution counsel instructed to appear at trial should be required to attend the PDH in all cases involving allegations of rape.

9.64 The CPS is required to provide a summary (by way of an agreed one page document) to the court and the defence at the PDH to assist in the identification of the issues and to help in listing the case on a suitable date. We found that these summaries can often be so brief as to be inadequate. In the worst example, the summary simply said "allegation of raping ST (12). Likely issue: consent". This case unsurprisingly attracted criticism from the court. It is a process to which the CPS should pay greater attention.

9.65 It is important that all the issues in the case are identified at the PDH. This includes ensuring that the court is made aware that, for example, there is a need for a video link. During the course of our court observations, we saw two cases which were delayed because they had been listed in court rooms without these facilities.

Medical and scientific evidence

9.66 Many of our interviewees expressed concern about the time it takes for scientific and medical evidence to become available to the police and the CPS. One Crown Court judge described this as the slowest part of the process. This means that decisions to charge and, in some cases, decisions to allow the case to proceed to the Crown Court are often taken without the benefit of what might be crucial evidence in the case.

9.67 We saw some cases which were dropped after medical/scientific evidence became available after the PDH. This meant that the decision to proceed to the Crown Court was taken in the absence of potentially crucial evidence. In one case, the medical evidence had taken a month to reach the CPS, and the scientific evidence took a further month. During this delay, the young defendant was required by his bail conditions to reside away from home and not to visit his hometown. As a result, his education was severely disrupted. We also saw a case where the defendant had changed his plea to guilty on the day of trial, following service of forensic evidence.

9.68 In two cases, we considered that the prosecutor should have awaited sight of the medical or scientific evidence before dropping the case.

9.69 Medical evidence is almost always required in rape cases, and in most cases the examination takes place very soon after a complaint is made. We are therefore concerned that there is still delay in the provision of evidential statements by medical examiners. Some of our concerns will be resolved by the new protocol agreed by ACPO, the British Association of Emergency Medicine and the CPS, which covers timeliness and quality of statements provided by staff at accident and emergency departments of hospitals.

9.70 Clearly, there will be instances where it is necessary to charge a defendant before vital forensic evidence is formally prepared, and the majority of these will be sent cases. It is important that the prosecution is in a position to provide the court with information about when the evidence will be available, thereby enabling the Crown Court judge to set a realistic timetable for preparation of the case papers. All CPS Areas have agreed protocols/procedures with the police and Forensic Science Service. Properly implemented, these can ensure that the agencies work together to improve the delivery of results to court and thus avoid ineffective hearings. The CPS has expressed its concern about unrealistic timetables being set. The protocols should ensure that such unrealistic deadlines, which can cause delay in other cases, are not set.

Case and file management

9.71 We examined the file endorsements in the magistrates' courts in 125 cases. We found that the endorsements were clear and legibly showed a comprehensive record of case progress in 116 cases (92.8%). The position with Crown Court files was not as impressive. We concluded that the quality of file endorsement was satisfactory in only 66 out of 97 files (68%). In this report we have stated that we were unable in some cases to ascertain exactly what happened at particular stages of their progress. This was due in the main to poor quality file endorsements.

9.72 Some aspects of poor file management were apparent in our file sample. We came across loose pages bundled together, and notes of unknown origin/purpose, even when there was compartmentalisation of the file contents. There were instances of no, or inadequate, notes of the result of the trial, and we were not able to distinguish between the indictment initially lodged and the amended version in other cases.

9.73 In one case, all counts were left on file, but we were unable to find any explanation for this. In another case, a committal was discharged because the prosecution was unable to proceed, but there was no record of what, if anything, the CPS proposed to do about the discharge. In a third case, the prosecution was dropped after one defendant became very ill during the trial. There was no record to explain why the CPS could not proceed against the other defendant.

9.74 In one Area the shortage of caseworkers was seen to be having a significant impact on performance. We noticed that most of their files were not maintained properly, with key documents missing, or filed in no particular order. This means that anyone seeing the file for the first time may have to waste valuable time trying to locate information, thereby adding to the pressure upon them. The state of the files may be due to a lack of time to maintain them properly, but we think that investment in file management will yield profit. We should point out that this Area also provided a file the preparation of which was excellent and was one of the best in our file sample.

THE TRIAL

The CPS in the Crown Court

10.1 Cases in the Crown Court are usually conducted by counsel instructed by the CPS. There is also a growing cadre of CPS Higher Court Advocates (HCAs) operating in most Crown Court centres, handling mainly uncontested work. CPS caseworkers attend the Crown Court to assist counsel and HCAs. They also perform various tasks that might arise, for example obtaining information not contained in the brief, marshalling witnesses and exhibits, and taking a note of the proceedings where necessary. They provide a record of the proceedings, and they also have a part in witness care.

10.2 Ideally, the caseworker involved in the preparation of the case should cover the trial, and do so throughout the trial. This does not always happen, and the extent of caseworker coverage varies in different Areas. Most Areas make an effort to enable the relevant caseworker to be present at the start of the trial, and in some cases manage to provide continuity of cover. However, while in some Areas the coverage can be as much as one caseworker to one or two courtrooms, in other Areas this rises to one caseworker to four or five cases, several of which may be trials.

10.3 Low caseworker coverage and the lack of case ownership can give rise to:

- difficulties in prosecution counsel obtaining instructions or assistance from the CPS;
- poor record keeping and file maintenance;
- lack of contact with the victim;
- breakdown in communications to witnesses about the progress of the case;
- a perception that the CPS does not treat the case seriously enough, when compared with the presence of a defence team in the courtroom; and
- the CPS appearing not to be in control of proceedings.

10.4 We found in our file sample that there was usually some form of caseworker coverage in 35 out of 40 trials. There was no cover in one case, and we could not ascertain the position in the remaining four cases. The caseworker in the case provided the cover in only 11 of the 35 cases. Continuity of cover through the trial occurred in only 14 cases.

10.5 During the course of our court observations, we noted that a good level of caseworker cover tended to result in business being conducted efficiently and effectively. The caseworkers were knowledgeable about the cases they were covering, even if they were not involved with the initial preparation of the case. In the Area that had the lowest level of caseworker cover, the conduct of CPS business was sometimes chaotic, with some caseworkers appearing to have little knowledge of the case or its progress. In one instance, a case was transferred to another court some distance away, without the caseworker's knowledge or involvement. In the same court, on another day, counsel sought an inspector's assistance on what to do with an offer of a plea to a less serious offence. In that Area, victim and witness care has effectively become the province of the police and organisations such as the Witness Service, and counsel tend to use the police officers in the case as their first point of contact. In a different court in the same Area, students employed during the summer holidays were used to cover absences due to summer leave.

10.6 These comments are not a reflection on the ability of the caseworkers involved. There is a sense that they are simply overwhelmed by the amount of work they have to get through each day. Where the CPS can only barely offer a basic level of service, very few cases can enjoy a higher degree of attention. This effect can be felt in rape cases.

10.7 As stated above, in many of the Areas we visited an effort was made to enable the caseworker in the case to attend court to cover the trial. We identify this as **good practice**.

10.8 Increasing the number of caseworkers in court is only part of the solution. CPS managers should also look carefully at how efficiency can be improved. The provision of copies of documents, and editing documents at the request of counsel, can take up much time. In many cases, this needs to be done at court because of poor case management or late requests by the defence. CPS managers should also consider whether staff at a lower grade should undertake basic clerical activities at court, serving a number of courtrooms. This can be extended to the recording of results and keeping witnesses informed of case progress. Managers in Areas where transfer of cases between courts is common should look to ways of ensuring that the receiving courts are adequately serviced.

10.9 Currently, there is no consistent lawyer presence at all Crown Court centres. The establishment of CPS Trials Units should mean that there will be more attendance by lawyers, which should assist in the legal aspects of cases. We noted that in two Areas one or more lawyers are normally present.

Cross examination of the victim

General

10.10 Contested rape cases almost invariably involve a challenge to the victim's credibility or recollection. The questioning of a victim in court often involves a significant intrusion into a victim's personal circumstances and lifestyle. It can also often involve questioning aimed at demonstrating that the behaviour of the victim led the defendant to believe that there was consent to sexual intercourse.

10.11 We understand that victims are aware that cross-examination may take place, and are aware broadly of the lines commonly adopted by defence counsel. However, they cannot understand the relevance of some questions of a personal nature, and are often surprised at the ferocity of the cross-examination, and many victims who have given evidence say that they would not report a rape again because of the ordeal. Practitioners we spoke to think that cross-examination of a victim generally, and in relation to his or her previous sexual behaviour, had become more restrained even before the commencement of section 41, Youth Justice and Criminal Evidence Act 1999 (YJ&CEA) in December 2000 (see below). However, they were not surprised at all by the reaction of the victims.

10.12 In an adversarial justice system, the defence is allowed to probe the prosecution case robustly and vigorously, but steps can be taken to minimise the level of hostility experienced by the victims. In one Area, defence counsel may, in so far as it does not conflict with their duty to their client, inform prosecution counsel of the nature of any intrusive questions that are likely to be asked, so that the victim will not be taken by surprise. In other Areas, prosecution and defence counsel have to introduce themselves to the victim together before the trial. These initiatives are encouraging.

Previous sexual history

10.13 The questioning of a victim about his or her sexual experience, by either the prosecution or the defence, is a contentious issue. There are occasions when a victim's previous sexual history may be relevant to an issue in the case, and evidence of it is then admissible. There is, however, a danger that this line of questioning can be used as a device unjustifiably to turn a victim's character into a significant issue in the case. The line is difficult to draw.

10.14 Section 2, Sexual Offences (Amendment) Act 1976 imposed some restrictions on the cross-examination of a victim about any sexual experience with a person other than the defendant. There were general concerns about the operation and ambit of that provision, and sections 41 to 43, YJ&CEA were enacted to address those concerns. The sections further restrict the circumstances in which evidence or questioning about a victim's sexual behaviour beyond the circumstances of the alleged offences can take place without the leave of the court. Unlike those under the 1976 Act, restrictions under the YJ&CEA apply to the prosecution as well as the defence, and include sexual activities with the defendant.

10.15 Many of our external interviewees consider that, since the commencement of the provisions, applications by the defence to adduce such evidence tend to be made properly, and that aggressive cross-examination occurs only rarely because it can be counter-productive. This view is not fully supported by CPS staff, representatives of victim and witness support organisations, or our own observations.

10.16 We observed an application to cross-examine being made. The application had some merit, but was refused. We were told of another case in the same Area where a different judge also expressed concern about a pending application.

10.17 On the other hand, we found in our file sample a case where a judge allowed the defence to cross-examine the victim, aged 14, about an alleged incident that had occurred when she was seven. We could not understand how this was relevant to the case.

10.18 The new restrictions apply to the prosecution as well, but we saw one case where prosecution counsel appeared not to have considered whether he could call the evidence himself. As a result, the defence application to cross-examine the victim seemed speculative but was not objected to, and the victim was cross-examined in an inappropriate way.

10.19 The procedure for application for leave to adduce the evidence is governed by rules of court. The party should normally provide notice of the application to the court and all the parties in the case, to allow the other parties to consider a response. The rules also envisage that applications should be made in advance of the trial. We are concerned that in a number of cases the procedure set out under the rules had not been adhered to, and we noted that written application had not been made in either of the two cases we observed in court.

RECOMMENDATION FIFTEEN

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

10.20 We understand that the Home Office is planning to undertake research into the operation of the provisions of section 41, YJ&CEA later this year. We welcome this initiative.

Listing of cases

10.21 In most Areas, cases are heard at the Crown Court to which they are committed, transferred or sent. In London, however, cases are regularly transferred between courts. We appreciate that there may be logistical reasons which make this necessary, but it can affect the preparation of cases. In particular, it can make arranging a court familiarisation visit for the victim difficult, and may influence the choice of venue for special measures meetings.

10.22 In all the Areas, trials are generally fixed, by that we mean that the court assigns a day on which the trial is expected to start. In London, rape cases are still listed as floaters, that is, cases that might be called on if a courtroom becomes available due to the collapse of other cases. Witnesses in floaters are left in suspense as to whether their case will be called on. They often have to wait for some time before they give their evidence, and in some cases are sent home after a long wait, without having given their evidence. We are concerned about the effect this has on witnesses, particularly victims in rape cases.

10.23 Even if trial dates are fixed, some courts regularly list other short hearings before rape trials. This lengthens the waiting time, as does the occurrence of legal arguments before the trial, some lasting several hours. This is as undesirable as floating rape trials.

10.24 We observed a case that was transferred on the day of trial from the Central Criminal Court to a court in the south western extreme of the capital. The victim had to be transported to Kingston. The delay in the commencement of the case led to the victim having to give evidence over the course of two days. Our attention was drawn to another case where the victim had to wait for a day and a half before she was called to give evidence, and she was then criticised for being five minutes late.

10.25 The CPS should try to ask witnesses to attend court at a time and date when it is anticipated that they will be required to give evidence. Some of our external interviewees commented on the unrealistic estimate the CPS arrived at. Others added that lengthy waits by the witnesses are also occasioned by legal arguments at the beginning or during the trial. In Greater Manchester, a pilot scheme has extended witness care by providing a pager unit, which allows victims to avoid the pressure of waiting within the court building until required to give evidence. However, if effective use is made of PDHs and other pre-trial hearings, the need to have witnesses waiting unnecessarily, even away from court with a pager, should be minimised.

10.26 The staggering of witnesses is down to local protocol. CPS policy is to take account of the needs of witnesses, and so aims to ensure as far as possible that cases are not listed as floaters. We were told that in one London Crown Court time is set aside for any legal arguments in the afternoon, so that the victim, who is usually the first witness, can start giving evidence the next morning without any unnecessary delay. This is a practice often used for young witnesses, and we are pleased to see that it is being extended to victims in rape cases. We commend this as **good practice**. We urge CPS Areas to work with Crown Courts to develop protocols which reduce time spent by victims waiting to give evidence, and to avoid rape cases being transferred or dealt with as floaters.

Advocacy

Selection of counsel

10.27 Rape cases are difficult cases to prosecute, particularly if the disputed issues involve consent. There is, therefore, a particular need to select counsel, or HCA, of experience and ability, and to ensure that there is continuity of counsel as the case progresses. The Bar, as well as some observers of the criminal justice system, have expressed concerns regarding the strength of prosecution counsel compared to their counterparts for the defence. They say that this is caused by a difference in the rates of remuneration between the prosecution and the defence. It is said that the result of this difference means that the CPS only obtain counsel of lesser experience and ability.

10.28 The evidence we received through interviews was inconclusive on the point. Some judges were of the view that most prosecution advocates are at least adequate or better, and that poor advocates appear for the defence too. Some interviewees pointed out that the issue is not so much that the rate of fees affects the availability of counsel, but that the given fee restricts the amount of time counsel can afford to give to the case. On the other hand, very experienced counsel said that they are pleased to be able to prosecute in rape cases.

10.29 A Graduated Fee Scheme was implemented on 29 October 2001 and is expected to solve any problems in this regard. Its aim is to ensure that there is no disparity in the fees paid to prosecution and defence advocates at the Crown Court, unless there is good reason for distinguishing the value of their comparative roles. The effectiveness of the new system remains to be assessed.

10.30 We think that the CPS should also give special consideration to cases involving several defendants, or where Queen's Counsel leads for the defence. In six cases in our sample the defence had instructed Queen's Counsel. The CPS had not done so in five cases, and we could not ascertain the position in the remaining case. We were told of a case where prosecution counsel, albeit an experienced advocate, found herself against five leading counsel and five junior counsel. The parity of remuneration in that case was an issue, but, more importantly, prosecution counsel would have been placed under tremendous pressure.

10.31 Most CPS staff are of the view that some counsel are better at prosecuting rape cases than others, and they strive to ensure that these counsel are instructed. The collection of information about counsel's ability is informal, however. Only CPS London had a formal list of counsel considered suitable for rape cases. Although their list is over-long, and perhaps in need of updating, we commend as **good practice** the creation of such lists with the agreement of, and in consultation with, the Bar. This can be achieved through discussion by the Joint Advocate Selection Committee.

10.32 Several caseworkers, from different Areas, expressed concern not so much about any imbalance of strengths, but that suitable counsel are in short supply, and that once they acquire a good reputation for rape cases they become heavily in demand.

The quality of advocacy

10.33 We attended the Crown Court on several occasions and generally found the quality of prosecuting counsel ranged from satisfactory to good. We were impressed with some aspects of performance by some counsel. On the other hand, there were occasions where the advocate's preparation for the trial, or mastery of the facts, could have been improved. We did not see any obvious difference between prosecution and defence advocates, although we have already referred to one counsel's failure to consider the restrictions on questioning victims about their previous sexual history above.

Monitoring advocacy standards

10.34 There is no general monitoring of advocacy standards in the Areas we visited, nor are there arrangements to confirm how counsel perform in rape cases. Any assessment tends to be in response to feedback of poor performance.

10.35 We consider that the value of effective monitoring of advocacy standards, coupled with effective feedback, cannot be underestimated. Rape cases require sensitive handling and special aptitude for such cases should be looked for.

RECOMMENDATION SIXTEEN

We recommend that CCPs introduce structured monitoring of Crown Court advocates who prosecute cases involving allegations of rape.

10.36 Any monitoring should, of course, be discussed by each circuit's Joint Advocate Selection Committee, and needs to take into account the agreement between the CPS and the Bar on the selection of advocates in the Crown Court.

Returned briefs

10.37 Counsel originally instructed in a case may not always be able to conduct the trial. There are several reasons for this, including listing practices, late change of pleas, and trials going beyond the time initially allocated. This can mean a lack of continuity in case management and differing opinions leading to changes of how the prosecution is to be conducted. For briefs that are returned late, there can also be a question mark over whether counsel has had sufficient time to prepare the case, and whether the new counsel is of an acceptable standard.

10.38 Cases in our file sample demonstrate the scale of the problem. Counsel originally instructed appeared at the PDH in 42 out of 81 cases, and at trial in 19 out of 40 cases. In one case, different counsel, none of whom was counsel originally instructed, appeared at the PDH, the trial, and the sentencing hearing.

10.39 CCPs will want to ensure that the standard of advocacy and case management in the Crown Court is not adversely affected by the rate of returned briefs. In rape cases, it is particularly important that when returns become necessary the case should go to counsel of appropriate experience and calibre.

10.40 It is also important that there is as much continuity of cover as possible. We have already commented upon the need for conferences to be held with counsel in order to discuss the issues in the case. Such conferences will also be important when the special measures to assist vulnerable and intimidated witnesses to give evidence are implemented (see following chapter). Clearly, it would benefit both the preparation of the case, and the victim, if counsel instructed to prosecute the case attended any conferences and all the hearings in the case. This will require the commitment of the CPS and the Bar, and we trust that every effort will be made to achieve this.

VICTIMS

General

11.1 Generally, great progress has been made in the service provided to victims. The Victim's Charter, which was published in 1996 and is currently being revised, sets out the duties of the various agencies in the criminal justice system. Victim Support and the Witness Service provide a valuable service to victims, as do many other organisations that represent the interests of the victim.

11.2 In addition, there have been a number of new statutory provisions (such as special measures to give evidence), which should further enhance the service provided to victims. They should also result in victims having a greater role in the criminal justice system.

11.3 It is important to remember that the prosecution, that is, the police, CPS and counsel, do not represent an individual victim, although they should take into account his or her interests and views. However, the prosecution needs to bear in mind that there is a balancing exercise to be undertaken between the rights of the victim and the competing rights of the defendant, and also between the victim and the interests of the public at large.

Reluctance of victims to report offences of rape

11.4 Our inspection did not include a detailed study of the reasons for some victims being reluctant to report allegations of rape. In particular, as set out in the chapter dealing with our methodology, we did not interview victims. However, we did explore the possible causes with representatives of special interest groups.

11.5 Most interviewees had similar views about why there is so much under reporting. The reasons we were given included:

- fear of not being believed;
- fear of judgements being made about their behaviour;
- fear of the process, particularly of the court system; and
- fear of reprisal.

11.6 These views accord with the literature review findings.

11.7 Another common reason for not reporting an offence of rape is because the parties knew each other. We have already considered the difficulties in relation to cases where a defendant is alleging that the victim consented. Generally, this is in cases where the parties know each other, and it is of note that victims themselves appear to be aware that these sorts of cases are difficult.

Victim care after the conclusion of the investigation

11.8 This report has consistently urged police forces to put victims at the centre of police activity. The needs of the victim continue beyond the demands of the medical examination and the taking of statements of evidence.

11.9 A victim's needs can often be met more appropriately by agencies independent of the police, and many victims benefit from the services of Victim Support. One initiative is a Vulnerable Witness Support Scheme in Humberside, currently funded by the Home Office and run on a multi agency basis. This pilot scheme has yet to be evaluated but victims (and other witnesses) regard its support as valuable. Another Home Office initiative is a scheme being piloted by St Mary's Hospital in Greater Manchester. A support worker is providing support to victims at the statement taking stage in liaison with the police, and continuing regular telephone contact throughout the case. The pilot will be evaluated in August 2002.

11.10 Some forces are recognising their responsibilities and responding to them in imaginative ways. We urge those forces yet to put necessary arrangements in place to learn from the experience of others. Those with adequate systems should ensure that they are monitored and evaluated so that no victims fall through the administrative safety net. Victims must remain at the centre of policy, process and practice from the first report to the judgement of the court and beyond.

Progress updates

11.11 One of the biggest complaints made by organisations representing the interests of victims was about the lack of information victims receive about the criminal justice system, including the likely time-scale between reporting the allegation and trial. There was also said to be limited updating on the progress of a case, including the position in relation to bail. This is of particular importance to a victim, especially in view of a general fear of reprisal. The general view was that a victim needs to be told from the start that the whole process will take time, and that he or she needs regular contact from someone in authority. We found no evidence of any effective system to ensure that the victim is kept informed about the progress of the case. We were told of an instance where a victim felt unable to leave her house after the defendant had been charged, for fear that she might receive a telephone call warning her to attend court.

11.12 The Victim's Charter places the responsibility for keeping a victim informed about significant developments in the case on the police. However, it also requires a will on the part of prosecutors and caseworkers to ensure that the police are aware of progress in a case, and thereby are put in a position to pass this information on to the victim. The CPS should prompt the police to speak to the victim in these circumstances, if possible before a final decision is made. We saw examples in our file sample of prosecutors doing this in relation to decision-making (see below).

11.13 One suggestion made by interviewees was that victims would benefit from a pack that sets out the various stages of a case and likely time-scales. There is already a Home Office produced leaflet which is given to witnesses by the police. It contains information about going to court, but none in relation to the criminal justice system or time-scales. Another booklet has been produced for relatives of homicide victims, although this covers issues unique to such cases, such as details about the coroner's court.

11.14 In Scotland, the Crown Office issued a booklet entitled "Advice for victims of rape or sexual assault" on 4 July 2001. It sets out information about the offence of rape, the role of the Procurator Fiscal and the investigation, going to court and the services available for information and support. It is also available in six languages other than English. This is an initiative which we consider could be of benefit to victims of rape in England and Wales: we are reinforced in this by the views expressed by interviewees.

11.15 There is a need to keep the victim informed during the period between charge and disposal. There were no formal protocols in place to ensure that this was undertaken, but we were made aware of ad hoc contact being made by individual officers.

SUGGESTION TWO

We suggest that ACPO revisit the area of contact with victims during the life of a case, with a view to introducing protocols/guidance.

11.16 The need for information extends beyond the conviction of a defendant, as victims are concerned about when the defendant will be released from a term of imprisonment. The Probation Service has been under a statutory duty (section 69, Criminal Justice and Court Services Act 2000) since 1 April 2001 to consult and notify victims about release arrangements for offenders serving 12 months or more for a sexual or violent offence. (Prior to this, it was a Victim's Charter requirement in cases where a defendant had been sentenced to four years' imprisonment or more.) The police are now responsible not only for informing victims of the results of court cases, but also for sending victims a copy of the "Release of prisoners" leaflet in the event of a plea or a finding of guilt.

Liaison with victims about decisions in a case

11.17 It has to be remembered that it is the prosecution who have the responsibility to make decisions about a case, not the victim. However, victims should be informed of any significant decisions. They should be able to give their views about any proposals, and the prosecution should take these into account.

11.18 The CPS is currently in the process of introducing a scheme whereby there is direct contact between the CPS and victims. It has already been piloted in some Areas, and is due to be fully implemented by October 2002. The scheme involves the provision to victims of written confirmation of the reasons for decisions made to drop, or substantially alter, charges. In cases involving certain offences, including allegations of sexual offences, a meeting will also be offered.

11.19 The Attorney General's guidelines on the acceptance of pleas, introduced on 7 December 2000, emphasise the need to keep victims informed when consideration is being given to accepting a plea to a reduced number of charges, or less serious charges. The prosecution should speak to the victim so that the position can be explained, and their views and interests can be taken into account as part of the decision-making process.

11.20 We found that prosecutors regularly ask the police to inform victims about decisions made by them during the course of their review. In particular, we found that the victim was consulted in 13 out of 23 cases where a decision was made at an early stage to drop the case in its entirety. We also found evidence of liaison with the victim in five out of ten judge ordered acquittals.

11.21 We found evidence that victims were informed about decisions when they are at court. Indeed, we observed two instances of counsel speaking to victims, to explain proposed decisions, during the course of our court observations. Some counsel suggested that they would always do this personally. We commend this as **good practice**.

Separate representation for victims

11.22 It should always be open to a victim to raise issues with the officer in the case, who should make any necessary further enquiries and pass on that information to the prosecutor. However, the use that is made of any such information has to be decided by the prosecution. It is also open to a victim to seek advice from a solicitor: indeed, one of the defence solicitors we interviewed had acted for a victim in raising an issue with the CPS.

11.23 We canvassed opinion on whether victims should be more involved in the preparation of the case, and whether they should be separately represented. Almost without exception, our criminal justice agency interviewees, including Victim Support, were of the view that it would be inappropriate for a victim to be separately represented in court. They considered that it could cause conflict and delay, and that it could result in more acquittals. Other interviewees, particularly special interest representatives, thought that it would be beneficial.

11.24 The literature review shows that there have been proposals, both in this country and elsewhere, to allow separate representation for the victim at trial. It has been introduced in countries with an investigative system, but not in any with an adversarial system. The nearest any adversarial system has come to doing so is in Ireland, which has just introduced a limited procedure.

11.25 Although prosecution counsel is appearing on behalf of the Crown, and not on behalf of the victim, he or she is under a duty to ensure that the victim's rights are upheld. Disappointingly, this is not always adhered to. The case we referred to in chapter 10 was an example of a failure to protect the victim from unnecessary cross-examination and innuendo. However, provided that prosecution counsel does act properly, we conclude that a victim's rights can be sufficiently protected under the current system.

11.26 Special interest representatives were of the view that victims need to be more involved in the preparation of the case. The introduction of special measures to give evidence should result in some victim involvement (see below), as should the victim personal statement scheme. The scheme came into effect on 1 October 2001, and its purpose includes:

- giving victims the opportunity to state how the crime has effected them;
- allowing victims to express their concerns in relation to bail or the fear of intimidation by or on behalf of the defendant;
- providing victims with the opportunity of stating whether they require information about, for example, the progress of the case; and
- providing victims with the opportunity of stating whether or not they wish to request assistance from Victim Support or any other help agency.

11.27 The victim's personal statement will be considered when the prosecutor is reviewing the file. It may also contain information that may assist the prosecutor and the court when bail is considered. The Home Office is planning an evaluation of the scheme (in 2002) to establish the level of victim satisfaction, both at the time the personal statement was taken and later in the case. We trust that the CPS and the police will use any findings in order to address any areas of the scheme that may require attention.

Court familiarisation visits

11.28 The Witness Service is generally responsible for arranging for victims to visit the court where they will be giving evidence, so that they can familiarise themselves with the layout and procedure. Ideally, these visits should take place in advance of the trial.

11.29 Although generally no prosecutor or caseworker is present, the Witness Service relies on the CPS to provide them with details of cases, and the witnesses being warned, in order to arrange the visits. We were told that these details are not always provided, and that often any information given does not include the nature of the allegation. Without these details, the Witness Service is unable to offer its services as extensively as it would wish, including arranging familiarisation visits in advance, and providing appropriate support in court.

11.30 It is also important that the Witness Service is aware of the nature of sensitive cases, including rape allegations, in order that they can ensure that the appropriate volunteers are available for the visits and to assist the victim on the day of trial itself. We were told that one team in CPS Greater Manchester provides the Witness Service with a copy of the witness list and brief details of the nature of the case, at the time the instructions to counsel are prepared, that is, before the PDH and well before the date of trial. This ensures that the Witness Service is in possession of all information necessary to arrange timely familiarisation visits, and we commend this as **good practice**.

11.31 There was little information in our files about whether a court familiarisation visit had taken place, as the CPS is not generally present. This means that the CPS do not get to know whether one has taken place, and miss an opportunity for meeting victims before trial. Some interviewees suggested that, if possible, caseworkers and counsel should attend pre-court visits. This is envisaged as a possibility when special measures to give evidence are implemented (see below).

Personal contact with victims at court

11.32 It is obviously important that victims are kept informed about what is happening in the case when they are at court, and this should normally be undertaken by the CPS caseworker. We have already commented about the level of caseworker cover at the Crown Court. We found that in those Areas with a good level of coverage, the victim was kept well informed about events. Indeed, we saw examples of very good practice during the course of our court observations. On the other hand, we were very disappointed with the level of service provided by the CPS in the Area with the poorest caseworker coverage.

11.33 Recent changes to professional rules make it clear that contact by counsel with victims and witnesses is proper within set parameters. Indeed, the rules encourage the practice of counsel speaking to witnesses they expect to call to give evidence. They also place a responsibility on counsel to ensure that nervous or vulnerable witnesses are put as much at ease as possible.

11.34 Despite this, we were told that there is a variable practice on the part of counsel. Some counsel will always introduce themselves to victims before they give evidence, and some make a point of speaking to them again after they have given evidence. Other counsel will only speak to victims after they have given evidence. As many victims leave court immediately after they have given evidence, this means that many never have the opportunity to speak to prosecution counsel.

11.35 This is disappointing, particularly as our interviewees told us that it makes a big difference to how victims feel they have been treated if counsel speaks to them. We understand that the CCP in CPS Northumbria has written to all counsel's chambers in the area, reminding counsel of the need to introduce themselves to victims in allegations of sexual offences. We identify this as **good practice**. There seems no reason why this should not in fact be a standard instruction to counsel.

Special measures to give evidence

11.36 Giving evidence can be very traumatic for victims of rape offences, because of the nature of the allegation. Some victims find it difficult to give evidence in the sight of the defendant. Others find the giving of evidence in a public court traumatic, particularly if details of, for example, previous medical history are disclosed. Currently, there are limited measures to assist a victim in giving evidence. Those that do exist, such as screens behind which victims can give evidence, are discretionary and applications for their use are not always granted. Further, because of their discretionary nature, they can be seen as being prejudicial to the defendant.

11.37 'Speaking up for justice' ("the report") was published in June 1998. It contains 78 proposals which were designed to encourage and support vulnerable or intimidated witnesses to give their best evidence in criminal cases. In particular, it recommended that special measures be introduced, now enacted in Part II of the Youth Justice and Criminal Evidence Act 1999.

11.38 The provisions, when brought in, should provide for consistency of approach, and allow the involvement of the victim in determining which measures, if any, to include in an application. Their introduction will take place on 24 July 2002, with implementation being phased. Full implementation will occur by 2004.

11.39 Witnesses are eligible for special measures on grounds of age (under 17 at the time of any hearing), or incapacity, or of fear or distress about giving evidence. Victims of sexual offences are deemed to be eligible unless they inform the court that they do not wish to be eligible.

11.40 The special measures provided for include:

- screening of witness from the defendant;
- evidence by live television link;
- video recorded cross-examination or re-examination; and
- evidence given in private (that is, the court is cleared).

11.41 The last measure is limited to sexual offences, and is designed to allow the victim to give evidence of a sensitive nature without being open to public scrutiny.

11.42 The court may direct that evidence-in-chief is given by way of a video recorded interview. There is a presumption that in cases involving sexual offences where a witness is "in need of special protection" and where the evidence in chief is video-recorded, subsequent cross-examination and re-examination will take place by pre-recorded video unless the witness does not want it. This provision could assist in ensuring that victims are not made to endure the lengthy periods at court waiting to give evidence (as described in chapter 10 dealing with listing of cases).

11.43 The measures will not automatically be available at trial, as the court has to determine whether they would be likely to improve the quality of the evidence and, if so, which of the measures would maximise, so far as practical, the quality of the evidence. The court has to consider all the circumstances of the case and, in particular, the views of the witness and whether the measure/s might tend to inhibit the effective testing of the evidence by the defendant. In other words, the court has to balance the interests of the victim with those of the defendant and the wider public interest.

11.44 The report recommended that an early special measures meeting take place between the police and the CPS, to discuss and agree what special measures directions should be the subject of an application to the court. The views and preferences of the witness were to be taken into account during this meeting.

11.45 Police/CPS guidance states that such meetings will be attended by the police officer who has had contact with the witness and the reviewing lawyer. Where practicable, the caseworker and prosecution counsel should also attend. The guidance suggests that the meeting could take place at the same time as a court familiarisation visit, for which the Witness Service will remain responsible.

11.46 In addition to covering the special measures, the meeting should establish a link between the CPS and the victim. It could also include an explanation of court procedure and the roles of the various parties in the trial, if the meeting does not coincide with the pre-court familiarisation visit.

11.47 It is important to remember that both the Bar Code of Conduct and the Guide to the Professional Conduct of Solicitors make it clear that there must be no discussion of evidence with the witness. Any such discussion would be likely to lead to an allegation of rehearsing or coaching of the witness, which could lead to the exclusion of the evidence.

11.48 The aim must be to provide the maximum possible continuity. Therefore, the trial advocate (including counsel where appropriate) should, wherever possible, attend the meeting, as well as the caseworker. We have already commented about the high number of returns of brief. It will require a will and determination both on the part of the CPS and the Bar to ensure that counsel originally instructed to represent the prosecution retains the brief throughout the case. This would not only be of benefit to the needs of the victim but also should result in better preparation and presentation of the case.

11.49 We are optimistic that, provided all members of the prosecution team undertake their duties in accordance with the guidelines, the new measures should result in it being easier for a victim to proceed with an allegation of rape. They should also go some way towards "empowering" victims, who currently, we are told, feel frustrated by their lack of involvement in the case. It is, however, important that the opportunity for change should not be lost. We consider, therefore, that there should be structured monitoring, to include not only CPS and police performance, but also the attendance at meetings by prosecution counsel who conducts the trial.

SUGGESTION THREE

We suggest that ACPO and CCPs introduce monitoring of performance in relation to the introduction of special measures to give evidence.

Liaison with Victim Support and the Witness Service

11.50 We were told that, generally, liaison at court by caseworkers with the Witness Service is very good. Formal liaison takes place at court user group meetings, and again was generally considered to be constructive.

11.51 There is less day-to-day contact with Victim Support, which is not surprising as a lot of their work is with victims whose cases never reach the court system. However, some members of Victim Support feel able to speak to prosecutors about any concerns they have on a case by case basis, and we trust that approaches such as these are dealt with appropriately. There is also a constructive relationship on a national level.

11.52 The police, CPS, Victim Support and the Witness Service in Humberside have agreed a protocol dealing with the Home Office Vulnerable Witness Support Scheme we referred to earlier in this chapter. They also undertook joint training of the volunteer court support workers, assisted by FME input. This is a good example of inter-agency co-operation.

11.53 We were pleased to note that both the police and the CPS assist in training of volunteers, both for the Witness Service and Victim Support, and we commend their involvement.

Liaison with special interests groups

11.54 There is some liaison with sexual assault referral centre representatives. This includes the regular meetings held between the CPS and police with the Rape Examination Counselling Help Centre (REACH) doctors in Northumbria, and the development of guidelines for the provision of medical statements. This is valuable in both developing good practice and promulgating the efforts and standards of service being achieved in an area.

11.55 Liaison with other special interests groups appears to be limited, and benefits need to be assessed locally. We encourage regular liaison.

GUIDANCE AND TRAINING FOR PROSECUTORS

Introduction

12.1 CPS staff are bound to take key casework decisions in accordance with the Code for Crown Prosecutors and the relevant law. In order to assist them to discharge their duties, the CPS Policy Directorate provides guidance on various casework themes, including sexual offences. Guidance is also given on casework tasks or processes, such as the disclosure of unused material and the care and treatment of victims and witnesses.

12.2 The guidance deals with issues of substantive law, as well as practice and procedure, the law of evidence and CPS policy. Policy Directorate will consult with appropriate CPS staff and other headquarters directorates when the guidance is prepared. Where appropriate, other government departments and public and private sector organisations will also be consulted.

12.3 The Prosecution Manual, which was launched in 1995, is the main source of casework guidance. Parts of it have been amended in response to new legislation, developing case law, and comments from staff and other interested parties. The Prosecution Manual's circulation is currently restricted to CPS staff, although copies have been provided to some other government departments. However, a recent change of policy, partly in response to the Freedom of Information Act 2000, has resulted in a project to overhaul the systems for providing legal information to CPS staff. The Prosecution Manual will be updated, and it will be made public. The target for internal publication is April 2002, with wider dissemination by the end of 2002.

12.4 Inspectors have found in the course of this inspection that there is often a misunderstanding, even amongst people who have a working knowledge of the criminal justice system, of CPS policy, practice and procedure. Some of our interviewees have also expressed a concern that CPS decision-making lacks transparency. We therefore welcome the proposed publication of the guidance.

12.5 The Prosecution Manual consists of several bulky volumes, and effecting amendments of any part of it takes time. Policy Directorate has therefore developed the use of Casework Bulletins. A Bulletin tends only to be several pages long, and can be disseminated electronically. It is used to bring matters to the attention of CPS staff rapidly.

12.6 There is also a CPS weekly bulletin known as Inform, where urgent instructions and guidance can be disseminated to all staff.

12.7 CPS staff can contact policy advisers based at the Policy Directorate for advice on issues in individual cases. Each policy adviser specialises on a number of topics such as sexual offences, disclosure, the Human Rights Act etc. CPS staff may also seek assistance from the Casework Directorate, which conducts serious or complex cases.

National guidance for the prosecution of rape offences

12.8 The guidance for the prosecution of rape offences is contained in a chapter in the Prosecution Manual dedicated to sexual offences. There is also related guidance in a chapter dealing with offences involving child victims and witnesses.

12.9 The chapter on sexual offences was last amended in October 1996. However, seven Casework Bulletins have been issued since then, dealing with developments such as the Sexual Offenders Register and the changes to the law on the restrictions on the use of evidence of the victim's previous sexual history. We are told that as part of the project referred to above, the chapter will be the subject of an overhaul to take into account all the developments since 1996.

12.10 The first section expresses the view that many sexual offences are of a serious kind and that the public interest will normally require that the offender be prosecuted. We agree with this statement of principle.

12.11 Guidance is then given on charging practice and evidential considerations, both generally and on specific offences. Much of the guidance is clearly stated, but we consider that the following two aspects require clarification.

12.12 First, the Manual provides that "The character of the victim cannot be ignored when considering an alleged sexual offence. Such evidence may be relevant to the question of consent.". This is repeated in the section dealing with evidential consideration in rape. We consider this statement to be too sweeping. It needs to address what, if any, character traits can be relevant, and why.

12.13 Secondly, the guidance states that the mental condition of the victim is an important consideration. It points out that while a victim who suffers from a mental disability needs particular protection, he or she can, on the other hand, be a difficult witness requiring corroboration on all the salient points of the defence. We have dealt with the difficulties prosecutors encounter when reviewing these cases in chapter 8. We would like to see the emphasis of the guidance shifted to demonstrate the importance of obtaining relevant expert assistance both in assessing the strength of the victim's evidence and in presenting the case.

12.14 The Casework Bulletins have generally kept pace with the development of the new legislation and case law. These should now be incorporated into the new version of the Prosecution Manual.

New topics for inclusion

12.15 As we have already stated, the decision making in the prosecution of rape offences can involve making an assessment of the victim's credibility as a witness, and weighing up the different factors in the case. It too easily can become a subjective process, vulnerable to stereotyping or assumptions. The majority of staff we spoke to considered that the guidance provided by the CPS is adequate to good, although some think that they need further guidance on some issues not yet covered. We agree that guidance on some further topics is required. These include:

- consent and the issue of recklessness;
- analysis of medical evidence;
- dealing with retractions;
- dealing with allegations of historic abuse against children; and
- how to approach cases where the victim has learning difficulties.

12.16 We are also of the view that the research findings in relation to how victims can react needs to be considered (see paragraphs 6.14 and 8.66 - 8.67), and guidance provided as appropriate.

12.17 Other topics include cases of drug assisted rapes. Reports of such cases, or suspicions that they might have occurred, have increased recently. Many Areas we visited have had some limited experience of dealing with these cases, but we found that there are gaps in the knowledge of the drugs commonly used, their effect and the scientific processes to determine their presence. The information is normally available on a case by case basis but, as it is a comparatively new type of offending for which there is no general knowledge within the CPS, guidance should be provided. An update on new developments in forensic science should also be undertaken.

RECOMMENDATION SEVENTEEN

We recommend that the CPS updates, revises and widens its guidance to prosecutors on the review and handling of cases involving allegations of rape.

Training

12.18 Legal training for CPS staff is mainly delivered in-house on a national basis, as well as locally. Staff from headquarters directorates, and volunteers from the Areas, work with the Vocational Training Unit at CPS headquarters to maintain and develop all the national legal training material. The Unit also organises national training and manages a course brief database.

12.19 At a local level, each Area has a training strategy, and training can be delivered though formal events, as well as at team meetings and other briefings. Selected Area staff are trained to deliver nationally designed courses locally, and each Area may develop its own training material. Areas also have arrangements for learning from experience, and staff can attend external specialist training or seminars, should the need and the opportunity arise.

12.20 Formal internal CPS training for the prosecution of rape offences is in the form of a one-day course that covers all sex offences. The course, which can be delivered on its own or as a module in a wider package, deals with the substantive law as well as evidential considerations. It deals with the assessment of the victim's credibility in greater detail than the guidance in the Prosecution Manual, and case studies and peer discussion enhance the training. Nevertheless, our concerns about the Prosecution Manual, and the improvements we urge, apply equally to the training material. The tone of the material is defensive rather than constructive. There is a list of warning signs, but little or no help with how a case can be built and strengthened.

12.21 The course material was last updated in September 1997. Although the relevant law, up to the time when the material was last revised, is accurately stated, there is an urgent need to bring it up to date. It also needs considerable expansion and, in our view, a one day course is inadequate to develop the necessary specialist knowledge. Future plans for a Prosecution College to raise standards through a centre of excellence for training and development are very welcome.

RECOMMENDATION EIGHTEEN

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

12.22 In addition to legal training, some CPS staff are also being trained how to deal with victims as part of the direct communication with victim initiative. Others will be trained in how to deal with special measures to give evidence, including meeting with the witness. We have covered both these issues in the preceding chapter.

ATTRITION

Research

13.1 Current research reveals that there are four key attrition points:

- decision to report;
- during investigation;
- CPS dropping a case; and
- acquittals after trial.

13.2 The literature review indicates that one in five reported rape cases reaches trial. Of these, half or less result in a conviction for rape or attempted rape, and a third result in acquittals. The remaining cases involve convictions for charges other than rape.

Our findings

Decision to report

13.3 The Rape Crisis Federation has suggested that only 12% of the women who contacted them in 1998 reported the allegation to the police. We did not undertake a detailed review of why victims do not report allegations of rape. However, it is clear from our interviews with representatives of special interest groups that a fear of being "re-victimised", and feeling that they will be "put on trial", operates to influence victims. This perception is not surprising, in view of the publicity about how victims are treated by the criminal justice system, some of which we found is justified.

13.4 We consider that an increase in the number of cases reported to the police can be achieved by improved police liaison with other relevant agencies and special interest groups. This should also help heighten victims' awareness of the facilities offered and the police commitment.

13.5 A real difference would also be made if the steps outlined below are taken, thereby improving the treatment of victims and the prospects of conviction. A victim is likely to be more willing to report an offence if it becomes known that an improved service is being provided.

Investigation

13.6 We defined attrition at the investigation stage as being where an allegation has been recorded as a crime, but the alleged offender has not been charged or cautioned. We also included the cases where the CPS advised the police not to charge (these amounted to 4% of the crime reports). It should be remembered that the figures also include those cases where the decision was made not to charge after the victim had retracted his or her statement. There is also an argument for excluding some of the cases which were detected under Home Office Codes, which would make the rates slightly lower.

13.7 Our findings show that the alleged offender was charged or cautioned in only 28.3% of the crime reports examined (492 out of 1,741):

Total Files Reviewed	Undetected	No Crime	Detected under HO Codes[8]	CPS Advice to take NFA	Cautioned	Charged/ Summonsed
1,741	746 (42.8%)	219 (12.6%)	213 (12.2%)	71 (4.1%)	25 (1.4%)	467 (26.8%)

13.8 The attrition rate in our sample was, therefore, 59.2%. This is similar to the rates quoted in the literature review, which varied from 36% to 67%.

13.9 An improvement in the standard of the initial treatment of victims by the police is required, including the environment into which they are taken. This will involve training of all those who come into contact with victims, both in how to approach their jobs and how to treat victims.

13.10 Improvements will continue when, on 1 April 2002, all police forces in England and Wales adopt the National Crime Recording System. It is believed that these new Home Office guidelines will improve consistency in recording, and diminish disparities between forces. The guidelines espouse a more victim centred approach to allegations of crime.

13.11 Continuing efforts need to be made by practitioners and supervisors to ensure enhanced statement taking from victims and interviewing of subjects.

Dropping of cases by the CPS

13.12 Analysis of the 230 cases in the police sample (which were submitted to the CPS) shows that the case proceeded to court in 42.2% of cases:

Offence	Total	Not Charged on CPS Advice	Charged but Discontinued by CPS	Proceeded to Court	Result No Known
Rape	220	64	67	88	1
Unlawful Sexual Intercourse	4	0	0	3	1
Indecent Assault	6	0	0	6	0
Total	230	64	67	97	2

8 See Annex E for breakdown of Home Office Codes

13.13 Our sample shows that 57% of cases (131 out of 230) were either the subject of CPS advice to take no further action, or were dropped by the CPS after charge. This is higher than the figures referred to in the literature review where the rate was said to be 33% - 50% of all cases referred to the CPS.

13.14 We consider that an improvement in the quality and consistency of review can be achieved by the introduction of specialist prosecutors, who have received revised training and guidance, particularly in how to build cases. The number of rape cases where the CPS gives the police advice to take no further action, or drops or substantially reduces the prosecution case, should be reduced by the introduction of a procedure which requires all such cases to be the subject of a second opinion by another specialist before a final decision is taken.

Acquittals after trial

13.15 Our sample shows a conviction rate of 60.8% of all prosecuted cases (including guilty pleas):

Offence	Total Cases Proceeded to Court	Found Not Guilty	Convicted at Court - Guilty Plea	Convicted at Court - Not Guilty Plea
Rape	88	35	39	14
Unlawful Sexual Intercourse	3	1	2	0
Indecent Assault	6	2	2	2
Total	97	38	43	16

13.16 The sample shows an acquittal rate of 39.2% of all prosecuted cases. The acquittal rate is even higher (70.4%) if guilty pleas are excluded.

13.17 The introduction of specialist prosecutors, and use of experienced prosecution counsel, will improve the preparation and presentation of cases. This needs to be coupled with continuity of prosecutor, caseworker and counsel. The proper approach to special measures to help witnesses give evidence, and the linked meetings with victims, should also assist.

13.18 A more determined effort by the prosecution team, listing officers and indeed the trial judge, is also needed to ensure that the victim is properly treated, both before and in court, and is not subjected to unnecessary, or intimidating, cross-examination.

13.19 It is clear that there are wider issues involved than simply how the police and CPS handle cases. As we have stated, the level of acquittals did not reveal any pattern which might reflect on the prosecution. Our file sample included cases which appeared to have been handled properly by the police, CPS and prosecution counsel and yet still resulted in an acquittal. The new provisions dealing with vulnerable witnesses have the potential to improve the quality of evidence given by victims. This report has focussed on the performance of the police and CPS but, in our view, the criminal justice system as a whole needs to reassess the way it approaches cases involving allegations of rape.

Comparison of attrition rates

13.20 In order to compare the attrition of rape cases in our sample with that of CPS national averages, we analysed the CPS sample, to determine at what stage cases were dropped after charge.

13.21 The national average for cases discontinued in the magistrates' courts is 13%. The average for judge ordered acquittals is 12.8%, while that for judge directed acquittals is 2.4%. This covers all offences, but the figures are significantly lower than those for our sample of rape cases, which were 21.6%, 19.2% and 4.8% respectively. (Note that the figure for judge ordered acquittals includes those sent cases which were dropped before being prepared for trial, in accordance with the CPS recording practices.)

Conclusion

13.22 In themselves, the numbers appear shocking. The detailed analysis in this report shows how this comes about. The steps we have outlined, which could be taken from the outset, will, we hope, have a cumulative effect upon improving the quality of the evidence and presentation in court. The impact of this should be, hopefully, to reduce the attrition rate at each stage.

13.23 No one step will achieve a substantial reduction in the attrition rate. It will take a concerted effort on the part of all those involved in the investigation and prosecution of rape cases for any real result to be achieved. It also needs to be borne in mind, however, that there are wider issues involved, that require an effort on the part of the criminal justice system itself. Changes have been made over the years in relation to the requirement for a judicial warning to be given to the jury if there is no corroboration, and the extent to which a victim's previous sexual history is relevant. There are further provisions to come to enhance the quality of evidence of vulnerable witnesses.

13.24 It needs to be remembered that at the heart of the process is the issue of the treatment of the victim. As the literature review points out, the best evidence can only be gleaned from the best treated victim. Further changes may be necessary within the criminal justice system itself to address the issue of attrition, but in the meantime our findings reveal that there is much that can be done by the police and CPS, sometimes in conjunction with other organisations, to enhance the treatment of victims and the collection and presentation of evidence.

GLOSSARY OF TERMS USED IN THIS REPORT

ACPO	Association of Chief Police Officers
APS	Association of Police Surgeons
CCP	Chief Crown Prosecutor
CPIA	Criminal Procedure and Investigations Act 1996
CPS	Crown Prosecution Service
DNA	Deoxyribonucleic acid
FME	Forensic medical examiner
FSS	Forensic Science Service
GMP	Greater Manchester Police
GP	General practitioner
HCA	Higher court advocate
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate.
HMIC	Her Majesty's Inspectorate of Constabulary
MPS	Metropolitan Police Service
NCF	National Crime Faculty
NPT	National Police Training
PDH	Plea and directions hearing
PEACE	Planning and Preparation, Engage and Explain, Account, Clarification and Challenge, Evaluate and Close
PSG	Project Steering Group
REACH	Rape Examination Counselling Help Centre
SCAS	Serious Crimes Analysis Section
SIO	Senior Investigating Officer
TIC	Taken Into Consideration
TU	Trials Unit
USI	Unlawful Sexual Intercourse
YJ&CEA	Youth Justice and Criminal Evidence Act 1999

TERMS OF REFERENCE

HMCPSI and HMIC to carry out an analysis of investigations, decision-making and prosecutions of allegations of rape, from initial report through to case disposal. The review will cover all offences of rape, including allegations of male rape, as well as those involving children. It will take into account:

- attrition rates and possible causes of attrition during the investigation stage;
- attrition rates and possible causes of attrition at the advice and prosecution stage;
- identification of any regional variations in attrition rates;
- advice and decision-making by the CPS;
- the preparation of cases for trial, including the prosecutor's duties of disclosure;
- the presentation of cases at court;
- interaction between the police, the CPS and prosecution counsel;
- the treatment and support of victims;
- identification of good practice throughout the process;
- identification of any training needs;
- liaison with outside agencies, such as Victim Support and Rape Crisis, to explore possible causes of under reporting and reluctance to report offences; and
- consideration of other research/reviews, with a view to ensuring that the review team's findings are passed on where relevant.

PROJECT STEERING GROUP MEMBERSHIP

Jerry Hyde	HM Deputy Chief Inspector, HMCPSI (Chair)
Peter Franklin	Association of Police Surgeons
David Gee	Staff Officer, HMIC
Jessica Harris	Crime and Criminal Justice Unit, Home Office
Sue Hill	Detective Chief Inspector, Twickenham Police Station
Liz Kelly	Professor, Child and Woman Abuse Studies Unit, University of North London
Anita Mansley	St Mary's Sexual Assault Referral Centre
Mary Newton	Forensic Science Service
Katey Rushmore	HM Legal Inspector, HMCPSI
Alison Scott	HMIC (seconded from Hampshire Constabulary)
Ian Shaw	Forensic Science Service
Debora Singer	Victim Support
Paddy Tomkins	Assistant Inspector of Constabulary, HMIC
Baljit Ubhey	CPS, Policy Directorate
Robert Wood	Deputy Chief Constable, Derbyshire, ACPO

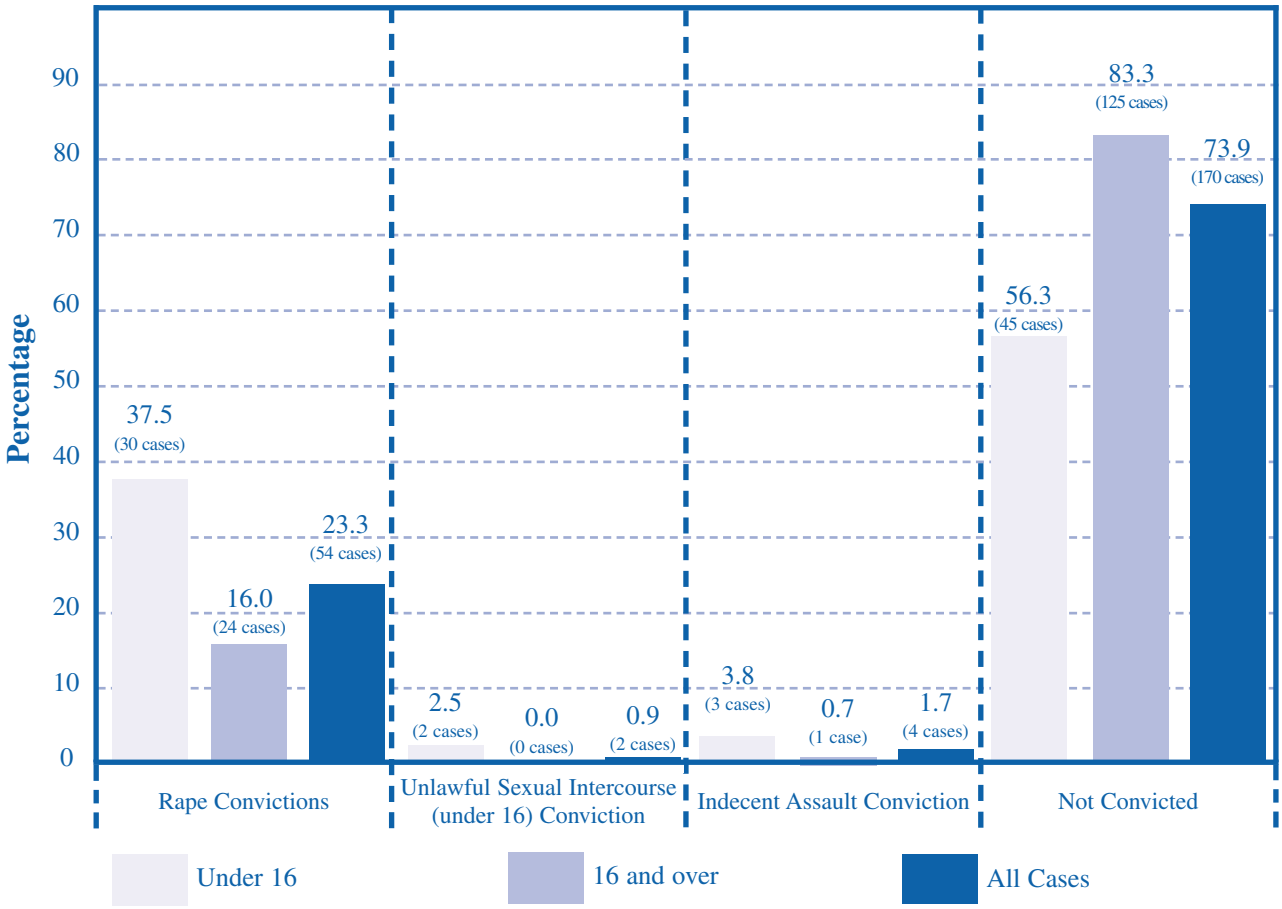
STATISTICS

Child victims

Conviction rate

The percentage of suspects convicted of rape in cases where the victim was under 16 at the time of the incident (37.5%) was more than twice that in cases where the victim was older (16%). 40% of cases with child victims resulted in the suspect being convicted of an offence, whilst this figure was 16.7% for adult rape.

Conviction Broken Down by Age of Victim at Time of Incident



	Under 16	16 and Older	Totals
Rape Convictions	30 cases (37.5%)	24 cases (16.0%)	54 cases (23.3%)
Unlawful Sexual Intercourse (USI) (under 16) Conviction	2 cases (2.5%)	0 cases (0.0%)	2 cases (0.9%)
Indecent Assault Conviction	3 cases (3.9%)	1 case (0.7%)	4 cases (1.7%)
Not Convicted	45 cases (56.3%)	125 cases (83.3%)	170 cases (73.9%)
Total	80 cases	150 cases	230 cases

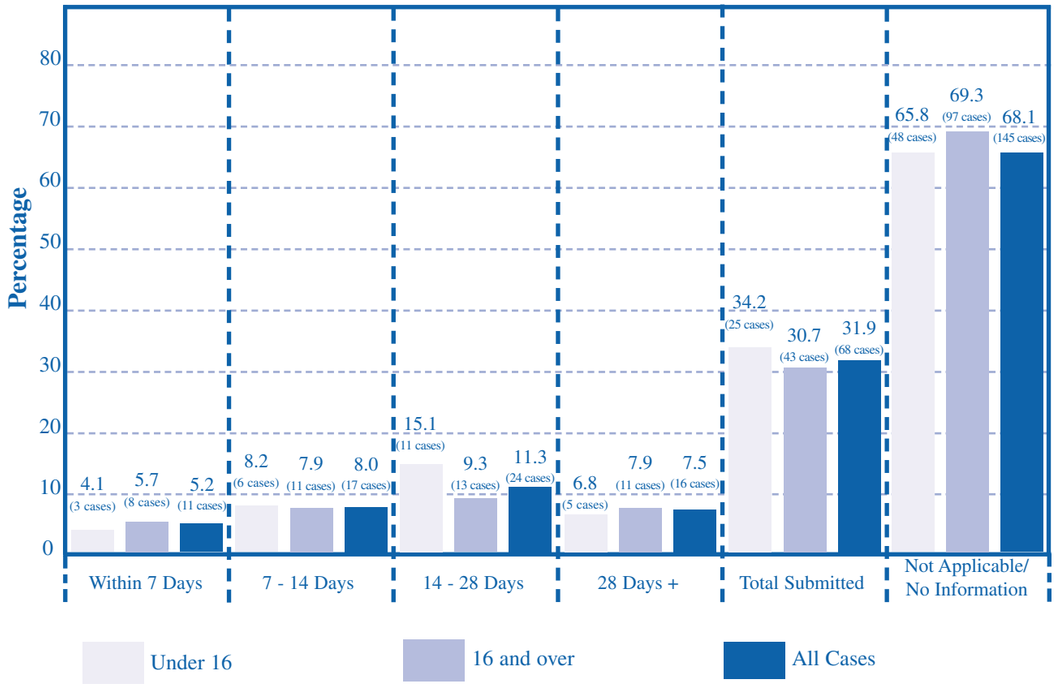
Advice files submitted to CPS

Seven of the 80 child victim files on the database lacked data regarding advice file submission. Of the remaining 73 files, 25 (34.2%) were submitted for advice and 48 (65.8%) were not.

Among cases where the victim was 16 years of age or older at the time of the offence, 43 were submitted for advice. This represents 30.7% of the 140 files that included this information. The other 97 (69.3%) were not submitted for advice.

Among the files examined, a slightly larger proportion (by around 3%) of advice files were submitted for child victim cases than was the situation for adult rapes.

Advice Files to CPS - Age Breakdown



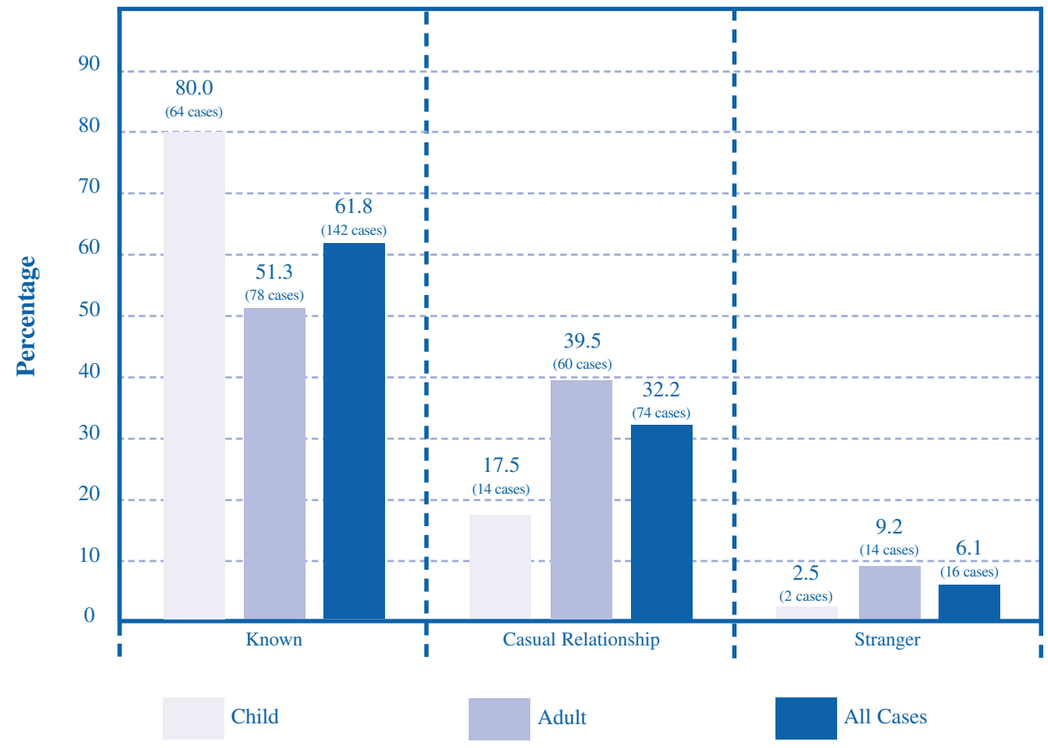
	Victim Under 16 at Time of Offence	Victim 16 or over at Time of Offence
Submitted Within 7 Days	3 cases (4.1%)	8 cases (5.7%)
Submitted Within 7 - 14 Days	6 cases (8.2%)	11 cases (7.9%)
Submitted Within 14 - 28 Days	11 cases (15.1%)	13 cases (9.3%)
Submitted Within 28 Days +	5 cases (6.8%)	11 cases (7.9%)
Total Submitted	25 cases (34.2%)	43 cases (30.7%)
Not Applicable	48 cases (65.8%)	97 cases (69.3%)
No Information	7 cases (9.6%)	10 cases (7.1%)
Total Files Excl. No Information	73 cases	140 cases

Victim - suspect (1) relationship*

Unsuprisingly, a far higher percentage of children knew their attackers than was the case in adult rape. Only 2.5% of the child victim cases were committed by strangers.

* Where there was more than one suspect, we recorded the information relating to the first suspect.

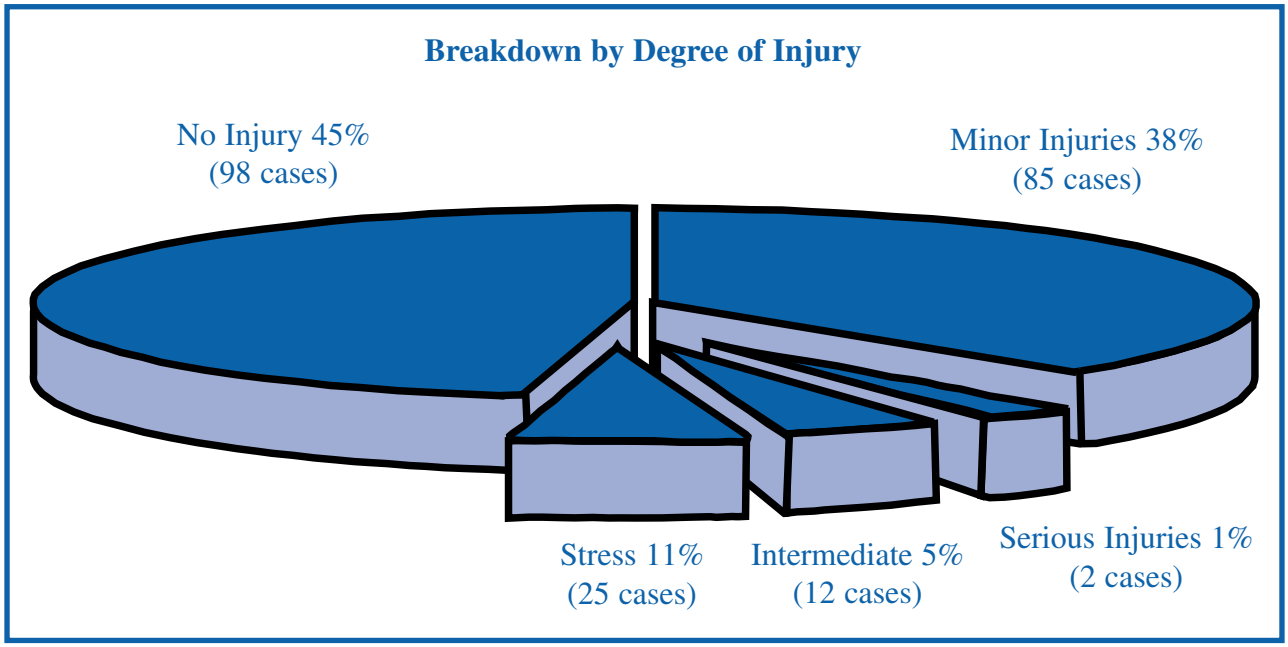
Age of Victim at the Time of Incident Broken Down by Victim - Suspect (1) Relationship



	Child	Adult	Total
Known	64 cases (80.0%)	78 cases (51.3%)	142 cases (61.8%)
Casual Relationship	14 cases (17.5%)	60 cases (39.5%)	74 cases (32.2%)
Stranger	2 cases (2.5%)	14 case (9.2%)	16 cases (6.1%)
Total	80 cases	152 cases	230 cases

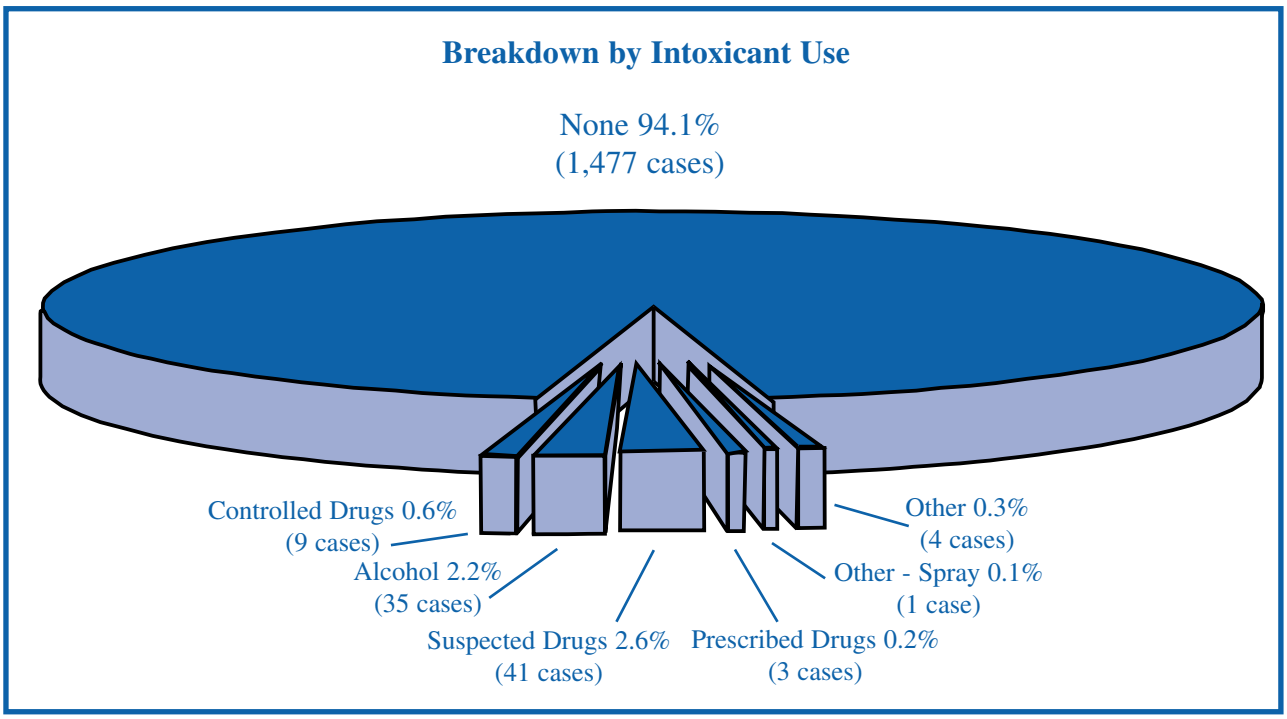
Injuries

The following chart breaks down the 222 out of 230 files which provided the relevant information, by the degree of injury sustained by the victim:



Intoxicants

Of 1,570 crime records examined, 1,399 contained information on the use of intoxicants as follows:



REPRESENTATIVES OF THE CRIMINAL JUSTICE AGENCIES AND SPECIAL INTEREST GROUPS WHO ASSISTED OUR INSPECTION

Judges

His Honour Judge Hodson, Recorder of Newcastle upon Tyne
His Honour Judge Fabyan Evans
His Honour Judge Humphries
His Honour Judge Rogers QC
His Honour Judge Shand
His Honour Judge Styler

Defence solicitors

Mr C Clark
Ms B Higgenson
Mr P Housiaux
Mr L Pearson
Mr G Robinson
Mr R Thompson

Counsel

Mr J Aitken
Miss C Bradley
Mr J Broadley
Miss L Kamill
Miss L Matthews
Mr C Mitchell
Mr R Trevor-Jones
Mr R Witham

Victim support

Mrs C Evans
Mrs S Fisher
Ms N Grundy
Ms H Jobling
Mrs A McDonnell MBE
Ms T McIntosh
Mr G Morgan
Mrs C Muter
Mrs B Roberts
Ms D Singer
Ms J Woodd

Witness Service

Mr K Andrews
Mrs I Ewing
Mr G Lewis
Mrs M Mather
Ms J May
Mr F Palmer
Mr E Reavley
Ms L Walkling

Special interest representatives/organisations

Ms J Barnard, Rape Crisis Federation
Mr R Curren, Survivors UK
Ms C Dawson , Rape and Sexual Abuse Support Centre, Croydon
Ms H Jones, Rape Crisis Federation
Mr R Kramer, Head of Campaigns, Mencap
Ms S McNeil, Campaign to end rape
Ms I Murray, Rape Crisis Federation
Mr M Sullivan, Survivors UK
Miss J White, Rape and Sexual Abuse Support Centre, Croydon
Legal Action for Women
Rape Crisis, Hull
Women against Rape

Sexual assault referral centre representatives

St Mary's Hospital, Greater Manchester
The Juniper Centre, Leicester
The Haven Centre, London
The REACH Centre, Northumbria

HOME OFFICE DETECTION CODES

CODE	REASON
A	*A person has been charged or summonsed for the offence irrespective of any subsequent acquittal.* If the CPS discontinues the case on the grounds of insufficient evidence, a senior officer of Inspector rank or above should review the reasons for the charge. If the senior officer agrees that there is insufficient evidence, then the detection must be cancelled and the offender removed from the CIS.
B	*The offender has been cautioned or informally warned by police.*
C	*The offence has been taken into consideration by the court OR, if the offender is found to be not guilty, the unequivocal consent of the offender has been obtained, by way of statement of admission and desire to have the offence taken into consideration, on a signed TIC acceptance form, prior to him/her being found not guilty.* If an offender asks for an offence to be TIC'd and the offence has not been previously recorded, it can be recorded as a TIC and detected only if the victim confirms that it was committed, and a TIC acceptance form has been signed. If there is no evidence other than that of the offender's interview, the offence can neither be recorded or detected.
D	*No further action has been taken by the police for any of the reasons listed below. In all cases there must be sufficient admissible evidence to charge and the evidence to support the case must be such that if given in court would be likely to result in a conviction. It must be contained within signed witness statements or in other satisfactory documentation form. A pocket book entry is not sufficient in these circumstances with the exception of D4 below.*
D1	*The offender dies before proceedings could be initiated or completed.*
D2	*The offender is ill and unlikely to recover or too senile or too mentally disturbed for proceedings to be taken.*
D3	*Victim or essential witness is dead and the proceedings cannot be pursued.*
D4	*Victim or essential witness refuses or is permanently unable, or if a juvenile, is not permitted, to give evidence.* The evidence of refusal will normally be recorded by a signed witness statement or signed pocket book, but in exceptional circumstances a note by the officer in their pocket book or other official record will be sufficient when a victim refuses to do either of the former.
D5	*It has been ascertained that an offence has been committed by a child under the age of criminal responsibility.*
D6	*An offence is admitted by a juvenile of the age of criminal responsibility and police take no action, other than reporting the particulars to a local authority for action under the Children and Young Persons Act 1969.*
D7	*CPS or police officer of Inspector rank or above decides that no useful purpose would be served by proceeding with the charge.* *Offender already serving a sentence (custodial or otherwise) for another offence.* In general, an offence cannot be detected for Home Office purposes by this method if the suspect is already serving a custodial sentence for another offence. The only exception is where an offender is serving a sentence when evidence becomes available which, regardless of an admission, is sufficient to charge him/her. In such cases the offence can be detected by this method with the authority of CPS and a police officer of Superintendent rank or above.
D8	*There is sufficient admissible evidence to charge the offender with a summary offence, but a police officer of Superintendent rank or above has authorised the detection as the time limit of six months for commencing prosecution has been exceeded.*

HM Crown Prosecution Service Inspectorate
26 - 28 Old Queen Street, London SW1H 9HP
Tel: 020 7210 1197. E-Mail: cpsinspectorate@gtnet.gov.uk

HM Inspectorate of Constabulary
Home Office, 50 Queen Anne's Gate, London SW1H 9AT
Tel: 020 7273 4197.