Her Majesty's Inspectorate of Constabulary
Ashley House
2 Monck Street
London SW1P 2BQ

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Without *consent* A report on the joint review of the investigation and prosecution of rape offences

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Without*consent*

A report on the joint review of the
investigation and prosecution of rape offences

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FOREWORD

In 2002, Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate published a joint thematic inspection report on the investigation and prosecution of rape offences. The report made a total of 18 recommendations and three suggestions to improve the investigation of rape cases by the police, guidance and training for both the police and prosecutors, the decision making and the prosecution of rape offences, and the treatment of victims and witnesses.

In response, the Government published a Rape Action Plan in July 2002, accepting virtually all of the recommendations put forward by the inspection report. Relevant agencies agreed to the action plan, and some new provisions in relation to rape and other sexual offences were introduced in the Sexual Offences Act 2003. Nevertheless, research has continued to provide a picture of increasing attrition rates. In addition, a stocktake to assess progress on the measures set out in the action plan, carried out in 2005 by the Home Office, the Association of Chief Police Officers and the Crown Prosecution Service (CPS) Policy Directorate, identified that, although there were a number of key areas of progress, there were also gaps in implementation.

This review was, therefore, conducted to assess progress against the recommendations and suggestions of the 2002 inspection, taking account of the stocktake findings, recent research and legislative changes. In doing so, current working practices and procedures were examined in order to assess the quality and effectiveness of investigations and prosecutions and to establish, where possible, the reasons for the continued high rate of attrition in rape cases.

Attrition, from the initial call to the police to the final outcome at court, formed an important part of both the 2002 inspection and the current review, and it will undoubtedly continue to be a focus of attention. However, the review findings also underline the importance of setting attrition in context.

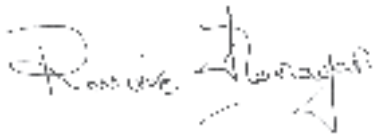
The key points at which attrition occurs provide valuable lessons about what must take place to ensure that investigations and prosecutions are as effective as possible, and much has been learned. The police and the CPS have made considerable efforts since the inspection in 2002 to develop and improve their responses to the investigation and prosecution of rape offences, and Inspectors were impressed by the achievements of many dedicated and committed individuals. A considerable amount of good practice was identified. Nevertheless, challenges remain, some of which continue to be significant. The review found, however, that in many cases it is not necessarily about changing what is done, but ensuring instead that what is done is effective and is carried out to a consistently high standard, and that the efforts of those involved are properly supported and co-ordinated. In many respects, the policies are sound and in place. It is not a question of changing the approach, but of ensuring that what should be done is actually done in practice and that full effect is given to the existing sound policies and good practice.

Thanks of the chief inspectors are extended to all police forces and CPS Areas that responded to requests for information and, in particular, to those seven forces and Areas that were visited during the fieldwork. Thanks also go to those members of other criminal justice and voluntary sector organisations and bodies, who provided valuable insights into the effectiveness of systems locally and the

needs of victims and witnesses, and to members of the Reference Group who gave guidance and help to the joint review team at key stages.

We hope that this report will inform the debate and the Government's decisions arising out of the consultation paper *Convicting Rapists and Protecting Victims – Justice for Victims of Rape*. To facilitate this, the inspection team has liaised with the Home Office Working Group dealing with the responses received to the consultation paper.

Victims of rape remain at the heart of this process and maintaining victim confidence in the criminal justice process is absolutely key if offenders are to be brought to justice. Although successful criminal justice outcomes can never be guaranteed, it is incumbent on all those involved to ensure that every victim of rape receives the highest standard of treatment and care, and that, irrespective of the outcome, every victim can be assured that everything possible was done to build a strong case and present it well.



Sir Ronnie Flanagan GBE MA
Her Majesty's Chief Inspector
of Constabulary

Stephen J Wooler CB
Her Majesty's Chief Inspector of the
Crown Prosecution Service

EXECUTIVE SUMMARY

Background to the review

In 2001, Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) conducted a joint thematic inspection into the investigation and prosecution of rape offences. The purpose of that inspection 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 make recommendations to address this.

Published in April 2002, the report made a total of 18 recommendations and three suggestions to improve:

- the investigation of rape cases by the police;
- guidance and training for both the police and prosecutors;
- the quality of advice, decision making, case preparation and presentation at court by prosecutors; and
- the treatment of victims and witnesses in cases involving allegations of rape.

In response, the Government published a Rape Action Plan (RAP) in July 2002, accepting virtually all of the recommendations put forward by the HMIC/HMCPSI report.

Despite the relevant agencies having agreed to the RAP, research has continued to provide a picture of increasing attrition rates. As a result, in February 2005, a two-stage process to review progress on the way in which reports of rape are investigated and prosecuted was agreed by the Home Office, the police, the CPS, HMIC and HMCPSI, and comprised:

- a stocktake to assess progress specifically on the measures set out in the RAP; and
- a follow-up to the 2002 thematic inspection to be carried out by HMIC and HMCPSI.

The stocktake, conducted jointly by the Home Office, the Association of Chief Police Officers (ACPO) and the CPS Policy Directorate, consisted of self-report surveys of police forces, CPS Areas and key stakeholders. Completed in September 2005, the stocktake identified a number of key areas of progress and gaps in implementation. This review was, therefore, conducted to assess progress against the recommendations and suggestions of the 2002 inspection, taking into account the findings of the Home Office, ACPO and CPS stocktake and the findings of the Home Office Research Study, *A gap or a chasm? Attrition in reported rape cases*. In doing so, the review examined current working practices and procedures in order to assess the quality and effectiveness of investigations and prosecutions and to establish, where possible, the reasons for the continued high attrition rate.

Setting the scene

There was a strong focus during the 2002 inspection on identifying and understanding the reasons for the high attrition rate in rape cases. This theme was carried through to the current review. Estimates from research suggest that between 75 and 95 per cent of rape crimes are never reported to the police. Studies show that the decision not to report is often based on a combination of factors and that many of these are connected to the notion of 'real rape' – that is, committed by a stranger, in a public place or in the context of a break-in, and involving force and injury.

For those victims who do come forward, between a half and two-thirds of cases will not proceed beyond the investigation stage; victims declining to complete the initial process or withdrawing at a later stage account for a significant number of these cases. Where cases are referred to prosecutors for a charging decision, a proportion will not proceed. Of those cases that do reach court, between a third and a half of those involving adults will result in acquittals.

High levels of attrition are also set against a background of decreasing detection rates. While detection rates remained broadly stable between 1990 and 1997, they have fallen steadily since and continue to do so. Although this trend now appears to be slowing, HMIC data covering 2001/02 to 2004/05 illustrate the ongoing decline – from 41 to 37 to 31 to 30 per cent over the four-year period. At the same time, there has been a progressive increase in the number of rape cases reported to the police for more than 20 years. This trend shows no sign of slowing, with an increase in recorded rape over the same four-year period of 40.9 per cent (from 9,734 to 13,712 recorded crimes).

Taken on their own, the figures present a stark picture. There is, however, an important context to the data as a result of changes to the way detections were defined in 1999 and the introduction of the National Crime Recording Standard (NCRS) in 2002. Widening of the definition of rape to include anal penetration in 1994 and oral penetration in 2003 will also have impacted on recorded crime, detection rates and levels of attrition. However, there remains a difficulty in that the impact of these changes has never been fully explored or quantified.

Since 2002, there have been a number of significant developments in policy, law and practice, several of which have been aimed specifically at improving the investigation and prosecution of rape offences. These include:

- the introduction and nationwide roll-out of statutory charging (completed in April 2006), whereby Crown Prosecutors have taken over the responsibility for deciding whether a defendant should be charged or not in more serious offences, including rape;
- extensions to the availability of 'special measures';
- the Sexual Offences Act 2003 (SOA), which changed some offences and provided some presumptions about consent issues;

- the Criminal Justice Act 2003, which has provided that evidence of the defendant's 'bad character' or hearsay evidence may be admitted in some circumstances;
- publication of the CPS *Policy for Prosecuting Cases of Rape* in 2004 and the ACPO *Guidance on Investigating Serious Sexual Offences* in 2005;
- creation in the CPS Policy Directorate of the Sexual Offences Team in September 2005;
- development by ACPO of a project to provide consultancy and support to individual forces to assist them in identifying and addressing gaps in performance;
- an increase in the number of Sexual Assault Referral Centres (SARCs) and the publication of joint Home Office and Department of Health guidelines;
- Police and Crime Standards Directorate (PCSD) assistance to forces to exploit developments in forensic science to revisit 'cold' cases and the publication of a *Good Practice Guide*; and
- the roll-out of dedicated Witness Care Units (WCUs) under the 'No Witness, No Justice' project.

This review also examined the impact of a number of these developments.

Police crime recording

The review revisited police crime recording practice in light of the huge disparities that were identified during the 2002 inspection in the way in which forces recorded and subsequently classified reports of rape. These variations had made levels of crime and comparisons across forces difficult to measure accurately.

Despite tightening up of standards under the Home Office Counting Rules (HOCR) and the introduction of the NCRS, high levels of variation across the review sites were found to persist, which reflects the national picture. The high level of 'no criming' was identified as a particular concern, with 31.8 per cent of 'no crimes' examined during the review being found to be non-compliant with the HOCR. It was concluded that inappropriate recording practices resulted from a lack of knowledge of, or misinterpretation of, the HOCR. However, two significant factors were identified in influencing police decision making to 'no crime' in these cases:

- the decision by the victim not to complete the initial process or to withdraw support for the investigation or prosecution; or
- the view that the victim lacked credibility as a result of inconsistencies or discrepancies in their account or other factors such as alcohol consumption or behaviour, but without the necessary 'verifiable information that no crime was committed' as required under the HOCR.

As 'no crimes' include those designated 'false allegations', which also fall under the 'verifiable information that no crime was committed' criterion, there is a

danger that dilution of this criterion, which is inflating levels of 'no criming', is also inflating perceptions of the scale of false allegations among police officers. Failure to adhere to the relevant HOCR criteria is also skewing recorded crime figures for rape and undermining the ability to gain an accurate understanding of attrition. In addition, there are implications for loss of information and intelligence where a report is 'no crimed' inaccurately, and it also raises the potential to undermine a victim's credibility where a subsequent report is made.

High levels of variation were also found in the detection rates across the review sites, again reflecting the national picture which ranged from 22.2 to 93.4 per cent in 2001/02 and from 7.0 to 60.4 per cent in 2004/05. This, together with continued variations in recording practices under the HOCR, hindered attempts to understand the decline in detection rates. Seven of the eight review sites showed a decrease in detection rates between 2000 and 2005, and, in most cases, this decrease was marked. In the remaining site, the improved detection rate was found to run parallel to improvements in investigation standards and the level of priority afforded to rape investigations locally, as well as to more robust management of cases and monitoring of performance.

The 2002 report highlighted that, in the majority of cases, the suspect and victim are known to one another – crime report analysis carried out during that inspection identified that only 14 per cent of cases involved rape by a stranger. It also highlighted the resulting dilemma that forces face as a result of current classification categories under the HOCR – unless there is sufficient evidence to charge a suspect, the crime must remain classified as 'undetected', regardless of the fact that no other person will be sought for the offence – and recommended that the HOCR criteria for the classification of 'detected' and 'undetected' offences in these circumstances be revisited.

Analysis of crime reports during the current review provided similar results. It also identified that the suspect was either known or identified following investigation in 80 per cent of cases classified as undetected, highlighting the need to revisit the 2002 recommendation.

Police structures

At the time of the current review, considerable progress was found to have been made in this area, particularly with the formal introduction of the role of the Specially Trained Officer (STO) and the development of SARCs. Although nationally accredited training for officers who deal with rape victims (as recommended in the 2002 report) has yet to be delivered, local training was generally described as good and, in some cases, excellent. There were gaps identified, however, in relation to refresher training and training of supervisors.

STOs, who are primarily trained, uniform branch officers, are a vital and integral part of the investigation team. They have a range of responsibilities in relation to the initial response to a report of a serious sexual offence, the forensic medical examination, conducting the victim interview and maintaining contact with the victim in relation to case progress. The formal introduction of the STO

role was found to have significantly improved the quality of the initial response to rape investigations; however, a number of difficulties were identified in relation to their management, supervision and deployment.

STO call-out lists and rotas were found to be poorly managed and deployment tended to be based on the most readily available officer, irrespective of their core workload, tour of duty or existing STO commitments. There was also a tendency to seek the services of STOs with proven experience, resulting in a small core of officers being called upon time and again. Understanding of the STO role was not widely shared at supervisory level, and pressure on STOs from core team line managers to return to the demands of response policing often left officers torn between the two roles. Once deployed, there was clear evidence that STOs were providing a good service within their capability, but dual demands and lack of support were found to be undermining morale and efficiency.

As a result, there is a need for forces to review call-out lists and rotas, formally monitor STO deployment and review supervisory structures to ensure that line-management responsibility for STOs following deployment and during investigations is clearly defined.

First response

First response officers assume the role of Investigating Officer (IO) until the incident is allocated to an STO and an IO is appointed. Their role in the initial stages of the investigation, therefore, is no less important than that of specialist officers and investigators.

It was found that front-line officers had received very little training in responding to rape offences and there was a lack of awareness of the ACPO guidance. As a result, when first response officers had to take a first or early complaint from the victim, they often lacked the confidence and knowledge to deal with this effectively; this was highlighted as an area requiring specific guidance.

The use of Early Evidence Kits (EEKs) was also found to be variable. EEKs were introduced for the immediate recovery of non-intimate forensic samples by first response police officers and members of police staff who deal with victims prior to the medical examination. The location of EEKs did not always meet need, management and allocation of kits were inconsistent, and training varied.

General levels of forensic awareness were found to be good, although more specialist knowledge was found to be limited, and there was evidence from some of the review sites visited that forensic awareness training in relation to volume crime was adding value in other areas. Again, however, knowledge and understanding varied.

An effective investigation

Research shows that a significant amount of attrition occurs during the investigation process. Some of this relates to practical issues such as the availability of female practitioners (particularly forensic physicians (FPs)), delays in arranging medical examinations or during the investigation itself, and unpleasant environments. Some relates to the behaviour and approach of professionals, such as insensitive questioning during interview, judgemental or disbelieving attitudes, or failure to maintain contact as the case progresses. Some relates to victims' fears, such as fear of the court process and the potential for intrusive, public questioning, or fear of acquittal. This emphasises the important contribution that sensitivity to the need for privacy, a feeling of safety, confidence in the professionalism of staff and a climate of belief can make to ensuring that victims remain engaged in difficult processes.

The interview with the victim is key to the investigation and, in all of the review sites visited, responsibility for obtaining the full statement lay with the STO. There has been a growing trend to video interview adult victims of rape. This was found to have developed in an unstructured way and a number of difficulties were identified as a result. These included:

- raised expectations on the part of victims that they will not have to give live evidence;
- issues as to whether the video is then treated as unused material or as an exhibit;
- the need to prepare a written witness statement based on the recording, which can be a lengthy and time-consuming process;
- the need for greater consideration to sensitive detail within the interview; and
- prosecutors not taking the opportunity to watch a victim's interview where it has been superseded by an evidential statement.

Concerns were also identified in relation to the quality of video-recorded interviews, together with technical issues such as misplaced microphones and high camera angles, and the quality of equipment, including that used at court. There is a need, therefore, for ACPO and the CPS to revisit the procedures for taking a victim's statement in rape cases, taking into account the evaluation of pilot schemes for the relevant special measures and duties of disclosure of unused material.

As already highlighted, with crimes of rape the victim and suspect are known to one another in the majority of cases. This means that in a large number of cases the main evidential issue is one of consent as opposed to identification. In examining the investigation process, it was found that there is a need for 'consent' defences to be challenged more rigorously and greater consideration to be given to the use of 'bad character' evidence. Interviews with suspects need to be better planned and interviewers must be properly trained. The ACPO

guidance stipulates that interviewers should be trained to 'Tier 3' (specialist level); however, in practice this was not found to be widespread.

Improved planning is also required in relation to the gathering of evidence and the development of forensic strategies, to ensure not only that forensic opportunities are maximised, but that opportunities to gather other types of evidence, such as fingerprints, are fully explored. Supervisors have a key part to play throughout the process and, in particular, supervisory reviews are important in maintaining momentum in investigations and providing direction where required.

The increased importance of forensic science in investigations has led some forces to set up service level agreements (SLAs) with forensic providers to better manage the processes. These can provide for 24-hour access to a scientist, advice on the forensic dimensions of the investigation, agreements on the quality of submissions and turnaround times for cases, and regular review of forensic performance across cases, together with feedback and bespoke training. Where an SLA had been agreed, the scientist was provided with better quality information about the case, and there was an improvement in the quality of evidence submitted and a reduction in turnaround times for exhibits; such agreements are, therefore, strongly commended.

Forensic medical examinations

Concerns were raised during the 2002 inspection about the performance, management and training of FPs and these issues were revisited during the current review.

There was little consistency found in the way in which FPs were employed, and there is a growing trend to outsource these services to private enterprises. Again, the 2002 inspection concerns were highlighted, together with issues relating to the availability of FPs (particularly paediatricians), delays in examinations, varying levels of expertise and wide disparities in levels of service offered to victims. Standards of medical examination facilities were also found to be widely variable, despite a recommendation in the 2002 inspection report that they be reviewed.

Good practice was identified at the Haven in London, where local health services are actively involved in the management of the SARC. The clinical director, a doctor, has overall responsibility for managing the performance, training and clinical governance of the FPs, while the SARC manager has responsibility for the day-to-day running of the centre. There is also a planned programme of training for FPs, who are required to undertake two examinations, complete a skills assessment and carry out a required number of examinations under supervision before consideration is given to them practising alone. This was, however, the exception.

It is important that an FP is provided with the full evidence in the case when they are asked to provide expert evidence. They should also be invited to attend any case conference and, where appropriate, attend court to give evidence.

An effective prosecution

The 2002 report recommended that all rape cases should be allocated to specialist lawyers, and linked this with the possibility of a lead prosecutor in each Area or trial unit. The CPS has responded by introducing Area rape co-ordinators, which has been a very positive step. Specialist rape prosecutors have also been introduced by the CPS and, where these roles have been implemented effectively, rape co-ordinators and specialist rape prosecutors have developed considerable expertise in the prosecution of rape offences.

There are, however, no criteria for the selection of co-ordinators and specialist rape prosecutors and no minimum standards of competence, resulting in varying levels of knowledge and expertise in practice. The CPS issued key tasks for co-ordinators, including some standard training requirements, in June 2006. There remains a need for the CPS to set a standard for the role of rape specialist lawyer, deliver appropriate training and ensure continuing involvement in cases in order to achieve real expertise. The role of the Area rape co-ordinator also needs to be enhanced by defining the level of experience and competence required, and by allocating specific time to the role.

Pre-charge decision making

The statutory charging arrangements provide for duty prosecutors to give pre-charge advice and make decisions on whether to charge in serious cases such as rape. Ideally, this should be done face to face at charging centres, or at least through discussion between the IO and the prosecutor over the telephone. Urgent cases out of office hours are considered by CPS Direct, with CPS prosecutors providing a facility accessed by telephone and fax. In practice, many rape cases are still dealt with by the police submitting a file of evidence with a formal request for advice to a CPS office, and advice is given in writing.

The introduction of statutory charging arrangements facilitates the pooling of expertise by police investigators and prosecutors at an early stage in the investigation. However, there remains a need to improve early liaison between police and prosecutors and develop a team approach to case building. There is also a need to ensure that advice is sought and given in a timely manner.

Review and decision making

It is CPS policy that advice should be given by a rape specialist; however, it was found that this was not being followed consistently. The rape specialist who made the decision to charge should retain management and control of the case from beginning to end, albeit counsel may prosecute in the Crown Court. Examination of a sample of case files during this review revealed that this was not happening often enough, and this is an unsatisfactory position.

There is a need to ensure that a conference with trial counsel and the officer in the case takes place in every case involving an allegation of rape. The conference should be held as part of the continuation of a strong prosecution team, which has been working together to build and develop a strong case throughout its progress through the criminal justice system (CJS). In particular, it is essential that a conference is always held to analyse the evidence and to explore ways of overcoming difficulties before a decision is made to stop a case at a late stage.

Review endorsements should be recorded on the CPS electronic case management system (Compass CMS). The prosecutor's endorsement should record which of the two pre-charge advice tests was applied at the initial review, followed by a detailed assessment of the available evidence. It was found, however, that the quality of review endorsements was lower than the average cycle of reports where HMCPSI looked at a full range of cases, and this reflects the findings of the 2002 report. There is a need, therefore, for CPS to produce and circulate a rape checklist to promote consideration of all relevant issues at the advice stage.

As a result of statutory charging, prosecutors are expected to make a significant contribution to case building. The specialist prosecutor should provide assistance and add value by using a detailed action plan that sets out any further work required to build the case. Some lawyers were found to be extremely proactive in building cases. However, despite a high standard of review in a number of cases, overall performance was variable, resulting in decisions to stop work (no further action) being taken prematurely in some cases.

Developments in the law relating to the admissibility of hearsay evidence and evidence of a defendant's 'bad character' have been the subject of guidance and training provided to prosecutors. Greater consideration needs to be given to these aspects at the decision-making stage. There is also a need for police and prosecutors to look beyond previous convictions when considering 'bad character' evidence.

The 2002 report recommended that trial counsel prepare a written report in any case that results in an acquittal and discuss any lessons to be learned with the police. This recommendation has not been achieved. In addition, the use of debriefs following the conclusion of a trial is limited, resulting in the loss of opportunities for police and prosecutors to learn from experience in both successful and unsuccessful cases.

Case preparation

Disclosure of unused material is particularly significant in the prosecution of rape offences. The nature of the offence means that often there are no witnesses other than the victim, which leads to significant reliance on the credibility of the victim. Unused material may contain background information by which that credibility can be tested, and it is important that prosecutors comply with the Criminal Procedure and Investigations Act 1996 (CPIA), not only in ensuring that full disclosure is made where appropriate, but also in ensuring that they do

not make disclosure of sensitive personal material (such as medical records) that does not come within the terms of the CPIA.

Performance in relation to initial or primary disclosure and continuing or secondary disclosure was found to be slightly lower than in HMCPSI's last Area inspection cycle. Timeliness in relation to dealing with the disclosure of material held by third parties needs to be improved. However, there was evidence of a significant improvement in relation to the disclosure of sensitive material since the 2002 inspection.

The victim's previous sexual history will rarely be relevant (the way in which a defendant can introduce or question a victim about it is restricted by virtue of section 41 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA)), and whether or not it needs to be disclosed depends on the individual case. Care should be taken to ensure that it is not disclosed unnecessarily because it is contained in a witness statement and then admitted in evidence because the statement is used at the trial. It is important for the prosecutor to be aware of any relevant information about a victim's previous sexual history that may lead to an application for it to be admitted, and it should be recorded separately.

Written applications under section 41 of the YJCEA should be made within 28 days of committal or notice of transfer. This should ensure that genuine and considered applications are made and should enable the prosecution to make an informed response. Research undertaken on behalf of the Home Office and published in 2006 (*Section 41: An evaluation of new legislation regarding sexual history evidence in rape trials*) revealed that the vast majority of applications took place at trial and were not made in writing.

The use of a strong prosecution team to build and proactively manage a case is important. Prosecuting counsel, when instructed, is also part of the team. Good instructions to counsel will contain a full analysis of the evidence, setting out the issues in the case, and will indicate whether guilty pleas would be acceptable should the defendant plead to a less serious offence or to only some of the counts on the indictment. This latter instruction should indicate the opinion of the reviewing (specialist) lawyer and prevent delays caused by the need to contact the lawyer to take instructions at court.

There was evidence from the file reading that performance in relation to instructions to counsel had improved since the 2002 inspection, although not significantly enough. As rape cases are dealt with by specialists, and it is more important than in many other types of case to deal sensitively with the issues involved, instructions should be of a better quality.

The case at court

When CPS caseworkers attend the Crown Court to assist counsel and higher court advocates (HCAs), they provide administrative support, deal with continuity of evidence and exhibits and have a role in witness care. The extent of CPS caseworker support at court in rape cases is variable across the Areas. The

2002 report identified as good practice the attendance of the caseworker at court throughout the trial, and some Areas have made efforts to introduce this. However, in some Areas, caseworker attendance is often limited to the first day of the trial or, at best, while the victim is giving evidence. In other Areas, caseworkers cover a number of courts at the same time, so any support to counsel and the victim in a rape trial is limited.

Where caseworkers had attended at court throughout the trial, there were excellent examples of trial notes made by the caseworkers providing a full record of the evidence given and of any applications made during the trial. In addition, both counsel and the judiciary commented on the positive impact caseworker attendance has on the smooth running of the case. Court observations carried out during this review confirmed this.

Rape cases are difficult to prosecute and, by their very nature, require sensitive and careful witness-handling skills. They can also involve complex disclosure issues. Cases where the issue is one of consent are often particularly challenging to prosecute, requiring a high degree of skill and care. There is, therefore, a need to ensure that the selection of counsel is made on the basis of full knowledge of their expertise and experience. There are a number of reasons why counsel originally instructed may find themselves unavailable to continue with the case, including listing practices and other trials running beyond the time originally allocated. A high number of returned briefs were still occurring on rape cases. There should be continuity of counsel, as well as of the specialist prosecutor, throughout the case.

Although court observations during the review were limited, the counsel seen were found to be professional and well prepared. The standards of advocacy and the handling of sensitive questioning of victims were impressive. However, formal monitoring of rape advocates is still not generally being undertaken, despite a recommendation in the 2002 report. Assuring standards of advocacy and case preparation in all cases is crucial in ensuring that rape cases are properly handled.

Cases are usually heard at the Crown Court to which they are sent. However, the practice of transferring cases from one Crown Court centre to another occurs in some Areas. While this may be due to logistical necessity, it can cause real detriment to the victim, particularly when a court familiarisation has been undertaken for the original listed court. It can also affect the provision of previously agreed special measures.

Victims and witnesses

The 2002 report highlighted that the treatment afforded to rape victims throughout the investigative process was key to securing a conviction, and that the ongoing provision of information to the victim, together with liaison, provision of special measures and consideration, would all be important factors in raising the quality of evidence given on behalf of the prosecution.

Since then, the police and the CPS have introduced victim and witness care arrangements through the 'No Witness, No Justice' initiative, and the CPS has developed its Direct Communication with Victims (DCV) scheme to explain the situation when a charge is withdrawn, discontinued or substantially altered.

The 10-point Prosecutors' Pledge, introduced by the Attorney General on 21 October 2005, and the Victims' Code of Practice, issued by the Home Secretary under the Domestic Violence, Crime and Victims Act 2004 on 4 April 2006, set out commitments and minimum levels of service to be provided to victims. The Victims' Code provides that a victim of a sexual offence is eligible for enhanced levels of support.

Despite the establishment of WCUs, in some Areas there remained a lack of clarity as to who was responsible for contacting the rape victim at each stage and what the victim should be told. There was some duplication of communication by the WCU, the police, Victim Support and the Witness Service, but there were also examples of the victim receiving little or no information as a result of a lack of clarity of roles. Awareness of the DCV among CPS interviewees was good, but the file reading identified significant room for improvement in consulting with victims in accordance with the scheme.

During the initial stages of the investigation, responsibility for ensuring that victims are updated on the progress of enquiries rests with the police, and, in particular, with the STO – sometimes jointly with the IO. There was good evidence from interviews of heightened awareness of the importance of contact in ensuring that victim engagement is not lost, particularly among STOs. Again, however, there was evidence of a lack of clarity over who was responsible for contacting the victim at each stage.

A Witness Care Officer (WCO) will undertake a needs assessment with the victim and arrange for a pre-court familiarisation visit with the Witness Service. In some Areas, the pre-court visit is also attended by the IO or STO. The CPS is rarely present at the visit and only a minority of the files read contained information about a visit. Pre-court familiarisation visits for victims need to be undertaken systematically as research has indicated their value to victims. Where feasible, they should inform decisions on any special measures to be sought.

There has been a significant improvement in the level of contact by counsel with victims and witnesses and a good awareness by caseworkers of the need to ensure that counsel speaks to victims at court. During the course of court observations, examples of good practice were seen, with counsel, the caseworker and the police working together as a team.

The Victim Personal Statement (VPS) scheme was introduced in 2001. Its purpose is to give victims a voice in the proceedings. Generally, interviewees showed a good awareness of the scheme and counsel commented that they would always ensure that a VPS was placed before a judge on sentencing. However, there was no VPS in just over half the cases within the file-reading

sample. The timing and method of taking the statement also varied and it was not always clear whether the VPS had actually been used.

There was a very good understanding by prosecutors of special measures in general, and evidence from the file reading showed that they had been considered appropriately in a large number of cases. What was less evident from the files was completed background information on the needs and capabilities of victims. In addition, early special measures meetings between the police and the CPS were found rarely to take place in practice, resulting in applications being made on the basis of the initial assessment of the victim's needs carried out by the police.

There are currently no formal arrangements for monitoring diversity or vulnerability issues, although this is done on a case-by-case basis to identify individual capability and need. Both the police and the CPS record ethnicity of victims and offenders, but there was no evidence of this information being collated and used.

Analysis of data from the file reading showed that a vulnerability or diversity issue was identified in a high proportion of cases (42.4 per cent). The most frequently identified vulnerabilities related to mental health and learning difficulties. Further analysis showed that the resulting conviction rate for these cases was lower than the overall conviction rate for the relevant sample. Although the actual sample sizes were small and the findings have to be treated with caution, when taken together with other research, they indicate a likely poorer outcome for a particularly vulnerable group of people. In addition, given the high proportion of cases within the overall file sample where a diversity or vulnerability issue was identified, it is essential that improvements are made in the early identification of vulnerable and intimidated witnesses and that early special measures meetings take place between the police and the CPS.

Safeguarding children

Safeguarding children is embedded in HMIC's inspection process. In 2004, HMIC carried out a thematic inspection on the investigation and prevention of child abuse. Published in 2005, the inspection report made seven recommendations for improvement. These findings and recommendations have been incorporated in the HMIC annual baseline assessment process, which is used to assess force performance.

From the file reading, where a case involved a child victim under 18, the conviction rate was 72.4 per cent of charged cases within the sample. This is a far higher ratio than for those cases involving adult victims and this reflects the findings from research.

It is usual practice for interviews with child victims to be video recorded. All children below the age of 17 are considered to be vulnerable under the YJCEA and eligible for special measures. This results in the majority of recorded interviews being shown in the trial, with the child not having to give live

evidence and appearing over a television link for cross-examination. The principle of children's evidence being given in this way seems to be entirely accepted, with no suggestions, as were made in the case of adults, that appearing over a live link weakens the impact of a victim's account.

Since the 2002 inspection, the SOA has introduced a range of offences specific to children. The offence of sexual activity with a child under 16 does not require proof of lack of consent. The offence is similar to the previous offence of unlawful sexual intercourse with a girl under 16, but carries a heavier penalty – 14 years' imprisonment instead of two.

If there was no consent, the charge should be one of rape contrary to section 1 of the SOA. Rape of a child under 16 and sexual activity with a child under 16 are separate and distinguishable offences, and it may well be appropriate to have alternative counts on the indictment. The selection of charges and acceptance of pleas will require careful consideration by prosecutors, bearing in mind the strength of the evidence, the tendering of a plea to the lesser offence and the possibility of an acquittal on both offences.

The nature and degree of actual consent, and the different maximum sentences, will affect mitigation and sentence. Many offences involving child victims are committed by older acquaintances or family members, and each case must be decided on its own facts. This is highlighted as an issue on which prosecutors would benefit from more guidance, and which could be included in the training for rape specialists.

Partnership working

Partnership working is a firmly established concept and significant practical benefits have been gained across a range of criminal justice issues through close collaboration with partners and joint working. This review found a number of good examples at operational level of prosecutors and police officers working closely together, both with each other and with members of other agencies. This included mutual training exchanges, sharing of information, joint monitoring of case progress and referrals to support services. However, there was less evidence of joint working with partner agencies at a strategic level. As a result, some organisations were working in isolation, unaware of the work of other partners. In addition, generally there were no forums where **all** agencies (both statutory and voluntary) could come together on a regular basis to discuss issues relating to their contribution to the criminal justice process.

The National Service Guidelines for Developing Sexual Assault Referral Centres, published in October 2005, highlights the importance of inter-agency co-ordination for ensuring a comprehensive response to victims of sexual violence, with the involvement of the voluntary sector, the local authority, the CPS and Crime and Disorder Reduction Partnerships, as well as the police and health services. Partnership working within the context of rape and sexual violence now needs to be taken forward on a more formalised and structured

footing at a strategic level across police forces, CPS Areas and local authorities to ensure that services are co-ordinated and developed effectively.

Attrition

Although figures from research present a picture of high levels of attrition and declining conviction rates set against a background of decreasing detection rates, Home Office figures show that the actual number of convictions is increasing year on year – from 640 in 2002 to 728 in 2005 (rape of a female only). However, this increase is not keeping pace with increased reporting, and therefore the justice gap for victims of rape is widening.

Over the years, huge disparities in the way in which police forces recorded and subsequently classified reports of rape meant that levels of crime and comparisons across forces were difficult to measure accurately. Improved recording practices under both the HOCR and NCRS have undoubtedly resulted in increases in levels of recorded crime, which in turn will have impacted on detection rates. However, the difficulty in accurately measuring this impact remains, and direct comparison with early data is, therefore, unreliable.

The drive to understand attrition in rape cases continues. Although quantifying attrition may not be straightforward, studies in recent years confirm the widening justice gap and provide consistent messages to all those involved in the investigation and prosecution of rape offences about the key points at which attrition occurs and the factors that have an impact on it.

This review has found that attrition during the investigation stage begins early. Of the 752 reported crimes examined for 2005, 179 were 'no crimed' (23.8 per cent). Of these, 57 (31.8 per cent) were non-compliant with the HOCR and should have remained as recorded crimes. This would have resulted in an overall total of 630 recorded crimes within the sample.

Of the 573 crimes **actually recorded**, the suspect was known to the victim or identified following investigation in 491 cases (85.7 per cent). Of these cases, the victim chose not to complete the initial process or withdrew support for the investigation or prosecution in at least 102 cases (20.8 per cent). The reasons for such withdrawals are well documented in research, and the steps that have been taken by the police and the CPS to encourage and support victims of rape to remain engaged in the criminal justice process are acknowledged. For example, the introduction of the STO role, SARCs, WCUs, CPS rape co-ordinators, specialist lawyers and specialist caseworkers is, without doubt, leading to improvements in the CJS response in rape cases and a more professional approach to the treatment and care of victims. However, 'intention' is not yet translating into fully effective practice on the ground, and several fundamental difficulties persist that are constraining the potential for more significant and sustained improvement.

Of the 389 cases where there was continued support by the victim, the offender was charged in 160 (41.1 per cent). The main reason why no charges were

brought in the remaining cases (229) was that there was insufficient evidence. It was not possible to establish from the crime reports whether any more could have been done to build the case in any of these instances. A recurring theme from the file reading, however, was the need to strengthen communication between, and co-ordination of, all those involved in the investigation and prosecution of rape offences to ensure that investigations are as thorough as possible. The development of the 'prosecution team' approach, in which, at the very least, police and prosecutors work closely together to build and strengthen cases, is strongly supported.

During the file reading, a sample of 75 cases was examined in which a defendant was charged and brought into the court process. The case outcomes in this sample showed that the CPS subsequently offered no evidence in 17 cases (22.7 per cent) (judge ordered acquittals) and 19 defendants (25.6 per cent) were acquitted after trial, including 2 on the direction of the judge (judge directed acquittals). There was a total of 39 convictions (52.0 per cent), made up of 20 guilty pleas and 19 jury verdicts of guilty.

More detailed examination of the individual cases within this sample highlights the importance of the beginning-to-end handling of a case by a single specialist lawyer with real expertise in rape cases, to build a strong case in conjunction with the IO and to maintain continuity of approach to the case within the prosecution team. Another important feature is the need to ensure that an informed second opinion is obtained by a rape specialist lawyer in relation to decisions to drop a prosecution or not to prosecute. Case preparation must provide for the victim's evidence in the case to be presented in the best possible manner, and legislative measures in relation to the admissibility of evidence, for example hearsay and 'bad character', or in relation to restrictions on the admissibility of previous sexual history, must be followed rigorously but fairly.

RECOMMENDATIONS

RECOMMENDATION 1 (page 46)

That police forces specifically include auditing of rape 'no crimes' within routine auditing processes to ensure that all 'no crimes' are sustainable and compliant with the HOCR.

RECOMMENDATION 2 (page 58)

That police forces:

- review STO call-out lists and rotas to ensure that they are up to date, are meeting need and are regularly maintained;
- formally monitor the deployment of STOs to ensure that workloads are equitable and that all STOs have the opportunity to engage in the work and maintain their skills; and
- review STO supervisory structures to ensure that line-management responsibility for STOs following deployment and during investigations is clearly defined.

RECOMMENDATION 3 (page 61)

That police forces issue guidance to first response officers on the action to be taken when attending a report of a rape, including taking an initial account from a victim, in line with the ACPO *Guidance on Investigating Serious Sexual Offences*.

RECOMMENDATION 4 (page 67)

That ACPO, in consultation with the CPS, revisits the procedures for taking a victim's statement in rape cases, taking into account the evaluation of pilot schemes for the relevant special measures and duties of disclosure of unused material.

RECOMMENDATION 5 (page 80)

That police forces ensure that review processes are established for the investigation of rape and that the quality of reviews is monitored.

RECOMMENDATION 6 (page 91)

That where expert opinion is to be sought from an FP:

- police forces ensure that all prosecution evidence is sent to the FP as soon as is reasonably practicable; and
- the CPS ensures that:
  - the FP is always included in the conference with the prosecutor, counsel and the officer in the case, unless there are particular reasons for not doing so; and
  - the FP is always called as a live witness in a trial, unless there are considered reasons for not doing so.

RECOMMENDATION 7 (page 97)

That the CPS should:

- set a standard for the role of rape specialist lawyer and deliver appropriate training to achieve this;
- ensure that specialist accreditation is the subject of continuous review;
- enhance the role of Area rape co-ordinator by defining the level of experience and competences required, and by allocating specific time to the role; and
- empower rape co-ordinators to sample rape files systematically to:
  - check for the quality of decision making and the implementation of the specific recommendations of the 2002 report;
  - identify any learning points; and
  - disseminate results throughout the Area, in particular to unit heads and Chief Crown Prosecutors, and share relevant issues with the police.

RECOMMENDATION 8 (page 104)

That police forces and the CPS ensure that rape cases receive full and early consultation between the IO and the rape specialist prosecutor.

RECOMMENDATION 9 (page 108)

That Chief Crown Prosecutors ensure that one specialist prosecutor is involved in, and accountable for, a rape prosecution from beginning to end. Consultation with a second specialist should be undertaken if no further action is to be advised or a prosecution is to be dropped, and the consultation should be recorded and the second specialist identified.

RECOMMENDATION 10 (page 111)

That Chief Crown Prosecutors ensure that a conference with trial counsel and the officer in the case takes place in every case involving an allegation of rape. This is essential where consideration is being given at a late stage to stop the case, or to accept pleas to alternative charges, in order to analyse the evidence and explore ways of overcoming any difficulties.

RECOMMENDATION 11 (page 112)

That the CPS produces and circulates a rape checklist to address all relevant issues at the advice stage.

RECOMMENDATION 12 (page 133)

That Chief Crown Prosecutors ensure that there is continuity of counsel, as well as of specialist prosecutor, throughout the case, and the caseworker in the case should attend court throughout the trial.

Introduction and *methodology*

1 INTRODUCTION AND METHODOLOGY

Purpose

1.1 This review was conducted jointly by HMIC and HMCPSI between February and May 2006. Its purpose was twofold:

- to follow up the joint thematic inspection of the investigation and prosecution of rape offences carried out by HMIC and HMCPSI in 2001 and published in 2002; and
- to assess progress against the report's recommendations and suggestions and to analyse and assess the current quality of investigation (including evidence gathering), decision making and prosecution by the police and the CPS of reports of rape, taking account of changes in legislation, policy and research.

Background to the review

1.2 In 2001, HMIC and HMCPSI conducted a joint thematic inspection into the investigation and prosecution of rape offences. The purpose of that inspection was "to analyse and assess the quality of the investigation, decision making and prosecution by the police and the CPS of allegations of rape". In doing so, its aim was to ascertain, if possible, the reasons for the high attrition rate and make recommendations to address this.

1.3 Published in April 2002, the report made a total of 18 recommendations and three suggestions to improve:

- the investigation of rape cases by the police;
- guidance and training for both the police and prosecutors;
- the quality of advice, decision making, case preparation and presentation at court by prosecutors; and
- the treatment of victims and witnesses in cases involving allegations of rape.

1.4 In response, the Government published an RAP in July 2002, accepting virtually all of the recommendations put forward by the HMIC/HMCPSI report.

1.5 Despite the relevant agencies having agreed to the RAP, research has continued to provide a picture of increasing attrition rates – in 2003, the rate of conviction for cases reported to the police was 5.4 per cent. In addition, research commissioned by the Home Office to improve understanding of attrition – *A gap or a chasm? Attrition in reported rape cases*[1] – found high rates of attrition in the six police force areas it studied, with the majority of cases falling out of the CJS at an early stage. Although the research was based on data from 2001 to 2002 (prior to publication of

1 Liz Kelly, Jo Lovett and Linda Regan, Child and Woman Abuse Studies Unit (CWASU), London Metropolitan University, *A gap or a chasm? Attrition in reported rape cases*, Home Office Research Study 293, 2005.

the thematic inspection report and implementation of the RAP), it nonetheless clearly illustrates the factors affecting attrition rates. A number of important recommendations for change were made, including the need for a fundamental shift within the CJS from a focus on the discredibility of complainants to enhanced evidence gathering and case building.

1.6 In February 2005, a two-stage process to review progress on the way in which reports of rape are investigated and prosecuted was agreed by the Home Office, the police, the CPS, HMIC and HMCPSI as follows:

- a stocktake to assess progress specifically on the measures set out in the RAP; and
- a follow-up to the 2002 thematic inspection to be carried out by HMIC and HMCPSI.

1.7 The stocktake, conducted jointly by the Home Office, ACPO and CPS Policy Directorate, consisted of self-report surveys of police forces, CPS Areas and key stakeholders. Completed in September 2005, the stocktake identified a number of key areas of progress and gaps in implementation. These are summarised in Appendix 2.

Scope of the review

1.8 The review involved a detailed analysis of police and CPS practice and procedures, from initial report through to case disposal, and covered all offences of rape as defined under the SOA.[2]

1.9 The review benefited from the advice of a Reference Group comprising individuals with particular expertise in and knowledge of the investigation and prosecution of rape offences. The Reference Group assisted at key stages of the review and in the finalisation of this report, and the Chief Inspectors are grateful for their invaluable contribution. (A list of the individuals involved is set out in Appendix 6.)

1.10 The full scope of the review was agreed as follows:

- To assess progress against the recommendations and suggestions of the 2002 inspection, taking into account the findings of the Home Office, ACPO and CPS stocktake and the findings of the Home Office Research Study, *A gap or a chasm?*.
- To assess the implementation of good practice identified in the 2002 report where appropriate.

2 "A person (A) commits an offence if: he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis; B does not consent to the penetration; and A does not reasonably believe that B consents. Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents."

- To consider the impact of new legislation – for example, the use of special measures, 'bad character' evidence and hearsay as contained in the SOA.
- To consider the impact and potential impact of new initiatives – for example, statutory charging, WCUs, the *Policy for Prosecuting Cases of Rape* and the Prosecutors' Pledge.
- To examine police compliance with the NCRS and the HOCR and whether progress has been made.
- To assess the quality of investigation, including evidence gathering, and whether progress has been made.
- To assess the quality of advice, decision making, case preparation and presentation and whether progress has been made.
- To assess the quality of any guidance on policy and practice and whether improvements have been made.
- To examine the treatment of victims and witnesses and whether progress has been made.
- To ascertain, if possible, the reasons for the continued high attrition rate and whether progress has been made.
- To make recommendations for further improvement and to identify additional good practice.

Methodology

1.11 The purpose of a thematic inspection or review is to paint a picture of how a particular issue is dealt with throughout England and Wales. This review considered the practice and performance of the police and the CPS based on evidence drawn from a number of police forces and CPS Areas.

1.12 Seven police forces and CPS Areas, covering eight review sites, assisted in this work: Cambridgeshire, Cheshire, Essex, Leicestershire, the Metropolitan Police Service (MPS) (London boroughs of Islington and Westminster), Northumbria and South Wales. This represented a cross-section of forces and Areas in England and Wales and provided a mix of rural and urban environments from which to draw evidence. Files were examined from the eight review sites and each was visited by the joint inspection team.

1.13 Evidence for the review was obtained through the following:

- consideration of the findings of the Home Office Research Study, *A gap or a chasm?*;
- consideration of the findings of the Home Office, ACPO and CPS stocktake report;
- discussion about methodology and key issues with a project reference group;

- discussion about the key issues, available guidance and policy and any relevant data;
- file examination (both police and CPS files);
- examination of crime reports (police only);
- interviews with police and CPS staff;
- interviews with WCU staff;
- interviews with judges, defence solicitors and counsel;
- interviews with local voluntary sector groups and victims' services;
- visits to SARCs and interviews with staff, where available;
- consultation with the Criminal Bar Association;
- consultation with forensic science providers and the Serious Crime Analysis Section (SCAS); and
- court observations.

1.14 In relation to the examination of files, each of the eight review sites was asked to provide two file samples, working backwards chronologically from 30 November 2005, comprising:

- 10 completed charged files; and
- 10 advice files where CPS advice had been given to the police to take no further action,

giving a total of 80 files in each category. Where possible, the samples were restricted to cases falling within the previous 12 to 18 months. Some forces had difficulties in providing a full sample, either because of problems in locating an individual file locally or because there was an insufficient number of relevant cases within the specified time frame. As a result, the final samples consisted of 75 charged and 70 advice files. These were examined in detail by the joint inspection team to obtain information about the quality of the investigation, evidence gathering, review and case building, as well as the timeliness and quality of decision making throughout.

1.15 In order to explore more fully the factors impacting on attrition during the investigation stage, HMIC also undertook an examination of crime reports. Again, two samples were obtained and the review sites were asked to provide:

- all recorded crimes and 'no crimes' from 1 January to 30 June 2000; and
- all recorded crimes and 'no crimes' from 1 January to 30 June 2005.

In two forces, the number of samples was halved on site due to the large number of crime reports. A total of 494 reports was examined from 2000 and 752 from 2005.

1.16 Where possible, interviews were conducted in focus groups in the review sites to ensure that representative views were obtained from the broad range of police and CPS staff involved in the investigation and prosecution of rape offences.

1.17 Court observations were carried out in three CPS Areas: Cheshire, Essex and Northumbria. This enabled an assessment to be made of the performance of the prosecution team, including preparation for trial, levels of caseworker support, standards of advocacy, and the provision of support and information to victims.

Structure of the report

1.18 In order to present the review findings logically and accessibly, the report follows a generally chronological order, beginning with the police response to the initial call, then covering the investigation and evidence gathering, liaison with the CPS, preparation of the case file for prosecution, charging, reviewing the evidence for the prosecution, case preparation and the trial. Related and important issues such as victim care, diversity considerations, safeguarding children and training are covered throughout the report at points where they most sensibly fit within the chronology of events.

1.19 A number of brief case examples are used to illustrate specific points. These have been anonymised but are taken from actual cases identified from the file reading.

Acknowledgements

1.20 The inspection team comprised a staff officer from HMIC and an HM Inspector (legal) and three other legal inspectors from HMCPSI, together with police officers seconded from Lothian and Borders Police, the MPS, Lancashire Constabulary, Sussex Police and Staffordshire Police, and three CPS Area rape co-ordinators seconded from CPS London, CPS Greater Manchester and CPS Northamptonshire.

1.21 The Chief Inspectors and the joint inspection team are grateful for the co-operation, support and assistance of all those with whom they came into contact throughout the inspection – from preparation of material for the team's consideration to arrangements for the fieldwork and participation in the interviews.

Setting the *scene*

2 SETTING THE SCENE

Understanding attrition

2.1 There was a strong focus during the 2002 thematic inspection on identifying and understanding the reasons for the high attrition rate in rape cases. This theme was carried through to the current review.

2.2 Not every offence of rape that takes place is reported to the police. Of those that are reported, only a small number result in criminal proceedings and still fewer result in a criminal conviction. This 'falling off' process is known as attrition and has been the focus of much research and policy deliberation, as levels of attrition in rape cases have been consistently higher than for most other crimes.

2.3 It is currently estimated that between 75 and 95 per cent of rape crimes are never reported to the police. A number of studies have explored the reasons for not reporting and a wide range has been documented:

- not naming the event as rape (and/or a crime) oneself;
- thinking that the police or others will not define the event as rape;
- fear of being disbelieved;
- fear of blame or judgement;
- distrust of the police, courts or the legal process;
- fear of family and friends knowing or of public disclosure;
- fear of further attack or intimidation;
- divided loyalty in cases involving current or ex-intimates; and
- language or communication issues.

2.4 Studies also show that the decision not to report is often based on a combination of factors and that many of these are connected to the notion of 'real' rape – that is, committed by a stranger, in a public place or in the context of a break-in, and involving force and injury.

2.5 While this review focuses primarily on the investigation and prosecution stages, the fears and misgivings that victims may have about reporting provide an important context for understanding what must take place to ensure that investigations and prosecutions are as effective as possible. If a report of a rape is met with an inadequate police response, this could easily confirm a victim's fear of not being believed; if the investigation is not effectively resourced, this could well reinforce a victim's distrust of the police process. If the CPS's decision making is influenced by judgements about a victim's behaviour, this could confirm a victim's fear about being blamed; if the cross-examination in court is intrusive and hostile, this could reinforce the victim's fear of the legal process and not being believed.

2.6 For those victims who do come forward, between a half and two-thirds of cases will not proceed beyond the investigation stage; victims declining to complete the initial process or withdrawing at a later stage account for a significant number of these cases. Home Office research (*A gap or a chasm?*) highlights a range of factors that play a part in influencing decision making by victims once a report has been made. A number of these relate to practical issues such as the availability of female practitioners (particularly FPs), delays in arranging medical examinations or during the investigation itself, and unpleasant environments. Others relate to the behaviour and approach of professionals, such as insensitive questioning during interview, judgemental or disbelieving attitudes, or failure to maintain contact as the case progresses. Others relate to victims' fears – for example, fear of the court process and the potential for intrusive, public questioning, or fear of acquittal.

2.7 While the majority of respondents in this part of the Home Office research (70 per cent) were satisfied with the initial police response, the study emphasises again the important contribution that sensitivity to the need for privacy, a feeling of safety, confidence in the professionalism of staff and a climate of belief can make to ensuring that victims remain engaged in difficult processes.

2.8 Even where cases are referred to prosecutors, a proportion will be discontinued; and of those cases that do reach court, between a third and a half of those involving adults will result in acquittals.[3]

2.9 Prior to the 2002 thematic inspection, the rate of conviction for rape, after trial, had declined from one in three cases reported (33.3 per cent) in 1977 to one in thirteen (7.7 per cent) in 1999. Additionally, only one in five reported cases reached the trial stage (20.0 per cent).[4] By the time the inspection report was published, Home Office figures showed that conviction rates for reported rape offences had reached an all-time low, with only one in eighteen reported cases resulting in a conviction (5.6 per cent).

2.10 High levels of attrition and declining conviction rates are also set against a background of decreasing detection rates. While these remained broadly stable between 1990 and 1997, they have fallen steadily since and continue to do so. Although this trend now appears to be slowing, HMIC data covering 2001/02 to 2004/05 illustrate the ongoing decline – from 41 to 37 to 31 to 30 per cent over the four-year period. At the same time, there has been a progressive increase over a period of more than 20 years in the number of rape cases reported to the police. This trend shows no signs of slowing, with an increase in recorded rape over the same four-year period of 40.9 per cent (from 9,734 to 13,712 recorded crimes).

3 Data obtained from Home Office Research Study 293, *A gap or a chasm?*.

4 HMCPSI and HMIC, *A Report on the Joint Inspection into the Investigation and Prosecution of Cases involving Allegations of Rape*, April 2002.

2.11 Taken on their own, the figures present a stark picture. There is, however, an important context to the data as a result of changes to the way detections were defined in 1999 and the introduction of the NCRS in 2002. Widening of the definition of rape to include anal penetration in 1994 and oral penetration in 2003 will also have impacted on recorded crime, detection rates and levels of attrition. However, there remains a difficulty in that the impact of these changes has never been fully explored or quantified.

2.12 At the time of writing, the Research Development and Statistics Directorate of the Home Office is in the process of completing an extensive analysis of police case files. This research should provide a more definitive picture of what has brought about the decline in detection rates for rape and improve the understanding of attrition.

Developments since 2002

2.13 There have been a number of significant developments in policy, law and practice since 2002, some of which have been aimed specifically at improving the investigation and prosecution of rape offences.

2.14 At the time of the 2002 inspection, the police were responsible for making the decision about whether or not to charge a suspect with an offence. In many cases, they sought the advice of the CPS before making this decision, but it was only after the police had charged a suspect that the CPS became responsible for deciding whether a case should continue and, if so, on what charge. The Criminal Justice Act 2003 changed this position, as a result of which the responsibility for charging decisions in more serious cases was transferred from the police to the CPS. Nationwide roll-out of statutory charging was completed in April 2006. The CPS charged file sample pre-dated statutory charging in five of the Areas, but the advice files would, for the most part, have been subject to shadow or statutory charging schemes. In three of the CPS Areas visited, statutory charging was not rolled out until after this review had started, but the fieldwork visits to all Areas and interviews took place after the introduction of statutory charging in those Areas.

2.15 Part II of the YJCEA provides a range of 'special measures' to assist eligible witnesses in giving evidence, together with special provisions for child witnesses (see Appendix 4). With effect from July 2002, all special measures have been available for vulnerable and intimidated witnesses (with the exception of video-recorded examination-in-chief for intimidated adults, and video-recorded pre-trial cross-examination and intermediaries for vulnerable and intimidated witnesses).

2.16 The SOA has changed some offences and provided some presumptions about consent issues (see paragraph 10.40). The Criminal Justice Act 2003 has provided that evidence of the defendant's 'bad character' or hearsay evidence may be admitted in certain circumstances.

2.17 In 2004, the CPS published its *Policy for Prosecuting Cases of Rape*. The introduction of the policy is a significant achievement; it specifically commits prosecutors to compliance with some of the 2002 report's recommendations (such as continuity of prosecutor and the referral of some decisions to a second specialist). Similarly, in 2005, ACPO published *Guidance on Investigating Serious Sexual Offences*. This provides the police service with clear information and standards for the investigation of serious sexual offences, from the initial response through each stage of the investigation to its conclusion. It also contains information on the role of specialists, national sources of investigative support and the roles and responsibilities of other agencies.

2.18 In the past two years, CPS Policy Directorate has strengthened its links with criminal justice agencies, ensuring mutual co-operation and information sharing in respect of offences of rape. In September 2005, it created the Sexual Offences Team, which has an ambitious programme of work in its action plan. The ACPO Rape Working Group has been actively driving forward implementation of the recommendations from the 2002 inspection report and the RAP at national level. At the time of writing, an ACPO-sponsored project has also been developed to provide consultancy and support to individual forces to assist in identifying and addressing gaps in performance.

2.19 At the time of writing, the number of SARCs has risen from four in 2001/02 to 13 in 2005/06, with further centres currently under development. SARC practitioners are working closely with the Home Office and Department of Health to ensure that high-quality services are developed and maintained. Joint Home Office and Department of Health guidelines published in 2005 emphasise the important role SARCs have to play in delivering both health and criminal justice agendas.

2.20 Operation Advance, run by the PCSD in association with the Forensic Science Service (FSS), has assisted a number of police forces in exploiting developments in forensic science to revisit 'cold' cases. The prosecution and conviction rates for Operation Advance cases are extremely high and a *Good Practice Guide* has been published to assist all forces in developing a cold case review capability.

2.21 The 'No Witness, No Justice' project is rolling out dedicated WCUs across England and Wales, bringing the police and CPS together to meet the individual needs of victims and witnesses. These units provide an initial needs assessment to identify specific support requirements; WCOs to steer individuals throughout the criminal justice process and to co-ordinate support and services; continuous review of victim and witness needs throughout the case by the CPS and the police; and greater communication and contact with witnesses about cases, including the case outcome or trial. The Prosecutors' Pledge (introduced by the Attorney General) and the Victims' Code (issued by the Home Secretary) both reinforce the requirement for greater consideration of victims' needs.

Police crime *recording*

3 POLICE CRIME RECORDING

The crime report

3.1 When an incident is reported to the police, it is recorded on an incident log which is then used to manage deployment and scene attendance. If the incident involves apparent or possible criminal activity, it is known as a **crime-related incident**. Once a crime has been confirmed, it should then be recorded as such on the force's crime recording system.

3.2 Although IT systems vary from force to force, crime recording practices should not. The 2002 inspection report, however, highlighted a huge disparity in the way in which forces recorded and subsequently classified reports of rape, with the threshold for crime recording fluctuating between:

- recording where it was alleged that a crime had been committed (prima facie); and
- recording following the application of an evidential test to the circumstances (evidential).

3.3 These variations in recording practice had made levels of crime and comparisons across forces difficult to measure accurately. The 2002 report, therefore, looked forward to the introduction of the NCRS on 1 April that year; indeed, it concluded that, without such an agreed standard across the police service, "inter-force comparisons on recorded crime and crimes cleared-up is a matter of conjecture".

3.4 The 2002 report also identified variations in interpretation of the HOCR, despite their revision in April 1998, and quantified a number of apparent disparities. For example, from the crime report examination carried out at the time, variations in the 'undetected' classification ranged from 14 to 70 per cent of recorded rape offences, and from less than 1 to 24 per cent of all rape reports in the 'no crime' classification.

3.5 Given the issues raised during the 2002 inspection, this review revisited crime recording practices in light of the introduction of the NCRS to establish if the anticipated improvements in recording practice had materialised. Each of the eight inspection sites was asked to provide copies of all crime reports (including 'no crimes') for the first six months of 2005 (1 January to 30 June). A control sample for the same period for 2000 was also requested in order to try and assess the impact of the introduction of the NCRS and the drive for greater HOCR compliance on attrition rates, and, if possible, to identify any changing trends in reporting and police decision making.

3.6 A total of 494 crime reports was examined from 2000 and 752 from 2005. These are referred to in the remainder of this chapter as the '2000 sample' and the '2005 sample'. Where comparisons are made of data across the eight review sites, individual sites are identified by the letters A to H.

Crime recording – the rules

3.7 The NCRS was developed by ACPO and the Home Office to promote greater consistency between police forces in the recording of crime and to take a more victim-orientated approach to crime recording. The HOCR are used for the counting and classifying of notifiable offences recorded by police forces in England and Wales. They take account of the NCRS and their main aims are to improve clarity and ensure consistency in recording by police forces.

3.8 Under the NCRS and HOCR, all incidents that come to the attention of the police and appear to be crimes should be recorded as such, unless there is credible evidence to the contrary. In deciding whether or not a crime should be recorded, the test to be applied is the balance of probabilities. In other words, is the incident more likely than not the result of a criminal act? In most cases, the belief by the victim (or person reasonably assumed to be acting on behalf of the victim) that a crime has occurred is sufficient to justify its recording.

3.9 Once recorded, a crime should remain recorded unless there is additional verifiable information to the contrary. Provision is made for such circumstances through what is termed **'no criming'**.

3.10 Under the HOCR, a recorded crime should be 'no crimed' if one of the following criteria applies:

- It was committed outside the jurisdiction of the recording force.
- It constitutes part of a crime already recorded.
- The reported incident was recorded as a crime in error.
- There is verifiable information that no crime was committed.

3.11 The HOCR also set out the conditions that must be met before a crime is deemed to be detected (cleared-up). In most cases, action will have been taken against the offender – they will have been charged, summonsed or cautioned. This is usually referred to as a **sanctioned detection**.

3.12 The HOCR also provide for situations where the crime has been cleared up but no further action is to be taken against an offender – usually referred to as a **non-sanctioned** (or administrative) **detection**. Before such a detection can be claimed, the evidential requirement to show that the named person was responsible for the offence must still be met. Any interviews with suspects must comply fully with the requirements of the Police and Criminal Evidence Act 1984 (PACE) in order to preserve the integrity of any admission. The victim, or in the case of a child the parent or guardian, must be informed of the outcome and the suspect must also be informed that they have been recorded as being responsible for the crime.

3.13 Once a decision has been made that a crime-related incident should be recorded as a crime under the NCRS, then, broadly speaking, when the investigation has been completed, the outcome will be classified in one of four ways under the HOCR:

- 'no crime';
- sanctioned detection;
- non-sanctioned detection; or
- undetected.

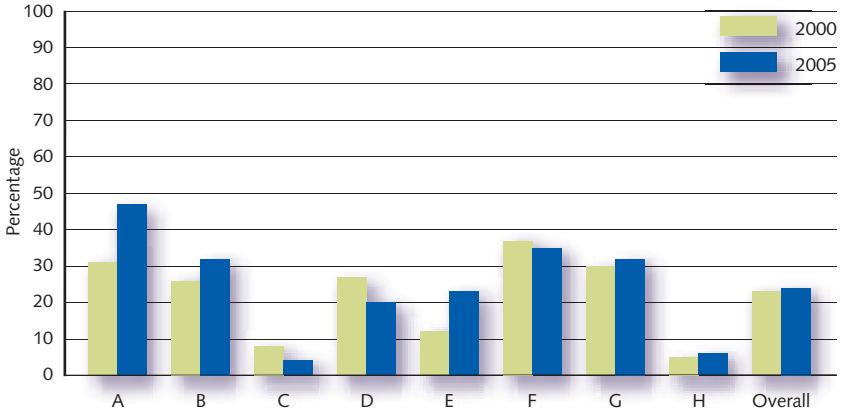
'No crimes'

3.14 Studies into attrition in rape cases have identified that the 'no crime' category has been used for a far wider group of cases than designated under the HOCR. Data provided by forces nationally to HMIC on the 'no crime' category show considerable variations in levels of 'no criming' – between 3 and 50 per cent of reported crimes – and this variation has remained constant over the last four years. The level of variation is strongly suggestive of continued, and potentially significant, variations in recording practice and differences in interpretation of the HOCR. 'No crimes', therefore, formed a specific part of the crime report examination.

3.15 'No crimes' are excluded from official recorded crime figures (and justifiably so – provided they comply with the criteria set down under the HOCR). Recorded crime figures are used as the basis for calculating detection rates, and both are used in determining levels of attrition.

3.16 From the 2000 sample, 22.7 per cent (112 reports) were classified as 'no crime'; from 2005, the figure was 23.8 per cent (179 reports). However, there were considerable variations in levels of 'no criming' across the individual review sites, as shown in Figure 3.1.

Figure 3.1: Percentage of 'no crimes' by review site (2000 and 2005 samples)

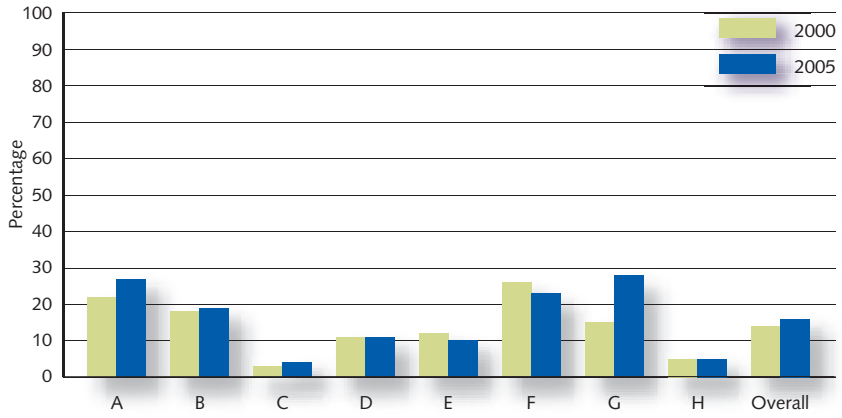


3.17 To explore this further, each 'no crime' within both samples was examined in detail and compliance with the HOCR 'no criming' criteria was tested.

3.18 Errors, duplicate reports and crimes committed outside the jurisdiction of the recording force accounted for a minority of cases and all were found to be HOCR-compliant. However, when the remaining criterion was applied (verifiable information that no crime was committed), 40.2 per cent (45 of 112) of 'no crimes' from the 2000 sample and 31.8 per cent (57 of 179) from the 2005 sample were found to be **non-compliant**.

3.19 When the figures are adjusted to remove non-compliant 'no crimes', overall 'no criming' levels reduce to 13.6 per cent and 16.2 per cent for 2000 and 2005 respectively. In addition, while the variations across the inspection sites remain, these are also reduced, as shown in Figure 3.2 below. The most significant reduction in variation can be seen in the 2005 sample – from between 4 and 47 per cent to between 4 and 28 per cent.

Figure 3.2: Percentage of adjusted 'no crimes' by review site (2000 and 2005 samples)



3.20 Of the total recorded 'no crimes' from the 2005 sample (179), 162 were categorised under the 'verifiable information that no crime was committed' criterion. It would be easy to assume that, because a report is classified as a 'no crime' in this way, the allegation is false. However, as highlighted in *A gap or a chasm?*, 'no crimes' comprise "a complex layering of different kinds of cases and circumstances" and there are several reasons, other than a false allegation, why it can be found that no crime of rape has taken place. Examining those reasons, and the way in which the HOCR are being interpreted, is revealing in terms of the complexities involved as well as initial police decision making.

3.21 The following 'no crimes' were found to be compliant with the HOCR:

- In nine cases, the initial report was made by a third party (partner/relative/friend) without the knowledge or consent of the individual concerned. On the police making contact, the individual either denied having made the allegation or refused to confirm whether a crime had taken place.
- In 11 cases, due to the influence of alcohol and/or drugs, the complainant was either unable to provide an effective account on initial contact with the police or had no memory of events and had

approached the police because of concerns that they might have been assaulted. In each case, there was verifiable information that no crime had been committed.

- In 10 cases, once the full circumstances were known, it was established that either no crime of rape had taken place or another sexual offence had been committed. In these cases, the original crime had been defined by the police and not the complainant.
- In 57 cases, the allegation was retracted[5] (cases were included only if there was also evidence of a retraction statement).
- In 18 cases, there was other evidence (for example, CCTV, witnesses, forensic/medical evidence) to show that no crime had taken place.

3.22 However, the following were also included:

- In 21 cases, the victim either declined to complete the initial process (that is, to make an official complaint, provide a statement, undergo a medical examination or respond to early police efforts to make contact) or withdrew support for the investigation or prosecution.
- In six cases, the report was 'no crimed' on the basis that there was insufficient evidence that a crime had taken place (for example, where the only issue was consent), although, in each, there was no verifiable information that it had **not** taken place.
- In two cases, the reports were 'no crimed' following CPS advice to take no further action.
- In 10 cases, the grounds were not provided in the report and there was no apparent reason for 'no criming'.
- In 18 cases, the allegation was treated as false, primarily as a result of the victim's credibility being called into question (for example, due to inconsistencies or discrepancies in their account or factors such as their alcohol consumption or behaviour). There was a small number, however, where the victim had retracted the allegation, but in circumstances where there was good reason to doubt the retraction (for example, domestic violence).

3.23 All non-compliant 'no crimes' within the review samples should have remained as recorded crimes. For 2005, this would have increased the overall number of crimes within the sample by 10 per cent. Across individual forces, however, the overall increase would have varied from 0 per cent to as high as 38 per cent. Failure to adhere to the relevant HOCR criteria is not only skewing recorded crime figures for rape but is also undermining the ability to gain an accurate understanding of attrition.

5 For the purposes of this report, a retraction is defined as being where the victim makes or confirms the complaint but subsequently states that the crime did not take place or that the report was fabricated. A withdrawal is defined as being where the victim declines to complete the initial process or withdraws support for the investigation or prosecution but maintains that the crime took place.

3.24 'No crimes' also include those designated 'false allegations' which fall under the criterion 'verifiable information that no crime was committed'. *A gap or a chasm?* identified "an over-estimation of the scale of false allegations by both police and prosecutors", feeding into a "culture of scepticism". False allegations accounted for 36.6 per cent of all recorded 'no crimes' in the 2000 sample and 43.0 per cent in 2005. However, if **all** 'no crimes' falling under the 'verifiable information' criterion are perceived to be false, these figures rise to 85.7 and 90.5 per cent respectively. There is a danger, therefore, that dilution of the 'verifiable information' criterion, which is inflating levels of 'no criming', is also inflating perceptions of the scale of false allegations.

3.25 Setting this in its proper context, false allegations accounted for only 8.3 per cent of the overall 2000 sample and 10.0 per cent of the sample from 2005. Even these figures have to be treated with caution, however, as one inspection site was found to have a higher than usual level of victim retractions (see paragraph 3.21). Removing this site from the 2005 sample results in an overall reduction in false allegations to 8.1 per cent.

3.26 The results show that, although there is now greater compliance with the HOCR, there has also been a slight overall increase in the level of 'no criming'. One explanation for this anomaly is likely to lie in the introduction of the NCRS, in that reports which would have remained as crime-related incidents before the standards were introduced are now being properly recorded as crimes. It is possible that, had they been recorded as crimes under the current rules, a higher proportion would have resulted in a 'no crime' outcome.

3.27 For example, prior to 2002, if a report were made by a third party on behalf of a victim, it would not be unusual for the submission of a crime report to be deferred until the victim had been seen and the crime confirmed. If it remained unconfirmed, it would not be recorded as a crime and would not, therefore, appear in the figures. Procedures under the NCRS, however, mean that a crime report must now be submitted in such circumstances and then 'no crimed' if unconfirmed.

3.28 That said, a non-compliance level of nearly one-third is unacceptably high. The 2002 report concluded that inappropriate recording practices resulted from a "lack of knowledge or misinterpretation of the HOCR, as opposed to wilful manipulation of the data", and this is echoed by the findings of this review. However, it is also the conclusion of this review that the "culture of scepticism" highlighted within *A gap or a chasm?* is playing a part, as evidenced by the reports resulting in a 'no crime' where subjective judgements had been made about the complainant's credibility.

3.29 There are two further considerations that emphasise the importance of accuracy in this area. Firstly, the Bichard Inquiry report, published in June 2005, highlighted the importance of knowledge of past allegations in informing decision making in other cases involving the same offender and

in establishing patterns of behaviour. Crime reports are a valuable source of intelligence and information about offenders and suspected offenders. The 145 cases examined during the file reading involved 154 suspects/offenders, of whom 15 (10 per cent) had been either suspected of, charged with or convicted of committing previous sexual offences. However, the total number of previous offences involved was 40. In one example, the suspect had been arrested on four previous occasions for rape and serious sexual offences. In one instance, there had been insufficient evidence to charge the suspect; in the remaining three cases, the victims had withdrawn support for the investigation and/or prosecution.

3.30 When the 'verifiable information' criterion is used as the grounds for 'no criming', this is effectively saying that the crime did not happen and the information about the alleged offender in that case is no longer valid as usable intelligence. In addition, it cannot be disclosed for vetting purposes under Part V of the Police Act 1997. This is absolutely correct – otherwise, information relating to allegations which have been proven to be unfounded could be disclosed about innocent parties. However, the implications for loss of information and intelligence are clear where a report is 'no crimed' incorrectly.

3.31 Secondly, in *A gap or a chasm?* concerns were raised over the impact that previous reports can have on decision making where a further complaint is made – the majority of relevant cases examined in that study were found to have been dropped at an early stage. Clearly, if a previous report has been 'no crimed', the inference may well be that the previous report was false, thereby casting doubt on the victim's credibility in relation to the current complaint. In addition, with repeat victims, the fact that a prior complaint has been made is disclosable to the defence. Again, if the earlier complaint has been 'no crimed', it could be used to question the victim's credibility in court.

3.32 Given the potential levels of over-'no criming' identified in this review, it is absolutely essential that force auditing processes specifically include sampling of rape 'no crimes'. The following recommendation is, therefore, made:

RECOMMENDATION 1

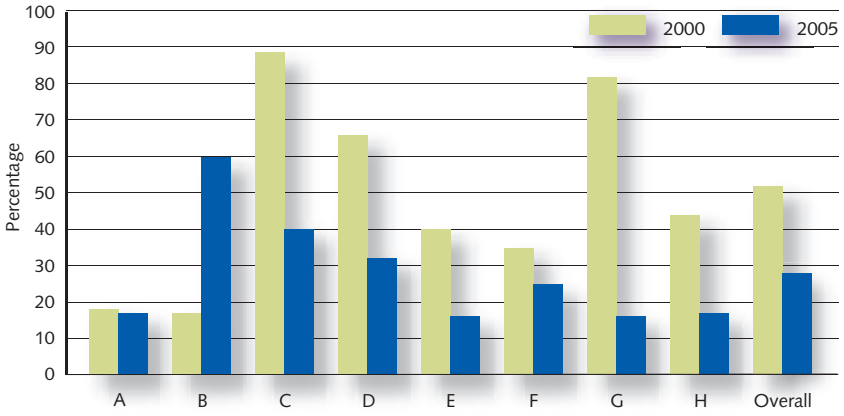
That police forces specifically include auditing of rape 'no crimes' within routine auditing processes to ensure that all 'no crimes' are sustainable and compliant with the HOCR.

Detections

3.33 Tables 1–4 in Appendix 3 summarise the 'results of investigation'. The overall detection rate for the 2000 sample was 52.3 per cent, compared with 27.9 per cent in the 2005 sample. This reflects the national trend, which shows a decrease from 40.7 per cent in 2001/02 to 29.6 per cent in 2004/05.

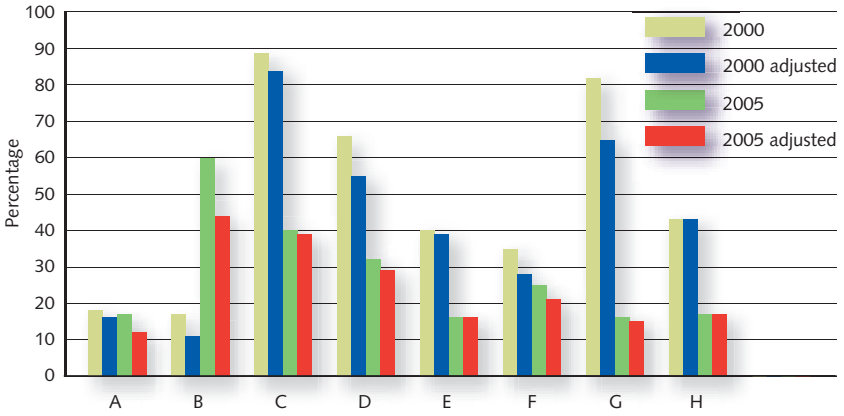
3.34 Across all forces nationally, detection rates varied from 22.2 to 93.4 per cent in 2001/02 and from 7.0 to 60.4 per cent in 2004/05. High levels of variation were also found in the review sites, as shown in Figure 3.3. All but one of the sites showed a decrease in detection rates. In most cases, this decrease was marked.

Figure 3.3: Percentage detection rates by review site (2000 and 2005 samples)



3.35 When the detection figures for both samples are adjusted to take account of non-compliance across all HOCR closure categories, detection rates for both samples decrease, as shown in Figure 3.4. The most significant factor in altering detection rates is non-compliance with the HOCR criteria for 'no criming'.

Figure 3.4: Percentage detection rates by review site (2000 and 2005 samples) – unadjusted and adjusted figures



3.36 Understanding the decline in detection rates is not straightforward. Given the varying thresholds for crime recording that existed prior to 2002, the introduction of the NCRS will undoubtedly have had greater impact in some forces than in others – that is, some forces will have experienced greater increases in recorded crime as a result of applying the new standards. Consequently, even when the figures for the 2000 sample are adjusted to take account of HOCR compliance, the picture at that time remains unreliable. Identification of trends is, therefore, speculative at best.

3.37 Understanding the variations in force performance is equally difficult. For example, within the 2005 sample, the most HOCR-compliant of the review sites in relation to detections were C, E and H. Review sites E and H show similar detection rates for 2005; site C's rate is considerably higher, potentially indicating a significant difference in performance. However, research shows that attrition is less marked in cases involving those under 16 years of age, and the site C sample contained a higher proportion of intra-familial cases involving victims under 16. Site B is the only area to show a marked improvement in detection rates since 2000. This improvement was found to run parallel to improvements in investigation standards and the level of priority afforded to rape investigations locally, as well as to more robust management of cases and monitoring of performance. That said, there were also some concerns identified from the file reading in relation to premature charging – that is, where the police were seeking, and being given, early advice to charge, before a sufficiently full investigation had been carried out.

3.38 Only sanctioned detections are included within official detection rates. It is worth mentioning here, however, the issue of non-sanctioned detections because these still impact on the overall levels of 'undetected' crime.

3.39 Non-sanctioned detections provide for circumstances where, despite the fact that there is verifiable evidence to show that a named offender is responsible for an offence, it is decided that no further action will be taken (by way of charge, summons or caution) – for example, where the offender, complainant or an essential witness dies before proceedings can be initiated or completed. Other circumstances allowed under the HOCR, however, include where the victim or essential witness refuses, or is permanently unable, or, if a juvenile, is not permitted to give evidence.

3.40 It is essential that there is sufficient evidence to charge the offender before the offence can be classified as detected and, given the seriousness of the crime of rape, there should be few occasions when a case is concluded in this way.

3.41 In the 2000 sample, non-sanctioned detections accounted for 5.7 per cent (21 crimes) of the total recorded crimes (371); only one of these complied with the HOCR. In the remaining 20 cases, 16 failed the evidential test and four failed to meet the requirement in relation to advising the victim and/or offender. With the 2005 sample, this had fallen to 1.9 per cent (11 crimes) of the total recorded crimes (573). All 11, however, failed the evidential test.

Undetected crimes

3.42 All non-compliant 'no crimes', non-sanctioned detections and sanctioned detections within the two samples should have remained as undetected crimes under the HOCR. It is here, therefore, that any adjustments will have greatest impact.

3.43 The 2005 sample, without adjustments, was 402 undetected crimes; and the figure for 2000 was 156. When both crime report samples are adjusted, the undetected category of crimes increases by 17.7 per cent (71 crimes) for 2005, but the same category increases by 43.6 per cent (68 crimes) for 2000.

3.44 It is clear, therefore, that there is now far greater compliance with the HOCR and this has undoubtedly impacted on detection rates. The difficulty remains, however, that with the overall increase in recorded crime and continued high levels of variation between forces, it is still not possible to quantify that impact. While some of the recorded crime increase will be due to the tightening up of standards under the NCRS, actual numbers remain an unknown quantity. This is also true of other factors, such as the extent of increased reporting (as opposed to improved recording) and the impact of changes to legislation.

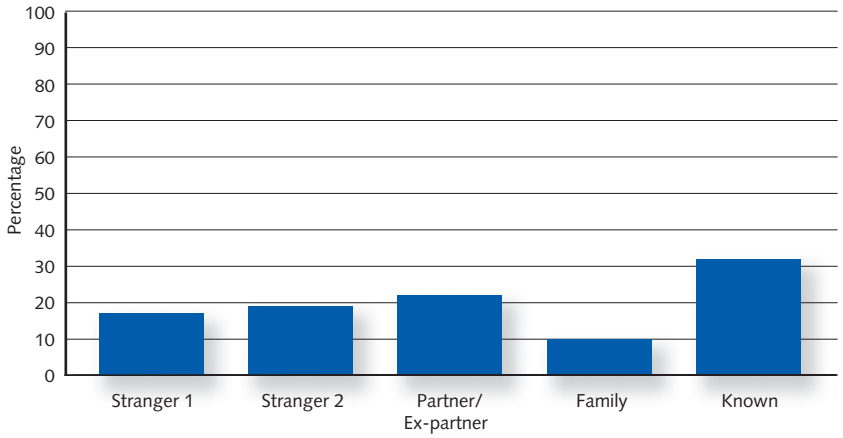
3.45 The undetected category is, arguably, one of the most contentious because it does not necessarily mean that the crime is 'unsolved'. The 2002 report highlighted that, in the majority of cases, the suspect and victim are known to one another – crime report analysis carried out during that inspection identified that only 14 per cent of cases involved rape by a stranger. The relationship between victim and suspect was also examined during the current review and a similar, although slightly higher, figure of 17 per cent was obtained.

3.46 The full results of the crime report analysis[6] (2005 sample) are given at Figure 3.5 below. The relationship categories were defined in the following way:

- stranger 1 – the suspect is completely unknown to the victim;
- stranger 2 – the victim and suspect have met for the first time (including those who were previously known to each other only via the internet) or are known on first-name terms only or are known only through third parties such as mutual friends;
- partner/ex-partner – includes all partner relationships (irrespective of whether this is or has been sexually intimate);
- family – all family relationships, including step-relationships; or
- known – includes a range of relationships where the victim and suspect are known to one another beyond that defined under 'stranger 2', such as friends, longer-term acquaintances, work colleagues, neighbours and those in positions of trust (babysitters, teachers, etc).

6 In view of over-'no criming' issues identified in this report, the full sample of crimes and 'no crimes' was analysed.

Figure 3.5: Percentage of crime and 'no crime' reports by relationship (2005 sample)



3.47 In the 2005 sample, the suspect was either known or identified following investigation in 80 per cent of cases that were classified as undetected (320 out of 402 cases). There were four main reasons why a suspect was not charged or no further action was taken:

- the victim chose not to complete the initial process (14.1 per cent);
- the victim withdrew support for the investigation or prosecution (16.6 per cent);
- police decision that there was insufficient evidence (8.1 per cent); and
- CPS advice (50.6 per cent).

There were a number of cases where the CPS decision that no further action should be taken was based on the fact that the victim had withdrawn support or had chosen not to complete the initial process. Where this was known, it was counted as a 'victim withdrawal' or a 'victim decision not to complete' as opposed to 'CPS advice'. In the remaining cases (10.6 per cent), the enquiry was still ongoing at the time of the review; the crime report had not been updated; or there were other factors such as the suspect's whereabouts being unknown or they had left the country.

3.48 The 2002 report highlighted the dilemma that forces face as a result of current classification categories under the HOCR – unless there is sufficient evidence to charge a suspect, the crime must remain classified as 'undetected', regardless of the fact that no other person will be sought for the offence. The report also highlighted the potential impact on public confidence, particularly if a low detection rate is interpreted as "a lack of police interest or as a judgement on police competence" in the investigation of rape offences. As a result, the following recommendation was made:

Recommendation 5 (2002)

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.

3.49 It is recognised that this is not an easy matter to resolve, as any solution will need to ensure that the integrity of the 'detected' crime classification category is maintained. Initial attempts to address this recommendation included piloting a new 'case concluded' category. Although this did not produce meaningful results at the time, given the high proportion of cases where the victim and suspect are known to one another and the potential impact on public confidence where these cases are concluded as 'undetected' under current rules, the above recommendation should be revisited.

Strengths

- **The introduction of the NCRS has reduced variations in recording practice, although non-compliance remains an issue in relation to 'no criming'.**
- **There have been improvements in compliance with the HOCR.**
- **The use of the non-sanctioned detections in the classification of rape offences has reduced.**

Areas for improvement

- **Variations in interpretation of the HOCR still exist, skewing recorded crime figures and undermining the ability to gain an accurate understanding of attrition.**
- **Inaccuracies in 'no criming' levels under the 'verifiable information that no crime was committed' criterion remain unacceptably high.**
- **There is an over-estimation of the scale of false allegations among practitioners and subjective judgements are still being made about victim credibility.**
- **Inaccurate 'no criming' is resulting in loss of intelligence about offenders.**
- **There remains a need to revisit the criteria for the classification of 'detected' and 'undetected' offences, given the high proportion of cases where the suspect is known but there is insufficient evidence to proceed with a charge or prosecution.**

Police*structures*

4 POLICE STRUCTURES

The situation in 2002

4.1 Although structures for responding to and investigating rape offences varied across the police forces visited, a number of consistencies were identified.

4.2 At the time of the 2002 inspection, while investigations were primarily carried out by detective officers from the Criminal Investigation Department (CID), the initial response was usually provided by trained officers from the uniformed branch. Training, however, was often found to be inadequate and rarely took account of an individual officer's competency for the role. For example, in one force all probationary constables undertook two weeks' sexual offences investigation training at around 64 weeks' service, following which they were eligible for deployment. In addition, the role and responsibilities of the trained officer often lacked definition and clarity.

4.3 To improve this response, forces had begun to introduce specialist officers trained in sexual offences investigation techniques. Again, these officers were usually uniformed patrol officers and, although referred to by a number of different titles (chaperone, victim liaison officer, sexual offence liaison officer, sexual offence investigation trained officer), their assigned role was to assist the investigation team to gather evidence and information in a manner suited to an individual victim's needs. In particular, they were responsible for the forensic medical examination arrangements, obtaining the victim's full statement and, thereafter, liaising with and updating the victim on case progress.

The situation in 2006

4.4 By the time of the current review, considerable progress was found to have been made in this area. While investigations remain primarily the responsibility of detective officers nationally, each of the forces visited during the review had formally introduced the specialist role (now referred to as a Specially Trained Officer or STO). This role is discussed more fully in paragraphs 4.8–4.20. One force, the MPS, now has specialist units known as Sapphire Units and, while the separate roles of IO and STO have been retained within this structure, Sapphire Units provide a dedicated, 24-hour response for the investigation of all adult rape offences.

4.5 All forces across England and Wales also have dedicated Child Abuse Investigation Units. Although their remits tend to be confined to the investigation of offences committed by family members, some also have specific responsibility for the investigation of all rape and serious sexual offences committed against children.

4.6 Depending on the circumstances, and the way in which a force is structured, the investigation of rape can also be carried out by forces' Major Investigation/Inquiry Teams (MITs).

4.7 A number of police areas have also established SARCs. Although models vary according to demographics and the availability of resources, SARCs provide 'one-stop' locations where victims of rape and sexual assault can receive medical care and counselling and where dedicated facilities for forensic medical examinations are provided (see Chapter 7).

The role of the Specially Trained Officer

4.8 *Guidance on Investigating Serious Sexual Offences* was produced in 2005 on behalf of ACPO by the National Centre for Policing Excellence (NCPE) and provides a comprehensive outline of the role and responsibilities of the STO. Examination of the role across the forces visited found that the responsibilities were very similar and reflected the ACPO guidance:

- initial response to a report of a serious sexual offence;
- arranging the victim's forensic medical examination;
- briefing the FP;
- securing exhibits and samples from the victim;
- briefing the IO and other members of the investigation team;
- communicating forensic information to the Crime Scene Investigator (CSI), Crime Scene Manager (CSM) and IO;
- updating the FP on the progress of the investigation (as directed by the IO);
- conducting the victim interview; and
- taking statements of withdrawal of support for the prosecution (as directed by the IO).

The role of the STO is key – STOs are a vital and integral part of the investigation team.

4.9 The 2002 inspection was critical of the selection, training and deployment of trained staff, highlighting the need for:

- staff to be selected on the basis of competency and skill;
- tailored training to meet the needs of the role;
- effective management of availability and deployment; and
- effective officer management and supervision, particularly in relation to welfare.

These issues were re-examined during the current review.

4.10 All officers in the forces visited were required to have completed their probationary period before they could undertake the role of STO and all were required to be fully trained before deployment. While the role of STO is voluntary, scarcity of STOs in some forces had resulted in officers feeling pressured into being trained in an area in which they were

reluctant to work. In MPS Sapphire Units, potential STOs had the opportunity to be attached to the unit for a short period of time before being considered for training. This allowed an assessment to be carried out as well as providing potential STOs with the opportunity to confirm their own suitability for the role. With this exception, however, assessment prior to training was found to be rare.

4.11 At the time of writing, there is no nationally accredited training for STOs, although this is being progressed by ACPO and the NCPE/Centrex. While local training provision was generally described as very good, and in some cases excellent, standards were not always consistent. There were also gaps in the provision of refresher training, with two forces providing no input other than initial training, as well as an absence of training for supervisors. This reinforces the need for nationally accredited training, and the following recommendation from the 2002 report is, therefore, reiterated:

Recommendation 3 (2002)

ACPO and the National Police Training (now NCPE/Centrex) review the training of officers who deal with rape victims, so that the appropriate skills and competence are enhanced in officers at an appropriate level and are made available to victims across the service.

4.12 The majority of forces had attempted to implement a system of 'shadowing', with newly trained officers being deployed alongside experienced STOs before undertaking the work on their own. However, these systems were found to be largely self-governing and, when coupled with a high level of operational demand, were failing to deliver in practice.

4.13 There was little evidence of performance monitoring, and feedback (for example from IOs or Crime Managers) was rare. The management and updating of call-out lists and rotas was poor and deployment tended to be based on the most readily available officer, irrespective of their core workload, tour of duty or existing STO commitments. There was also a tendency to seek the services of STOs with proven experience, resulting in a small core of officers being called upon time and again. For example, in one force, the burden of work fell on five officers despite there being more than 30 trained officers available. All forces experienced difficulties with staff being trained but not engaging, or not having the opportunity to engage, in the work, resulting in de-skilling and staff removing themselves from the role. In another force, of 600 trained officers only around 100 were available for deployment.

4.14 There were active STO Co-ordinators in six of the review sites visited. Many of these officers were, or had been, STOs themselves and had a firm understanding of the role and its demands. More often than not, however, such arrangements had been agreed locally within individual Basic Command Units and were not applied consistently across forces, nor was

the Co-ordinator's role always clearly defined. In addition, the majority of Co-ordinators were constables and their authority to effect change was therefore limited.

4.15 Welfare arrangements are now generally better developed across all forces in England and Wales and all officers, irrespective of their role, have access to a range of services through Occupational Health Units. In one of the forces visited, annual referral to occupational health was mandatory for STOs. In the remaining forces, welfare monitoring was generally undertaken through supervisors. However, with the exception of the MPS Sapphire Units, there was no clear management structure for the STO function, and supervision during ongoing enquiries was also limited.

4.16 The ACPO guidance details the importance of structured monitoring of STO workloads and work-related stress and highlights the potential impact of secondary post-traumatic stress disorder (PTSD). Other avenues of support are also suggested, providing forces with a range of options for safeguarding the welfare of STOs. These measures should, however, complement, not replace, structured supervision, and STOs themselves need to be involved in discussions on any additional support to ensure that it meets their needs.

4.17 With the exception of officers in specialist units, all STOs carried the additional responsibilities of their core work. Understanding of the STO role was not widely shared at supervisory level and pressure on STOs from core team line managers to return to the demands of response policing often left officers torn between the two roles. These pressures often left STOs feeling that their role in the investigation of rape was undervalued and, in some areas, this was compounded by their lack of full inclusion in the investigation team. One force had introduced Special Priority Payments (SPPs) as a means of recognising and rewarding the STO role. This requires careful management, given what has been said in paragraph 4.13.

4.18 All forces had either a policy or an expectation that the STO would remain in contact with the victim. In practice, the level of subsequent contact was often dependent on the STO's other duties and availability. Sometimes IOs experienced difficulties in maintaining contact with the STO on their return to core duties, and the review found examples where communication had ceased. Where this occurred, STOs were unable to monitor the progress of the investigation and update the victim effectively. This reinforces the need for STOs to be recognised as full and active members of the investigation team.

4.19 Expectations of the STO role were found to vary across forces and, in practice, STOs could find themselves undertaking responsibility for a range of tasks outside their designated role. Overall, a picture has emerged of dedicated front-line officers, at times managing the initial stages of the investigation as well as their responsibilities in relation to the victim. Once deployed, there was clear evidence that STOs were providing a good level

of service within their capability, but dual demands and lack of support are undermining morale and efficiency.

4.20 There is no doubt that the formal introduction of the STO role has significantly improved the quality of the initial police response to rape investigations, but the management, supervision and deployment of STOs require to be urgently addressed if this improvement is to be sustained.

RECOMMENDATION 2

That police forces:

- review STO call-out lists and rotas to ensure that they are up to date, are meeting need and are regularly maintained;
- formally monitor the deployment of STOs to ensure that workloads are equitable and that all STOs have the opportunity to engage in the work and maintain their skills; and
- review STO supervisory structures to ensure that line-management responsibility for STOs following deployment and during investigations is clearly defined.

Strengths

- **Considerable progress has been made in the introduction and development of the STO role.**
- **All forces have dedicated Child Abuse Investigation Units.**
- **There has been increased momentum in the development of SARCs and greater focus on the need to improve facilities for the forensic medical examination of victims.**
- ***Guidance on Investigating Serious Sexual Offences* has been published by ACPO.**
- **Significant improvements have been made in relation to STO training locally.**

Areas for improvement

- **There remain gaps in relation to training for non-specialist officers and supervisors and refresher training for STOs, and nationally accredited training has not yet been delivered.**
- **STO rotas and deployment are not well managed and supervision of STOs during investigations is often ad hoc.**
- **Understanding of the STO role is not widely shared at supervisory level and conflicting demands can place STOs under unreasonable pressure.**
- **There is a need to ensure that line-management responsibility for STOs during investigations is clearly defined.**


Firstresponse

5 FIRST RESPONSE

Deployment and scene attendance

5.1 The ACPO *Guidance on Investigating Serious Sexual Offences* emphasises the requirement for positive action in such cases and the obligations incurred at every stage of the police response. The importance of presenting a positive and supportive attitude is highlighted together with the need to use every investigative opportunity to secure evidence. This often means that the first response officer is faced with the conflicting demands of meeting the needs of the victim and preserving evidence.

5.2 First response officers assume the role of IO until the incident is allocated to an STO and an IO is appointed. Their role in the initial stages of the investigation, therefore, is no less important than that of specialist officers and investigators.

5.3 In rape offences, obtaining an accurate first or early complaint from the victim can be vital in progressing the investigation and later in the court process to show consistency (or inconsistency). It may contain detail that is lost or forgotten when a formal statement is obtained and can become evidence of the truth of the content of the victim's account. It is important, therefore, that **all** officers who may have dealings with victims of rape are fully aware of the steps to be taken to gather as much information and evidence as possible from the outset. It is a basic tenet of police work that the earlier action is taken to obtain evidence, particularly forensic or physical evidence, the greater the prospect of a successful outcome.

5.4 Wherever possible, the first account should be obtained by the STO; however, delays in obtaining the services of an STO can result in front-line staff dealing initially with the victim and obtaining the early complaint. Although this did not appear to be a particular issue from the file reading (only 14.5 per cent of the total HMIC file sample – 21 of 145 files – showed evidence of any delay in accessing an STO), front-line staff were, nevertheless, very aware of their shortcomings when dealing with victims where an STO was not readily available:

"All I say is, tell me what happened, as anything else would be construed to be an interview."

"More training is required … with rape there is more fear of the unknown. They are afraid of getting things wrong, not knowing what they can ask and what can be written down."

At worst, this 'fear of getting things wrong' resulted in some officers, despite spending several hours with a victim, recording nothing.

5.5 It was found that front-line officers had received very little training in responding to rape offences. Many forces now rely heavily on email and self-briefing to ensure that staff are kept up to date with new developments. Although this can never replace training, it can be a quick and effective method of circulating information – provided staff are aware

of what to look for, where to look, and how the information will help them in their role. Although there is no standard format for recording the early complaint from a victim, the ACPO guidance outlines the information required and highlights the limitations to questioning. Few police officers, including a number of specialist staff and investigators, were aware of its existence. Given the importance of the first response in providing the foundation for the investigation, it is recommended:

RECOMMENDATION 3

That police forces issue guidance to first response officers on the action to be taken when attending a report of a rape, including taking an initial account from a victim, in line with the ACPO *Guidance on Investigating Serious Sexual Offences*.

The use of Early Evidence Kits

5.6 EEKs were introduced for immediate use by first response police officers or members of police staff who deal with victims prior to the medical examination. They are intended to ensure the effective recovery of non-intimate forensic samples that are affected by the passage of time, such as urine samples, where drug and/or alcohol analysis is required, or where a mouth swab is required.

5.7 A recent report by the PCSD on the use of EEKs found the following:

- the location of EEKs did not meet need;
- the management of kits, including their allocation, was inconsistent;
- the use of kits was not monitored and, therefore, usage could not be linked to investigative outcomes;
- training in the use of EEKs varied; and
- information as to whether or not an EEK had been used as part of the investigation was not always readily apparent from case samples submitted to the FSS provider.

5.8 These findings were reflected during this review. From the file-reading sample (145 cases), there were 93 occasions identified when an EEK could have been used. They were used, however, on only 33 occasions. The level of use of EEKs across the forces visited varied between never and 80 per cent of relevant cases. Although it was not possible to establish the extent to which this might have resulted in any loss of evidence, in one of the 33 cases where an EEK **was** used, a suspect DNA match was obtained from a mouth swab.

5.9 In those forces where EEKs had been adopted, assumptions were made by managers about their availability and use. The single biggest issue raised by front-line staff, however, was lack of availability, with EEKs not being routinely carried in response vehicles. Front-line staff also expressed concern about the limited training received, even though EEKs were

designed to optimise officers' existing skills and require minimum training. It may be that front-line staff are associating the level of training required with the seriousness of the crime as opposed to the actual skills necessary to take the samples, and that lack of confidence is also having an effect on their use.

Preserving the scene and physical evidence

5.10 As well as having immediate responsibility for preserving and, where appropriate, collecting evidence from the victim, first response officers are also responsible for identifying, securing and protecting the scene prior to examination by CSIs. General levels of forensic awareness were found to be good and there was evidence from some forces that forensic awareness training in relation to volume crime was adding value in other areas. Again, however, knowledge and understanding varied and, in some areas, CSIs raised concerns about the forensic awareness of front-line staff.

5.11 Availability of CSIs was also raised as an issue. Six of the seven forces visited operated an on-call system outside designated hours, with the authorisation of a detective inspector being required for call-out; the seventh force – the MPS – has the capability to provide 24-hour cover. If, for any reason, authorisation is not given, crime scenes have to be guarded by response staff until a CSI comes on duty, with the obvious potential for evidence to be lost. This issue is explored further in paragraphs 6.36–6.38. The crime report examination for 2005 showed that, overall, between 50 and 60 per cent of victims had reported the crime within the first 24 hours. In these cases (at the very least), the CSI should be regarded as an integral part of the first response.

Strengths

- **The ACPO guidance provides clear information to first response officers on the action to be taken following initial deployment and scene attendance.**
- **Overall, general levels of forensic awareness are good and training in relation to volume crime is adding value to other areas of work.**

Areas for improvement

- **First response officers are often unaware of how to approach taking an initial account from a victim and this is constraining effectiveness. Awareness of ACPO guidance was found to be limited.**
- **There is inconsistent management, availability and use of EEKs.**

An effective *investigation*

6 AN EFFECTIVE INVESTIGATION

Interviews with victims and witnesses

6.1 Where a criminal investigation is to be carried out, it is the responsibility of the police to conduct that investigation, identify lines of enquiry and identify all the available evidence relating to the offence. Since the introduction of statutory charging, the police no longer have responsibility for taking decisions to charge offenders in serious cases, although they can make the decision to take no further action; the responsibility to charge now rests with the CPS. As part of the decision-making process, the CPS may suggest or ask the police to follow up particular lines of enquiry, for example by collecting forensic evidence. As part of the charging scheme, the police and prosecution now frequently agree investigative action plans. This development is welcomed (see Chapter 9).

6.2 As already highlighted, research into rape offences shows that a significant amount of attrition occurs during the investigation process and the reasons for this have been well documented (see paragraphs 2.5–2.6).

6.3 The interview of the victim of rape is key to the investigation. In all the forces visited, responsibility for obtaining the full statement from the victim lay with the STO. In two forces, it was policy **not** to obtain this statement for at least 24 hours to allow the victim time to recover from the initial trauma. A detailed first account was obtained in these instances.

6.4 In practice, it was found that this policy could lead to substantial delays in obtaining a full statement, with suspects being interviewed and, in some cases, charged on the basis of the first account. Documentation from the file reading and crime report examination showed a significant amount of time could subsequently be spent re-establishing contact with the victim, resulting in delays in progressing lines of enquiry and the beginnings of disengagement by the victim. This requires careful management and highlights, again, the importance of maintaining effective victim contact from the outset and throughout the investigation.

6.5 In police areas where there was clear evidence of a team approach to the interviews of victims – with the IO and the STO developing a clear strategy for the victim interview (often with the IO observing) – there was much greater focus on developing lines of enquiry from an early stage. This approach also allowed likely areas of contention to be identified and clarified, with the IO having direct input into the interview process to clear up ambiguities.

6.6 The importance of early links between the STO and IO cannot be overstated. The work undertaken by the STO provides the platform for the investigation and requires the involvement of the IO from the outset. It gives the IO the opportunity to identify evidential weaknesses at an early stage, to obtain clarification in respect of ambiguities or inconsistencies,

and to prevent issues arising which may be more difficult to resolve later on in the enquiry.

6.7 Victims of rape can suffer traumatic responses and stress and interviewing officers need to be aware of the impact this can have on the interview. In addition, the distress of some victims will be such that they are unable to provide a complete or coherent account or they may fail to mention relevant facts. From both the file reading and within the crime report samples, examples were found where inconsistencies or ambiguities within the victim's statement had not been fully addressed and this had undermined the victim's credibility at a later stage in the investigation. During interviews, some STOs expressed a reluctance to explore these issues too deeply in case this resulted in the victim feeling they were being disbelieved and this discouraged them from continuing with the process. This reluctance is not without foundation, as research continues to highlight cases where the conduct of, and questioning during, the interview resulted in loss of victim confidence and early withdrawal. However, failure to deal with evidential weaknesses or address inconsistencies in a timely manner can only serve to undermine the victim's account and thereby reduce the chances of a successful prosecution. An effective interview, therefore, is one that successfully meets the needs of the investigation and, at the same time, ensures that the victim feels supported and believed. This requires sensitivity, care and skill and re-emphasises the need for effective STO selection, training and performance monitoring.

Video recordings of interviews with victims

6.8 Since the 2002 report, there has been a phased implementation of the provisions of Part II of the YJCEA. Its provisions and definitions are provided in Appendix 4. Under the YJCEA, victims of sexual offences are automatically considered to be intimidated witnesses and thus are eligible for special measures unless they tell the court they do not want them. With effect from 24 July 2002, all special measures have been available for vulnerable and intimidated witnesses, with the exception of video-recorded examination-in-chief for intimidated adults, and video-recorded pre-trial cross-examination and intermediaries for vulnerable and intimidated witnesses.

6.9 The use of intermediaries has been the subject of trials in six Pathfinder Areas and, at the time of writing, the publication of the evaluation report is awaited. However, it is open to prosecutors to make an application under the common law in appropriate cases. This will, of course, be subject to judicial discretion. The use of adult video-recorded evidence has been piloted in the Crown Court at Sheffield and Wood Green, but evaluation of the pilots has not yet been finalised.

6.10 There is a growing trend to video interview adult victims of rape, albeit the statutory provisions for admitting such a video recording as the

victim's evidence in trial have not yet been implemented for intimidated witnesses, save in the two pilot Crown Court centres. Research indicates that such interviews prompt greater 'free recall', which is more accurate than a question and answer style of interview, and also that the process is easier for the victim. Where such a video-recorded interview is not admissible in court, the 'real' evidence will be a written witness statement and such a statement, based on the recording, has to be prepared. This can be a lengthy and time-consuming process.

6.11 During the interviews with police practitioners, it was found that there was a mistaken belief in many of the review sites visited that vulnerable **and** intimidated victims could have video evidence-in-chief admitted. Not only can this raise expectations on the part of the victim that they will not have to give live evidence, but it can also raise issues as to whether the video is then treated as unused material or as an exhibit.

6.12 Lack of awareness of the status of the video interview also means that it is regularly omitted by the police from the unused material schedule. During the file reading, even where it was found to be listed, little thought had been given to its sensitivity (for instance, the inclusion of previous sexual history or, more basically, revealing the victim to the defendant for close scrutiny) or otherwise. Adherence to the CPIA should mean that sensitive detail is edited out for inclusion on the sensitive material schedule but this does not always happen. Finally, prosecutors do not always watch a victim's interview where it has been superseded by an evidential statement. In these circumstances, they are ill-equipped to apply the disclosure test; indeed, they are also not in a position to review the case properly.

6.13 There was also widespread dissatisfaction with the quality of video-recorded interviews. Most of this related to those involving children as they were being used in trials, with criticism that interviewers were spending too much time on the rapport-building phase and surrounding circumstances and not enough time on the incident itself.

6.14 Technical issues, such as misplaced microphones and high camera angles, were also highlighted. For example, in one area, the victim's image was found to appear in a small section of the screen, with the remainder being dominated by the interviewer. While these issues are relatively straightforward to resolve, less easy to remedy is the quality of court equipment. Some courts now have large plasma screens, which, if positioned appropriately, offer the jury a much clearer picture of the witness. In other courts, however, the facilities are much more basic, resulting in the jury having to crowd together to watch the evidence on small screens. In addition, the lack of facilities in some courtrooms means that rape cases, rather than being priority listed, are delayed to await a courtroom set up with video equipment.

6.15 The quality of equipment can have a major detrimental impact on the case. During interviews, an example was given of one case where the picture on the television screen was so dark that it was impossible to make out the facial features of the victim. Despite strong protestations from prosecution counsel, the case proceeded and resulted in an acquittal. Problems with video equipment should be included in reports prepared by counsel on acquittals (see paragraph 10.57). They should also be discussed with the police and at court user group meetings.

6.16 The use of video interviews with victims of rape has been the subject of much debate, and this debate continues. From the police, there was considerable support for the use of such interviews as presenting a more accurate, and immediate, reflection of the crime from the victim's perspective. There was similar support from members of the voluntary sector and WCU staff. However, there were consistent concerns raised by the judiciary and the Bar about the quality of interviews with children. Additionally, while the practice of using video interviews of children as evidence is accepted and usually explained to the jury, the view was often expressed that the use of a television link for adult victims of rape reduces the impact of the victim's evidence, making it 'less real' than when the victim gives evidence in a courtroom.

6.17 The practice of video recording interviews with adult victims of rape has developed in an unstructured way. In addition, video interviews are carried out in accordance with the principles of 'achieving best evidence' (ABE), which are not tailored to meet the needs of interviews with adult victims of rape. Consequently, the following recommendation should be considered as a matter of urgency:

RECOMMENDATION 4

That ACPO, in consultation with the CPS, revisits the procedures for taking a victim's statement in rape cases, taking into account the evaluation of pilot schemes for the relevant special measures and duties of disclosure of unused material.

Arrests of suspects

6.18 The arrest and interview of the suspect are a vital part of the investigative process. The vast majority of rape offences have an identified suspect, and the management of issues such as forensic examination and any 'consent' defence have to be considered at an early stage. As well as an arrest strategy, the IO should develop an interview team and an interview strategy that anticipates any defence likely to be put forward by the suspect.

6.19 For pre-planned arrests, the IO should provide a pre-arrest briefing which should include the arrest strategy, reason for the arrest, a summary of the crime under investigation and the suspect's known history, and which covers practical issues such as legal requirements. In practice, the level of

briefing often depended on the perceived level of risk posed by the suspect. At the high-risk level, operational orders and formal risk assessments, with strategies for evidence recovery, were completed. At the lower-risk levels, informal briefings tended to be undertaken by the IO with those directly involved in the arrest.

6.20 Overall, however, there was little evidence of a structured approach being adopted consistently for the arrest and management of suspects in rape offences, other than those offences identified as a critical incident and where the investigation was led by an MIT. In many cases, there was also limited evidence that the investigation was being actively supervised or that the quality of interviews was being regularly monitored. This was also a finding of the 2002 inspection. There were exceptions. In Northumbria and Islington, for example, where evidence of active supervision was found, this was accompanied by an improved standard of investigation and file quality. In both areas, it is policy that rape investigations are led by an officer of at least the rank of detective sergeant, and this is to be commended.

6.21 Lack of effective planning was also evident in relation to forensic issues, particularly where an immediate arrest was made and before the involvement of a nominated IO. As already highlighted, while general forensic awareness was found to be good among first response officers, they often lacked the wider and more detailed knowledge of evidence-gathering tools (such as body maps of injuries, blood samples from suspects and forensic medical examinations) required for rape investigations. Where an arrest is made before the appointment of an IO, there is a heavy reliance on front-line staff, whose knowledge of and training in the investigation of rape is often limited. This needs to be addressed.

6.22 The timing of the arrest is critical and there can be a tension between the need for effective preparation and planning and the need to make a prompt arrest. From the file reading, there was an apparent delay in arresting the suspect in 35 of the 70 advice cases (50 per cent) and 19 of the 75 charged cases (25 per cent). In 11 advice and 5 charged cases, the reason for the delay could not be established from the file. Where the reason could be established, the delay was considered justified in the majority of cases – 83.3 and 85.7 per cent of advice and charged cases respectively – due to either difficulties in tracing the suspect or the needs of the investigation.

Interviews with suspects

6.23 With the introduction of Professionalising the Investigation Process (PIP), training is being standardised on a national level for investigators. This includes nationally agreed competencies and standards for the interviewing of suspects and witnesses. There are currently five different tiers of interviewing:

- Tier 1 – Probationer;
- Tier 2 – Investigator;

- Tier 3 – Specialist;
- Tier 4 – Supervisor; and
- Tier 5 – Adviser.

6.24 The ACPO guidance stipulates that interviewing officers should be trained to Tier 3, but this was not yet common practice across the eight review sites. Evidence was given of difficulties in procuring courses at Tier 3 level for interviewers and this needs to be managed if standards are to be improved. Significantly, in those cases where interviews were conducted by Tier 3 trained interviewers, there was greater evidence of the use of interview plans and more scrutiny of suspect interviews by supervisors through dip-sampling or direct monitoring.

6.25 The provisions of the Criminal Justice Act 2003 allow evidence of 'bad character' to be considered at court. If the suspect has a propensity to be untruthful and/or to commit offences, it should be raised at interviews as part of the investigation (see paragraphs 10.49–10.54).

6.26 A number of the police officers interviewed were able to provide examples of recent cases where the use of 'bad character' evidence had led to successful prosecutions. However, there was inconsistent understanding of this type of evidence and its use. In particular, not all officers were aware that, as well as previous convictions, it can include previous arrests and behaviour.

6.27 A further consideration from a police perspective is the retention and retrieval of information likely to assist with 'bad character'. Lawyers in particular noted that the police were poor at providing full details of previous behaviour and convictions. Even where convictions are made available, before they can be admitted as supporting evidence the full details of the offence and its circumstances are required. In most cases, this means transcripts or witness statements relating to the case. In preparing for the inspection, all participating forces were asked to provide a sample of cases for file reading. Not all forces were able to provide the full file sample and difficulties were highlighted in quickly identifying and retrieving relevant files.

Good practice

In the MPS, the files for all concluded cases are reviewed, weeded where necessary, and a closing report is attached. The case papers are then clearly indexed with information on suspect, victim, location of offence, methodology and details of the IO. A copy of the intelligence report is also attached, together with any unique information such as press cuttings. This applies to all cases, irrespective of whether they are detected or undetected. The papers are then filed in a central registry to allow ready retrieval.

6.28 This issue is compounded by the increasing tendency of suspects to refuse to answer questions about previous 'bad character' in interview, on legal advice. The prosecution then has the added burden of proving that the suspect was the person arrested or convicted in the incident in question.

6.29 This has resulted in a heavy administrative burden that does not appear to have been anticipated when the legislation was introduced, and one that may be impacting adversely on the effective use of 'bad character' evidence. There is a need for better record keeping throughout the criminal justice process, including details of court appearances, convictions and results, together with measures to identify the person convicted – for example, by means of a photograph or fingerprint kept with the relevant record. In addition, a summary of the case with the salient points highlighted would be extremely useful in the event that the suspect becomes the subject of a future investigation.

6.30 Consent is a defence often raised by suspects during investigations. Of the total 145 cases examined during the file reading, suspects claimed 'consent' in 49.0 per cent (71 cases). In the remaining instances, the suspect denied the offence in 35.2 per cent (51 cases), offered 'no comment' in 9.7 per cent (14 cases) and admitted the offence in 5.5 per cent (8 cases). There was insufficient information in the file in one case. There was some evidence that the issue of consent is now being addressed at the interview planning stage. Again, however, there was little consistency within and across the review sites visited, with the exception of those where Tier 3 trained interviewers were used.

6.31 Overall, it was evident from the file reading that this issue was not being explored in depth often enough, nor was the suspect's statement that the victim consented always being effectively challenged. It is clearly vital that this area is explored thoroughly at an early stage and the review findings emphasise the need for improved planning and rigorous interviewing in this vital area.

The use of bail conditions

6.32 In the large majority of cases, the suspect and the victim are known to each other in some way. It is essential, therefore, that every effort is made to consult with victims prior to a bail decision being made and that bail conditions are designed to protect the victim, witnesses and members of the public.

6.33 The ACPO *Guidance on Investigating Serious Sexual Offences* provides information on the risk factors relating to serious sexual offences and highlights the importance of risk identification in informing decisions about police bail conditions. While all police officers in relevant roles indicated during interviews that risk assessment or risk identification was carried out, it was clear that these were not always recorded, with the exception of the MPS. This was borne out during the file reading. Of the 145 files within the

total file sample, there was evidence of risk assessment/identification in only 48. In addition, more than half of these related to MPS cases, where there was a risk assessment on file in virtually every instance. In the remaining 97 cases, there was no information available within the file.

6.34 The ACPO guidance also highlights the importance of the IO being present to assist the CPS where a suspect has been charged and applies for bail from the court, and the use of VPSs by the prosecution to object to the granting of bail. From the charged file sample, there was evidence of a VPS in the file in only 16 out of 75 cases. Again, in the remaining cases, there was no information within the file.

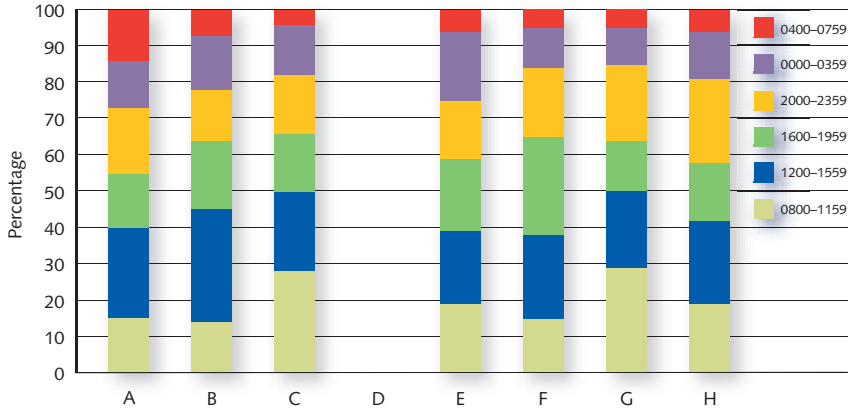
6.35 Evidence from the file reading strongly suggests that this is an area requiring considerable improvement. This was supported during interviews with voluntary sector representatives, who indicated that lack of consultation with victims in relation to bail conditions remains a significant issue.

Crime scene examinations

6.36 Crime scene examinations are carried out by CSIs and, as already highlighted, cover outside designated hours is usually managed through call-out systems. The file reading showed that scene attendance was generally well managed within the charged file sample, with no deficiencies being identified in relation to scene attendance or the gathering of physical evidence. Within the advice file sample, however, in 7 out of 53 relevant cases (13.2 per cent), evidence was missed due to non-attendance, or delays in attendance, by CSIs.

6.37 Figure 6.1 provides a breakdown of reporting times by percentage of calls received in blocks of four-hour periods (where information was available). These data were obtained from the crime report analysis for 2005.

Figure 6.1: Reporting times by review site (2005 sample)



This shows that, overall, around 40 per cent of reports were made to the police between 8pm and 8am, when CSI availability was likely to be restricted. Limited resources have to be managed to ensure that they are

available at times of greatest demand. This means that compromises will always have to be made. It should not, however, mean compromising on the quality of evidence gathering in cases of serious crime. It is essential, therefore, that forces undertake their own analytical work to ensure that they have an accurate picture of demand and are managing resources effectively.

6.38 Prior to examination of a scene, it is imperative that the IO or STO briefs the CSI on the circumstances so that all evidential possibilities are explored and a clear strategy for gathering evidence is agreed. The ACPO guidance provides a checklist of the issues for consideration in the development of a forensic strategy. It also highlights the need for any resulting exhibits to be accompanied by a summary of the victim and suspect interviews to assist scientists in understanding the sequence of events. During consultation with forensic science providers, concerns were raised that, where a video interview was undertaken, there was a tendency for the videotape to be forwarded with exhibits, resulting in considerable time being taken to research details of the crime. Forensic issues are more fully covered in the following section; however, a simple but significant improvement could be made to the evidence-gathering process if the ACPO guidance were followed.

Forensic evidence

6.39 The 2002 report highlighted a range of problem areas in relation to the gathering of forensic evidence, including:

- variations in levels of forensic awareness on the part of police officers;
- variations in the quantity of samples submitted;
- inappropriate assumptions by FPs based on 'sight' examination of samples taken;
- delays in the submission of samples to the forensic science provider; and
- delays in the examination of samples on reaching the forensic science provider.

The report concluded that the key to improving evidence gathering in this area lay with effective forensic strategies and greater collaboration between the police, FPs and forensic science providers.

6.40 Forensic evidence can be obtained from the victim, the suspect and the scene and can add considerable value to investigations. The scientific examination of medical samples may help to show whether a particular act has taken place, possibly when and possibly by whom. Every case is different, however, and each requires a tailored forensic strategy to ensure that forensic opportunities are maximised.

6.41 In developing the strategy, a range of issues has to be considered, including:

- the details of the offence provided by the victim, bearing in mind that, in most cases, the medical examination will take place before a full account has been obtained;
- the time interval between the offence and the report being made;
- any account provided by the suspect;
- any legitimate contact between the victim and the suspect; and
- other information which may affect the likelihood of evidence being found or the relevance of items or samples to be examined, for example whether items of clothing have been washed.

6.42 In the forces visited, there was evidence of some form of forensic strategy prepared by the SIO or IO, but standards were not consistent. This was particularly evident in relation to the forensic medical examination of suspects. For example, any time interval between the offence and the report being made or the suspect arrested will affect the probability of obtaining forensic medical evidence from the suspect. Where consent is claimed, this can also restrict the value of medical samples as supporting evidence. Of the total 145 cases within the file-reading sample, a medical examination of the suspect was considered appropriate in 68 (46.9 per cent). However, it was not always possible to tell from the information in the file whether an examination had indeed been completed or what, if any, samples had been obtained or submitted for analysis. In addition, while there might well have been good reasons for not carrying out a medical examination or submitting samples for analysis, the rationale behind decisions was not always documented. This was particularly evident in the advice file sample and also meant that prosecutors would not have had the fullest possible information available at the time of reviewing the case.

6.43 A further issue identified during consultation with forensic science providers relates to the management and forensic cleanliness of custody suites or areas where suspects are examined. For example, in one case, a police surgeon was unable to take a blood sample as there were no sample bottles available; in another, a suspect was placed in a cell with a toilet where he was able to wash.

6.44 The forensic medical examination of victims was generally better planned. (This is covered in more detail in Chapter 7.) From the file reading, forensic medical examination of the victim was considered appropriate in 115 cases (79.3 per cent) and, in almost all, it was possible to establish from the file the outcome as well as the rationale behind decisions.

6.45 One final issue relates to the need to give greater consideration to other forms of evidence in the event that either no forensic samples can be

obtained or their analysis proves inconclusive. For example, in one complex case involving multiple offenders, as well as taking forensic samples and items of bedding and clothing for forensic examination, the scene was fingerprinted. The suspects made no comment at interview. Although each of the suspects' DNA was obtained from forensic samples, the fingerprint evidence also allowed a picture of their movements at the scene to be built up. In contrast, in another case, the victim stated that she had been raped within public toilets in a nightclub. The suspect claimed that she had consented. During interview, the victim gave specific details of the assault that might have been confirmed by fingerprint evidence at the scene. However, this was not explored and the scene was not fingerprinted.

6.46 A number of the forces visited had introduced central submissions units for decision making and advice on the samples to be submitted. These units also perform a quality control function and such a structure was found to add value by their adoption of a 'phased submission' approach, whereby exhibits are assessed in terms of the likelihood of evidence being found and those with the greatest potential submitted first. These priorities are usually set by the central unit together with the IO, although there is now a growing trend to obtain the opinion of a scientist to better inform the decision-making process.

6.47 While there was evidence of clear procedures in place for ensuring that appropriate police personnel were consulted before submissions were made, there was little evidence that the CPS was included in such discussions. Dialogue between prosecutors and forensic scientists varied from Area to Area and from prosecutor to prosecutor. However, such dialogue is essential to ensure that the forensic investigation is watertight and robust and should occur at critical intervals throughout the life of the case. It follows, therefore, that prosecutors should play an active part in forensic strategy discussions with the police.

6.48 Some forces expressed concern that consultation with the CPS was taking place too late and that, on occasion, they had been forced to revisit their strategy at the insistence of the CPS. Forensic strategy should be raised with the CPS at an early stage: certainly at the time of charging, if not at a time when the prosecutor is advising on lines of enquiry (see Chapter 7).

6.49 Comment was also made in some areas that prosecutors were reluctant to discuss cases with scientists, preferring instead to channel any concerns or enquiries through the police. It may be that appropriate training needs to be given. At the time of writing, CPS Policy Directorate had recently taken steps to raise rape co-ordinators' awareness of forensic issues. However, it is essential that training needs are identified and addressed to ensure that both co-ordinators and other rape specialists are confident of their knowledge in this critical area.

6.50 With the continued development of forensic science, it is important that all parties to the investigation (the police, FPs, forensic scientists and

prosecutors) work together to ensure that all avenues of the forensic process are exploited and the best evidence obtained. Each contributes their own area of expertise to this process and it is this relationship that underpins the concept of the prosecution team.

6.51 The increased importance of forensic science in investigations has led some forces to set up an SLA with the forensic provider to better manage the processes. These can provide for 24-hour access to a scientist (including scene attendance if required), advice on the forensic dimensions of the investigation, protocols and agreements on quality of submissions and turnaround times for cases, regular review of forensic performance across cases together with feedback, and bespoke training.

6.52 Where an SLA had been agreed, the scientist was provided with better quality information about the case and was seen as an integral part of the prosecution process. This had led to a change in thinking and, in the words of one interviewee, had resulted in a shift from:

"Here is what we have, what does it tell us?" – to – "Here is what we have been told, does the forensic evidence support this and is there anything more we can do to prove the victim's account?"

6.53 It was found that this had also resulted in improved quality of evidence submitted and a reduction in turnaround times for exhibits. The quality assurance features allowed for feedback to be given to all involved in the evidence chain, from front-line officer and STO to the FP, thereby improving the service to victims. Although the services provided under such SLAs do come at an additional cost, there is potential to make savings in the longer term and such agreements and management processes are to be strongly commended.

6.54 There was good evidence that continuity of exhibits was being well managed. The majority of forces had moved, or were in the process of moving, to a computer-based exhibit tracking system, and all staff indicated that they were fully aware of the importance of this area. The picture in relation to the storage of exhibits was a little more mixed, although it was still good. In some areas, there were single storage facilities with fridges and freezers in one location. In other areas, the storage was spread over a number of locations but there were no indications that this was a major problem.

6.55 One issue for the future relates to the storage and safekeeping of samples in the longer term. Advances in DNA technology over recent years have led to convictions that were not previously possible. These advances continue and the ability to identify suspects is likely to increase in the future. It is therefore imperative that all forces implement structures for the demonstrably uncontaminated preservation of samples and exhibits and the effective retrieval of files relating to rape enquiries and other serious crime in anticipation of these advances.

Intoxicants[7]

6.56 The use of drugs by offenders to assist in committing sexual assaults has become the subject of heightened public concern and media attention in recent years. The 2002 inspection uncovered little evidence that this was widespread, but did find that either the victim or the suspect, or both, were under the influence of alcohol in just over 50 per cent of cases examined at the time. The inspection report concluded that the use of alcohol was not only likely to increase a victim's vulnerability but could also influence the initial police response to a victim.

6.57 Since then, a study into drug-facilitated sexual assault (DFSA) has been carried out by the PCSD to try and assess the extent of the problem; the findings were published in 2006. As the simplest, and most commonly suspected, method for an assailant to administer a drug is to introduce it into an alcoholic drink, the study also sought to identify the alcohol levels in those reporting DFSA. A total of 120 cases in which victims reported to the police that they had experienced or suspected a DFSA within the previous 72 hours was submitted for forensic examination. The following findings were obtained:

- In 119 cases, the victim had reportedly been drinking alcohol.
- Alcohol was detected in 52 per cent of cases; in 35 per cent of these, the blood alcohol levels at the time of the incident were estimated to be between two and three times the driving limit.
- Controlled or prescribed drugs were detected in 48 per cent of cases, with cannabis and cocaine being the most commonly detected drugs (20 per cent and 17 per cent respectively).
- The combination of drugs and alcohol would exacerbate intoxication.
- GHB[8] was detected in two cases and, in a further 10, a sedative or disinhibiting drug was detected which had either been given to the victim by the suspect or the victim denied its legitimate use (for example, prescription drugs).

6.58 The use of intoxicants by victims was examined during the current review from the file reading. (It was possible to establish this from the file in the vast majority of cases.) The overall findings reflected those of the 2002 inspection in that, from both the advice and charged file samples, alcohol and/or drugs featured in 49.3 per cent of cases. However, there was a significant difference between the two samples: 59.7 per cent of advice cases and 39.0 per cent of charged cases. In the vast majority of cases in both samples, the primary intoxicant was alcohol.

7 The term 'intoxicants' is used to cover alcohol and controlled and prescribed drugs.

8 Gammahydroxybutyrate – initially used as an anaesthetic and hypnotic in the 1960s and later marketed illicitly as a steroid alternative for body-building – has been linked anecdotally with DFSA.

6.59 The impact that intoxicants had on the victim's ability to provide details of the offence at the time of reporting was also examined. Again, there was only a small number of cases where this could not be established from the file. Intoxicants were found to have had an adverse impact in 37.5 per cent of relevant advice cases and 30 per cent of relevant charged cases.

6.60 The use of intoxicants by suspects was also examined. There was a much higher number of cases where it was not possible to establish this from the file – 21.3 per cent of suspects from the advice sample and 15 per cent from the charged sample – and this is likely to be due to the time intervals between the offence occurring or being reported and the arrest. Where this could be established, alcohol and/or drugs featured in 50 per cent of cases within the total file sample – 55.9 per cent of advice cases and 44.8 per cent of charged cases. Again, alcohol was the primary intoxicant in the majority of cases.

6.61 The sample sizes from which the findings are drawn from the file reading are relatively small (40 advice and 30 charged cases in respect of victims and 33 advice and 30 charged cases in respect of suspects) and the findings of this review, therefore, have to be treated with caution. However, the following findings were obtained from these samples:

- There was more information available from the files on the use of intoxicants by victims than by suspects.
- Where this information was available, intoxicant use by both victims and suspects featured in half of the relevant cases.
- In the vast majority of cases, the primary intoxicant was alcohol.
- In only three cases was the intoxicant administered to the victim (two involving drugs and one involving alcohol administered under duress); in the remainder it was self-ingested.
- There was a higher proportion of intoxicant use by victims and suspects found within the advice file sample than in the charged sample, with a marked difference in relation to use by victims.
- Where intoxicants were involved, they impacted adversely on the victim's ability to provide details of the offence in one in three cases.

6.62 There is no doubt that the use of alcohol and drugs increases victim vulnerability. The extent to which alcohol use by victims may also be influencing police decision making, as suggested by the 2002 report, is not known, although the different findings within the advice and charged file samples suggest that it does play a part. However, difficulties in obtaining details from the victim at the time of reporting will also impact on progress in the early stages of the investigation. The extent to which these factors influence the outcome of investigations is, again, unknown, but the fact that alcohol has featured consistently in half of reported cases makes gaining that understanding increasingly imperative.

6.63 In spring 2006, the Office for Criminal Justice Reform (OCJR) issued a consultation paper, *Convicting Rapists and Protecting Victims – Justice for Victims of Rape*, setting out a range of proposals aimed at improving the outcome of rape cases. One of these proposals concerns 'capacity' in relation to consent and whether there is a need for this to be defined in law to assist the courts and juries in cases where drink or drugs may have affected the complainant's ability to give meaningful consent. This consultation is ongoing at the time of writing, but it is hoped that, whatever the outcome, the process will provide an opportunity to gain a better understanding of the part that intoxicants (in particular, alcohol) play in influencing the outcome of rape cases.

Intelligence

6.64 The SCAS of the Central Police Training and Development Authority is a national agency with a remit to analyse serious crime with a sexual element. Information submitted by police forces is examined by SCAS staff and entered onto a database, recording a wide range of characteristics relating to offences as well as information about offenders and suspects. This information is then used to identify elements that may suggest or confirm links between cases.

6.65 The effectiveness of this approach is dependent on police forces submitting all relevant or potentially relevant cases, together with the fullest possible information about those cases. The 2002 report highlighted, however, that the SCAS facility was underused and that timeliness and accuracy of submissions was lacking. More recently, minimum standards in relation to timeliness, quantity and quality of submissions to SCAS have been established through a Code of Practice, made under section 39 of the Police Act 1996. This came into effect on 10 January 2006 and replaced an earlier ACPO Crime Committee agreement on compliance.

6.66 Police forces are required to submit at least 90 per cent of all offences that fall within SCAS criteria occurring within the force area annually. For rape (and certain other offences), full case papers must be submitted to SCAS within 28 days of the offence notification to the force (this timescale will reduce to 14 days as of 10 January 2007).

6.67 Although the majority of cases within the file-reading sample fell outside the Code of Practice implementation date, each was examined against the SCAS criteria and standards. Overall, 29 per cent of the total 145 cases (20 charged and 22 advice) met the criteria for submission to SCAS. However, lack of relevant information in the files meant that no meaningful data could be obtained on submissions.

6.68 Standards under the Code of Practice are now monitored by SCAS and regular feedback is provided to all forces. Early indications are that the introduction of the Code has resulted in improvements in submission levels, although this varies from force to force and timeliness remains an issue.

6.69 The National Intelligence Model (NIM) provides managers with a framework to plan and work in co-operation with partners to secure community safety and to manage performance and risk. Within this model, the tasking and co-ordinating process identifies priorities and the resources required to deal with them, and directs activity in the most effective way. Some of the forces visited had undertaken specific analytical work in relation to rape offences to gain a better understanding of crime patterns and profiles locally and to identify priorities and areas for improvement. Such work, however, is predicated on the need for accurate, up-to-date and complete information. It was not possible during this review to examine the quality of intelligence submitted in relation to rape offences as only a limited number of case files contained a copy of the intelligence report. Where the report was available, however, the quality and level of detail of information was variable, which reflects the findings of other thematic inspections.

6.70 The potential for loss of information and intelligence through inaccurate 'no criming' has already been detailed. If the 10 per cent increase in recorded crime as outlined in paragraph 3.23 reflects the national picture, then potentially, in 2004/05, intelligence about just under 1,400 suspects has been lost. This figure **must** be treated with caution, based as it is on data collected from eight out of 43 forces and given the variations in recording practice and interpretation of the HOCR. Nevertheless, it should act as a signal to forces of the importance of implementing Recommendation 1 of this report.

Supervision

6.71 Effective supervision of rape investigations is key to ensuring that they are conducted to a high standard and remain victim-focused. During the file reading and interviews it was found that the level of supervision afforded to the investigation of rape offences varied considerably across all of the eight review sites. As already highlighted, supervision tended to be more effective where there were dedicated supervisors or structured supervision in place.

6.72 The use of policy logs was highlighted as good practice in the 2002 report; however, only one force, Northumbria, was found to use these as a matter of routine. These were found to be of high quality, showing clear strategic direction and providing clarity in relation to the progress of the investigation. In the remaining forces, there was little evidence of supervisors using policy logs, although a number of other types of log had been introduced on a local basis. On examination, it was found that these were underused in practice and rarely endorsed by a supervisor. Policy logs allow the rationale behind the lines of enquiry, case progress and other management issues, such as continuity of IO, to be clearly documented, and their use is reiterated as good practice.

6.73 Reviews into the progress of the investigation, including risk assessments for both the victim and the suspect, were fragmented. Other than the MPS, three of the forces visited stated that a seven-day and, in some cases, a 28-day review was conducted. It was not, however, possible to establish the effectiveness of reviews in practice as they were rarely formally recorded. There was also conflicting evidence from IOs, who stated that some supervisors were not complying with their force guidelines for the review of cases. In one force, although detective inspectors had specific responsibility for rape investigations, they only became visible on case closure.

6.74 In the MPS, reviews are recorded on the Crime Report Information System (CRIS). The detective sergeant carries out the first review within the first 10 hours and this is followed by a further review in seven days. The detective chief inspector carries out a further review at 28 days. Each review follows a set pattern regarding scene, victim and witnesses and includes risk assessments. There was strong support by IOs for the review process:

"It is like a fresh set of eyes checking everything and making sure you have not inadvertently missed something."

6.75 This theme was echoed throughout the investigation process and the supervision of the file. Although some forces stated that they had introduced 'gatekeepers' to quality check the files of evidence prior to submission to the CPS, there was limited support for this happening in practice.

RECOMMENDATION 5

That police forces ensure that review processes are established for the investigation of rape and that the quality of reviews is monitored.

Cold case reviews

6.76 Cold case review teams were in place in a number of the review sites visited. Their remit is to re-review previously unsolved high-profile and/or serious cases, including offences of rape, with the benefit of new developments in forensic evidence and recent legislative changes, for example the admittance of 'bad character' evidence under the Criminal Justice Act 2003.

6.77 Although there were no cold case review cases considered within the file sample, there was evidence from those interviewed during this inspection that the cases prosecuted following cold case reviews had a very high conviction rate. It should be noted that these cases are not representative of rape cases as a whole, as they are invariably stranger rape cases where the main evidential issue is one of identification rather than consent.

6.78 There was a consistent opinion, expressed by all those interviewed, that these cases benefited considerably from dedicated specialist prosecution teams, including the use of specialist counsel, that handled the case from review to conclusion. The examples cited demonstrated early (pre-charge) involvement of the CPS reviewing lawyer; early, often pre-charge, involvement of prosecution counsel; very high levels of witness care, support and information; and comprehensive case building.

Good practice

The use of specialist prosecution teams comprising police, CPS and counsel to provide a beginning-to-end handling of the case.

6.79 The practice of seeking the views of the victim before any decision to charge is taken ensures that the impact of any reluctance or unwillingness to proceed on the part of the victim can be taken into account when deciding whether or not the case should continue.

6.80 Since the 2002 report, the Criminal Justice Act 2003 has reformed the law relating to 'double jeopardy' – the rule that prevents a person being retried after being acquitted for an offence. Retrials are now permitted in respect of a limited number of serious offences, including rape and attempted rape. In all but the most urgent cases, the Director of Public Prosecutions (DPP) must give personal consent before the police can re-arrest and question the acquitted person. The Court of Appeal decides whether to quash an acquittal and order a retrial based on the availability of new and compelling evidence.

Strengths

- **Victim welfare is a key consideration in the timing of victims' interviews and the manner in which they are undertaken.**
- **Overall, the timing of arrests of suspects is generally good, with few unacceptable delays.**
- **There is improved awareness of the need for risk identification.**
- **The introduction of central submissions units has improved the management and quality of forensic submissions.**
- **SLAs with forensic providers are leading to significant improvements in both processes and quality of evidence and have the potential to provide long-term cost savings.**
- **Continuity and storage of exhibits is well managed.**
- **Structured review processes, where introduced, provide for clear strategic direction to be given and for clarity on the progress of investigations.**
- **The introduction of cold case review teams.**

Areas for improvement

- Strategies for interviews with victims are not always well developed, resulting in the failure to deal with potential evidential weaknesses at an early stage.
- Greater consideration needs to be given to the timing of interviews with victims to ensure that victims' needs and the needs of the investigation are properly balanced.
- Video recording of interviews with victims has developed in an unstructured way and the procedures for taking a victim's statement in rape cases requires to be revisited as a matter of urgency.
- The arrest and interview of suspects are not always effectively planned, particularly in relation to exploring and challenging 'consent' defences.
- Awareness of risk identification is not always being translated into effective practice on the ground.
- The forensic medical examination of suspects needs to be considered at an earlier stage in the investigation.
- The availability of CSIs needs to be examined locally to ensure that it matches need.
- Although levels of submissions to SCAS have improved, this varies from force to force and timeliness remains an issue.
- The CPS should be included in forensic strategies.
- There is a need for improved understanding of the extent to which alcohol consumption is influencing decision making and the outcome of investigations.
- Structured supervision and review of investigations is inconsistent and processes are not always being followed.

Forensic medical *examinations*

7 FORENSIC MEDICAL EXAMINATIONS

The provision of forensic physician services

7.1 There are very few investigations into rape that do not require some form of medical or forensic input. The arrangements for the medical examination of witnesses are crucial both in terms of the evidence-gathering process and the welfare of the victim. In four of the review sites visited, designated SARCs had been established. Such centres are widely regarded as the ideal environment for quality forensic examinations while ensuring that the victim has access to the skills and professionalism of a range of agencies, including health, as well as the services of counsellors and trained volunteers. The centres visited were:

- the Juniper Centre, Leicestershire;
- the Haven Centre, London;
- the REACH Centre, Northumbria; and
- New Pathways, South Wales.

7.2 Of the remaining three sites, two had outsourced to private companies and one, which had been reliant on an ad hoc service provided by local GPs, had outsourced just as the review commenced.

Forensic physicians

7.3 The role of the FP in a rape investigation is crucial and is both investigative and therapeutic. It is the FP's responsibility to ensure that appropriate samples are taken and to note any injuries while tending to the immediate welfare of the victim. FPs may also be asked for an expert opinion as to whether their findings support or refute the allegation that has been made.

7.4 There was little consistency in the way in which FPs were employed. In one Area with a SARC, FPs worked on an ad hoc basis. They were not contractually bound to work for the police, and the service appeared to rely on their goodwill. As a result, there were occasions when there were gaps in the rota that could not be covered by FPs in the area, resulting in the police having to take the victim to a neighbouring force for an examination. This caused an inevitable delay – commented on elsewhere in the report.

7.5 In five of the sites, the services of FPs had been outsourced. Each of these sites – two of which had a SARC while three did not – had issues with the service that was being offered. These included:

- delays in examining the victim because of an insufficient number of FPs being available;
- inappropriate samples being taken;
- poor facilities for examinations;

- lack of understanding of the needs of the victim;
- lack of expertise to deal with sexual offences, in particular examinations of children, and thus no ability to supply the police with an expert opinion on their findings;
- no evidence of succession planning for FPs who were close to retirement age; and
- FPs recruited from abroad and employed on short-term contracts returning to their homes at the expiry of the contract, with inevitable consequences if their attendance is required at conference or at court.

7.6 In particular, concern was expressed by the police, prosecutors and members of the Bar about the level of expertise of some of the FPs employed. In one case, an FP had carried out an examination of a victim and then admitted that he did not have the necessary experience to do so, resulting in the victim having to be re-examined by another FP. In another case, an FP and a paediatrician gave expert opinion that supported allegations of rape on a number of siblings. Defence experts cast such doubt on the opinion that it was not relied upon at trial. It is vital that the quality of all expert evidence relied upon to support the investigation and prosecution of rape is sound. If it is flawed, then challenge by the defence is inevitable.

7.7 In March 2006, an article entitled 'Facilities for complainants of sexual assault throughout the United Kingdom', written by Mary Pillau and Sheila Paul, was published in the *Journal of Clinical Forensic Medicine*. Their research identified wide disparities in the levels of service offered to complainants of sexual abuse. In particular, they highlighted both the inadequate number of FPs in some areas to provide coverage for examinations of children and issues around cross-contamination. They too expressed concern that it was unlikely that FPs employed on short-term contracts would be in a position to provide sound expert evidence on which the prosecution team could rely and that this in turn could have a significant impact on the effectiveness of forensic medicine as a whole.

Quality assurance of forensic examinations

7.8 Although the processes in each of the SARCs were well managed, in all but one there was no management of the quality of the forensic examination or of the expert opinion that might follow.

7.9 The structures put in place to manage the SARCs varied. In all, the police were found to work closely with SARC staff to improve their service to victims and to provide an appropriate environment and equipment for forensic examinations. However, in three, no one was responsible for managing the performance of the FPs. While the FP's role sits logically within the forensic framework of the police investigation, the police are unable to monitor the quality of the work they carry out. That role must fall to someone suitably qualified and appointed to manage performance.

7.10 At the Haven in London, local health services were actively involved in the management of the SARC. The clinical director is a doctor who has overall responsibility for management of the performance, training and clinical governance of the FPs, while the SARC manager has responsibility for the day-to-day running of the centre. However, in the remaining SARCs, the local health service played no part in ensuring that FPs' performance was monitored or that appropriate training and guidance were in place. In one Area, attempts had been made to engage the Strategic Health Authority in developing the services of the SARC but, at the time of writing, there had been no positive response from the authority. In another, it was stated that the local health service was shortly to withdraw funding from the SARC.

7.11 Where services had been outsourced, it was not possible to establish whether there was any management of performance within the company itself. There was no evidence of anyone within the police service actively monitoring the quality of the FPs' work, albeit that both police officers and prosecutors had expressed concerns about the standard of the work of some FPs who had been employed.

7.12 The management of FPs is best placed with local health services because of their medical expertise and their authority, especially given that they are now part of the local crime and disorder partnerships. Indeed, in order to ensure the level of service and control required, it may well be appropriate for some FPs to be employed on a full-time basis to carry out this type of work. This is the position at the Havens. While there is a growing trend to outsource these services to private enterprises, they must actively participate in managing the performance of FPs. The police service, too, will need to monitor performance. If this does not happen, the services may become ad hoc and disparate, with the police managing processes while no one manages the people involved in delivering the service itself.

7.13 The following recommendation from the 2002 report is, therefore, reiterated:

Recommendation 2 (2002)

ACPO reviews the role of the FME [forensic medical examiner, now FP]. Such a review should incorporate:

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

Training

7.14 There is no consistent approach to training of FPs. The 2002 report commended to the police service the recommendation made by a Home

Office Working Group on Police Surgeons in 2001 that FPs be trained to the level of the Diploma in Medical Jurisprudence. There was little evidence of this having occurred.

7.15 In one area, performance and training were left to the FPs themselves, the more experienced FPs monitoring any new recruits. There was no clear programme detailing what that training and monitoring should entail, although the police were kept informed of the progress of new FPs. In two of the other SARCs where the forensic examination process was outsourced to private companies, it was not possible to establish what level of training the FPs employed by these companies received or who was responsible for ensuring that that training was sufficiently detailed. It was a matter of concern that offers made by members of the FSS to these companies to assist in the ongoing training of their staff had been rejected.

Good practice

At the Haven, there is a planned programme of training for FPs managed by the clinical director. FPs are required to undertake two examinations, complete a skills assessment and carry out a required number of examinations under supervision before consideration is given to them practising alone.

7.16 There should be minimum standards of training set for FPs dealing with rape and sexual offences. Only those FPs trained to this standard should be employed to deal with rape cases. This will ensure high-quality examinations and better presentation of evidence, including sound expert opinion.

Cross-contamination issues

7.17 It is important that any samples gathered by FPs are free from contamination. Contaminated samples could have a significant impact on the investigation of the offence and might even result in an investigation being abandoned.

7.18 Each of the SARCs demonstrated an understanding of cross-contamination issues and all had policies in place for cleaning their medical suites. Elsewhere, however, cleaning arrangements and standards were variable and, in some cases, were found to be unsatisfactory. Forensic scientists also expressed concern that some FPs were reluctant to wear any form of protective clothing other than gloves when carrying out examinations because they feared that this would alienate the victim. This practice, however, had been successfully introduced in another part of the country, where time was spent explaining to victims the need for protective clothing. Given advances in forensic science, particularly the ability to detect DNA in smaller and smaller samples, it is vital that this practice changes. It is also important that FPs have their DNA added to the Police Staff Elimination Database as a matter of routine so that samples can be checked if a DNA cross-contamination issue arises.

7.19 In one of the sites without a SARC, examinations took place in a room that had been set aside at the A&E department of the local hospital. In another, examinations took place in local GPs' surgeries. In the 2002 report, it was highlighted that such ad hoc arrangements increase the potential for cross-contamination and the likelihood of evidential challenge.

7.20 The following recommendation from the 2002 report is, therefore, reiterated, with the addition that it should also include the management and forensic cleanliness of custody suites and areas where suspects are medically examined:

Recommendation 1 (2002)

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.

Delay

7.21 It is vital that any medical examination is carried out as soon as possible, not just in terms of obtaining the best possible evidence, but also for ensuring the well-being of the victim. Many of the difficulties highlighted four years ago remain.

7.22 From the file read, in 21.1 per cent of relevant cases (23 out of 109 cases where a medical examination was appropriate and the results could be confirmed), it was established that there was a delay in undertaking the medical examination. In the vast majority of cases, this was due to difficulties in obtaining the services of an FP. This was particularly acute in the case of forensic paediatricians. The length of the delays varied from four to well over 24 hours. The implications of delays for the investigation and evidence gathering and, importantly, for victims are readily illustrated by the following examples from the file read.

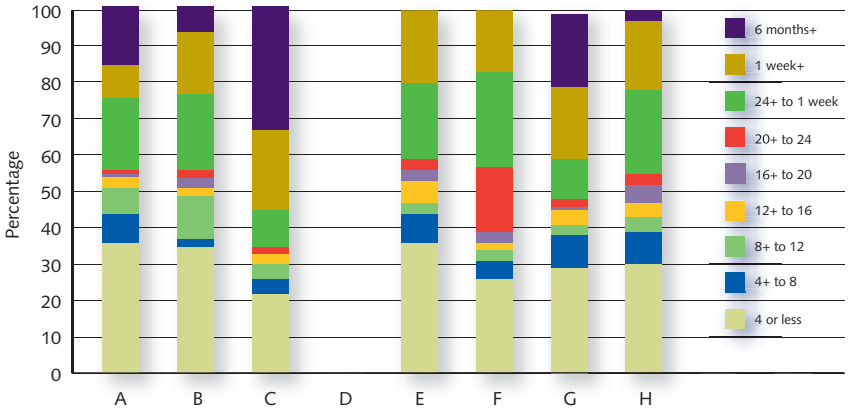
7.23 In one case, an elderly victim who had been raped and violently assaulted was forced to wait over six hours at the SARC before an examination could take place as the FP on call had two other cases to deal with. In another, a victim was sent home and told to come back the following day as there was no FP available to perform the examination. In a further case involving the historical rape of two children aged 10 and 12 years by the same offender, the medical examination could not be carried out until a week after the initial report was made due to the lack of availability of a paediatrician. In yet another, involving a child victim on holiday with her mother, when there was still no paediatrician available after three days of waiting, the mother took her child home to London where she made her own arrangements for the examination to be carried out at a Haven.

7.24 This level of delay is unacceptable and is a factor that is likely to contribute significantly to victims withdrawing their complaint before the

investigation has properly commenced. Unless this issue is addressed, the potential for loss of evidence and loss of confidence on the part of victims is high.

7.25 Data from the crime report examination from the 2005 sample show that, overall, between 50 and 55 per cent of reports were made within 24 hours of the offence taking place, with around 30 per cent being reported within four hours, as outlined in Figure 7.1.

Figure 7.1: Time taken to report crime – percentage of crimes by review site (2005 sample)



7.26 The 2002 report highlighted that FP service provision is costly and it can be difficult to project demand – not every report of a rape will require a forensic medical examination, although a large number will. As illustrated in Figure 6.1, however, it is possible for forces to identify peak reporting times – that Figure, for example, shows that between 40 and 50 per cent of reports across the review sites were made between 8am and 4pm when the availability of FPs is likely to be restricted. A clearer picture can be gained when demand is placed within the context of the length of time taken by victims to report offences and other factors such as age. In site C, for example, a noticeably higher proportion of offences were reported six months or more after they had taken place. However, that force also showed a higher proportion of intra-familial abuse involving child victims where a forensic medical examination might still be appropriate despite the delay in reporting. It is also likely, therefore, that this force will have a higher demand for the services of paediatricians.

7.27 Once again, it is essential that forces carry out their own analytical work to ensure that they have as clear a picture as possible of potential demand. It is also essential that response times are monitored to ensure that any delays are identified and addressed.

The prosecutor's approach to medical evidence

7.28 Prosecutors treat medical evidence as an important factor in the prosecution of rape offences, and it was relevant to the investigation in 58 out of the 75 cases in the charged file sample. In ten of those cases, there were problems with that evidence, not all of which had been picked

up by the prosecutors reviewing the cases. For example, the following was noted:

- some prosecutors, having requested sight of medical evidence from the police as part of their file building, went on to make decisions about these cases without having received the medical evidence;
- medical evidence being accepted at face value by prosecutors where further explanation was clearly required; and
- medical evidence being reduced to admissions at trial, and misinterpreted within the body of the admission.

7.29 All this demonstrates a general lack of understanding of medical evidence by prosecutors and its potential evidential worth. In one case, a prosecutor had recorded, as part of his justification for not proceeding with an allegation of rape, the fact that because no injuries had been found following an examination, this had undermined the victim's account. Research has shown that on many occasions when a victim is raped, injuries are not found.

7.30 If a witness is sufficiently experienced to give an expert opinion, then he or she is entitled to have sight of all the prosecution evidence in order to ensure that their opinion is soundly based. In cases where an FP had given an expert opinion, this rarely occurred. Very often the FP's only knowledge of the case was what they had learned from their discussions with the victim at the time of the examination. On the other hand, when FPs acted as experts for the defence, they were always afforded the opportunity of seeing all of the evidence, both prosecution and defence. This could mean that an FP acting on behalf of the Crown is less well prepared than one acting on behalf of the defence.

7.31 This is clearly not acceptable. As a matter of course, in cases where expert opinion is given by FPs, all prosecution evidence should be sent to them as soon as is reasonably practicable. They should also always be included in the conference with counsel and the officer in the case, and called as a live witness in a trial, unless there are good reasons for them not to be.

Good practice

In Northumbria, agreements have been made with doctors at the REACH Centre about the provision to them of prosecution evidence and their inclusion in conferences; they also agreed to setting out their qualifications to support their acceptance as experts.

RECOMMENDATION 6

That where expert opinion is to be sought from an FP:

- police forces ensure that all prosecution evidence is sent to the FP as soon as is reasonably practicable; and
- the CPS ensures that:
  - the FP is always included in the conference with the prosecutor, counsel and the officer in the case, unless there are particular reasons for not doing so; and
  - the FP is always called as a live witness in a trial, unless there are considered reasons for not doing so.

Strengths

- **The difficulties in relation to FP service provision are well understood.**
- **The introduction of SARCs has resulted in improved management of processes.**

Areas for improvement

- **There is little consistency in the way in which FPs are employed, resulting in significant variations in standard and level of service.**
- **There is concern about the level of expertise of some FPs; training is inconsistent and performance monitoring is a gap.**
- **Lack of availability of FPs is resulting in delays in medical examinations and, potentially, disengagement and loss of confidence on the part of victims.**
- **Outsourcing of FP services is not being effectively monitored, resulting in new difficulties not being identified and addressed.**
- **The quality of medical examination facilities remains variable, despite review.**
- **Medical evidence is an important factor in the prosecution of rape offences but its evidential worth is not always properly understood by prosecutors.**
- **There is a lack of engagement by health services – it is critical that this is remedied if improvements are to be made.**

An effective *prosecution*

8 AN EFFECTIVE PROSECUTION

Background

8.1 Prosecutors take decisions in accordance with the principles set out in the Code for Crown Prosecutors (the Code). A prosecution must ensue only if there is sufficient evidence to provide a realistic prospect of conviction, and, if so, if the circumstances are such that a prosecution is in the public interest. (A decision not to prosecute a rape case because of the public interest is extremely rare.) Prosecutors also comply with the CPS *Policy for Prosecuting Cases of Rape*. Cases that proceed are subject to continuous review as circumstances may change, meaning that a decision to proceed may have to be reassessed.

8.2 Revised guidance on sexual offences including rape was made available to prosecutors from May 2002. The guidance is currently up-to-date, and CPS Policy Directorate is proposing to expand this and collate it to improve accessibility.

CPS rape co-ordinators

8.3 The 2002 report recommended that all rape cases should be allocated to specialist lawyers, linking this with the possibility of introducing a lead prosecutor in each Area or trial unit. The CPS has responded by introducing Area rape co-ordinators (four sector co-ordinators in CPS London), which is a very positive step.

8.4 The Area rape co-ordinators are pivotal to ensuring that national initiatives and legislative changes are followed and applied locally. However, the role has not been defined and this has resulted in co-ordinators being unclear about what is expected of them. This, in turn, has led to a wide variety of practice.

8.5 There was no minimum standard of competence for the co-ordinator role (nor indeed, as discussed below, for the rape specialist). CPS Policy Directorate published key tasks for co-ordinators on 28 June 2006, requiring only that co-ordinators have completed the serious sexual offences training programme. There are no criteria for selection: people have been appointed who had little interest in the performance management aspects of the work, and one co-ordinator, who was appointed on a temporary basis two years ago, is still in post.

8.6 Many co-ordinators, nevertheless, have developed their own role to the best of their ability and in so doing have gained considerable expertise. In all Areas, the co-ordinator is regarded as a specialist who frequently acts as a second opinion and a sounding board, and as a filter for information and guidance that is received, disseminating it appropriately. Quarterly meetings of rape co-ordinators have now been introduced.

8.7 To raise effectiveness across the CPS as a whole, there is a need to formalise the amount of time co-ordinators are given to carry out the role.

Some, for example in CPS Northumbria, are officially allocated time, while most have to fit it around their other work. The role should include, among other things, liaison with other co-ordinators, work and training with the police and the voluntary agencies in the Area, monitoring and analysing trends in outcomes and dealing with the media in rape cases. The co-ordinator needs communication skills and the authority to develop the role and to be able to report findings directly to the senior management team or the Chief Crown Prosecutor.

Specialist lawyers

8.8 The CPS considers the specialist lawyer to be the keystone of the effective prosecution of rape cases. However, there is no set standard of competence for that specialism, and we found a wide range of practice and opinion. Generally, the specialists are experienced lawyers and must have attended the training course on sexual offences. Some are also required to have attended the course on Speaking Up for Justice (about special measures for vulnerable and intimidated witnesses). Some had dealt regularly with rape cases; others, although experienced lawyers, had worked only in the magistrates' courts for a number of years and had not been allocated a rape case in that time. Lawyers might be appointed who had never dealt with a rape case from beginning to end.

8.9 In some Areas, all or most of the trial unit lawyers were considered to be rape specialists. Depending on the size of the Area, this could mean that each lawyer might deal with only one or two rape cases each year. In other Areas, very few lawyers were designated so that, while they were handling sufficient rape cases to develop a real expertise, they were under considerable pressure. Few rape specialists were able to provide details of the size of their rape caseload, or monitored the outcomes of their cases. To date, there also appears to have been limited succession planning, although this is now one of the key tasks for Area co-ordinators.

8.10 There are also difficulties in ensuring that specialists handle rape cases from the pre-charge advice stage to the end (see Chapter 10). There is a need for early involvement and case building by specialists. One option would be to consider the introduction of specialist teams of prosecutors, certainly in Areas with a significant number of rape cases.

8.11 Most specialists felt supported by their colleagues or the Area rape co-ordinator, but there was also concern about the lack of time to read the large amount of material now produced by the extensive debate on the reason for the high attrition rate in rape cases. The Sexual Offences Newsletter is distributed to Areas through the CPS rape co-ordinators, and is available to all (on the CPS infonet), but some specialists were not aware of it.

8.12 In view of the heavy responsibility placed on these specialists dealing with the most sensitive of cases, there should be a stated standard of experience

and competence that should be required. This would include training (covering not only the law but also the psychological impact on victims and an understanding of forensic issues), experience of Crown Court cases generally, experience of rape cases including having attended complete trials, and an understanding of the issues surrounding the high attrition rate through the reading of key material. Further, specialist accreditation should be reassessed at least every two years. The role itself should include the requirement to be responsible for cases from beginning to end, and to attend trials regularly.

8.13 In addition to the basic sexual offences training, rape specialists should receive appropriate training and guidance through a defined programme of rape training. The Sexual Offences Team is giving consideration to the development of a training brief to deliver to rape specialist prosecutors, but the reality is that it may be some time before all rape specialists receive formal training. The minimum formal training that a rape specialist should have ought to cover the law, and other issues including the psychological impact of rape on victims, new developments in forensic science, and the role that voluntary organisations can play in providing support to victims. This knowledge and understanding is essential for more effective prosecutions of rape. Policy Directorate has recently distributed the ACPO *Guidance on Investigating Serious Sexual Offences* to the rape co-ordinators.

8.14 The CPS national Domestic Violence Project Implementation Manager plans to provide training in relation to rapes occurring in the context of domestic violence in future rape seminars, and domestic violence co-ordinators will attend relevant rape seminars.

Specialist caseworkers

8.15 Two Areas had introduced specialist caseworkers to deal with rape cases. These were abandoned in one Area because the system was felt to be unfair to other caseworkers, and in the other Area because there was insufficient time for a few caseworkers to deal with a large number of cases. The dominant consideration for allocation of caseworkers to rape cases should be what is most appropriate for the effective handling of the case. Therefore, in view of the considerable involvement of caseworkers, both in the preparation of cases and in liaison with other agencies in supporting witnesses, consideration should be given to the feasibility of dedicated specialist caseworkers with an effective rotation policy.

The prosecution team

8.16 The problems inherent in prosecuting rape cases successfully have long been recognised, and prosecutors are under a duty to review cases and prosecute only those having a realistic prospect of conviction by a properly directed jury. However, it is equally important that people who take advantage of others are brought to justice for committing rape. The development of the prosecution team in which police and prosecutors

work closely together, where appropriate from an early stage in a case, provides the opportunity to build and strengthen such cases.

8.17 The prospect of the IO and an experienced specialist prosecutor coming together at an early stage to agree interview and forensic strategies, to discuss potential lines of enquiry and for the decision to prosecute or not to be made on the fullest evidence, is to be welcomed. In practice, it will require a premium service with appropriate resources assigned by Area managers to these cases, so that the prosecutor is involved in, and accountable for, a rape prosecution from beginning to end, including attending court as an advocate (if an HCA) or to instruct counsel (and develop expertise) when appropriate.

8.18 The CPS charged file sample pre-dated statutory charging in five of the Areas, but the advice files would, for the most part, have been subject to shadow or statutory charging schemes. The visits to Areas and interviews took place after the introduction of statutory charging in those Areas. In practice, the prospect of how the prosecution team might operate was at best embryonic. Very good examples were seen of reasoned advice and detailed action plans, but beginning-to-end involvement by a truly specialist prosecutor was not yet the norm. Where statutory charging is in place, CPS Direct provides advice and charging decisions (often under the threshold test) from 5pm to 9am and at weekends, and an Area prosecutor takes over the case thereafter.

RECOMMENDATION 7

That the CPS should:

- set a standard for the role of rape specialist lawyer and deliver appropriate training to achieve this;
- ensure that specialist accreditation is the subject of continuous review;
- enhance the role of Area rape co-ordinator by defining the level of experience and competences required, and by allocating specific time to the role; and
- empower rape co-ordinators to sample rape files systematically to:
  - check for the quality of decision making and the implementation of the specific recommendations of the 2002 report;
  - identify any learning points; and
  - disseminate results throughout the Area, in particular to unit heads and Chief Crown Prosecutors, and share relevant issues with the police.

Strengths

- CPS Policy Directorate has introduced revised guidance on sexual offences.
- Area rape co-ordinators and rape specialist prosecutors have been introduced by the CPS.
- Where these roles have been effectively implemented, rape co-ordinators and rape specialist prosecutors have developed considerable expertise in the prosecution of rape offences.

Areas for improvement

- There are no criteria for the selection of co-ordinators and rape specialist prosecutors and no minimum standard of competence, resulting in varying levels of knowledge and expertise in practice.
- The training of specialists is variable.
- There needs to be early consultation between the investigating police officer and the specialist CPS lawyer.

Pre-charge decision*making*

9 PRE-CHARGE DECISION MAKING

Statutory charging

9.1 The statutory charging arrangements provide for duty prosecutors to give pre-charge advice and make decisions on whether or not to charge in serious cases such as rape. Ideally, this should be done face to face at charging centres, but local arrangements mean that some decision making is dealt with over the telephone. Urgent cases out of office hours are considered by CPS Direct, with CPS prosecutors providing a facility accessed by telephone and fax (see paragraphs 9.17–9.20). In practice, many rape cases are still dealt with by the police submitting a formal request for advice to a CPS office.

9.2 The DPP's *Guidance on Charging* (revised 2005) sets out how duty prosecutors should approach pre-charge decision making, applying either the threshold test or the full test under the Code for Crown Prosecutors (see paragraph 8.1). The threshold test is applied in cases where there is some evidence outstanding but it would not be appropriate to release the suspect on bail. A small proportion of rape cases were dealt with in this way. Cases where a charge has been authorised under the threshold test must be reviewed as soon as possible in accordance with the full Code test review.

9.3 There was a lack of awareness among police officers of the DPP's *Guidance on Charging*, including the tests that the CPS must apply under the Code for Crown Prosecutors. This may be resulting in unrealistic expectations on the part of some police officers in relation to pre-charge decision making – for example, that authority either to charge or take no further action could be given through informal approaches or requests. That said, there remains a need for both police and prosecutors to ensure that early liaison and a team approach to case building take place where appropriate. It was evident from the file reading that, where this occurred, the standard of the investigation, file quality and victim service was noticeably better than in Areas where this was lacking.

The impact of statutory charging on rape cases

9.4 The charging initiative was intended to facilitate the pooling of expertise by police investigators and prosecutors at an early stage in the investigation on a range of cases including rape. The need for such a close working relationship was identified in the report *A gap or a chasm?* in which researchers stressed that enhanced evidence gathering and case building were vital if the quality of the investigation and the prosecution were to improve. Statutory charging should encourage face-to-face consultation between police investigators and prosecutors. This in turn should lead to a more comprehensive discussion of the issues in the case and result in more thorough case building. There were some excellent examples of cases where prosecutors had worked closely with the police, compiling detailed action plans. However, while recognising that statutory charging had only recently been introduced in some of the Areas visited,

more frequently it was found that advice in rape cases tended to be by way of an evidential report and was not dealt with face to face, nor indeed at an early stage. Instead, at the end of the investigation, a 'full' evidential file was sent to the CPS office.

9.5 Individual Areas differed in their arrangements for the provision of pre-charge decision making in rape cases. In some Areas, cases were sent direct to specialist prosecutors for formal advice and a decision about whether to prosecute. There is potential for delay in the submission by the police and in the provision of advice by the prosecutor. While this system means that the advice is more likely to be given by a specialist, there may perhaps be a loss of opportunity for early CPS involvement and case building.

9.6 In other Areas, rape cases were referred to the CPS through the charging centres. Where this occurs, duty prosecutors may not be rape specialists, although they will be experienced lawyers. There may be constraints on the time available for the duty prosecutor to give the case proper care and consideration, including watching any video-recorded interviews.

9.7 One of the major points of the charging initiative and the prosecution team concept is to facilitate early discussion between the IO and the prosecutor in difficult and serious cases. It may be that because of the need for specialists in rape cases, the statutory charging scheme should be developed flexibly so that investigators can obtain immediate or early face-to-face advice from a rape specialist, not necessarily the duty prosecutor at the charging centre. A prosecutor must have sufficient time to consider the case, including giving thought to developing the case and enhancing the evidence. Therefore, even if specialist rape units are not introduced, the practice of making the pre-charge decision in the office, rather than at a charging centre, may be an appropriate approach, and should still include an early face-to-face discussion with the officer in the case.

Police decisions to submit cases for pre-charge decision making

9.8 In some Areas, police gatekeepers were not applying the DPP's *Guidance on Charging* in order to identify cases where there was manifestly no evidence or where the threshold test clearly could not be met. This resulted in prosecutors being asked to make decisions that should have been made by police officers, with the responsibility for decision making in rape cases shifting solely to the CPS. Conversely, in one Area, police were deciding that there should be no prosecution even though there was evidence that would have justified consideration by the CPS.

9.9 There were also indications that some police officers were using the charging scheme to seek early advice that no further action was required, rather than as a mechanism to gain early guidance as to case building. In either instance, a rape specialist prosecutor is required. Areas need to promulgate the availability of specialists where appointment systems are

used, or to make alternative arrangements for police officers to see specialists at CPS offices in urgent cases, and for advice to be provided promptly. Police forces need to ensure that IOs seek early meetings with prosecutors where appropriate.

Timeliness of pre-charge decision making

9.10 Where the pre-charge decision is not made promptly through the charging centre, it is important that advice is sought and given in a timely manner. Unnecessary delays hinder both the investigation and prosecution, as well as doing a disservice to the victim. They can also be the cause of a number of victims withdrawing from the process. In addition, delays can result in suspects being re-bailed several times until a decision on the case is reached.

9.11 In 14 out of 70 (20 per cent) of advice cases where the advice was to take no further action, there was an unnecessary delay on the part of the police in submitting the file to the CPS. At its most extreme, it took four months in one case for the file to be submitted. Similarly, there was unnecessary delay in the provision of advice by the CPS in 18 out of 70 files (25.7 per cent). In one case, advice was not given for some two and a half months.

9.12 Delays generally occur because of conflicting priorities, but it should be incumbent on supervisors to ensure the speediest possible investigation and the submission of high-quality files of evidence. Once submitted, the files should be reviewed by the prosecutor in a timely fashion to ensure that delays of any nature are exceptional.

File quality

9.13 Crucial to the successful outcome of a case is the need for good quality evidence and information from the police. The 2002 report recommended 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'. This recommendation has been largely overtaken by statutory charging and the concept of the 'full' file is now obsolete.

9.14 The statutory charging manual sets out the minimum requirements for the submission of files. Where the threshold test is appropriate, only a shorter, 'expedited' file is needed. In all other rape cases, an evidential report containing the key evidence and any unused material that may undermine the prosecution case or assist the defence is required.

9.15 File quality was variable, and there were examples of the following being missing:

- initial witness assessments;
- 'bad character' forms;
- VPSs;

- essential witness statements; and
- video interviews and/or an index.

9.16 There is a need in rape cases for early liaison between the police and the CPS, so that the police can be given advice about the direction their enquiries should take. This allows for prosecution team case building in order to strengthen the evidence and enhance the prospects of conviction, and thus reduce the attrition rate. However, the decision to charge (except in threshold test cases) or to take no action should be made on the basis of an evidential file.

CPS Direct

9.17 CPS Direct had been asked to make the pre-charge decision in only two instances in the sample of 70 in which the advice was to take no further action. In the sample of 75 charged cases, CPS Direct authorised charging in six instances. Essentially, these related to cases where the defendant had to be detained in custody, and it was overnight or on a weekend.

9.18 CPS Direct has a number of rape specialists and has recently undertaken a review of staff skills and shift patterns to ensure that there is always at least one rape specialist on call at all times. Due to the nature of their work, it is not always possible to allocate cases for initial advice to a rape specialist. However, where a decision is taken not to charge, every effort is made to seek a second opinion from another CPS Direct lawyer, or to seek further evidence and refer the case to the Area for review by a rape specialist. In these circumstances, the police are asked to bail the suspect with suitable conditions. Where CPS Direct advises that a rape case should proceed, an electronic marker is put on the file, indicating that the case should be allocated to a rape specialist for early review on receipt of the case papers.

9.19 CPS Direct has recently appointed an Area rape co-ordinator who will have responsibility for disseminating information and providing guidance. It is also in the process of drafting a case-handling protocol that will formalise procedures for handling cases of rape. At present it is acknowledged that only limited information is fed back to CPS Direct on the outcome of cases where it has provided advice; it is important that this is formalised so that learning points can be disseminated to CPS Direct staff to improve the quality of service provided.

9.20 The quality of advice provided by CPS Direct was also examined. The advice complied with the Code in both cases in the advice sample and in all six cases in the charged sample.

Involvement of counsel pre-charge

9.21 Counsel's involvement at the pre-charge advice stage is rare. However, in cases involving serial offenders, multiple defendants or historic abuse, it is

important to consider instructing counsel as part of the prosecution team from the earliest practicable stage.

RECOMMENDATION 8

That police forces and the CPS ensure that rape cases receive full and early consultation between the IO and the rape specialist prosecutor.

Strengths

- **The introduction of the statutory charging arrangements facilitates the pooling of expertise by police investigators and prosecutors at an early stage in the investigation.**
- **The overall quality of service and advice provided by CPS Direct was found to be good.**

Areas for improvement

- **Awareness of the DPP's *Guidance on Charging* among police officers needs to be improved.**
- **There is a need to ensure that both police and prosecutors undertake early liaison and a team approach to case building.**
- **Unnecessary delays on the part of the police in submitting files to the CPS and on the part of the CPS in providing advice are still occurring.**

Review and decision*making*

10 REVIEW AND DECISION MAKING

Outcomes

10.1 There were 75 cases in the CPS file sample in which defendants were charged with rape or similar offences, of which:

- 39 (52 per cent) were convicted, made up of 20 guilty pleas and 19 convictions after trial; and
- 36 (48 per cent) were acquitted, made up of 17 dropped by the prosecution (judge ordered acquittals), two were acquitted on the direction of the judge and 17 acquitted after full trial.

10.2 In comparison with the CPS charged file sample in 2002, there is a marginally improved conviction rate and a reduced proportion of cases dropped by the CPS once charged. It does not provide substantial reassurance as to attrition as a whole, but indicates some signs of greater resilience and success once cases enter the court system. A more detailed breakdown of the outcomes of the charged file sample, together with a broader comparison with the 2002 charged file sample, is given in Table 10.1 below.

Table 10.1: Outcome of cases – comparison of charged cases (2006 and 2002)

	Charged	Dropped by CPS	Acquitted	Convicted following plea of guilty	Convicted following not guilty plea	Percentage convicted
2006	75	17	19	20	19	52%
2002	98	23	26	37	12	50%

It was against this background that the handling of rape cases by the CPS was examined.

Background

10.3 Prosecutors take decisions in accordance with the principles set out in the Code for Crown Prosecutors (the Code). HMCPSI 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 relevant guidance. A statement that HMCPSI considers that a decision was not in accordance with the Code therefore means it was considered to be wrong in principle. On some occasions, therefore, while a decision not to prosecute or to drop an existing prosecution may not fall outside the Code, equally it would be proper to take a more robust approach. There are also cases in which a more rigorous analysis should lead to the seeking of more evidence or the obtaining of more support for a victim so that prosecution is sustainable and the prospect of conviction realistic. The CPS *Policy for Prosecuting Cases of Rape* (and, where appropriate, the policy on prosecuting cases of domestic violence) provides guidance on the care and sensitivity to be exercised in decision making, obtaining all possible forensic and scientific evidence and, where appropriate, deciding to proceed against the victim's wishes.

Use of specialists

10.4 Of the 70 advices to take no further action, 37 decisions (52.9 per cent) were made by a rape specialist. In a further 18 cases it was not possible to establish if the duty prosecutor was a specialist. Therefore, a non-specialist advised the police to take no action in at least 15 cases (21.4 per cent) in the sample, and possibly more. This is one of the key attrition points in rape cases and shows that the CPS's own policy following the recommendation about specialists in the 2002 report is not being consistently followed. Of the 75 charged cases, relevant decisions were made by a rape specialist in 39 cases (52 per cent); it was not possible to tell in a further 15 cases. Therefore, a specialist did not make all the relevant decisions in at least 21 cases (28 per cent).

10.5 The 2002 report recommended that all decisions to drop or substantially reduce the offence, or to advise the police to take no further action, be discussed with a second specialist lawyer before a final decision is made. One of the benefits of this approach is that a second specialist may be able to suggest further case-building opportunities. There was a clear endorsement on the file to show that advice to take no further action was discussed with a second rape specialist in only 11 out of 70 cases (15.7 per cent). In cases where the prosecutor considers that the police should take no action, and no specialist is available, the suspect should, if appropriate, be bailed for the second opinion to be obtained.

10.6 Prosecutors stated that a second opinion was sought where at all possible, but that this discussion was not always endorsed on the file. When second opinions are provided, they take a variety of forms, from a telephone conversation to a full examination of the file. The second opinion should, where possible, be given after consideration of the evidential report. It should be recorded on the file, and identify the second specialist. The CPS Compass CMS should be adapted to include this endorsement.

10.7 In eight out of 17 cases in which the prosecution offered no evidence before the jury was empanelled (judge ordered acquittals), there was no discussion with a second rape specialist before the case was finalised. The position could not be established in three cases. More should have been done to avoid dropping the case in five of the eight cases where there was no such discussion.

10.8 The rape specialist who made the decision to charge should retain control and management of the case from beginning to end, albeit counsel may prosecute in the Crown Court. There was clear continuity of lawyer from the time the CPS received the file until the proceedings were concluded in 45 out of 75 cases (60 per cent). There were 23 cases in which it was clear that there was a change of lawyer – 14 of these cases resulted in an acquittal (eight judge ordered acquittals, one judge directed acquittal, and five after full trial), which is a significantly higher proportion than in the cases in which there was continuity.

10.9 This is an unsatisfactory position. The 2002 report recommended that rape cases be allocated to specialist lawyers who should be responsible for the case from advice stage to the conclusion of any proceedings. CPS policy guidance is clear that a specialist prosecutor will be responsible for the case from advice stage to the end of the case, but this was not the norm in practice. The purpose of the recommendation was to ensure continuity of approach and expertise, and individual accountability. This should prevent changes of view about the viability of a case, or how the evidence should be presented. It should also ensure that all possible steps are taken to build the case from a very early stage and increase the prospects of a conviction, thus reducing attrition.

RECOMMENDATION 9

That Chief Crown Prosecutors ensure that one specialist prosecutor is involved in, and accountable for, a rape prosecution from beginning to end. Consultation with a second specialist should be undertaken if no further action is to be advised or a prosecution is to be dropped, and the consultation should be recorded and the second specialist identified.

The quality of pre-charge advice and decisions

10.10 The quality of advice/decisions given by prosecutors was examined in the file sample of 70 advice cases. The evidential Code test had been properly applied to the evidence in 69 cases (98.6 per cent). The public interest test had been properly applied in all appropriate cases. It would be unsafe to try and make a comparison of the advice files findings with the data from the 2002 report because the current file examination included only those where the advice was to take no further action.

10.11 There were, however, six instances where the decision to advise no further action was premature. Further work should have been done to see if it was possible to build the case. In these cases, further enquiries might have resulted in there being sufficient evidence to prosecute. In another case, the decision was apparently taken on the basis of a police report, without statements.

10.12 The quality of advice/decisions was examined in 49 relevant cases in the charged sample. The evidential Code test had been properly applied in 48 cases (98 per cent). In one case, the advice/decision should have been to take no further action. Prompt action was taken after charge and the case was discontinued. (The decision to drop the case was very carefully considered and a meeting was held with the victim to explain the decision.) The public interest test had been properly applied in all appropriate cases.

10.13 The findings in the charged file sample are good, and bear comparison with the 2002 report in which the correct advice was given in 15 out of 16 cases.

10.14 Good pre-charge advice and decision making require a careful examination of the available evidence and the adoption of a dynamic approach to case building. All advice and decisions should be well reasoned, with analysis of the evidence weighing up the strengths and weaknesses. Equally, in cases where the advice is to take no action there should be sufficient detail for the police to explain to the victim why the case is not proceeding. Generally, there has been a significant improvement since the 2002 inspection in the detail of the advice. This was particularly the case where the MG3 (the form introduced for pre-charge advice and decision making) was used.

Selection of the appropriate charge

10.15 The main offence was one of rape in 71 of the 75 cases in the charged sample. There was a subsequent reduction from the rape charge in seven cases; it was appropriate in all but one case. The inappropriate reduction involved multiple rape charges by a man on his daughter, where the indictment was amended on the day of trial to charges of incest. The defendant pleaded guilty and was sentenced to four years' imprisonment. The rape charges should have been pursued – a view shared by the victim who felt that the defendant was not being properly punished. An appropriately timed conference between the prosecutor, counsel and the officer in the case should have been held, and a firm view taken on the appropriate charges.

10.16 Prosecutors generally identified the correct charges on which to proceed. The case proceeded to trial or a guilty plea on the correct charge(s) in 56 out of the 61 cases (91.8 per cent) that proceeded. There were five cases where it was considered that the incorrect charge had been selected.

10.17 In one case, the defendant was charged with, and admitted, two offences of rape. Five other serious offences were not included on the indictment, but were left to be taken into consideration on sentence. The judge adjourned the case so that the CPS could consider whether this was the appropriate approach as it curtailed his sentencing powers, but the CPS did not change its stance. The offences were too serious to be dealt with in this way; the defendant should have been charged with the five offences.

10.18 In another case, pleas were accepted by the reviewing lawyer to all charges other than the two of rape, in circumstances where the victim (who had special needs) had already given credible evidence in another case (resulting in a conviction). The handwritten note of the decision justified it by suggesting that the victim had 'poor creditability' factors. There was no continuity of counsel; nor was a conference held.

10.19 Conversely, in a third case the prosecutor decided to pursue a charge of rape to trial, albeit counsel added an appropriate, alternative, charge to which the defendant pleaded guilty. After the victim had given evidence, the position had to be reconsidered and the rape charge was dropped.

Again, there was no definitive case conference. While it is proper to pursue a charge of rape if there is sufficient evidence to do so, it is equally important not to continue with such a charge inappropriately, thereby putting a victim through the traumatic experience of giving evidence unnecessarily.

The quality of decisions to discontinue

10.20 Seventeen judge ordered acquittals were examined. The decision to offer no evidence was in accordance with the Code in 15 cases (64.7 per cent). The case should have proceeded to trial in the remaining two cases (35.3 per cent). In one case, there was clear lack of consent to anal penetration, which was supported by medical evidence, but which the defendant denied, which meant the case should have proceeded in spite of concerns in relation to other sexual activity. The victim was 15 years of age, the defendant 43.

10.21 The second case was one in which a decision was made not to seek a retrial, following a trial where the jury were unable to reach a verdict. There was clear evidence to support the allegations made by the victim, and the first jury had indicated that they were sure that the victim had not consented, the only issue concerned the defendant's state of mind at the time of the incident. The reasoning behind the decision to offer no evidence was not clear from the file or the adverse case report (see paragraph 10.57), and the judge felt strongly that the case should proceed.

10.22 In six other cases, the prosecutor should, in accordance with the Code and the CPS *Policy for Prosecuting Cases of Rape*, have taken more action in conjunction with the police with a view to overcoming difficulties and deficiencies. All the cases had difficulties to be surmounted. These included one case where the victim had limited recall through drink and had withdrawn her complaint but where there was other evidence; another case in which there were issues about the victim's reliability in the light of two previous complaints of rape which had been withdrawn; and two cases of domestic violence involving rape in which the victims withdrew. (Three of these cases, and that in paragraph 10.21, come from the same Area.)

10.23 In the cases in which the victims withdrew, it would have been inherently difficult to proceed without them, even though this is being done in some cases of domestic violence. However, there was no indication that they had received the proactive support from police and the CPS that they clearly needed.

10.24 In one case, the action to drop it should have been taken much sooner once the additional information giving rise to the decision had been received.

10.25 In many cases, counsel had been instructed and the decision to offer no evidence was made by the reviewing lawyer in consultation with counsel. However, in some cases, the decision to drop was not discussed with a second specialist or counsel. Further, the decisions made in conjunction with counsel were not routinely made following a conference with counsel and the officer in the case, and there were cases in the sample which clearly would have benefited from one. Where counsel has been instructed, a conference should always be held to analyse the evidence and to explore ways of overcoming any difficulties before a decision is made to stop a case. The conference should be held as part of the continuing work of a strong prosecution team, which has been working together to build and develop a strong case throughout its progress through the CJS.

RECOMMENDATION 10

That Chief Crown Prosecutors ensure that a conference with trial counsel and the officer in the case takes place in every case involving an allegation of rape. This is essential where consideration is being given at a late stage to stop the case, or to accept pleas to alternative charges, in order to analyse the evidence and explore ways of overcoming any difficulties.

Acquittals

10.26 In the charged sample there were two judge directed acquittals (2.9 per cent) and 17 acquittals (22.7 per cent) after full trial. The initial decision to proceed was in accordance with the Code in each case, as was the continuing decision to proceed.

Convictions

10.27 There were 19 convictions after trial plus 20 guilty pleas, so that there were 39 convictions (52 per cent) out of 75 charged cases.

Review endorsements

10.28 Good recording of actions and decisions, and of the reasons for them, both in and out of court, is essential. The 2002 report recommended that 'prosecutors make full records on files of review decisions in cases involving rape'. In September 2002, CPS Policy Directorate issued guidance stating that prosecutors must record their review process properly and that Areas were to put procedures in place to monitor this.

10.29 Review endorsements should now be recorded on Compass CMS (the CPS electronic case management system). The review might be written on the MG3 form and so combine advice and review, or on a separate initial advice page. In either case, a copy should be placed on the file.

10.30 The prosecutor's endorsement should record which of the two pre-charge advice tests was applied at the initial review, followed by a detailed assessment of the available evidence. This should include appropriate consideration of the evidence as a whole, the victim's credibility, 'bad

character' evidence, hearsay evidence, the evidential presumptions, special measures and disclosure issues including third party material. Policy issues and any human rights considerations should be noted. Where the offence is one of rape, the dangerous offender provisions will fall to be considered on sentence. This should be noted. Acceptable pleas should be identified, where appropriate, and this action plan should also be prepared, with timescales agreed by both the CPS and the police. Continuing review decisions, and in particular the reasoning behind a decision to terminate a case, should be recorded plus any discussion with a second specialist.

10.31 The relevant evidential factors at each review were fully recorded in 44 out of 75 cases (58.7 per cent) and the public interest factors were fully recorded in 43 cases (57.3 per cent). These compare with 44 per cent and 57.4 per cent respectively in the 2002 report. The prosecutor's explanation of any decision to terminate or reduce the charge was recorded fully in 17 out of the 31 relevant cases (54.8 per cent).

10.32 As with the 2002 report, these findings on the quality of endorsements were lower than the average in the cycle of reports where HMCPSI looks at a full range of cases. It is expected that lawyers, in particular specialists, would take greater care when reviewing rape cases. A full review of the evidence, with a clear note of what needs to be done or decisions taken, is an essential starting point for improved success. There was generally a record of the actual decision, for example to terminate the case, but recording of all the factors taken into account and any attempts to case build were variable. Some endorsements illustrated the fact that the prosecutor had considered all relevant points; in others this was not clear. Prosecutors would benefit from a reminder of what issues should be addressed when reviewing cases involving allegations of rape. In CPS Nottinghamshire, there are instances where the lawyer at the charging stage addresses issues that will be relevant at the plea and case management hearing (PCMH).

RECOMMENDATION 11

That the CPS produces and circulates a rape checklist to address all relevant issues at the advice stage.

Case building

10.33 Acts of rape are rarely witnessed and the key evidence is usually centred on the victim's account. When that is so, there is a need to look for ways to build a case, rather than to focus on the victim's credibility and anticipate the line of attack that the defence is likely to take. This was commented on in the 2002 report, and the Home Office Research Study, *A gap or a chasm?*, identified the need for a shift to occur, from a focus on the discreditability of victims to enhanced evidence gathering and case building, by changing the culture and requiring prosecutors to take a robust and proactive approach.

10.34 As a result of the introduction of statutory charging, prosecutors are expected to make a significant contribution to case building in order to strengthen cases. There were good examples found in the file reading of a team approach to case building; there were also examples where early dialogue and input from the CPS would have been beneficial, but where CPS involvement was restricted to providing a definitive answer as to whether or not to proceed with the case.

10.35 The specialist prosecutor should provide assistance and add value through using a detailed action plan, setting out any further work required to build the case. Action plans were agreed in 14 out of the 70 advice cases (20 per cent), even though the final decision in these cases was that no further action should be taken. There was an action plan in 39 out of 63 relevant charged cases (61.9 per cent).

10.36 Some lawyers were extremely proactive in building cases and exploring all avenues to enhance the prospects of a conviction. The reviewing lawyer had done so in 50 out of the 75 cases (66.7 per cent) in the charged file sample. Thirty-two of these cases resulted in a conviction. This clearly shows the benefits to be achieved where the prosecutor is proactive in building the case, and displays added value on the part of the CPS in dealing with rape cases.

10.37 There was supporting evidence in 65 out of 75 charged cases (86.7 per cent). This means that, despite the general view about most cases consisting of the victim's word against the defendant's, in the majority of cases there was other evidence that provided additional weight to the victim's account. In 17 of these cases, the prosecutor did not explore all avenues to enhance the prospects of a conviction and 13 of these cases resulted in an acquittal. The question that has to be asked is whether those cases might have resulted in convictions if those avenues had been explored.

10.38 Despite a high standard of review in a number of cases, performance was variable. In 20 charged cases (26.7 per cent), the prosecutor could have taken more steps to consider ways of case building when conducting the initial review. It was apparent in some cases that the decision to stop work on the case had been taken prematurely; had the prosecution taken a more dynamic approach, the cases might have been prosecuted successfully. This includes cases where:

- there were clear lines of enquiry outstanding, including medical evidence and other key witness statements;
- further enquiries could have been made of the victim in a borderline case; and
- counsel pursued additional lines of enquiry which should have been explored by the prosecutor at the pre-charge advice stage.

The Sexual Offences Act 2003

10.39 The SOA came into force on 1 May 2004. It repealed most of the previous statute law in relation to sexual offences, and its main provisions include:

- the definition of rape now includes oral penetration;
- changes made to the issue of consent;
- specific offences relating to children under 13, 16 and 18; and
- offences to protect vulnerable persons with a mental disorder.

10.40 There is now a statutory definition of consent. There is consent if the complainant 'agrees by choice, and has the freedom and capacity to make that choice'. There are also provisions in relation to whether or not a defendant has a 'reasonable belief in consent'. A defendant is guilty of rape if:

- he acts intentionally;
- the victim does not consent; and
- he does not reasonably believe that the victim consents.

10.41 The Act contains evidential and conclusive presumptions about consent. Each review should automatically include a consideration of the relevance of these evidential and conclusive presumptions. Performance in relation to reviewing cases in the context of the consent provisions varied between prosecutors (and between Areas). In some instances, there was a careful consideration of the likely impact of the relevant presumption. In other cases, the prosecutor had apparently not considered the presumptions when they were clearly relevant.

10.42 The changes in the law in relation to the issue of consent where alcohol is involved are still causing difficulties in court. Discussions with practitioners and the judiciary highlighted these difficulties, with examples being given of cases in which the victim was drunk mostly resulting in acquittals, with little weight apparently given to the victim's lack of capacity. This has generated considerable publicity, notably in the case of R v Dougal [2005] at Swansea Crown Court.

10.43 In a case in the advice sample, a suspect preyed on a female who was drunk at a nightclub. He steered her to the toilets, where it was reported that he raped her. He claimed all activities were consensual. He had no previous convictions. The surrounding circumstances indicated that his actions were well practised and that he was sober. Enquiries could have been made as to whether there had been similar allegations made against this suspect and the extent of the victim's capacity to consent.

10.44 In its consultation paper in relation to rape offences, *Convicting Rapists and Protecting Victims – Justice for Victims of Rape* (issued in spring 2006),

the OCJR included two questions in relation to capacity, in an attempt to reduce/remove these difficulties:

- Does the law on capacity need to be changed?
- Should there be a statutory definition of capacity?

10.45 The OCJR has considered the possibility of creating a further evidential presumption based on extreme drunkenness, but believes that the better course would be for there to be a clearer definition of 'capacity'. Whatever the result of the consultation, it is clear from cases and discussions during this review that cases of rape are very difficult to prosecute successfully if the victim is intoxicated, and there is a high chance of non-prosecution or acquittal for rape in these circumstances.

Hearsay evidence

10.46 The rules governing hearsay evidence are set out in the Criminal Justice Act 2003. Section 114 defines the circumstances in which a statement not made in oral evidence in the proceedings is admissible as evidence of the matter stated. The term statement is defined in section 115 as a statement not given in oral evidence in the proceedings, which can become admissible as evidence of the matter stated. Prosecutors have received guidance and training on hearsay evidence, but need to be more proactive in identifying and considering it at each stage, including at pre-charge advice. The question of its admissibility should be identified and assessed, so that any notice of application to admit it can be made within the required timescales.

10.47 In 21 out of 39 relevant instances of advice given to take no further action (53.8 per cent), the prosecutor had not considered hearsay evidence. In 13 out of 22 relevant charged cases (59.1 per cent) hearsay evidence was appropriately considered at each relevant stage. In some cases, it was not apparent from the endorsements that hearsay evidence had been identified as such or had been considered at all.

10.48 Changes to the law about hearsay evidence have provided prosecutors with the opportunity to apply to admit evidence that previously could not have been included. Such evidence can add weight to the allegation made by the victim and in so doing strengthen the prosecution case. The figures suggest that there is considerable room for improvement. Significant opportunities were lost when hearsay evidence could have strengthened the case. Of the nine charged cases where hearsay was not appropriately considered at each relevant stage, most (six) were acquittals. Conversely, of the 13 cases where hearsay was appropriately considered, most (eight) were convictions. It is important, therefore, that prosecutors take appropriate steps to make such applications, seizing all opportunities to bring offenders to justice and reduce the attrition rate.

'Bad character' evidence

10.49 'Bad character' evidence is defined in section 98 of the Criminal Justice Act 2003 as evidence of a disposition towards misconduct other than evidence which concerns the offence charged, or evidence of misconduct in connection with the investigation or prosecution of that offence. 'Bad character' evidence will fall into one of three main categories:

- a record of previous convictions;
- evidence of facts about previous relevant convictions or relevant acquittals; or
- other reprehensible behaviour.

All prosecutors have received guidance and training on the provisions.

10.50 'Bad character' evidence is a valuable tool for the prosecutor, and it should be carefully considered at the pre-charge review stage. If there is sufficient evidence, the prosecutor may authorise charge, and endorse the file to the effect that 'bad character' should be obtained in admissible form if a not guilty plea is entered, and appropriate notices should be served.

10.51 Opportunities to case build must be explored. Guidance and training on the provisions of 'bad character' evidence have been made available, but the focus of prosecutors often appears too narrow. Prosecutors do not appear to be looking beyond previous convictions in a significant number of cases, when evidence falling within the wide definition of 'bad character' could be obtained.

10.52 Of the 37 relevant charged files, 'bad character' evidence was appropriately considered at each relevant stage in 21 cases (56.8 per cent).

10.53 In one instance where 'bad character' was not appropriately considered, the relevant form was present on the file. It contained the suspect's previous convictions, but not previous incidents of domestic violence contained in the crime report. It would have been useful to explore the circumstances of the previous incidents, to determine their relevance and potential admissibility. They might have strengthened the evidence in the case.

10.54 Practitioners commented that applications to admit evidence of 'bad character' had a positive impact on the outcome of proceedings, and successful applications made by the Crown had resulted in some defendants entering guilty pleas. In the file sample, of the 16 cases where 'bad character' was not appropriately considered at each relevant stage, most (nine) were acquittals. Conversely, of the 21 cases where 'bad character' was appropriately considered, most (13) were convictions. All appropriate opportunities need to be taken as the admission of such evidence can add strength to the prosecution case, and has the potential to contribute to an increase in the overall conviction rate for rape.

Custody and bail decisions

10.55 Prosecutors made appropriate decisions about whether or not to oppose bail in 65 out of 66 relevant cases, and whether there should be an application in relation to conditions of bail in 46 out of 52 relevant cases. This is a good performance and compares favourably with the findings in the 2002 report, where the appropriate decisions were made in 59 out of 61 relevant cases and 13 out of 14 cases respectively.

10.56 There were no cases in our sample where the granting of bail had affected a victim's willingness to give evidence.

Learning from experience

10.57 In the 2002 report, it was recommended that counsel prepare a written report in any case that results in an acquittal, to be used to complete a case report, and to discuss any lessons to be learned with the police. The report was to be prepared in all acquittals, not just in cases that the CPS would call 'adverse' cases. (These are cases that have resulted in no case to answer in the magistrates' courts, judge ordered acquittals and judge directed acquittals.) This recommendation has not been achieved and it is reiterated:

Recommendation 11 (2002)

- 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.
- The adverse case report is used to discuss with the police any lessons to be learned.

10.58 There was little evidence of effective debriefing following the conclusion of a trial. Such analysis is important to ensure that factors that contributed to an unsuccessful outcome, where appropriate, are disseminated to all lawyers and caseworkers and to those involved in the investigation process to reduce the chances of this occurring again. Of equal importance is the dissemination of the good practice and procedures that contributed to a successful outcome, so that, again, others can benefit from the experience.

10.59 Generally, instructions to counsel contain a standard paragraph requesting a written report in any case resulting in an acquittal, but there were very few such reports following the acquittal of a defendant in the file sample – even where the prosecution dropped the case or it was stopped by the judge.

10.60 There was a general perception that, in cases which resulted in a jury acquittal, 'there was nothing more the CPS could have done'. In some Areas, counsel was told by the caseworker in court not to bother writing

the report. While a jury acquittal might well indicate that there was no failure of investigation or review, jury acquittals are a significant factor in the high levels of attrition in rape cases, and significantly more analysis of individual cases needs to be undertaken. This information should then be considered as a whole by the Area rape co-ordinator, and should be part of a joint analysis with the police, so that trends can be considered and remedial action taken wherever possible. The issue of post-sentence review of cases is currently being discussed at CPS/Bar Liaison meetings, which is a welcome initiative.

10.61 At present, the preparation of the report is seen as part of the instructions and conduct of the case, and there is no separate fee. Clearly, compiling a short memorandum briefly setting out the reasons for the acquittal or adverse outcome, which is completed at the conclusion of the case, is not an onerous task. Where, however, more detailed case analysis or a structured debriefing is necessary, the question of additional payment to counsel ought to be considered and be part of the graduated fee scheme.

10.62 Counsel had prepared a written report in only two out of 19 relevant cases. An unsuccessful case report setting out the factual and legal reasons for the acquittal was prepared by the CPS in only four cases. The case reports were very brief and did not analyse the issues in depth. In essence, there was little evidence of systematic and thorough analysis being undertaken or of any trends being analysed and learning points disseminated. The prosecution team, consisting of the police, CPS and counsel, is not using the opportunity to look for ways to improve effectiveness in cases involving allegations of rape, and thus reduce attrition.

Performance management and monitoring of rape cases

10.63 Managing performance is about practical ways to improve how things are done in order to deliver better-quality services and improve accountability. It is not just about information systems, targets, indicators and plans. In the context of handling rape cases, it should mean ongoing quality assurance and analysing outcomes so that lessons are learned. It is also about getting the right focus, leadership and culture in place.

10.64 At present, there are no specific performance measures in relation to offences of rape. The CPS has determined that it will flag rape cases on its integrated CMS (Compass). However, the files examined were not consistently flagged and data did not appear to be accurate or reliable. In any event, Areas were making little use of the information they had available.

10.65 Performance measures that focus on outcomes are valuable, as they indicate whether objectives are actually being achieved. These should relate to reducing levels of attrition and increasing the number of offenders brought to justice. The purpose of measuring achievement is to help to manage and improve performance by identifying practical ways of

improving how things are done in order to deliver better-quality services. It also enables Areas to report on their performance to stakeholders, thus enhancing accountability and improving public confidence. Achievement will also enhance the sense of purpose and increase the morale of staff and prosecutors who deal with these cases.

10.66 Most CPS Areas carry out some monitoring of the quality of decision making and preparation of rape cases through the Casework Quality Assurance scheme, but none of the Areas analysed rape cases systematically.

10.67 In CPS London, three of the sector co-ordinators are dip-sampling cases, each visiting one unit monthly on a rolling programme. They dip-sample files using a form on which is recorded the quality of the decision making and the implementation of the specific requirements of the recommendations of the 2002 report together with any learning points. Results are disseminated throughout the Area.

Good practice

The systematic sampling of rape files by the co-ordinator to:

- check for the quality of the decision making and the implementation of the specific requirements of the recommendations of the 2002 report;
- identify any learning points; and
- disseminate results throughout the Area.

10.68 In CPS Cambridgeshire, a report is prepared at the conclusion of every case involving an allegation of rape, passed to the Area co-ordinator, and discussed with the Chief Crown Prosecutor and unit head at six-monthly meetings. This process could be developed to happen more regularly, and could be incorporated into the Area rape co-ordinator meeting cycle.

10.69 Although some individual pieces of work have been carried out, the role of the co-ordinator does not require any monitoring of rape cases. Performance in relation to the prosecution of rape was a special theme in the Area Performance Reviews by the DPP in the fourth quarter of 2005/06 and the first quarter of 2006/07. The figures required related to the attrition rate, and the volume of rape cases that were flagged in comparison with Home Office figures. Realistic monitoring of these cases depends on their accurate identification on the CMS. Development across the whole of the CPS needs to be considered if real improvements are to be made, and joint work with police locally would be valuable.

Strengths

- There is evidence of an improved conviction rate and of a reduction in the proportion of cases dropped by the CPS once charged, since 2002.
- Decisions by prosecutors on the charges on which to proceed were generally found to be correct.

Areas for improvement

- CPS policy in relation to the provision of advice by a rape specialist is not being followed consistently.
- There is a need to ensure that one specialist prosecutor is involved in, and accountable for, a rape prosecution from beginning to end.
- More effort needs to be made to ensure that counsel provides a written report in all rape cases resulting in an acquittal; there may be a need for the CPS to consider an additional payment to counsel and its inclusion in the graduated fee scheme.
- The quality of recording of review endorsements of relevant evidential factors at each review on Compass CMS is poor.
- Proactivity in case building by prosecutors is variable, resulting in decisions to stop work in some cases being taken prematurely.
- There is a need for prosecutors to be more proactive in identifying and considering hearsay evidence at each stage, including pre-charge advice.
- There is a need for police and prosecutors to look beyond previous convictions when considering 'bad character' evidence.
- The use of debriefs following the conclusion of a trial is limited, resulting in the loss of opportunities for police and prosecutors to learn from experience in both successful and unsuccessful cases.

Case*preparation*

11 CASE PREPARATION

The duties of disclosure of unused material

11.1 Disclosure of unused material is particularly significant in the prosecution of rape offences. The nature of the offence means that often there are no witnesses other than the victim, which leads to significant reliance on the credibility of the victim. Unused material may contain background information by which that credibility can be tested, and it is important that prosecutors comply with the CPIA, not only in ensuring that full disclosure is made where appropriate, but also in ensuring that they do not make disclosure of sensitive personal material (such as medical records) that does not come within the terms of the CPIA. The Disclosure Manual provides the police and the CPS with detailed guidance on the amended CPIA and its Code of Practice and the Criminal Procedure Rules 2005 and the Attorney General's *Guidelines on Disclosure* (as revised in 2005).

11.2 In February 2006 the Court of Appeal issued a Protocol for the Control and Management of Unused Material in the Crown Court (the 2006 Protocol) setting out the need for a robust approach. It includes guidance to prosecutors (as well as to other court users), enforces the need for a detailed defence statement and declares that the 'objectionable practice' of late applications for third party material must end. Local protocols in relation to third party disclosure are commended and there is a reminder of the right to privacy in the context of the disclosure of medical records. The file sample pre-dated the 2006 Protocol so it was not possible to consider its impact, but it provides a real opportunity to target and deal with the issues the inspection has highlighted.

Initial or primary disclosure

11.3 Initial disclosure (primary disclosure in investigations prior to 4 April 2005) was dealt with properly in 46 out of 62 relevant cases (74.2 per cent). This is similar to the finding of 70.1 per cent in the 2002 report, but lower than the national average of 79.9 per cent in HMCPSI's last Area inspection cycle. In view of the sensitivity of rape cases, inspectors would have expected better compliance with the prosecution's duties under the CPIA.

11.4 Unused material should be considered at an early stage and served on the defence well before the trial. During the course of one trial observed, material relating to the character of the victim was handed over on the morning of the trial, which delayed the start of the proceedings. The material should have been considered and served by way of initial disclosure, but the police had not supplied it to the prosecution until the day of trial. This resulted in the victim and witnesses having to wait longer than anticipated to give evidence.

Continuing or secondary disclosure

11.5 Continuing disclosure (or secondary disclosure in investigations prior to 4 April 2005) was dealt with properly by the CPS in 23 out of 46 relevant cases (50 per cent). This is worse than the performance of 54.7 per cent in

the 2002 report, and worse than the national average of 59.4 per cent in HMCPSI's last Area inspection cycle.

11.6 In one case, police delay in responding to the defence statement resulted in a bundle of unused material being delivered to the defence solicitors on the day before trial without previous inspection or consideration by the prosecutor. In view of the nature of some of the material in rape cases, it is particularly important that disclosure is not made unless a prosecutor has considered the material and concluded that it falls to be disclosed under the CPIA.

Sensitive material

11.7 Prosecutors have a duty to consider whether sensitive material satisfies the disclosure test and, if so, whether or not there are grounds for withholding disclosure in the public interest. In fact, most sensitive material does not potentially undermine the prosecution case or assist the defence, and it was dealt with properly in 19 out of 26 relevant cases (73.1 per cent). This is a significant improvement on the performance of 47.6 per cent in the 2002 report.

Third party material

11.8 Third party material is information relating to an investigation that is not in the possession of the police or CPS. It may have a bearing on the strength of the prosecution case and should be properly assessed. In rape cases the existence of such material can often be anticipated, particularly in cases involving child victims where the social services frequently hold relevant material. A victim's medical history may also be relevant to the case. There may be a difficulty for the police in obtaining third party material, as third parties are under no obligation to reveal material in their possession to the police or CPS. Courts have powers to order disclosure after the commencement of the criminal proceedings.

11.9 Third party material was dealt with properly by the CPS in 13 out of 19 cases (68.4 per cent). Disclosure was late in 11 instances.

11.10 Third party protocols on the exchange of information in the investigation and prosecution of child abuse cases were operating in seven out of the eight Areas inspected. There were inconsistencies in approach that suggested that the national model (published in October 2003) is not being followed. In one Area, it is a police officer, who is not an officer in the case and who may not be fully aware of all the issues, who flags up social services' files for the information of the judge. This could result in relevant material not being considered by the judge.

11.11 In some Areas, there is a tendency to leave the issue of third party material to the defence, which can result in undermining material being discovered at an advanced stage in the proceedings. This in turn can lead to cases being dropped late in the day, thereby causing unnecessary stress to both

the victim and the defendant, as well as being a waste of resources. Requests for third party material should be made at an early stage in the investigation. To do otherwise jeopardises the strength of the case as well as risking ineffective trials and a resultant lack of confidence in the system on the part of victims. The 2006 Protocol should be complied with, bearing in mind its strong criticism of late applications.

11.12 In cases in which a victim has received counselling, the counsellor's notes will be unused material, which may fall to be disclosed. Ineffective trials have resulted when requests for such notes have been made late by the defence, and then have to be considered by the prosecutor as to whether they fall within the criteria for disclosure. It would be far more satisfactory if the prosecution made an early enquiry about counselling and followed it up with the appropriate application to the court if necessary.

11.13 The disclosure test for third party material is the same as for any other unused material, yet material is sometimes disclosed when it does not satisfy the test. This means that the CPIA is not being adhered to, as well as giving rise to potential issues under the European Convention on Human Rights. Care should always be taken to ensure that a victim's personal details are not disclosed to the defence unless necessary.

Victims' recorded interviews

11.14 As already highlighted, it has become increasingly common practice for the police to video record interviews with adult rape victims, regardless of whether the recording will be admissible as evidence-in-chief under the provisions of the YJCEA. If the recording is not admissible as evidence, it will fall to be considered for disclosure as unused material.

11.15 Prosecutors do not always watch a victim's interview that has been superseded by an evidential statement. In these circumstances they are ill-equipped to apply the disclosure test, and indeed are not reviewing the case properly.

Previous sexual history

11.16 The victim's previous sexual history will rarely be relevant (the way in which a defendant can introduce it or question a victim about it is restricted by virtue of section 41 of the YJCEA 1999), and whether or not it needs to be disclosed depends on the individual case and whether it falls within the disclosure test. Care should be taken to ensure that it is not disclosed unnecessarily because it is contained in a witness statement and then admitted in evidence because the statement is used at the trial. It is important for the prosecutor to be aware of any relevant information about a victim's previous sexual history that may lead to an application for it to be admitted, and it should be recorded separately.

11.17 Recorded interviews of victims sometimes included inappropriate questions about sexual history. It would be preferable if interviewers dealt

with these issues separately. While some limited information to exclude a recent partner from enquiries may be necessary, FPs also sometimes include past sexual details when taking a history from a victim.

11.18 In some Crown Court centres, the practice is to reserve the argument about whether the defence will be allowed to cross-examine the victim about previous sexual history to the day of the trial. Written applications under section 41 of the YJCEA should be made within 28 days of committal or notice of transfer. This should ensure that genuine and considered applications are made and should enable the prosecution to make an informed response. Research undertaken on behalf of the Home Office and published in 2006 ('Section 41: an evaluation of new legislation regarding sexual history evidence in rape trials') revealed that the vast majority of applications took place at trial and were not made in writing.

11.19 The rules have recently been amended, following consultation with the CPS, and came into force in November 2006. The emphasis is now on the application being heard at the PCMH, with late applications being discouraged, and there will be a question on the new PCMH form which is due to be in place by the end of 2006. If an application succeeds, the court must now give the prosecutor time to consider any consequential need for special measures.

Training

11.20 Training on the amended disclosure procedure appears to have been limited, with many police officers interviewed being unaware of the changes and routinely referring to the old CPIA tests. Out of six members of one group, for example, only one had a copy of the Disclosure Manual and some had never seen it. The 2006 Protocol confirms the need for police training, particularly where responsibility for disclosure is retained by the IO as opposed to dedicated Disclosure Officers. Prosecutors are aware of the law but do not always follow the CPIA procedure. Rape specialists need to follow the new Protocol and be alert to considering particular aspects of unused material associated with rape cases, for example video-recorded interviews and details of sexual or medical history.

Indictments

11.21 The majority of indictments were satisfactory but 26 of the 75 cases examined (34.7 per cent) needed amendment. Five amendments were to reduce the level of the charge, and five to increase it. Six contained the wrong charge and 10 had minor cosmetic errors. The wrong charges included two cases where the date of change in the law was not properly considered. The indictment in another case was misconceived by a non-specialist lawyer and had to be radically amended by counsel.

11.22 Comment was made that CPS precedents were sometimes used without consideration of the need for more detailed particulars of the offence in order to distinguish counts in long indictments. Lawyers should be aware

if this is an issue in their local courts. It is important that the allegations are clear and distinguishable. Particulars were sometimes drafted in the second person (*you raped*) rather than the third person (*John Doe raped*). Although to do so may not be technically wrong, it is usual practice to use the third person. Frequent cosmetic errors can give a disproportionately negative impression of the competence of CPS lawyers.

Instructions to counsel

11.23 The use of a strong prosecution team to build and proactively manage a case is important. Prosecuting counsel, when instructed, is also part of the team. Good instructions to counsel will contain a full analysis of the evidence, setting out the issues in the case, and indicate whether guilty pleas would be acceptable should the defendant plead to a less serious offence or to only some of the counts on the indictment. This latter instruction should indicate the opinion of the reviewing (specialist) lawyer and prevent delays caused by the need to contact the lawyer to take instructions at court.

11.24 Only 31 out of 63 relevant cases (49.2 per cent) had instructions to counsel which contained a summary that adequately addressed the issues in the case. In only 21 of the relevant 45 cases (46.7 per cent) were appropriate instructions given about the acceptability of pleas. These figures, although better than those in the 2002 report, remain disappointing. In the second cycle of HMCPSI reports which covered all CPS Areas and all types of cases, these figures were 72.9 per cent and 49.5 per cent respectively. As rape cases are dealt with by specialists, and it is more important than in many other types of case to deal with the sensitive issues involved, there should be a better quality of instructions.

11.25 There were some examples of excellent instructions showing a complete grasp of the case and other cases where good team work was evident. Most Areas included standard instructions about rape cases which arose from the recommendations in the 2002 report. In one Area, a separate page is inserted in the brief setting out, and therefore highlighting, these specific instructions. The Instructions to Prosecuting Advocates contains a section on rape and serious sexual offences, which sets out the issues that are particularly relevant to prosecuting rape cases. At the very least, any relevant issues should be identified in the instructions and counsel's attention should be drawn to specific sections of the standing instructions that are relevant to the particular case.

Good practice

Including in the instructions to counsel a separate page setting out those instructions that are particularly relevant to rape cases.

Case and file management

11.26 Some rape files can be very large, and good file maintenance is important. Some 54 of the relevant 75 files (72 per cent) were in good order. In some files, however, there was great difficulty in finding information. In particular, the notes of conferences with counsel were apparently missing. In some files it was difficult to distinguish between the original and the amended indictment, and in a few cases the result of the trial could not be found. These shortcomings were raised in the 2002 report.

The use of Compass CMS

11.27 All rape cases should be identified, flagged, reviewed and documents prepared on Compass CMS (the CPS case management system) from the initial advice to the conclusion of the case. The system was examined to ascertain whether the cases in the sample were identified and flagged as rape cases. Where this could be ascertained in instances of advice given to take no further action, only 24 out of 58 cases (41.4 per cent) were flagged. In the charged cases, 46 out of 67 cases were flagged (68.7 per cent).

11.28 The review decision was properly recorded on CMS in 26 out of 54 instances where advice was given to take no further action (48.1 per cent). The recording of cases for charged files was better: the review decision was properly entered on CMS in 54 out of 67 cases (80.6 per cent).

11.29 The figures required for the Area Performance Reviews by the DPP described in paragraph 10.69 were based on cases flagged on CMS. Clearly, the low percentage of cases flagged will adversely affect the accuracy of the data. CPS Headquarters is fully aware of the issue and has noted an improvement of flagging in 2005 compared with 2004. Significant further improvement is required for accurate data to be collected, and for Areas to undertake meaningful performance monitoring.

Strengths

- **There was evidence of a significant improvement since 2002 in relation to the disclosure of sensitive material.**

Areas for improvement

- **Compliance with the prosecution's duties under the CPIA needs to be improved in relation to disclosure, and the timeliness of third party disclosure.**
- **Compliance by all parties to the 2006 Protocol for the management of unused material in the Crown Court, issued by the Court of Appeal, needs to be sought.**
- **Prosecutors need to watch victims' interviews, even where they have been superseded by a written statement, to ensure that they are properly equipped to apply the evidential test.**

- **The large majority of applications made in relation to a victim's previous sexual history under section 41 of the YJCEA take place at trial and are not made in writing.**
- **Where disclosure is undertaken by the IO, as opposed to dedicated Disclosure Officers, there is a need to ensure that they are adequately trained.**
- **There is a need to ensure that prosecuting counsel is regarded as part of the prosecution team and is fully instructed.**

The case *at court*

12 THE CASE AT COURT

The preliminary hearing

12.1 Defendants in rape cases generally appear once in the magistrates' court and are then 'sent' to the Crown Court for the preliminary hearing, where any early indications of plea are taken, and decisions regarding bail are made. These hearings are usually conducted by a CPS prosecutor. Realistic timetables for the service of the prosecution case and further progress should be agreed. In custody cases, full evidence, including medical or forensic evidence, may well not have been obtained. Wherever possible, the officer in the case should attend the hearing, so that decisions are taken in the light of up-to-date information and with full knowledge of all outstanding evidence.

Plea and case management hearings

12.2 The next effective hearing is the PCMH, when all evidence should have been served on the court and defence and disclosure undertaken. The need for continuity of advocate cannot be over-emphasised and it is essential that the trial advocate should, whenever possible, attend this hearing. There is a developing trend for CPS HCAs to prosecute PCMHs as their experience of Crown Court advocacy increases. This is appropriate if they are to prosecute the trial or if trial counsel's non-attendance is unavoidable. The use of inexperienced substitute members of chambers at this important hearing should be avoided.

12.3 In rape cases, many of which are complex cases and likely to be contested, at present, until rape specialism is developed in the CPS cadre of HCAs, counsel are generally instructed for the trial and so the papers should be sent to prosecution counsel in sufficient time for full consideration to be given to the issues prior to the PCMH. This should also give time for a conference with the reviewing lawyer and the police, at which the issues can be fully explored, and decisions made about the content and nature of any applications to be made to the court. The recommendation in the 2002 report that conferences with counsel should take place prior to the PCMH has not been fully implemented – an early conference took place in six out of 59 cases. In 40 cases, no conference was held at all and, in some, the late instruction of counsel resulted in insufficient time for effective preparation.

12.4 When the selected advocate remains with the case throughout, the effectiveness of the prosecution team is enhanced, helping to build the confidence of the victim. However, in only 17 out of 44 relevant cases (38.6 per cent) was the PCMH undertaken by the trial advocate. In one case, five different counsel dealt with hearings. This can result in important applications not being made until close to the trial date and can undermine efforts to ensure that the counsel originally instructed attends the trial.

Good practice

One specialist rape counsel seen during this review prepares a full file note to assist new counsel in any case in which the brief has to be returned.

12.5 Although the need for specific applications was generally identified at an early stage in the cases, current practice in the majority of courts is for applications to await the appointment of the trial judge, which may be very close to the trial date itself. This removes the opportunity for early applications. An early ruling on the admission of 'bad character' evidence could lead to a defendant pleading guilty at a much earlier stage, thereby removing the necessity for a trial hearing to be fixed.

The trial

12.6 When CPS caseworkers attend the Crown Court to assist counsel and HCAs, they provide administrative support, deal with continuity of evidence and exhibits and have a role in witness care. The extent of CPS caseworker support at court in rape cases is variable across the Areas. The 2002 report identified as good practice the attendance of the caseworker at court throughout the trial, and some Areas have made efforts to introduce this. There was universal approval of this practice and, where it had occurred, there were excellent examples of trial notes made by the caseworkers providing a full record of the evidence given and of any applications made during the trial. In addition, both counsel and the judiciary commented on the positive impact caseworker attendance has on the smooth running of the case. Court observations carried out during this review confirmed this.

12.7 In some Areas, caseworker attendance is often limited to the first day of the trial or, at best, while the victim is giving evidence. In other Areas, caseworkers cover a number of courts at the same time, so any support to counsel and the victim in a rape trial is limited.

12.8 Where no caseworker had been present at the trial hearing, it was often very difficult to ascertain what had happened during the trial. Without an accurate record of the trial and evidence given, it is particularly difficult for lessons to be learned and meaningful reports on acquittals to be prepared. The failure by Areas to provide caseworker cover of rape trials undermines the CPS's commitment to these sensitive cases.

Previous sexual history of the victim

12.9 There was a variation in opinions during interviews as to the frequency and appropriateness of section 41 YJCEA applications about previous sexual history. This may well be because of the individual experiences of those interviewed and the lack of monitoring, compared with the findings in the Home Office report, *A gap or a chasm?*, which found much more frequent applications.

12.10 Care and sensitivity are required when dealing with the previous sexual history of the victim. As applications to cross-examine victims are often not made until the morning of the trial, this can have a detrimental impact on victims' welfare and ability to give evidence. Wherever possible, applications should be dealt with well in advance of the trial hearing and the outcome explained to the victim so that they are aware that this is going to happen and have an opportunity to prepare themselves. This is an aspect of the case where the early allocation of the trial judge can have a positive impact on the way the case progresses.

12.11 In the 2002 report, it was recommended that clear instructions should be given to prosecuting advocates about the need to tackle inappropriate cross-examination about previous sexual history. In the current review, a number of instructions were found which drew attention to the duty of prosecution counsel to challenge inappropriate questioning of the victim about previous sexual experience by the defence. Otherwise, prosecutors are relying on the fact that the *Instructions to Prosecuting Advocates* contain instructions to tackle inappropriate questioning. This is not sufficient; at the very least, prosecutors should draw counsel's attention to the relevant section of the standing instructions. During trial observations, where such questions were put they were handled appropriately and sensitively. In one case, however, the judge asked the victim how old her two children were. This made it clear to the jury that the victim was aged 15 at the time she gave birth to her first child. This had no relevance to the issues in the case and might well have been perceived as adverse comment about the victim's lifestyle.

Selection of counsel and returns

12.12 Rape cases are difficult to prosecute and, by their very nature, require sensitive and careful witness-handling skills. They can also involve complex disclosure issues. Cases where the issue is one of consent are often particularly challenging to prosecute, requiring a high degree of skill and care. There is, therefore, a need to ensure that the selection of counsel is made on the basis of full knowledge of their expertise and experience.

12.13 In the main, the judiciary and practitioners considered that there was now parity between prosecution and defence advocates and that, generally, counsel of appropriate experience were being instructed. There were, however, still some concerns that, on occasion, counsel in rape cases were not of sufficient seniority or experience. Only two Areas had compiled a preferred list of counsel to use in rape cases. In other Areas, lawyers and caseworkers tended to use particular sets of chambers, and information was shared about suitability and relevant skills. In some Areas, specialist counsel lists were in the process of being drawn up.

12.14 The importance of continuity of counsel throughout the case has already been highlighted. There are a number of reasons why counsel originally instructed may find themselves unavailable to continue with the case,

including listing practices and other trials running beyond the time originally allocated. A high number of returned briefs were still occurring on rape cases. Within the file sample, there was continuity of counsel in only 50.9 per cent (29 out of 57 relevant cases). Although most Areas had informal systems for ensuring that the return was made to another advocate of suitable ability, monitoring of returns remains generally ad hoc and there was little evidence that the problem was being addressed on an Area level in a structured way with Heads of Chambers.

RECOMMENDATION 12

That Chief Crown Prosecutors ensure that there is continuity of counsel, as well as of specialist prosecutor, throughout the case, and the caseworker in the case should attend court throughout the trial.

12.15 There was some flexibility on the listing of cases to enable counsel originally instructed to attend the trial, for example by putting back the start time so that counsel could conclude speeches in another trial that had overrun. This clearly assists in reducing the number of returns, although it could affect the victim and witnesses, by increasing their waiting time.

12.16 With one exception, counsel interviewed were aware of their obligations to introduce themselves to the victim prior to the start of the trial, and in all Areas except one counsel were found to take this responsibility seriously. Caseworkers commented that they rarely had to ask counsel to speak to the victim, but examples were given of action taken on the rare occasions when counsel had refused to meet the victim.

Advocacy

12.17 Although court observations during the review were limited, the counsel seen were found to be professional and well prepared. The standards of advocacy and the handling of sensitive questions asked of victims were impressive.

12.18 However, formal monitoring of rape advocates is still not generally being undertaken, despite such a recommendation in the 2002 report. Assuring standards of advocacy and case preparation in all cases is crucial in ensuring that rape cases are properly handled so that public confidence is maintained. This is important, bearing in mind the high level of returns and the lack of dedicated caseworker support in some Areas. Where other agencies had noted concerns about case handling by counsel, they had felt able to raise these concerns with the CPS and there was confidence that action had been taken. It is, however, not appropriate to rely on other agencies to report concerns or problems as the only method of monitoring performance in court.

Counsel

12.19 The CPS and the Bar Council are in discussion about making it essential for there to be counsel accreditation for rape. The training of counsel should include an understanding of the psychological impact of rape, as well as the 'softer' skills of dealing with victims.

Listing

12.20 Cases are usually heard at the Crown Court to which they are sent. However, the practice of transferring cases from one Crown Court centre to another still occurs in some Areas. While this may be due to logistical necessity, it can be very detrimental to the victim, particularly when a court familiarisation has been undertaken for the original listed court. It can also affect the provision of previously agreed special measures.

12.21 Trying rape cases involves a high level of judicial expertise, which is acknowledged by the current system of allocation of rape cases to only pre-approved (ticketed) judges. In some Areas, there is a shortage of ticketed judges, which contributes to the delay in allocating the trial judge. The suggestion that each Crown Court centre appoints one or more senior judges to have responsibility for the case management of rape cases from a very early stage has received widespread approval throughout the course of this review. Such a system would bring considerable benefits to the way rape cases progress through the system. Joint action between the courts and the CPS to see whether such a system could be implemented should be explored.

12.22 There was evidence that the practice of warning the victim for the second day of trial was becoming more widespread in rape cases. This enables preliminary and ancillary matters to be dealt with on the first day so that unnecessary attendance and delay are minimised for the victim.

12.23 In some court centres, however, rape cases are still being listed with other cases, and there have been occasions when this has resulted in rape cases having to be adjourned due to lack of court time. This was a concern raised in the 2002 report, and it is disappointing that it is still occurring. There was, however, evidence that the practice of listing trials as 'floater cases', to be slotted in should a court become available, was becoming less widespread in London, where it had previously been prevalent. Every effort needs to be made to list rape trials as single fixed listings so that the chances of delay and adjournment are minimised.

Strengths

- **Improvements in objections to the defence's inappropriate questioning of the victim about previous sexual experience were identified during court observations.**
- **Standards of advocacy in the counsel seen were found to be high.**

- The practice of warning the victim for the second day of trial is becoming more widespread, minimising unnecessary attendance and delay.

Areas for improvement

- CPS caseworker support at court is variable, resulting in limited support to counsel and the victim.
- Continuity of counsel throughout the case remains a difficulty.
- Formal monitoring of rape advocates is still not generally undertaken and there is over-reliance on other agencies to report concerns.
- The practice of transferring cases from one Crown Court to another in some Areas is having an adverse impact on the victim, particularly where court familiarisation has been undertaken.

Victims and *witnesses*

13 VICTIMS AND WITNESSES

Victim care arrangements

13.1 The 2002 report highlighted that the treatment afforded to rape victims throughout the investigative process was key to securing a conviction, and that the ongoing provision of information to the victim, together with liaison, provision of special measures and consideration, would all be important factors in raising the quality of evidence given on behalf of the prosecution.

13.2 Since then, the police and the CPS have introduced victim and witness care arrangements through the 'No Witness, No Justice' initiative, and the CPS has developed its DCV scheme to explain the situation when a charge is withdrawn, discontinued or substantially altered.

13.3 The 10-point Prosecutors' Pledge, introduced by the Attorney General on 21 October 2005, and the Victims' Code of Practice, issued by the Home Secretary under the Domestic Violence, Crime and Victims Act 2004 on 4 April 2006, set out commitments and minimum levels of service to be provided to victims. The Victims' Code provides that a victim of a sexual offence is eligible for enhanced levels of support. The Pledge is directly relevant to rape victims as its essence is that the victim is considered, kept informed and supported at every stage, from the charging decision to sentencing or possible appeal.

13.4 The research conducted for *A gap or a chasm?* found that those victims who were supported throughout did not regret pursuing the case, regardless of the outcome. Conversely, those victims who felt they had received inadequate support said not only that they would not report an allegation of rape again, but that they would advise others not to make such a report. One of the most important ways in which a victim can be supported is by keeping them informed of progress in the case.

13.5 The 2002 report commented on the lack of effective systems to ensure that the victim was kept updated about the case. At that time, it was the responsibility of the police, either through the officer in the case or the criminal justice unit, to keep the victim informed. This responsibility has now passed to WCUs staffed by a combination of CPS and police staff, some with members of the Witness Service attached. Generally, the establishment of the WCUs has been well received and, as a result, many interviewees felt that positive progress had been made in relation to victim and witness care.

13.6 A WCO will contact the victim by way of general introduction once the case has been sent to the Crown Court, and will follow this with written or telephone contact after most court hearings or following significant developments in the case. They will also arrange for a referral to Victim Support. Once the case has been set down for trial, the WCO will undertake a needs assessment with the victim and arrange for a court

familiarisation visit with the Witness Service. If the victim fails to respond to contact with the WCU, the WCU will arrange for the officer in the case to visit the victim.

13.7 Despite the establishment of WCUs, in some Areas there remained a lack of clarity as to who was responsible for contacting the rape victim at each stage and what the victim should be told. There was some duplication of communication by the WCU, the police, Victim Support and the Witness Service, but there were also examples of the victim receiving little or no information as a result of lack of clarity of roles. The Victims' Code sets out the responsibilities for each agency in relation to communication with the victim. In cases involving vulnerable or intimidated witnesses, the WCU must now notify such a witness of the outcome of special measures applications, any pre-trial hearings and the requirement to give evidence within one working day.

Good practice

In South Wales, a joint protocol has been drafted which sets out who is responsible for what in relation to victim contact in each case.

Liaison with victims about decisions in cases

13.8 The CPS does not act directly on behalf of victims or represent them in court, but the impact on a victim should be taken into account when prosecutors are making decisions in cases and the views of the victim should be sought when considering the acceptability of pleas of guilty.

13.9 In the 2002 report, the victim was consulted in 13 out of 23 cases (56.5 per cent) where the decision was made to drop the case. Although all the CPS and counsel interviewees stated that they would always consult with the victim prior to dropping a case or accepting pleas, this was not fully supported by the current file examination, which showed a slight reduction in performance. There was evidence of consultation in 11 out of 21 cases (52.4 per cent). The Pledge contains a commitment to seek the victim's views and the importance of consultation is re-emphasised.

13.10 Since the 2002 report, the DCV scheme has been introduced into all Areas. Under this scheme, in any case where a decision is made to drop or substantially alter the charges, the CPS will write to the victim within five working days, explaining the reasons for the decision and, in cases of a sexual nature, offering a meeting. Under the Victims' Code, the timescales have been reduced to one working day. Awareness of the scheme among CPS interviewees was good, but victims were informed in accordance with the scheme in only 11 out of 24 cases in the files examined (45.8 per cent in the current sample).

13.11 The 'No Witness, No Justice' pilot evaluation recommended that, where resources allow, consideration should be given to integrating the staff responsibility for drafting DCV letters into the WCU. The benefits of this

are that it provides a single point of contact for communication with victims and greater value for money. Northumbria and Essex have implemented this and Essex's timeliness in sending letters has significantly improved as a result.

Good practice

Co-location of WCU and DCV co-ordinator.

Victim care after the conclusion of the investigation

13.12 During the initial stages of the investigation, responsibility for ensuring that victims are updated on the progress of enquiries rests with the police, and with the STO – sometimes jointly with the IO – in particular. There was good evidence from interviews of heightened awareness of the importance of contact in ensuring that victim engagement is not lost, particularly among STOs. Again, however, there was evidence of a lack of clarity over who was responsible for contacting the victim at each stage (see paragraph 13.7). This needs to be clarified locally, as concerns about contact with victims continued to be expressed during interviews with representatives from support agencies.

13.13 As the end of the investigation approaches, consideration needs to be given to the level of police contact required thereafter and the point at which it should cease. The 2002 report highlighted the requirement for this to be handled sensitively and according to the circumstances and needs of individual cases and victims.

13.14 This is reiterated in the ACPO guidance, which also highlights the need to ensure that contact post-trial does not come to an abrupt end, and that, irrespective of the outcome of the investigation, a final debrief is held with the victim to ensure that nothing has been overlooked. In addition, the STO should ensure that a victim is aware of how to contact the police service in the future should any new issues relating to the case arise.

13.15 The most effective way to ensure that these aims are met is through the development of a strategy, planned jointly by the STO and the IO. This would also allow for other contacts and avenues of support accessed by the victim to be taken into account and for any gaps to be identified and addressed before contact with the police comes to an end.

Court familiarisation visits

13.16 Under the Victims' Code, the WCU is responsible for sending victims who are to give evidence the *Going to Court* leaflet that explains what the Witness Service does, including pre-court familiarisation visits, and for providing the Witness Service with the details of the witnesses, the nature of the offence and any special measures that have been granted.

13.17 In some Areas, the pre-court visit is also attended by the IO or STO. The CPS is rarely present at the visit and only a minority of the files read

contained information about a visit. This is an important aspect of witness care, which has been highlighted in research. It could be utilised by the CPS to link to a meeting at which a joint and informed decision could be made on any appropriate special measures to help the victim give the best quality evidence (see paragraph 13.24).

Personal contact with victims at court

13.18 Attending court to give evidence in a rape case can be traumatic for victims and it is important that a proper level of support is given to them at court. The Witness Service plays a pivotal role in this but it is essential that victims are also kept informed of the progress of the case in court. This will normally be the responsibility of the CPS caseworker. In those Areas with good levels of coverage, caseworkers routinely introduced themselves to victims and ensured that they were kept well informed of developments in the case either by direct contact or through the Witness Service.

13.19 There has been a significant improvement in the level of contact by counsel with victims and witnesses and a good awareness by caseworkers of the need to ensure that counsel speaks to victims at court. During the course of court observations, examples of good practice were seen, with counsel, the caseworker and police working together as a team. In one case where the victim was in custody on unrelated matters, all three visited her in the cells to introduce themselves, explain the procedure and try to put her at ease before giving evidence.

13.20 In CPS Leicestershire, the good practice highlighted in the 2002 report of contacting counsel to remind them of the need to introduce themselves to victims has been adopted.

Victim personal statements

13.21 The VPS scheme was introduced in 2001. Its purpose is to give victims a voice in the proceedings. The statement should cover the effect the crime has had on the victim and any concerns over the granting of bail. Ideally, the statement should be taken at the same time as the witness statement, and it can be updated at any time before the case is heard.

13.22 Generally, interviewees showed a good awareness of the scheme and counsel commented that they would always ensure that a VPS was placed before a judge on sentencing. However, in the file sample, a VPS was present in 24 out of 57 appropriate cases (42.1 per cent), but it was only possible to tell that it had been used in 15 cases.

13.23 The timing and method of taking the VPS varied from case to case. In some instances, the VPS formed part of the victim's statement, and in those cases it was not clear if the VPS had been used by the prosecutor when opposing bail. Where the victim's evidence had been video recorded, the VPS was dealt with at the end of the video. There is an inherent risk that a VPS taken in this way might be 'lost' where the video is treated as

unused material, or where the reviewing lawyer does not view the video. In other cases, the VPS was taken close to the trial date, presumably so that the court would have the most up-to-date information on the impact of the rape on the victim. The ideal approach is for a VPS to be taken at an early stage and for it to be updated when the date of the trial is imminent.

Special measures

13.24 *Early Special Measures Meetings between the Police and the CPS and Meetings between the CPS and Vulnerable or Intimidated Witnesses: Practice Guidance* (the guidance) sets out the procedure for holding an early meeting between the police and the CPS to determine whether a witness may be eligible for special measures, and which measures to apply for; it also offers guidance to the CPS on holding meetings with vulnerable or intimidated witnesses, their purpose and scope. In the 2002 report, comment was made on the introduction of early special measures meetings and it was suggested that there should be structured monitoring of the implementation of the guidance. Despite this, only two meetings had taken place in the current file sample of 55 relevant cases.

13.25 There was a very good understanding by prosecutors of special measures in general, and there was evidence from the files examined that special measures had been considered appropriately at each stage in 58 out of 70 relevant cases (82.9 per cent). However, because lawyers were not attending early special measures meetings, applications for special measures were based on the initial assessment of the victim's needs made by the officer in the case. There was background information on the needs and capabilities of the victim in 33 out of 59 relevant cases (55.9 per cent), and the CPS made the appropriate applications in 38 out of 54 relevant cases (70.4 per cent).

13.26 Despite the guidance, which states that the views and preferences of the victim are to be taken into account when making applications for special measures, there was a widely held view among criminal law practitioners that evidence given in the courtroom is best as it has the greatest impact on a jury. There were examples of victims being actively encouraged to give evidence live. In one case, an application was made for screens but at the trial the victim requested, and was granted, use of the link. There was a file endorsement showing that counsel had tried to persuade the victim to give evidence in the courtroom.

Effectiveness of special measures

13.27 The Home Office published its research paper *Are special measures working?* on 26 January 2006. This paper looked at the effectiveness of the implementation of special measures. It concluded that the prosecution team was not effective enough in its early identification of vulnerable and intimidated witnesses, that of the non-statutory special measures the pre-

court familiarisation visit was the most effective, and that there was no evidence of any early special measures meetings taking place.

13.28 The CPS conducted a monitoring exercise between April 2003 and March 2006 and has now published its own research, *Special measures for vulnerable and intimidated witnesses: An analysis of CPS monitoring data*. During the monitoring period, applications for special measures were made on behalf of 4,920 witnesses and were granted to 4,838 witnesses (98.3 per cent), of which the most popular were television link (3,752 or 77.6 per cent) and video-recorded evidence-in-chief (1,748 or 36.1 per cent). The research concluded that the use of television link or video-recorded evidence-in-chief had no adverse effect on the number of guilty pleas or convictions after trial, and that the provision of special measures assisted witnesses who otherwise might not have given evidence at all.

13.29 In its consultation paper in relation to rape offences (issued in the spring of 2006), the OCJR raised the issue of whether video-recorded statements by adult victims in serious sexual offences should be automatically admissible as evidence-in-chief, subject to the 'interests of justice' test. The pilot schemes await evaluation at present, and the comments of some members of the Bar and the judiciary interviewed for this review conflicted with the CPS research findings as to the impact of evidence given in person compared with over a video link. Additionally, there were adverse comments on the quality of video-recorded interviews relating to interview techniques and the recording and/or playback quality. Without jury research on this aspect (and this cannot be undertaken without legislative change), there can be no conclusive proof. The possibility of legislative change to enable jury research on this topic should be considered.

Diversity

13.30 At the time of the 2002 inspection, diversity issues were considered primarily in relation to ethnicity and gender. An attempt was made to gather data from police crime reports; however, this was hampered by limited recording and some deficiencies in recording practice. A similar attempt was made during the current review. Although the police in all seven forces visited included recording of ethnicity and gender within their crime reports, the relevant information fields were not always completed. In addition, where information about ethnicity was included, definitions were not consistent across the review sites, making data gathering and analysis unreliable.

13.31 This situation raises questions about monitoring. Although there is no requirement to monitor diversity or related issues, such as vulnerability, within the context of rape offences, it would clearly assist in developing and improving the service to victims, particularly where agencies already have the capability to gather relevant information.

13.32 In any event, it is essential that diversity issues and their impact on vulnerability are identified and considered at the earliest possible stage of an investigation, so that the appropriate support can be offered to the victim. The police should take note of issues such as language difficulties, cultural issues, physical disabilities or learning difficulties at the pre-charge advice stage and include these within background information submitted to the CPS on the needs and capabilities of the victim. The ethnicity of the defendant and victim should also be noted by the police on the paperwork submitted to the CPS for pre-charge advice. The person registering the case within the CPS should thereafter record this on Compass CMS. Apart from this, there is no formal monitoring of diversity issues by the CPS.

13.33 More comprehensive information was obtained during the file reading, although even here there were gaps. In addition, some of the resulting sample sizes were too small to allow any statistically significant conclusions to be drawn. For example, the total file sample of 145 cases involved 151 victims, of whom almost 90 per cent (135) were white. (This is similar to the findings of *A gap or a chasm?*, where black and minority ethnic women made up 8 per cent of service users within the study.) There were only 10 cases within the file sample involving male victims.

13.34 An effective service is one that not only understands and recognises that people have different needs, but makes provisions for those differences. More detailed examination of the cases within the file sample is revealing in terms of the range of vulnerabilities that both the police and prosecutors need to consider when provisions are made for victims' needs. These are outlined in Table 13.1 below. (It should be noted that there were some cases where the victim was identified as having complex needs.)

Table 13.1: Victim diversity/vulnerability issues – charged and advice files reading samples

Victim diversity/vulnerability issues	Charged files	Advice files	Total
Unknown	17	16	33
None identified	35	32	67
Issue identified	27	24	51
Total number of victims	**79**	**72**	**151**
Mental health	9	11	20
Special needs/learning/ behavioural difficulties	6	8	14
Language	4	2	6
Alcohol/drug dependency	2	4	6
Domestic violence	4	1	5
Physical disability/frailty/health issues	4	0	4
Immigration status	1	0	1
Gender reassignment	0	1	1

13.35 In 33 instances (21.9 per cent), it was not possible to establish whether there were any diversity or vulnerability issues. Of the remaining 118, either a vulnerability or a diversity issue was identified in 50 instances (42.4 per cent). Within these 50, the most frequently identified vulnerability was mental health (40.0 per cent), followed by special needs, learning or behavioural difficulties (28.0 per cent).[9]

13.36 In *A gap or a chasm?*, reference is made to two studies (Harris and Grace, 1999, and Lea et al, 2003) that document "the failure of cases involving women with learning difficulties and mental health problems to progress through the system". Although it was not possible to determine whether these issues had impacted on decision making within the advice file sample, it was possible to track the relevant cases within the charged file sample to their outcome. Within that file sample, there were 79 victims, of whom 15 were vulnerable as a result of mental health problems or learning difficulties (see Table 13.1). The conviction rate in these cases was 33 per cent (five cases); the overall conviction rate for the charged sample was 52 per cent.

13.37 Although, the actual conviction rate must be treated with caution due to the small number of relevant cases, the findings, when taken together with those from other research, indicate a likely poorer outcome for a particularly vulnerable group of people. In addition, given the high proportion of cases within the overall file sample where a diversity or vulnerability issue was identified, it is essential that the areas for improvement highlighted by this review in relation to special measures are acted upon – beginning with the early identification of vulnerable and intimidated witnesses and early special measures meetings between the police and the CPS.

Strengths

- **Witness care arrangements have been introduced by the police and the CPS through the 'No Witness, No Justice' initiative and WCUs have been established.**
- **The Victims' Code of Practice sets minimum levels of service to be provided to victims.**
- **The 10-point Prosecutors' Pledge sets out the CPS commitment to victims.**
- **The CPS DCV scheme sets out timescales for notifying victims of certain CPS decisions.**
- **There has been significant improvement in the level of contact by prosecuting counsel with victims and witnesses.**
- **Overall, there is good awareness of the VPS scheme.**

9 The analysis in this paragraph is based on the total number of victims (151) as opposed to the number of cases (145) within the file sample.

- There is very good understanding of special measures by prosecutors and these are actively considered in relevant cases.

Areas for improvement

- There remains some lack of clarity as to who is responsible for contacting victims at each stage of the criminal justice process and what the victim should be told, resulting in either duplication of or gaps in information provision.
- Compliance with notifications under the DCV scheme requires significant improvement.
- The timing and method of taking the VPS are variable.
- Early special measures meetings between the police and the CPS are rarely taking place in practice, resulting in applications being made on the basis of the initial assessment of victims' needs carried out by the police.
- Pre-court familiarisation visits for victims need to be undertaken systematically and, where feasible, to inform decisions on any special measures to be sought.
- There are currently no arrangements in place for monitoring diversity and vulnerability issues locally to ensure that relevant services are available and that gaps in services are identified.

Safeguarding *children*

14 SAFEGUARDING CHILDREN

Background

14.1 *Safeguarding Children*, the second Joint Chief Inspectors' report on arrangements to safeguard children, published in July 2005, states that children who are victims in criminal proceedings need special care.

14.2 In 2005, HMIC published its thematic inspection report on the investigation and prevention of child abuse, *Keeping safe, staying safe*, making seven recommendations for improvement. The recommendations and findings have been incorporated into the HMIC baseline assessment process, which is used to assess force performance.

14.3 The inspection found that, overall, there was very positive feedback from Area Child Protection Committee (ACPC) chairs and representatives about the level of representation, attendance, involvement and commitment of the police on ACPC committees and sub-committees. Links between the CPS and local ACPCs – now Local Safeguarding Children Boards (LSCBs) – were found to vary between Areas. The CPS is not a statutory partner in the LSCBs, although prosecutors in one Area were involved.

14.4 All forces have specialist Child Abuse Investigation Units. Although, as already highlighted, their remit tends to be restricted to the investigation of intra-familial child abuse, child abuse investigators can provide a source of expertise in cases involving children and there are well-established links between the police and social services. CPS child abuse specialists deal with cases involving child victims. *Safeguarding Children* found that most files were properly flagged as child abuse cases and were allocated to CPS child abuse specialists.

14.5 In 2005, ACPO published *Guidance on Investigating Child Abuse and Safeguarding Children*, which provides the police service with clear information on the subject. The CPS published its policy on prosecuting criminal cases involving children and young people as victims and witnesses (*Children and Young People*) in June 2006. It is written for the parents and carers of child victims and witnesses, and for those whose job it is to support children. The policy brings together the principles of the Code for Crown Prosecutors, the Witness Charter, the Prosecutors' Pledge and the Victims' Code and applies them to children.

Child abuse cases

14.6 The charged case sample included 29 cases involving child victims under the age of 18. There were 21 convictions (72.4 per cent), a far higher ratio than among cases involving adult victims. There were 12 guilty pleas, and nine convictions after trial and eight acquittals. Twelve of the defendants were family members, 16 were acquaintances and one was a stranger. Cases involving children have their own particular issues and there are special provisions to offer added safeguards to victims who are not yet adult.

Good practice

Some Areas, including CPS Nottinghamshire, Lincolnshire and Derbyshire, have jointly compiled a child abuse manual and hold training workshops. CPS Nottinghamshire has developed a comprehensive MG3/case analysis structure (checklist) for use throughout the case.

Use of video evidence

14.7 It is usual practice for interviews with child victims to be video recorded (the poor quality of some interviews has been referred to in paragraph 13.29). All children below the age of 17 are considered to be vulnerable under the YJCEA and eligible for special measures. This results in the majority of interviews being shown in the trial, with the child not having to give live evidence-in-chief but appearing over a television link for cross-examination. The principle of children's evidence being received in this way seems to be entirely accepted with no suggestions, as were made in the case of adults, that appearing over live link weakens the impact of a victim's account.

14.8 *Safeguarding Children* reports that, in many cases, there is no evidence that prosecutors have watched and assessed the quality of a child's interview. Interviews with prosecutors confirmed that some do not watch every interview due to insufficient time, while others always watch a child's video. It is imperative that such videos are watched and the file endorsed as to content and quality.

14.9 A request should be made for a transcription of a child's interview once a decision has been made that the case is to proceed (unless there is to be a guilty plea). There can be delays in obtaining transcripts, and counsel provided examples of cases when they were not available until after the PCMH. It is essential for efficient case management that transcripts are obtained promptly.

Special measures

14.10 The NSPCC, in its research *In their own words: The experiences of 50 young witnesses in criminal proceedings* (December 2004), emphasises how traumatic it is for children to give evidence at court. The use of intermediaries is currently being piloted and will, once rolled out, provide another useful measure, particularly for very young children.

14.11 NSPCC research revealed that many children are afraid of being seen by the defendant over the television link. This was confirmed by representatives of the Witness Service who consistently raised the issue of the victim's shock on finding that the defendant could watch them on the court's television. Had this been explained to them earlier, they would have opted for screens. An example was given of one case in which the television had been covered to prevent the defendant from seeing the witness. It is important that children and their carers should be fully informed of the

procedures that will apply and are given the opportunity to express their views.

The Sexual Offences Act 2003

14.12 Since the 2002 inspection, the SOA has introduced a range of offences specific to children. The offence of sexual activity with a child under 16 does not require proof of lack of consent. The offence is similar to the previous offence of unlawful sexual intercourse with a girl under 16, but carries a heavier penalty, 14 years' imprisonment instead of two.

14.13 If there was no consent, the charge should be one of rape contrary to section 1 of the SOA. Rape of a child under 16 and sexual activity with a child under 16 are separate and distinguishable offences and it may well be appropriate to have alternative counts on the indictment. The selection of charges and acceptance of pleas will require careful consideration by prosecutors, bearing in mind the strength of the evidence, the tendering of a plea to the lesser offence and the possibility of an acquittal on both offences. One such case involved an allegation of rape on a 14-year-old victim, where the defendant claimed that she consented and that he believed her to be 16.

14.14 The nature and degree of actual consent, and the different maximum sentences, will affect mitigation and sentence. Many offences involving child victims are committed by older acquaintances or family members, and each case must be decided on its own facts. This is highlighted as an issue on which prosecutors would benefit from more guidance, and which could be included in the training for rape specialists that was recommended in Chapter 8. It might be helpful if there were judicial or Sentencing Council guidance on the sentencing for each offence. This would assist in selection of the appropriate offence on the facts in each case.

Strengths

- **Child abuse investigations have been mainstreamed into HMIC's baseline assessment process.**
- **The police are active partners on LSCBs (previously ACPCs) and there are well-established links with key partners, particularly social services.**
- **All forces have Child Abuse Investigation Units that provide a source of expertise in child abuse investigations.**
- **CPS cases involving child victims are dealt with by child abuse specialists.**
- **ACPO has published** ***Guidance on Investigating Child Abuse and Safeguarding Children*****.**
- **The CPS has published policy on prosecuting criminal cases involving children and young people as victims and witnesses.**

- There are special provisions to offer added safeguards to victims who are not yet adult.

Areas for improvement

- Video interviews of children are not always watched by prosecutors.
- There can be delays in obtaining transcripts of video interviews and this has an adverse impact on case management.
- There is a need for guidance to assist prosecutors in selecting the most appropriate offence in cases involving children under sections 1 and 9 of the SOA.

Partnership*working*

15 PARTNERSHIP WORKING

15.1 In 2003, following the Government White Paper, *Justice for all*, Local Criminal Justice Boards (LCJBs) were established to promote the concept of joint working between agencies and therefore to improve the performance of, and public confidence in, the CJS. Since then there has been greater co-operation between the key agencies involved in the criminal justice process, both at strategic and operational level.

15.2 This review found a number of good examples at operational level of prosecutors and police officers working closely together, both with each other and with members of other agencies. This included mutual training exchanges, sharing of information, joint monitoring of case progress and referrals to support services. However, there was less evidence of joint working with partner agencies at a strategic level, although membership of LCJBs afforded some opportunities for liaison.

15.3 While the view within the majority of the review sites was that there were effective links with key partner agencies, in practice partnership working within the context of rape was often found to be disjointed. As a result, some organisations were working in isolation, unaware of the work of other partners. In addition, there were generally no forums where **all** agencies (both statutory and voluntary) could come together on a regular basis to discuss issues relating to their contribution to the criminal justice process. There were exceptions locally, for example in Leicestershire, where a Sexual Violence Forum had recently been established under the Crime and Disorder Reduction Partnership. However, the overall picture that emerged during the review was that partnership working in this area is underdeveloped, particularly when compared with issues such as domestic violence and safeguarding children.

15.4 Even where SARCs had been established, there were partnership gaps identified at a strategic level. For example, in one review site visited, although SARC management meetings were held, neither the police nor the CPS attended, and some of the specialist prosecutors interviewed had little knowledge of the work of the SARC, particularly as regards its ability to support victims. In another, the CPS had not been invited to join the committee tasked with considering the future establishment of a SARC in the area. This situation was also reflected in the findings of the Home Office Research Study *Sexual Assault Referral Centres: Developing good practice and maximising potentials*,[10] published in 2004, which found that "apart from involvement in management committees, inter-agency links on sexual assault are minimal when compared with domestic violence", and "although there is regular contact between SARC staff and police officers, in the main this is limited to the practical necessities of individual cases".

10 Liz Kelly, Jo Lovett and Linda Regan, *Sexual Assault Referral Centres: Developing good practice and maximising potentials*, Home Office Research Study 285, 2004.

15.5 Links with voluntary sector organisations and the Witness Service were also found to be fragmented. Although there were established procedures at local level for liaison and referral on a case-by-case basis, there were concerns expressed by some interviewees during the review that lack of co-ordination across agencies was resulting in some victims not receiving full access to all available services. Importantly, this lack of co-ordination was also found to be resulting in lost opportunities for feedback from service providers and, consequently, in the early identification of areas for improvement in victim treatment and care. For example, during interview, Rape Crisis representatives in one area highlighted difficulties locally in relation to the lack of regular victim updates about case progress, together with the lack of provision of information on specialist support and counselling services. These were also among the most frequently reported areas for improvement in the rape stocktake survey of key stakeholders. Conversely, in another area, the Victim Support Service Strategic Manager described working closely with the police at a strategic level in developing and modernising the victim support service, as well as with both the police and Rape Crisis in relation to improving the referral process. In yet another, the CPS had developed close links with the Witness Service and Victim Support through attendance at the victims and witnesses subgroup of the LCJB.

15.6 Partnership working is a firmly established concept and significant practical benefits have been gained across a range of criminal justice issues through close collaboration between partners and joint working. *The National Service Guidelines for Developing Sexual Assault Referral Centres*, published in October 2005, highlights the importance of inter-agency co-ordination for ensuring a comprehensive response to victims of sexual violence, with the involvement of the voluntary sector, the local authority, the CPS and Crime and Disorder Reduction Partnerships, as well as the police and health services. Partnership working within the context of rape and sexual violence now needs to be taken forward on a more formalised and structured footing at a strategic level across police forces, CPS Areas and local authorities to ensure that services are co-ordinated and developed effectively.

Strengths

- **Partnership working is a well established concept and existing structures, such as Crime and Disorder Reduction Partnerships and LCJBs, provide opportunities for local partnerships to be formalised and strengthened.**
- **Good examples were found of close joint working at operational level (although consistency remains an issue) and there are well established procedures at local level for liaison and referral on a case-by-case basis.**

Areas for improvement

- **Within the context of rape, partnership working at a strategic level was often found to be disjointed and needs to be taken forward on a more structured and formalised footing.**
- **There were generally no forums where all agencies could come together, and partnership working was found to be underdeveloped when compared with issues such as domestic violence and safeguarding children.**
- **Lack of co-ordination across agencies was found to be resulting in some victims not receiving full access to all available services and lost opportunities for feedback.**

Attrition

16 ATTRITION

16.1 Attrition has provided an important context for this review and has been a recurring theme throughout. The figures from research present a picture of high levels of attrition and declining conviction rates set against a background of decreasing detection rates. Home Office figures show that the actual numbers of convictions are increasing year on year:[11]

- 2002: 640
- 2003: 666
- 2004: 702
- 2005: 728.

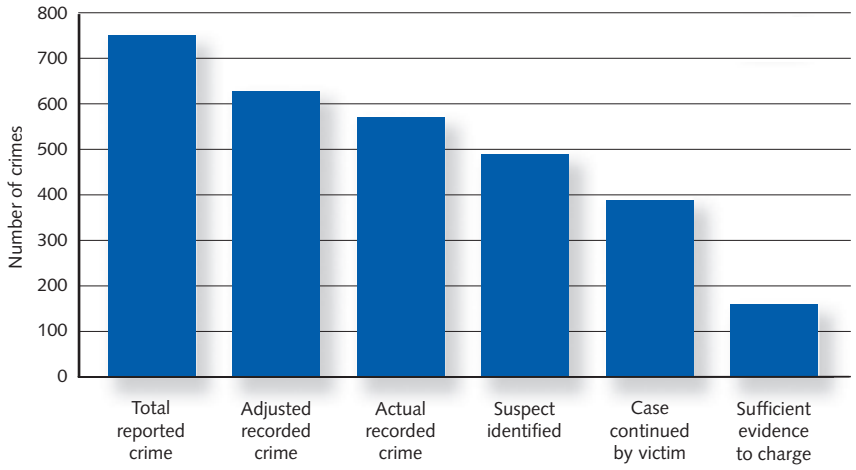
However, this increase is not keeping pace with increased reporting, and, therefore, the justice gap for victims of rape is widening. That said, there is also an important context within which the interpretation of data on attrition must be considered.

16.2 Over the years, huge disparities in the way in which police forces recorded and subsequently classified reports of rape have meant that levels of crime and comparisons across forces were difficult to measure accurately. This resulted in a review of the HOCR in April 1998, which changed the way in which detections were defined, and the introduction of the NCRS in 2002, which now provides an agreed standard across the police service for the recording of crime. Improved recording practices under both the HOCR and NCRS have undoubtedly resulted in increases in levels of recorded crime, which, in turn, will have impacted on detection rates. However, the difficulty in accurately measuring this impact remains. When increased reporting and changes to the definition of rape are also taken into account, this makes direct comparisons with early data on attrition unreliable.

16.3 The drive to understand attrition in rape cases continues. Although quantifying attrition may not be straightforward, studies in recent years confirm the widening justice gap and provide consistent messages to all those involved in the investigation and prosecution of rape offences about the key points at which attrition occurs and the factors that impact on attrition. Figure 16.1 below summarises this review's findings in relation to attrition during the investigation stage. The data are taken from the crime report examination for the year 2005.

11 Figures given are for rape of a female only.

Figure 16.1: Summary of attrition (2005 crime report sample)



16.4 This review has found that attrition during the investigation stage begins early. In every case where an incident is reported, a decision has to be made as to whether a crime has been committed. If so, it must be recorded and the rules on 'no criming' thereafter are clear. Of the 752 reported crimes examined for 2005, 179 were 'no crimed' (23.8 per cent). Of these, 57 (31.8 per cent) were non-compliant with the HOCR and should have remained as recorded crimes. This aspect of attrition remains largely hidden; however, two significant factors were identified in influencing the police decision to 'no crime' in these cases:

- the decision by the victim not to complete the initial process or to withdraw support for the investigation or prosecution (21 cases); or
- the view that the victim or their account lacked credibility (18 cases).

Although the numbers themselves may seem relatively small when set within the context of overall reported and recorded crime, their impact, as discussed in Chapter 3, is significant.

16.5 Of the 573 **actual** recorded crimes, the suspect was known to the victim or identified following investigation in 491 cases (85.7 per cent). Unlike most other types of crime, with crimes of rape the victim and suspect are known to one another in the majority of cases. This means that in a large number of cases the main evidential issue is one of consent as opposed to identification. In examining the investigation process, this review has found that there is a need to challenge consent defences more rigorously and give greater consideration to the use of 'bad character' evidence. Interviews with suspects need to be better planned and interviewers must be properly trained. Improved planning is also required in relation to the gathering of evidence to ensure not only that forensic opportunities are maximised, but that opportunities to gather other types of evidence, such as fingerprints, are fully explored. Supervisors have a key part to play throughout the process and supervisory reviews are important in maintaining momentum in investigations and providing direction where required.

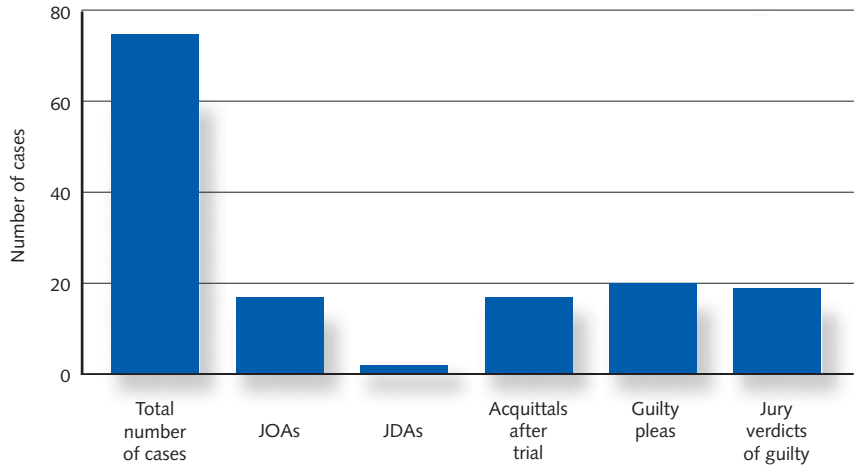
16.6 Of the 491 cases where the suspect was identified, the victim chose not to complete the initial process or withdrew support for the investigation or prosecution in at least 102 cases (20.8 per cent). The reasons for such withdrawals are well documented in research, and the steps that have been taken by the police and the CPS to encourage and support victims of rape to remain engaged in the criminal justice process are acknowledged. For example, the introduction of the STO role, SARCs, WCUs, CPS rape co-ordinators, specialist lawyers and specialist caseworkers is, without doubt, leading to improvements in the CJS response in rape cases and a more professional approach to the treatment and care of victims. However, 'intention' is not yet translating into fully effective practice on the ground, and several fundamental difficulties persist that are constraining the potential for more significant and sustained improvement. In addition, partnership working is underdeveloped and opportunities are being missed to provide more integrated and comprehensive care for victims.

16.7 Of the 389 cases where there was continued support by the victim, the offender was charged in 160 (41.1 per cent). The main reason why no charges were brought in the remaining cases (229) was that there was insufficient evidence. It was not possible to establish from the crime reports whether any more could have been done to build the case in any of these instances. However, in three-quarters of the 229 cases, no further action was taken on the advice of the CPS. The quality of pre-charge advice and decisions was examined as part of the file reading carried out during this review. This showed that the evidential test had been properly applied by prosecutors in almost every case (98.6 per cent).

16.8 There were cases identified, however, where lines of enquiry had not been fully explored and where further enquiries might have resulted in sufficient evidence to prosecute. In addition, file quality was found to be variable, with some, for example, missing essential statements and other documentation. These and related issues, such as the impact of alcohol and the need for early identification and consideration of vulnerability issues, have already been discussed in this report. A recurring theme, however, is the need to strengthen communication between, and co-ordination of, all those involved in the investigation and prosecution of rape offences. The development of the 'prosecution team' approach, in which, at the very least, the police and prosecutors work closely together to build and strengthen cases, is strongly supported. There is also a need to ensure that debriefs, involving the police and prosecutors, of both successful and unsuccessful cases take place in order to learn from experience, build up expertise and develop high-quality case decision making and handling.

16.9 Information in the crime reports about case outcomes following charge was limited. This is not unusual, as the results of court cases, for example, are recorded on the Police National Computer (PNC). However, case results were available from the file reading and are shown in Figure 16.2 below.

Figure 16.2: Case results (charged file sample)



A sample of 75 cases was examined in which a defendant was charged and brought into the court process. The CPS subsequently offered no evidence in 17 cases (22.7 per cent) (judge ordered acquittals or JOAs) and 19 defendants (25.6 per cent) were acquitted after trial, including 2 on the direction of the judge (judge directed acquittals or JDAs). There was a total of 39 convictions (52 per cent), made up of 20 guilty pleas and 19 jury verdicts of guilty.

16.10 These cases are analysed in more detail in Chapter 10. The findings of the analysis highlight the importance of the beginning-to-end handling of a case by a single specialist lawyer with real expertise in rape cases, to build a strong case in conjunction with the IO and to maintain continuity of approach to the case within the prosecution team. Another important feature is the need to ensure that an informed second opinion is obtained by a rape specialist lawyer in relation to decisions to drop a prosecution or not to prosecute. Case preparation must provide for the victim's evidence in the case to be presented in the best possible manner, and legislative measures in relation to the admissibility of evidence, for example hearsay and 'bad character', or in relation to restrictions on the admissibility of previous sexual history, must be followed rigorously but fairly.

Conclusion

16.11 This review recognises the efforts already made on the part of the police and the CPS since the inspection in 2002 to develop and improve their responses to the investigation and prosecution of rape offences. The key points at which attrition occurs provide valuable lessons about what must take place to ensure that investigations and prosecutions are as effective as possible, and much has already been learned. Challenges remain, some of which continue to be significant. In many cases, however, it is not necessarily about changing what is done, but ensuring instead that what is done is effective and is carried out to a consistently high standard, and that the efforts of those involved are properly supported and co-ordinated.

16.12 Victims of rape remain at the heart of this process. In no other crime is the victim subject to so much scrutiny during an investigation or at trial; nor is the potential for victims to be re-traumatised during these processes as high in any other crime. It should not be surprising, therefore, that so many choose not to report or not to continue with the process. Maintaining victim confidence in the criminal justice process, however, is absolutely key if offenders are to be brought to justice. Although successful criminal justice outcomes can never be guaranteed, the aim should be that, irrespective of the outcome, from the victim's perspective their treatment and care has been of the highest standard and they can be assured that everything possible was done to carry out a thorough investigation, build a strong case and present it well.

Appendices

APPENDIX 1: IMPLEMENTATION OF RECOMMENDATIONS/SUGGESTIONS FROM THE 2002 THEMATIC INSPECTION REPORT

RECOMMENDATIONS		POSITION IN MARCH/APRIL 2006
R1	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.	**Substantial progress** The rape stocktake showed that facilities have been reviewed across the country, resulting in significant improvements in some areas. However, variations in the quality of facilities still exist.
R2	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.	**Not progressed** A review of the role of FP (previously FME) has not been carried out and considerable problems continue in the recruitment, retention, training and management of FPs.
R3	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.	**Some progress** The development of a national training package for core investigative roles was delayed due to the diversion of resources to the PIP, but it is now being progressed. A new sexual offences investigation training project is under way to develop training for roles ranging from STOs to PIP level 4.
R4	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.	**Substantial progress** The rape stocktake showed that 20 forces had introduced an STO and all had carried out risk assessments on the role, although there is still more to be done in this area.
R5	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.	**Some progress** Initial attempts to address this issue, including piloting a 'case concluded' category, did not produce meaningful results and this is an area that requires to be revisited. The Home Office is currently undertaking research to look at the factors affecting the decline and variation in detection rates.
R6	ACPO introduces realistic timescales for the submission of advice files for all offences.	**Limited progress** In general, the submission of advice files is governed by local protocols but there has been no central protocol agreed for this purpose. There remains inconsistency across the country.

RECOMMENDATIONS		POSITION IN MARCH/APRIL 2006
R7	ACPO and Chief Crown Prosecutors should agree protocols in relation to the submission of advice files in rape cases.	**Limited progress** The charging initiative should have eliminated the need for this, but there are substantial variations in practice between and within Areas.
R8	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).	**Limited progress** Statutory charging means that when the threshold test applies, only an expedited file is needed. Performance is patchy in relation to the remainder of files. Some Areas follow the recommendation to the letter, others do not.
R9	Prosecutors make full records on files of review decisions in cases involving allegations of rape.	**Limited progress** Although most files include an initial review, many consist of a rehearsal of the allegation and fail to address strengths and weaknesses and other major issues. Continuing review and decisions taken in the course of proceedings frequently go unrecorded either on the paper file or CMS.
R10	• All rape cases be allocated to specialist lawyers, who should be responsible for the case from advice stage to conclusion of any proceedings.	**Substantial progress** Rape specialists have been introduced and are responsible for the majority of cases. (Reservations about their qualifications are expressed elsewhere.) The use of non-specialist duty prosecutors at charging centres means that some advice, especially in custody cases, may not be given by specialists.
	• 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.	**Limited progress** Procedures are in place for second opinions but compliance is not always evidenced.

RECOMMENDATIONS		POSITION IN MARCH/APRIL 2006
R11	• 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.	**Limited progress** The instructions to prosecuting advocates booklet contains a standard paragraph in relation to the requirement for written reports, but there were few examples of written reports being provided by counsel.
	• Any written report is used to complete an adverse case report, setting out the factual and legal reasons for the acquittal.	Adverse case reports were rarely seen.
	• The adverse case report is used to discuss with the police any lessons to be learned.	This is not usual practice.
R12	ACPO revisits the provision of disclosure training, in conjunction with the CPS, so that a more standardised and professional approach by police officers can be achieved.	**Limited progress** There is evidence of delivery of training in some forces but this is patchy and on a local basis. There remains a lack of consistency in the approach to disclosure.
R13	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.	**Limited progress** The instructions to prosecuting advocates booklet contains a standard paragraph in relation to third party material but counsel's attention should be drawn to the specific issue.
R14	A conference with trial counsel should take place in every case involving an allegation of rape and should be arranged as soon as practicable.	**Limited progress** This varies across Areas. There has been some increase in the number of conferences held, but they are not held prior to the PCMH and they are not always held to discuss acceptance of pleas or decisions to terminate cases.
R15	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.	**Limited progress** The instructions to prosecuting advocates booklet contains a standard paragraph in relation to offensive and seemingly irrelevant questioning. Counsel's attention should be drawn to specific instances where there is likely to be an application in relation to the admissibility of previous sexual experience.
R16	Chief Crown Prosecutors introduce structured monitoring of Crown Court advocates who prosecute cases involving allegations of rape.	**Limited progress** Formal monitoring of rape advocates is still not undertaken generally, but exception reporting may be undertaken by caseworkers and feedback from the judiciary acted upon.

RECOMMENDATIONS		POSITION IN MARCH/APRIL 2006
R17	CPS updates, revises and widens its guidance to prosecutors on the review and handling of cases involving allegations of rape.	**Achieved** There has been considerable progress in updating legal guidance for prosecutors, coupled with the publication of a comprehensive rape policy.
R18	Legal training on sexual offences should be updated in the near future. It should be relaunched and undertaken by all appropriate lawyers and caseworkers.	**Some progress** A national training brief on the SOA has been rolled out, but no training has been given specifically on rape for rape specialist prosecutors.

SUGGESTIONS		POSITION IN MARCH/APRIL 2006
S1	The lawyer in the case (if an HCA) 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.	**Limited progress** It is still not uncommon for someone other than the lawyer in the case or trial counsel to attend the PCMH. However, there is awareness of this suggestion and attempts to comply with it are being made.
S2	ACPO revisits the area of contact with victims during the life of a case, with a view to introducing protocols/ guidance.	**Limited progress** This suggestion has been overtaken by the establishment of WCUs. There is still a lack of consistency over who takes responsibility for which actions and further clarification is required.
S3	ACPO and Chief Crown Prosecutors introduce monitoring of performance in relation to the introduction of special measures to give evidence.	**Achieved** There has been Home Office research into, and CPS monitoring of, special measures.

APPENDIX 2: STOCKTAKE OF THE IMPLEMENTATION OF THE RAPE ACTION PLAN 2002

Key results

Progress – police

- Improved awareness of the needs of victims and greater engagement with partners.
- Improved facilities for the forensic examination of victims and increased momentum in the development of SARCs.
- The introduction of central submissions units to quality-assure the submission of all forensic samples.
- Growing use of EEKs for the recovery of non-intimate forensic samples affected by the passage of time.
- Expansion of the introduction of STOs to provide the initial response in the investigation of rape offences, supported by effective local training.
- The publication of the ACPO *Guidance on Investigating Serious Sexual Offences* (2005).

Progress – CPS

- The provision of guidance and training for all prosecutors and caseworkers on the SOA and the special measures provisions contained in the YJCEA.
- The publication of the *Policy for Prosecuting Cases of Rape* (2004).
- The introduction of rape specialist prosecutors and rape co-ordinators.
- Improved recording of review decisions.
- Greater understanding of the reasons why victims may withdraw support for the investigation and/or prosecution.
- The introduction in many Areas of the requirement for prosecuting counsel to attend the plea and directions hearing.
- The issue of clear instructions in the majority of Areas that offensive and irrelevant questioning should be challenged and inappropriate cross-examination about previous sexual history should be tackled.

Gaps in implementation – police

- Considerable variation remains across police forces in relation to implementation of the policing elements of the RAP.
- A review of the role of FP has not been carried out and considerable problems continue in the recruitment, retention and management of FPs.
- The development of a national training package for the core investigative roles in sexual offences has been delayed.
- There are considerable variations in the categorisation by individual forces of 'detected' and 'undetected' rape offences and there remains a need to revisit the criteria for the classification of these offences.
- Varying practices still exist in relation to disclosure in rape cases.

Gaps in implementation – CPS

- Although caseworkers attend court to cover the trial, this is often not the caseworker allocated to the case and attendance can also be limited.
- There are inconsistencies in the way in which prosecuting advocates are monitored and there are no standard benchmarks against which monitoring should take place.
- Written reports on cases resulting in acquittals (to be used to provide an adverse case report, the findings of which should be discussed with the police so that lessons can be learned) are not always being completed.
- In some Areas, conferences with trial counsel are taking place at the discretion of the prosecuting advocate.

APPENDIX 3: POLICE CRIME RECORDING DATA

Table 1: Recorded rape reports – results of investigation (2005 sample)

Force	Total crimes reported	'No crime'	Total recorded crime	Undetected	Non-sanctioned detection	Sanctioned detection
A	**79**	37 (46.8%)	**42**	35 (83.3%)	0 (0.0%)	7 (16.7%)
B	**59**	19 (32.2%)	**40**	12 (30.0%)	4 (10.0%)	24 (60.0%)
C	**114**	5 (4.4%)	**109**	66 (60.5%)	0 (0.0%)	43 (39.5%)
D	**141**	28 (19.9%)	**113**	76 (67.2%)	1 (0.9%)	36 (31.9%)
E	**71**	16 (22.5%)	**55**	46 (83.6%)	0 (0.0%)	9 (16.4%)
F	**97**	34 (35.1%)	**63**	42 (66.7%)	5 (7.9%)	16 (25.4%)
G	**108**	35 (32.4%)	**73**	61 (83.6%)	0 (0.0%)	12 (16.4%)
H	**83**	5 (6.0%)	**78**	64 (82.0%)	1 (1.3%)	13 (16.7%)
Overall	**752**	**179 (23.8%)**	**573**	**402 (70.2%)**	**11 (1.9%)**	**160 (27.9%)**

Table 2: Recorded rape reports – results of investigation (2000 sample)

Force	Total crimes reported	'No crime'	Total recorded crime	Undetected	Non-sanctioned detection	Sanctioned detection
A	**81**	25 (30.9%)	**56**	42 (75.0%)	4 (7.1%)	10 (17.9%)
B	**55**	14 (25.5%)	**41**	32 (78.0%)	2 (4.9%)	7 (17.1%)
C	**72**	6 (8.3%)	**66**	5 (7.6%)	2 (3.0%)	59 (89.4%)
D	**109**	29 (26.6%)	**80**	24 (30.0%)	3 (3.8%)	53 (66.2%)
E	**49**	6 (12.2%)	**43**	26 (60.5%)	0 (0.0%)	17 (30.5%)
F	**43**	16 (37.2%)	**27 (-7)* 20**	9 (45.0%)	4 (20.0%)	7 (35.0%)
G	**47**	14 (29.8%)	**33**	2 (6.1%)	4 (12.1%)	27 (81.8%)
H	**38**	2 (5.3%)	**36 (-4)* 32**	16 (50.0%)	2 (6.3%)	14 (43.8%)
Overall	**494**	**112 (22.6%)**	**382 (371)**	**156 (42.0%)**	**21 (5.7%)**	**194 (52.3%)**

* Cases that were recorded as crimes but where the outcome could not be established from the available information.

Table 3: Recorded rape reports – results of investigation adjusted (2005 sample)

Force	Total crimes reported	'No crime'	Total recorded crime	Undetected	Non-sanctioned detection	Sanctioned detection
A	**79**	21 (26.6%)	**58**	51 (87.9%)	0 (0.0%)	7 (12.1%)
B	**59**	11 (18.6%)	**48**	27 (56.3%)	0 (0.0%)	21 (43.7%)
C	**114**	4 (3.5%)	**110**	67 (60.9%)	0 (0.0%)	43 (60.9%)
D	**141**	16 (11.3%)	**125**	89 (71.2%)	0 (0.0%)	36 (28.8%)
E	**71**	14 (19.7%)	**57**	48 (84.2%)	0 (0.0%)	9 (15.8%)
F	**97**	22 (22.7%)	**75**	59 (78.7%)	0 (0.0%)	16 (21.3%)
G	**108**	30 (27.8%)	**78**	66 (84.6%)	0 (0.0%)	12 (15.4%)
H	**83**	4 (4.8%)	**79**	66 (83.5%)	0 (0.0%)	13 (16.5%)
Overall	**752**	**122 (16.2%)**	**630**	**473 (75.1%)**	**0 (0.0%)**	**157 (24.9%)**

Table 4: Recorded rape reports – results of investigation adjusted (2000 sample)

Force	Total crimes reported	'No crime'	Total recorded crime	Undetected	Non-sanctioned detection	Sanctioned detection
A	**81**	18 (22.2%)	**63**	52 (82.5%)	1 (1.6%)	10 (15.9%)
B	**55**	10 (18.2%)	**45**	40 (88.9%)	0 (0.0%)	5 (11.1%)
C	**72**	2 (2.8%)	**70**	11 (18.6%)	0 (0.0%)	59 (84.3%)
D	**109**	12 (11.0%)	**97**	44 (45.4%)	0 (0.0%)	53 (54.6%)
E	**49**	5 (10.2%)	**44**	27 (61.4%)	0 (0.0%)	17 (38.6%)
F	**43**	11 (25.6%)	**32 (-7)* 25**	18 (72.0%)	0 (0.0%)	7 (28.0%)
G	**47**	7 (14.9%)	**40**	14 (35.0%)	0 (0.0%)	26 (65.0%)
H	**38**	2 (5.3%)	**36 (-4)* 32**	18 (56.3%)	0 (0.0%)	14 (43.8%)
Overall	**494**	**67 (13.6%)**	**427 (416)**	**224 (53.8%)**	**1 (0.2%)**	**191 (46.0%)**

* Cases that were recorded as crimes but where the outcome could not be established from the available information.

APPENDIX 4: PART II OF THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

The Act provides:

- a definition of a vulnerable or intimidated witness;
- a test to determine eligibility for assistance;
- a range of special measures to assist eligible witnesses to give evidence;
- special provisions for child witnesses;
- a mandatory prohibition on cross-examination by defendants in person of complainants in sexual offences cases and of certain child witnesses, and a discretionary prohibition in the case of other witnesses; and
- restrictions on cross-examination of a complainant in sexual offences cases about previous sexual behaviour.

A vulnerable witness is defined as:

- a witness under the age of 17;
- a person in respect of whom the quality of evidence is likely to be diminished due to:
  - (i) suffering from mental disorder;
  - (ii) significant impairment of intelligence and social functioning; or
  - (iii) physical disability or suffering from a physical disorder.

An intimidated witness is defined as:

> "a witness in respect of whom the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings."

Victims in sexual offences are automatically considered to be intimidated witnesses and thus are eligible for special measures unless they tell the court they do not want them.

The special measures included in the Act are:

- screening victim from defendant;
- evidence by live link;
- evidence in private;
- removal of wigs and gowns;
- video-recorded evidence-in-chief;
- video-recorded pre-trial cross-examination (not implemented);
- use of intermediaries (being piloted in South Wales); and
- aids to communication.

APPENDIX 5: THE PROSECUTORS' PLEDGE

The Attorney General introduced a 10-point pledge on 21 October 2005 that sets out the level of service victims can expect from prosecutors. It links into the current charging programme, 'No Witness, No Justice', the Victims' Code, and the DCV scheme. Annexed to the Pledge is a revision of the Attorney General's guidelines on the acceptability of pleas and the prosecutor's role in sentencing. The 10 commitments apply to all prosecuting authorities, including advocates instructed on behalf of the CPS in the Crown Court.

The prosecutor will:

- take into account the impact on the victim or their family when making a charging decision;
- inform the victim when the charge is withdrawn, discontinued or substantially altered;
- when practical, seek a victim's view or that of the family when considering the acceptability of a plea;
- address the specific needs of a victim and, where justified, seek to protect their identity by making an appropriate application to the court;
- assist victims at court to refresh their memory from their written or video statement and answer their questions on court procedure and processes;
- promote and encourage two-way communication between victim and prosecutor at court;
- protect victims from unwarranted or irrelevant attacks on their character and may seek the court's intervention where cross-examination is considered to be inappropriate or oppressive;
- on conviction, robustly challenge defence mitigation which is derogatory to a victim's character;
- on conviction, apply for an appropriate order for compensation, restitution or future protection of the victim; and
- keep victims informed of the progress of any appeal and explain the effect of the court's judgment.

The essence of the Pledge is that the victim is considered at every stage in the process by being kept informed and supported throughout, from the charging decision to sentencing or possible appeal.

APPENDIX 6: REVIEW REFERENCE GROUP

Huw Jones (Chair)	Her Majesty's Inspectorate of Constabulary
Jerry Hyde (Deputy Chair)	Her Majesty's Crown Prosecution Service Inspectorate
John Yates	Deputy Assistant Commissioner, Metropolitan Police Service; Association of Chief Police Officers
Richard Chipping	Independent Advisory Group for Sapphire
Mark Lindley	Crown Prosecution Service Policy Directorate
Sally O'Neill QC	Criminal Bar Association
Professor Liz Kelly	Academic
Mary Newton	Forensic Science Service
Dr Cath White	Association of Forensic Physicians
Joanna Perry	Victim Support
Bernie Ryan	Sexual Assault Referral Centre Specialist
Helen Musgrove	Home Office, Sexual Crime Reduction Team
Dave Gee	Police and Crime Standards Directorate
Dave Osborn	Metropolitan Police Service
Mark Yexley	Metropolitan Police Service
Katey Rushmore	Her Majesty's Crown Prosecution Service Inspectorate
Lesley Warrender	Her Majesty's Inspectorate of Constabulary

APPENDIX 7: ABBREVIATIONS USED IN THIS REPORT

ABE	achieving best evidence
ACPC	Area Child Protection Committee
ACPO	Association of Chief Police Officers
CID	Criminal Investigation Department
CJS	criminal justice system
CMS	case management system
Compass CMS	Crown Prosecution Service case management system
CPIA	Criminal Procedure and Investigations Act 1996
CPS	Crown Prosecution Service
CRIS	Crime Report Information System
CSI	Crime Scene Investigator
CSM	Crime Scene Manager
DCV	Direct Communication with Victims
DFSA	drug-facilitated sexual assault
DPP	Director of Public Prosecutions
EEK	Early Evidence Kit
FME	forensic medical examiner
FP	forensic physician
FSS	Forensic Science Service
HCA	higher court advocate
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
HMIC	Her Majesty's Inspectorate of Constabulary
HOCR	Home Office Counting Rules
IO	Investigating Officer
JDA	judge directed acquittals
JOA	judge ordered acquittals

LCJB	Local Criminal Justice Board
LSCB	Local Safeguarding Children Board
MIT	Major Investigation/Inquiry Team
MPS	Metropolitan Police Service
NCPE	National Centre for Policing Excellence (Centrex)
NCRS	National Crime Recording Standard
NIM	National Intelligence Model
NSPCC	National Society for the Prevention of Cruelty to Children
OCJR	Office for Criminal Justice Reform
PACE	Police and Criminal Evidence Act 1984
PCMH	plea and case management hearing
PCSD	Police and Crime Standards Directorate
PIP	Professionalising the Investigation Process
PNC	Police National Computer
PTSD	post-traumatic stress disorder
RAP	Rape Action Plan
SARC	Sexual Assault Referral Centre
SCAS	Serious Crime Analysis Section
SLA	service level agreement
SOA	Sexual Offences Act 2003
SPP	Special Priority Payment
STO	Specially Trained Officer
VPS	victim personal statement
WCO	Witness Care Officer
WCU	Witness Care Unit
YJCEA	Youth Justice and Criminal Evidence Act 1999

Her Majesty's Inspectorate of Constabulary
Ashley House
2 Monck Street
London SW1P 2BQ

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www.inspectorates.homeoffice.gov.uk/hmic

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