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**JUSTICE**

**Understanding the progression  
of serious cases through the  
Criminal Justice System**  
Evidence drawn from a selection of  
casefiles

**Mandy Burton, Rosie McLeod, Vanessa de Guzmán,  
Roger Evans, Helen Lambert and Gemma Cass**

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# Contents

## List of tables

## List of figures

<b>Summary</b>	<b>i</b>
<b>1. Introduction</b>	<b>1</b>
<b>2. Context</b>	<b>2</b>
<b>3. Methodology</b>	<b>4</b>
3.1 Sample	4
3.2 Police and CPS casefile database	4
3.3 Qualitative work	5
<b>4. Findings</b>	<b>6</b>
4.1 Gender and age	6
4.2 The criminal justice process from allegation to outcome	6
4.3 Re-grading of cases	9
4.4 Understanding decisions and outcomes at key stages	10
4.5 Out of court disposals	12
4.6 The decision to charge a suspect	13
4.7 Case outcomes	14
4.8 The circumstances of victims and suspects	15
4.9 Key decision makers	18
4.10 Decisions in the light of official guidance	19
4.11 False allegations	19
4.12 Practitioners' views on barriers to case handling and examples of good practice	22
<b>5. References</b>	<b>24</b>
<b>Appendix A</b>	<b>25</b>
Data tables	25
<b>Appendix B</b>	<b>34</b>
Definitions of the four offences	34

<b>Appendix C</b>	<b>38</b>
Methodology	38
<b>Appendix D</b>	<b>44</b>
Topic guides: Pilot in-depth interviews with police and CPS	44

## List of figures

Figure 4.1: Progression through the CJS, by reported offence	7
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## List of tables

Table 4.1: Police outcome of cases where a suspect is identified	9
Table 4.2: Breakdown of charged offence, in relation to reported offence	10
Table 4.3: Outcome of cases referred to the Crown Prosecution Service	13
Table 4.4: Conviction rate, in relation to reported offence	14
Table A1: Cases reported to the police by gender and offence	25
Table A2: Cases referred to the CPS by gender and offence	25
Table A3: Age of the defendant for reported, crimed and charged cases	26
Table A4: Age of the victim for reported, crimed and charged cases	26
Table A5: Breakdown of who first reported the offence	26
Table A6: Percentage of victims who withdrew or retracted their statement, by reported offence	27
Table A7: Percentage of victim witness statements retracted, by who first reported the offence	27
Table A8: Percentage of victims who withdrew or retracted their statement by relationship between defendant and victim	27
Table A9: Percentage of cases referred to CPS, based on whether victim gave witness statement	28
Table A10: Percentage of cases where the victim gave a witness statement, by offence and whether they were referred to CPS	28
Table A11: Guilty pleas, by reported offence	28
Table A12: Types of evidence collected by offence	29
Table A13: Evidential testing by offence	29
Table A14: OoCDs by offence for which the OoCD was given in youth and adult systems	30
Table A15: Conviction rate, based on offence under which defendant was eventually charged	30
Table A16: Sentence types, based on offence under which defendant was eventually charged	30

Table A17: Whether convicted case was given a custodial sentence by use of threatening weapon and offence	31
Table A18: Case outcomes, by reported offence	31
Table A19: Percentage of cases with a suspect identified where the victim or defendant was recorded as intoxicated, by offence	31
Table A20: Percentage of cases referred to the CPS where the victim or defendant was recorded as intoxicated, by offence	32
Table A21: Relationship between defendant and principal victim, by offence	32
Table A22: Relationship between defendant and principal victim among cases referred to the CPS	32
Table A23: Types of physical violence reported, for GBH offences	33
Table B.1: Offence codes as requested for use in the study	40



# Summary

## Introduction

There is wide interest in understanding how cases progress through the Criminal Justice System (CJS). This project was commissioned to improve understanding of attrition<sup>1</sup> for serious offences, in order to inform future policy development. The primary aim of this project was to produce a serious crimes database that would collate data from a sample of casefiles relating to four serious offences: rape, sexual assault, grievous bodily harm (GBH) with intent and GBH without intent.

## Methodology

A random sample of 1,149 casefiles from eight police force areas was collated for the database relating to the four serious offences as they were originally reported in 2008/09. This time period was chosen to allow for as many cases as possible to have been processed through the CJS and be completed. A database was compiled using information present in these casefiles. Absence of details of reported offences did not mean that something did not occur; simply that it was not recorded on the casefile. Qualitative research was undertaken with police and prosecutors to supplement the database findings.

The aim of this project was to illustrate the attrition process and highlight potential differences between subgroups. It is not intended to be statistically representative of the whole population and the analysis is constrained by the small numbers of cases considered.

## Findings

This report summarises findings in relation to the criminal justice process from allegation to outcome, including re-grading,<sup>2</sup> decision to charge, circumstance of victims and suspects and false allegations.

Findings relate to a sample of cases recorded in 2008/09, and may not therefore reflect current practices.

## Reporting of offence

There was a clear difference in the source of **reported crimes** when comparing the sexual offences with the GBH offences. Victims were more likely to report sexual offences (43%)

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<sup>1</sup> Where cases discontinue and do not result in a criminal conviction.

than GBH (25%); the latter was more likely to be reported by third parties. **Retractions** were highest in cases where the victim reported the crime and also where the victim and defendant had a relationship.

### Police outcomes

A **suspect** was identified in nearly all cases (95% of reported cases). Of those cases with an identified suspect, the most common police outcomes for all offences were 'referred to CPS' (39%) and 'no further action' (36%). Rape was more likely to be '**no crimed**'<sup>3</sup> (11%) than the other three offences (4–6%). Cases where a suspect was identified were nearly four times more likely to be referred to the CPS if there was a **victim statement** (46% compared to 12% without a victim statement).

Analysis of the small sample of **out of court disposals** (OoCDs)<sup>4</sup> (37) indicated that cautions were being used appropriately for serious offences. Whilst workshop participants were in overall agreement that OoCDs were not appropriate for serious offences, they did highlight a need to use them, in more minor cases, where there was an admission of guilt and the other requirements to offer a caution were met, so that the offender would have a record that might be pertinent in the future.

### Re-grading of cases

Charged cases were much more likely to be **downgraded** (23%) than upgraded (6%). Sexual offences were more likely to be charged by the CPS for the reported offence (rape 49% and sexual assaults 52%) than GBH (with intent 28% and without intent 41%). Workshop participants mentioned that the need to secure convictions influenced changes in charging decisions, and that the 72-hour criming rule<sup>5</sup> resulted in higher levels of initial charge which were not supported when fuller evidence was gathered.

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<sup>2</sup> Where defendants are charged for a different offence, in relation to the reported offence.

<sup>3</sup> Under National Crime Recording Standard (NCRS) guidance, offences can be 'no crimed' for one of four reasons: where following a report of the incident additional verifiable information becomes available that indicates no offence took place; the crime is recorded in error; the offence took place in another force area; and if it constitutes part of a crime already recorded.

<sup>4</sup> Out of court disposals are an alternative way of dealing with an offender rather than prosecuting them in the criminal courts, depending on the seriousness and consequences of the offence. Out of court disposals for adults comprise Penalty Notices for Disorder, a caution (including conditional cautions) or a cannabis warning.

<sup>5</sup> Under the National Crime Recording Standards (2002), an incident should be recorded as a crime, where appropriate, within 72 hours of first being logged.

## Understanding decisions and outcomes at key stages

The majority (81%) of the casefiles in the sample cited some form of **evidence**, most commonly a victim witness statement (71% of casefiles). Other forms of evidence, including case exhibits, medical statements, inpatient admissions, 999 tapes, forensic and independent witness statements, were cited less frequently in the files of sexual assault cases than with the other three offences. The 'no further action' (NFA) decisions were mainly on the grounds of insufficient evidence (41%).

The main reasons for **arrests** not being made were a lack of a suspect (2% of reported rape cases, 3% of reported sexual assaults, 5% of reported GBH with intent and 8% of reported GBH without intent) or the victim withdrawing their complaint before an arrest could be made (victims withdrew their complaint in 11% of cases).

CPS **decisions to charge** were higher for GBH cases (75% of cases referred to the CPS for GBH with intent and 72% for GBH without intent) than for the sexual offences (59% of cases referred to the CPS for rape and 68% for sexual assault). This appeared to relate to whether evidence passed the Full Code Test,<sup>6</sup> with GBH cases being more likely to pass than sexual offences (81% compared with 69%). Less than a fifth of cases noted a public interest reason for not charging; this outcome was most likely in sexual assaults (21%) and least likely in GBH without intent (at 10%).

## Case outcomes

Convictions for the reported offence as a percentage of 'crimed' cases were similar across the four offence types (a range of 17–20%). However, attrition was higher for different offences at different parts of the process.

With a caveat of low sample sizes, the rates of 'crimed' cases reaching a hearing were lower among sexual offences (50%) when compared with GBH cases (69%). However, of the sexual assault cases that were charged, they were more likely to be charged under the reported offence (52%), compared with GBH with intent cases (28%)

The **conviction rates** in relation to the offence under which the defendant was eventually charged varied, with rape having the lowest conviction rate (60%) and GBH with intent the highest (84%).

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<sup>6</sup> The CPS Full Code Test has two stages: the evidential stage which requires the CPS to decide whether there is sufficient evidence for a realistic prospect of conviction and the public interest stage which requires the CPS to decide whether prosecution is in the public interest.

## The circumstances of victims and suspects

The number of casefiles identifying **mental health problems** for either victim or suspects was small and the qualitative research highlighted police hesitancy in identifying mental health, so it is likely that it is underestimated both in reality and in the casefiles. A quarter of casefiles referred to the CPS identified victim intoxication with **alcohol or drugs** prior to the offence. This was less likely with victims of sexual assault (10%) and more likely in cases of GBH without intent (34%). Defendant intoxication was noted in 31% of cases referred to the CPS, most commonly with GBH without intent (45%). Even so, workshop participants felt that alcohol use was a feature of most cases they dealt with but might only be recorded in certain situations, for example when reporting fitness for interview or reviewing witness credibility.

Nearly a quarter of the cases in the database sample fell within the CPS definition of **domestic violence** as they involved an intimate partner or other family member. A key difference between rape and the other offences was the **relationship between victim and defendant**, where suspects were much more likely to be family members, including current or former partners (40% of rape cases compared with 17–19% for the other offences).

## The type of violence during an incident

GBH by its very nature is typically a physically violent offence, although GBH can be caused or inflicted in non-violent ways (for example, the non-consensual transmission of HIV). Where GBH is reported, but no evidence is presented of physical violence occurring, it will normally be found not to be GBH and this was reflected in the disposals (for example NFA or downgrading). Within GBH cases, major physical violence (e.g. beating, choking, biting without weapons) was most common in GBH without intent (65%) and the use of weapons was most prevalent in GBH with intent; 33% involved life-threatening weapons and 45% other weapons.

For all four offences, custodial sentences were far more prevalent in cases where a weapon was used (73% with weapon; 48% without weapon).

## Vulnerable or intimidated victims and witnesses

A third of casefiles involved **vulnerable or intimidated witnesses**<sup>7</sup> (VIW). Considerable variation between offences (16% of GBH compared with 61% of sexual offences) reflected the categorisation in the Youth Justice and Criminal Evidence Act 1999 of victims in sexual cases as VIW. The application of special measures to support VIWs was also more common among sexual offences, but this did not appear to influence conviction rates.

## Decisions in the light of official guidance

All rape cases in the sample were within the scope of official guidance as to what constitutes rape. However, the definition of 'sexual touching' can make sexual assaults more ambiguous; the researchers identified some sexual assault cases that could have been potentially charged with rape.

Three times as many GBH with intent cases involved a life-threatening weapon than GBH without intent cases, fitting with CPS guidance on the deliberate selection of a weapon indicating intent.

## False allegations

A variety of definitions of false allegations of rape were found to be in operation amongst police and prosecutors. Some definitions included recording intoxicated victims, delayed reporting, victim retraction,<sup>8</sup> and lack of physical injury / medical evidence as false allegations.<sup>9</sup> Using definitions reflecting such perceptions would lead to classifying 12% of rape cases in the database as false. However, a narrower definition focusing on complaints that were perceived to be malicious would classify 3% as false. Even when taking the broader definition, the prevalence of false allegations in GBH cases was lower (2%). The findings suggest a clear difference in the perceived nature<sup>10</sup> and frequency of false complaints across the sexual/non-sexual divide.

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<sup>7</sup> See Appendix B for the definition of vulnerable or intimidated witnesses. Victims and witnesses are referred to as 'witnesses'.

<sup>8</sup> Note 40% of rapes were in domestic violence situations impacting on victim retractions (see Table 21 in Appendix A).

<sup>9</sup> Note this broader definition includes cases wherein there may be no evidence of the allegation being 'false'.

<sup>10</sup> GBH is typically a violent act with physical injury, whereas an injury from rape may not always be visible nor witnessed.

## Practitioners' views on barriers to case handling and examples of good practice

Practitioners' views on how case handling could be improved included clear leadership from experienced officers. This was seen as key to gathering reliable detailed evidence, particularly in the early stages of a case. An emphasis was placed on the importance of **case ownership** by the investigating officer; the role of specialist officers for sexual offences was suggested as a model of good practice. Linked to this was a belief that **close working relationships** between the police and CPS on more complicated cases could play a pivotal role in guiding police officers during investigative stages, for example with the CPS advising officers on the evidence to gather.

# 1. Introduction

There is wide interest in understanding how cases progress through the Criminal Justice System (CJS). This project was commissioned to improve understanding of attrition for serious offences, in order to inform future policy development. The primary aim of the project was to produce a serious crimes database that would collate as much detail as possible from a relatively large sample of casefiles and from which analysis could be conducted. The project focused on four serious offences as they were originally reported in 2008/09: rape, sexual assault, grievous bodily harm (GBH) with intent and GBH without intent. Qualitative research was also carried out in 2010/11 to add further insight on such issues as decision making and potential areas for improvement.

This report summarises some initial findings in relation to the following:

- The criminal justice process from allegation to outcome exploring key stages
- Re-grading of offences
- Understanding decision making at key stages
- The issue of false allegations
- Suggestions for improving case handling

Findings relate to a sample of cases recorded in 2008/09, and may not therefore reflect current practices.

## 2. Context

In the past considerable attention has been paid to the investigation and prosecution of rape. By comparison, there is less research on the decision making processes and the extent and reasons for attrition in cases of sexual assault and GBH (with and without intent).

Existing studies of charge reduction have shown that many charges of GBH with intent are reduced to GBH without intent (Cretney and Davis, 1995; Genders, 1999). The reasons for this are not clear, although Genders (1999) suggests that it is partly because of the difficulties in proving intent.

Further understanding is required of who makes decisions on whether (and for what offence) the offender is charged and the factors that influenced their decision. For example, what influence does the victim have on decision making? Previous research on domestic violence has demonstrated that victim withdrawal can have a significant impact on attrition – often resulting in prosecutions failing (Cretney and Davis, 1995; Hester, 2003; 2006), less clear is the impact of victim withdrawal on the prosecution of non-domestic violence. This is just one of a range of factors, including the personal characteristics of the victims and defendants, which the MOJ wished to see explored further.

There has been very little recent empirical research on the issue of whether out of court disposals (OoCDs) are appropriately used for serious violence offences. There is, however, a long history of policy development aimed at reducing the inappropriate repeat use of cautions for young offenders. This resulted in the introduction of a system of reprimands and final warnings in the 1998 Crime and Disorder Act. In addition, conditional cautions for adults were introduced by the Criminal Justice Act 2003.

The MOJ was also interested in a more detailed analysis of aspects specific to rape cases, in order to inform the debate about false allegations and wider issues related to rape. An Independent Review into 'How Rape Complaints are Handled by Public Authorities in England and Wales' carried out by Baroness Stern (the Stern Review) made a number of recommendations as to how rape victims can be better treated, but also highlighted the need for research on key matters relating to the decisions taken by the criminal justice agencies. There was detailed guidance on the investigation and prosecution of rape (issued by ACPO, the CPS and NIPA in 2009), but the Stern Review reported that 'The policies are not the problem. The failures are in the implementation.' The Stern Review concluded: 'faster progress could be made in improving the treatment of rape complainants if more solid



evidence was in the public domain' (page 41). It also noted that research comparing the handling of rape complaints with other serious offences would be beneficial. In particular it might help to explain issues such as 'false' complaints more clearly.

Before this research, there had been a lack of reliable evidence on the proportion of rape cases involving false complaints. However, false allegations of rape may also be problematic for 'genuine' victims in so far as they may feed into stereotypes that the majority of complaints are false. Some of the research in this area suggested that many police officers believe that women lie about rape (see Brown et al, 2010). However, Brown et al (2010) observed that estimates of false complaints were mainly based on qualitative small-scale samples. Currently available research does not fully explore the definition of 'false allegations' in order to assess the breadth of interpretation by police and prosecutors. There has been a clear need for quantitative research in this area, supplemented by careful qualitative analysis.

The value of comparing rape with other serious offences such as GBH should not be underestimated. For example, the Stern Review (2010) commented upon perceptions that the conviction rate for rape was much lower than for other serious offences, and that juries were particularly reluctant to convict. By looking at four serious offences, including rape, together it will be possible to compare the processes and outcomes for various offences. However, when making comparisons between offences, the different level of complexity involved in the criminal investigations for each offence should be recognised. With particular regard to rape and serious sexual abuse, the defence of consent is often at the heart of any investigation and can be very difficult to prove or disprove.

An underlying theme of many rape and serious violence offences is the presence of a relationship between the victim and defendant. A great deal of attention has been paid to the specialist domestic violence courts, but these operate at the lower end of the offence spectrum, usually only in the magistrates courts (see Home Office, 2008). The handling of serious cases of domestic violence that are destined for the Crown Court, such as GBH with intent or rape, needed to be more thoroughly researched.

## **3. Methodology**

This study used a combination of qualitative and quantitative methodologies in order to gather information on key elements of the criminal justice process for four serious offences: rape, sexual assault, GBH with intent and GBH without intent.

### **3.1 Sample**

Within each of these four serious offence types, a random sample of files was collated for the database relating to reported cases occurring in eight police force areas and recorded between 1 April 2008 and 31 March 2009. This time period was chosen to allow for as many cases as possible to have been processed through the CJS and be completed. The areas were not representative of England and Wales but were chosen to include a mix of urban and rural locations. Of the 1,200 cases originally sampled some 1,149 casefiles were available and subsequently coded during an intensive four-month period of data collection. Casefiles were supplied by the police and, where appropriate, the Crown Prosecution Service (CPS).

The aim of this project was to illustrate the CJS processes, to look at attrition in the system, and to highlight potential differences between subgroups. It was not intended to be statistically representative of the whole population. Throughout the report there are small numbers, thus constraining statistical analysis and the confidence with which comparisons can be made.

### **3.2 Police and CPS casefile database**

The researchers extracted all the key information available from the police and CPS (where applicable) casefiles, which was then compiled into a database. The database was designed to capture information that may have been held in the casefiles, rather than to act as a questionnaire. Consequently, data were sometimes missing and it cannot be said that something did not occur; simply that it was not recorded on the file.

The dataset only had scope to follow the details of cases for one defendant and one victim, although some cases were more complex and involved multiple defendants/victims.

### **3.3 Qualitative work**

Qualitative in-depth interviews were carried out with police and prosecutors early on in the project, focusing on how specific cases progressed through the CJS. Towards the end of the fieldwork period, two workshops were facilitated involving a total of 46 police officers and five CPS lawyers from two police force areas. The workshops explored reactions to findings emerging from the database and suggestions for improvements to case handling.

## 4. Findings

The database contained 1,149 cases which were broken down by these reported offences:

- Rape (299)
- Sexual assault (292)
- GBH with intent (282)
- GBH without intent (276)

### 4.1 Gender and age

In cases where the age of the defendant was recorded, defendants were most likely to be aged in the bands 18–24 and 35–54 for ‘reported’ cases (18% and 20% respectively) and 18–24 for ‘crimed’ and charged cases (28% and 36% respectively). Similarly, most victims were aged 18–24 (33% of charged cases) (see tables 3 and 4 in Appendix A).<sup>11</sup>

The vast majority (90%) of cases on the database referred to the CPS involved a male defendant. Victims in GBH cases were predominantly male (74% for GBH with intent and 67% for GBH without intent), whereas victims in sexual offences were mostly female (83% for rape and 86% for sexual assault) (see Table 2 of Appendix A).

### 4.2 The criminal justice process from allegation to outcome

Criminal justice is a process involving a series of steps, beginning with a criminal investigation and ending with release of a convicted offender from correctional supervision. The first contact an offender has with the criminal justice system is usually with the police who investigate a suspected wrong-doing and make an arrest. The police may then refer cases to the Crown Prosecution Service, who are responsible for prosecuting criminal cases investigated by the police in England and Wales.

The stages, and therefore points at which a case may discontinue (known as case attrition), are:

At point of reporting:

- Investigation unable to identify suspect
- Out of court disposal administered

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<sup>11</sup> The age bands used were not equal in size. See tables 3 and 4 in Appendix A for the age ranges used.

- 'No crime'<sup>12</sup> the case
- Take no further action (NFA)

Cases referred to the Crown Prosecution Service for advice/decision on whether case should proceed:

- Suspect charged
- Case submitted for trial
- Out of court disposal directed by CPS

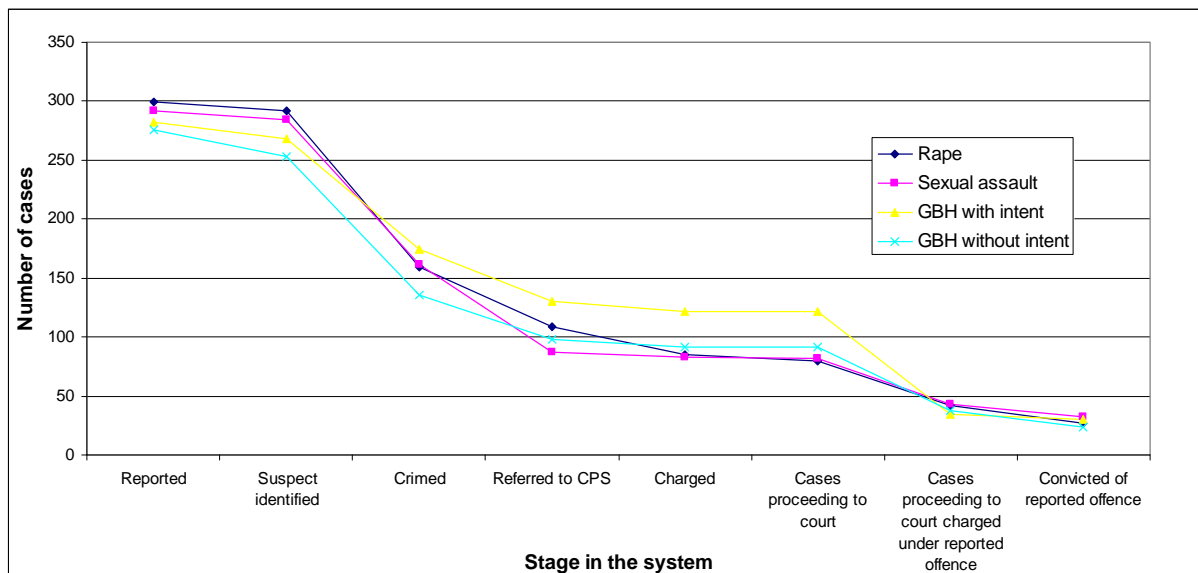
Cases proceeding to charge:

- Case dropped before trial
- Conviction (guilty plea, found guilty/not guilty) and sentencing

Cases may be re-graded to lesser or greater charges at different points in the process.

Figure 4.1 illustrates the progression of cases through the CJS for each of the serious offences. Please see Appendix B for more details on the classification of offence types covered by the database.

**Figure 4.1: Progression through the CJS, by reported offence**



<sup>12</sup> Under National Crime Recording Standard (NCRS) guidance, offences can be 'no crimed' for one of four reasons: where following a report of the incident additional verifiable information becomes available that indicates no offence took place; the crime is recorded in error; the offence took place in another force area; and if it constitutes part of a crime already recorded.

There was some variation in the attrition process across the eight police force areas. For example, some areas had slightly higher proportions of cases 'no crimed' or more cases where no further action was taken. There were higher numbers of out of court disposals in some areas. However the attrition process was steep in the early stages across all eight areas and the sample sizes for individual areas, especially in relation to the latter stages of the process, were small.

## Reporting of offence

At the beginning of the process, there was a clear difference in who reported the offence when comparing the sexual offences with the GBH offences; victims were much more likely to report rape (44%) and sexual assault (41%) in contrast with 29% of GBH without intent cases and 22% of GBH with intent cases. Similarly, family members were more likely to report sexual offences (19% for rape and 17% for sexual assault) in contrast with GBH (11% for GBH without intent and 6% for GBH with intent) (see Table 5 of Appendix A). In a quarter or more of GBH cases it was unclear who had made the initial report, but in nearly one-third of cases it was a third party not known to the victim. Qualitative data from the workshops and interviews suggested that cases were likely to fail during investigation where offences, particularly rape, had been reported by a third party, because a third party report might not be supported by the victim. However, this qualitative finding was contradicted by the quantitative data where retractions were highest in cases where the victim had reported the crime (the victim witness statement was retracted in 14% of cases reported by the victim and in 9% of cases reported by a third party<sup>13</sup> – see Table 7 of Appendix A). Where the victim had reported the crime, retractions were highest in rape cases, where the victim witness statement was retracted in 24% of cases. In addition, the retraction rate was higher in cases where the victim and defendant had a relationship.

## Police outcomes

Among the cases included in the Serious Crimes Database, a suspect was identified in nearly all cases (95% of reported cases). Of those cases with an identified suspect, the most common police outcomes for all offences were 'referred to CPS' (39%) and 'no further action' (36%). A study of attrition during the early stages of cases showed that rape was more likely to be 'no crimed' (11%) than the other three offences (4% of sexual assault cases, 6% of GBH without intent and 4% of GBH with intent).

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<sup>13</sup> There was a high volume of cases in which it was unknown whether the victim witness statement was retracted, and this may account for the difference.

**Table 4.1: Police outcome of cases where a suspect is identified**

Police outcome	Reported offence				
	Rape	Sexual assault	GBH with intent	GBH without intent	All offences
No further action	35%	39%	31%	40%	36%
'No crimed' <sup>14</sup>	11%	4%	4%	6%	6%
Out of court disposal	1%	4%	3%	5%	3%
Referred to CPS	37%	31%	49%	39%	39%
Don't know/No information	16%	23%	13%	10%	15%
Base (n)	292	284	268	253	1,097

Base: All cases where a suspect was identified

Note: Percentage may not sum to 100% due to rounding

In terms of progression, it appears that the existence of a victim statement might be a factor in the decision to refer to the CPS; cases where a suspect was identified were nearly four times more likely to progress if there was a victim statement (46% with a victim statement compared to 12% without) (see Table 9 of Appendix A). The casefiles examined indicated that the involvement of a specialist officer (defined as an officer specially trained in investigating rape and other sexual offences) had a positive impact on case progression, although it should be recognised that only 114 cases in our sample involved a specialist officer. For example, in rape cases involving a specialist officer 29% of victims withdrew their statements compared with 37% of cases not involving a specialist officer. Workshop findings suggested that the involvement of specialist officers benefited cases in terms of both the amount and quality of evidence collected. An example was given by workshop participants of specialist officers placing greater emphasis on gathering information on the victim's emotional state as part of case evidence and the contribution this could make to securing a conviction.

### 4.3 Re-grading of cases

Charged cases were much more likely to be downgraded (23% across all offence types) than upgraded (6%). When comparing the four offences it was found that rape and sexual assault were more likely to be charged by the CPS on the same offence (49% and 52% respectively) than GBH with intent cases (28%) and GBH without intent cases (41%). Several casefiles, as well as discussion with practitioners, suggested that a lack of evidence was a relevant factor

<sup>14</sup> Under National Crime Recording Standard (NCRS) guidance, offences can be 'no crimed' for one of four reasons: where following a report of the incident additional verifiable information becomes available that indicates no offence took place; the crime is recorded in error; the offence took place in another force area; and if it constitutes part of a crime already recorded.

resulting in downgrading, but not all files included an explanation and there was insufficient information to test this theory.

**Table 4.2: Breakdown of charged offence, in relation to reported offence**

Offence charged, in relation to reported offence	Reported offence			
	Rape	Sexual assault	GBH with intent	GBH without intent
Same offence	49%	52%	28%	41%
Upgraded	0%	6%	0%	5%
Downgraded	15%	1%	43%	34%
Other offence	1%	2%	0%	1%
Don't know/no information	28%	37%	30%	18%
Dropped before trial	6%	1%	0%	0%
<b>Total charged cases (n)</b>	<b>85</b>	<b>83</b>	<b>122</b>	<b>92</b>

Base: All charged cases

Note: Percentage may not sum to 100% due to rounding

Several workshop participants explained that the need to secure convictions could influence decisions to change the original charge. Police respondents also talked about the 72-hour criming rule,<sup>15</sup> which might mean that the initial crime could change as new evidence emerged over the course of investigations. One respondent said:

*“Why can’t we crime it when we know what we have got, so we know that we have actually got a genuine offence here, or we have got this offence instead of that offence.”* (Police officer)

This was a recurring theme among workshop participants.

#### 4.4 Understanding decisions and outcomes at key stages

Participants in the qualitative research thought that independent evidence was key to supporting decisions to charge; cases based on one person’s word against another were less likely to pass the evidential stage<sup>16</sup> or, if they did, to result in a successful prosecution. Consequently, it was considered routine to seek independent witnesses, check crime scenes for forensic evidence, establish availability of CCTV data and gather information from the complainant.

<sup>15</sup> Under the National Crime Recording Standards (2002), an incident should be recorded as a crime, where appropriate, within 72 hours of first being logged.

<sup>16</sup> The ‘evidential’ stage is the first of two stages applied by the CPS in deciding whether to prosecute. To pass the evidential test, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.



The majority (81%) of the casefiles in the sample included the recording of evidence. The most common form of evidence reported to have been collected, across all four offences, was a victim witness statement (recorded in 71% of casefiles). Other forms of evidence, for example case exhibits and inpatient admissions, were least common among sexual assaults compared to the other offences. Case exhibits were referenced in 25% of sexual assault files compared with 57% of GBH with intent cases, 49% of GBH without intent and 45% of rape cases (see Table 12 of Appendix A). There was a marked difference between the sexual offences and GBH cases in terms of inpatient admissions to hospital (<1% for sexual offences and 37% for GBH with intent and 41% for GBH without). The 'no further action' (NFA) decisions for all the offences were mainly on the grounds of insufficient evidence (41% of cases identified as NFA cited lack of evidence).

The main reasons for arrests not being made were the lack of a suspect or the victim withdrawing before an arrest could be made. Practitioners taking part in the workshops suggested that releasing a suspect on bail could increase the likelihood of victim retraction.

Findings from this research indicate that victims withdrawing their complaint before an arrest would be more likely in rape cases; statements were withdrawn in 20% of rape cases and 9% of GBH cases (with and without intent combined) (see Table 6 of Appendix A). With GBH, the lack of a suspect was the key factor in cases not leading to an arrest (no suspect was identified in 5% of reported GBH with intent cases and 8% of reported GBH without intent cases).

Domestic violence is not categorised as a separate offence, but can be a part of any of the four offence types included in this research. Researchers have identified the offences which fall into the CPS definition of domestic violence, in that they involved an intimate partner or other family member. The rate of withdrawal for all four offence types was higher for domestic cases than non-domestic cases (20% of victims in domestic violence cases withdrew, compared with 8% of non-domestic victims) (see Table 8 of Appendix A).

The qualitative research also suggested that, in cases where there was no other strong corroborative evidence, witness credibility was foremost in CPS decision making.

*"The big thing in these kinds of cases, where it's very much one on one, is going to be the credibility of the victims against the credibility of the suspect."*

(CPS Prosecutor)

This view was widely held among workshop participants in the qualitative research.

## 4.5 Out of court disposals

Out of court disposals (OoCDs) are an alternative way of dealing with an offender rather than prosecuting them in the criminal courts, depending on the seriousness and consequences of the offence. OoCDs for adults comprise Penalty Notices for Disorder, a caution (including conditional cautions) or a cannabis warning.

In relation to the small number of OoCDs in the case sample (37), examination of the information recorded in the casefiles suggests cautions were being used appropriately for serious offences. However, the potential of this research to address this issue was limited because there were so few cases (see Table 14 of Appendix A).

The types of OoCDs used were reprimands, final warnings and cautions.<sup>17</sup> There was no information recorded in the casefiles to suggest that restorative or rehabilitative justice options had been used or considered, but these would only be considered with a conditional caution, which is not currently available for the four offence types included in this study. A few offences were downgraded to common assault, for which conditional cautions are available, but restorative or rehabilitative justice options may not have been available in all of the sample areas for the period covered by the database.

There were no examples of the OoCD criteria not being met, but there were some instances of either evidential or public interest considerations which led to cases being downgraded and disposed of by means of an OoCD. For example, one victim was considered too vulnerable to appear in court and in another case the suspect admitted indecency, resulting in a caution for sexual assault. Twenty-eight of the 37 OoCDs were for sexual assault or GBH without intent. Of these, nine were downgraded from rape to sexual assault (by the CPS, given evidence that rape had not occurred) or from GBH with intent to GBH without intent. In addition, another nine cases were downgraded to offences such as common assault, affray and outraging public decency.

Independent evidence and an admission of guilt were common features of the few cases where victims were not willing to appear in court but where the police proceeded with a caution. Whilst workshop participants were in overall agreement that OoCDs were not appropriate for serious offences, they did highlight a need to use them, in more minor cases,

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<sup>17</sup> Some offences were downgraded to common assault, affray and public decency, for which conditional cautions are available.

where there was an admission of guilt and the other requirements to offer a caution were met, so that the offender would have a record that might be pertinent in the future.

### 4.6 The decision to charge a suspect

CPS decisions to charge were higher for GBH cases (75% for GBH with intent and 72% for GBH without intent) than for the sexual offences (59% for rape and 68% for sexual assault). This appeared to relate to whether evidence passed the Full Code Test,<sup>18</sup> with GBH cases being more likely to pass than sexual offences (81% compared with 69%). Conflicting evidence and conflict between witnesses were the most commonly cited reasons in the casefiles for failing the evidential test.

**Table 4.3: Outcome of cases referred to the Crown Prosecution Service**

Outcome	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Suspect charged	59%	68%	75%	72%	69%
Suspect not charged	23%	6%	8%	8%	11%
Don't know/No information	18%	26%	18%	19%	20%
Base (n)	109	87	130	98	424

Base: All cases referred to the CPS

Note: Percentage may not sum to 100% due to rounding

Qualitative research findings also suggested that witnesses<sup>19</sup> in sexual offence cases experienced a much higher degree of stress and emotional pressure than in other serious offences. Police officers in this study attributed this to the nature of the crime and also felt that victims had greater concerns about their perceived credibility in court if there was a lack of independent evidence and they were worried that they might not be believed in a situation where it is 'my word against theirs', due to the nature of the crime.

Public interest considerations could also play a part in decisions to charge. Findings from this research showed that less than a fifth of cases noted a public interest reason for not charging; this was most likely to be recorded in sexual assaults (21%) and least likely in GBH without intent (at 10%).

<sup>18</sup> The CPS Full Code Test has two stages: the evidential stage which requires the CPS to decide whether there is sufficient evidence for a realistic prospect of conviction, and the public interest stage which requires the CPS to decide whether prosecution is in the public interest.

<sup>19</sup> Victims and witnesses are referred to as 'witnesses'.

## 4.7 Case outcomes

Convictions for the reported offence, as a percentage of ‘crimed’ cases, were similar across the four offence types (rape 17%; sexual assault 20%; GBH with intent 17%; and GBH without intent 18%) (see Table 18 in Appendix A). However, attrition was higher for different offences at different parts of the process.

Figures suggest that the rates of ‘crimed’ cases reaching a hearing were lower overall among reported sexual offences (50%) when compared with GBH cases (69%) (see Table 18 in Appendix A). However, of the sexual assault cases that were charged, they were more likely to be charged under the reported offence (52%), compared with GBH with intent cases (28%) (see Table 4.2).

Overall, cases reaching a hearing were very likely to lead to a conviction (whether for the original charge or for another). This was most marked for GBH with intent at 88% of cases going to trial being convicted under the same charge (30 out of 34 cases).

**Table 4.4: Conviction rate, in relation to reported offence**

	Reported offence			
	Rape	Sexual assault	GBH with intent	GBH without intent
Conviction rate for offenders charged for reported offence	64%	74%	88%	63%
Number of cases proceeding to trial, charged under reported offence	42	43	34	38
Conviction rate for offenders charged for a different offence to reported offence	29%	26%	49%	61%
Number of cases proceeding to trial, charged for a different offence to reported offence	38	39	88	54

Base: Cases proceeding to trial

As a case progresses through the criminal justice system, the offence under which the defendant is charged may change. The conviction rates in relation to the offence under which the defendant was eventually charged varied for the four offences, with rape having the lowest conviction rate (60%), and GBH with intent the highest (84%) (see Table 15 in Appendix A).

## 4.8 The circumstances of victims and suspects

### Mental health problems

The number of casefiles identifying mental health problems was small; 7% of all defendants and 9% of all victims had recorded mental health issues. The qualitative research highlighted police hesitancy with regard to identifying mental health issues (this was also true in relation to learning disabilities) and so it is likely that it is underestimated. For those cases where mental health problems were identified (among victims or suspects), it was suggested that it could have an impact on case progression. For example, there were police participants in the workshops who commented that they had experience with victims who would be considered unreliable witnesses and there might be issues in relation to fitness to interview, or fitness to plead in the case of defendants; this was a recurring theme among workshop participants.

In addition, mental health issues can lead to the victim themselves withdrawing their complaint – hampering the progression of the case:

Case example: The defendant forced the victim (his girlfriend) to engage in sexual activity by telling her she was going to die and that there was a 'bomb under the bed'. There was a history of domestic abuse for which the victim had obtained an injunction, but she was at his home one week before it expired. The victim was noted to be emotionally unstable, with a psychiatrically diagnosed personality disorder. She withdrew her complaint because she could not cope with the stress and was 'not receiving any support'. The CPS advised NFA.

As the numbers are small, conclusions cannot be drawn but there did appear to be some evidence in our sample that cases where mental health problems were identified among suspects were less likely to be referred to the CPS: 58% of suspects recorded as having mental health problems were referred to the CPS compared with 65% of those not recorded as having mental health problems. However, this could be as a result of other factors and may not just be because of mental health problems.

Mental health problems of the victim was not a bar to securing a conviction. In one of the cases it was a clear aggravating feature and strengthened the decision to proceed with a prosecution on public interest grounds.

Case example: The defendant (who met the victim whilst she was receiving treatment at a mental health hospital) raped her at her home address. He admitted sexual intercourse, but maintained that she consented. The public interest was strong because of the abuse of a position of trust. The defendant entered a guilty plea at trial and was sentenced to 18 months imprisonment.

An examination of the free text noted in the casefiles database showed that mental health problems (or indeed learning disabilities) could impact on convictions in different ways: in some cases allegations were questioned but in others mental health status was a factor that could secure a conviction, for example in instances where there was an abuse of power. As the number of casefiles identifying mental health as a problem was small, further research would be needed in this area to generate more robust conclusions.

### **Intoxication prior to the offence**

A quarter of casefiles referred to the CPS identified that the victim was intoxicated with alcohol or drugs prior to the offence. This was less likely with victims of sexual assault (10%) and more likely in cases of GBH without intent (34%) (see Table 20 in Appendix A).

Intoxication was more of an issue for defendants than victims: 31% of defendants in cases referred to the CPS were said to have taken alcohol or drugs, most commonly in cases of GBH without intent (45%). Cases were also found to be more likely to be referred to the CPS if the defendant was intoxicated and less likely to be referred if the victim was intoxicated (see Appendix A, tables 19 and 20). Workshop participants felt that alcohol use was a feature of most cases they dealt with but that this may only be recorded on casefiles in certain situations, for example in relation to whether a suspect was fit for interview. The qualitative research also highlighted how intoxication could restrict case progression, particularly if it was seen to undermine witness credibility.

The following factors were identified by practitioners as weakening the quality of evidence:

- Postponing taking a statement until the victim was sober, as this reduced the emotional strength of the account;
- Intoxication was seen to adversely affect victims' memories and recall; and
- A victim's behaviour while intoxicated may imply they did not take the offence as seriously as they might have.

Case example: The victim lived in multi-occupancy accommodation with the defendant. On the day of the assault a group of the occupants were drinking together when an argument developed and the victim was hit over the head with a wine bottle. He did not remember much of what happened after that but recalls seeing a sword and waking up in a pool of blood. The defendant, who, like the victim, was intoxicated, claimed to have hit the victim with a wooden object in self-defence. The case was classified as no further action, on CPS advice, because of the high level of intoxication of all involved, the muddled accounts and divided loyalties.

### **The relationship between the victim and the defendant**

A key difference between rape and the other offences was the relationship between the victim and defendant. In all rape cases where a suspect was identified, the suspect was more likely to be a family member when compared to the other offences, including current or former partners (40% of rape cases compared with 17% for sexual assault, 18% for GBH without intent and 19% for GBH with intent) (see Table 21 of Appendix A). This fits with findings from previous research (Feist et al, 2007).

### **Prior convictions**

In nearly a third of all offences (29%) where a suspect was identified, and in half of all cases (52%) referred to the CPS, the defendant was recorded to have had at least one prior conviction. Prior convictions were more common in GBH (66% with intent, 58% without) than rape or sexual assaults (37% and 40%).

### **Location of offence**

Two in five offences (40%) referred to the CPS took place in the victim's home, the suspect's home or the victim/suspect's shared home, and these were the most common locations for offences involving rape or sexual assault. GBH was most likely to take place on the street (32%); nearly a quarter of all offences referred to the CPS occurred on the street (23%).

### **The type of violence during an incident**

GBH is by its very nature typically a physically violent act, although GBH can be caused or inflicted in non-violent ways, for example where HIV is transmitted non-consensually. Where GBH is reported, but no evidence is presented of physical violence occurring, it will normally be found not to be GBH and this was reflected in the disposals (for example NFA or downgrading). Major physical violence (e.g. beating, choking, biting) was most common in GBH without intent cases (65%) and the use of weapons was most prevalent in GBH with

intent cases (33% involving life-threatening weapons and 45% other weapons, such as a stick or bottle). These findings are unsurprising as these types of physical violence would reflect how an incident was charged; it is easier to establish intent where a weapon is used.

For all four offences, the use of a weapon did appear to influence sentencing. Custodial sentences were far more prevalent in cases where a weapon was used (73%) compared with when there was no weapon (48%) (see Table 17 of Appendix A).

### **Vulnerable or intimidated victims and witnesses (VIW)<sup>20</sup>**

Based on the Vulnerable or Intimidated victims and Witnesses (VIW) status recorded on the casefiles, a third of cases involved vulnerable or intimidated witnesses and such cases were more likely to be referred to the CPS (38% of all cases referred). There was considerable variation between the serious crimes (16% of GBH cases compared with 61% of sexual offence cases), but this can be explained by the categories of persons eligible for special measures to support vulnerable victims and witnesses as defined in the Youth Justice and Criminal Evidence Act 1999, which includes victims of sexual offences. Consequently, the application of special measures was also more common among the sexual offences cases (recorded in 23% of rape, 10% of sexual assault, 9% GBH with intent and 2% GBH without intent cases). There was no evidence that this influenced conviction rates.

A 'high' level of contact and support from the police towards victims occurred more in rape cases (20%) than other offences (9% overall). 'Level of contact' was determined by researchers' interpretations of the number and nature of victim–officer interactions noted on the casefile.

## **4.9 Key decision makers**

Casefiles mainly focused on decisions made by police and, where appropriate, CPS staff. Checks were made for the involvement of others and this showed that some specialist officers were used in certain cases, such as those involving rape allegations.

Whilst numbers were very low (and therefore further research would be needed to draw robust conclusions), data from the Serious Crimes Database indicated that rape cases involving specialist officers, trained in investigating rape and other sexual offences, were less

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<sup>20</sup> See Appendix B for the definition of vulnerable or intimidated witnesses. Victims and witnesses are referred to as 'witnesses'.



likely to have a witness withdraw, as mentioned earlier in this report, and therefore they appeared to influence the decision making process.

#### **4.10 Decisions in the light of official guidance**

Whereas the rape cases within the database clearly fell within the scope of official guidance as to what constitutes rape, incidents of sexual assault were often ambiguous. This reflected a definition of 'sexual touching' which was more open to interpretation; the researchers identified ten sexual assault cases that (based on information in the casefiles and CPS guidance) could have been charged as rape, for example oral penetration by the penis. However, this may be explained by some cases occurring before 1 May 2004 and therefore being prosecuted under the Sexual Offences Act 1956, under which oral penile penetration cannot be prosecuted as rape.

With regard to GBH, there was a clear difference in the database sample for those cases charged with intent and those without intent in relation to the use of a weapon; three times as many GBH with intent cases involved the use of a life-threatening weapon. This fits with CPS guidance on the deliberate selection of a weapon as an indication of intent.

Whilst domestic violence is not categorised as a separate offence, it can often play a part in the types of offences included in the Serious Crimes Database. Taking the CPS definition of domestic violence,<sup>21</sup> researchers noted that nearly a quarter (23%) of the cases in the database sample met the CPS definition of domestic violence, in that they involved an intimate partner or other family member. This figure was higher for rape, where 40% met the CPS definition (see Table 21 of Appendix A).

#### **4.11 False allegations**

There is no official definition of false allegations of rape. From the casefiles and the qualitative research a variety of definitions of false allegations of rape were found to be in operation amongst police and prosecutors. These ranged from a broadly drawn definition of false allegations relating to intoxicated victims (and poor recollection of details), delays in reporting, witness retractions,<sup>22</sup> lack of physical injury and lack of medical evidence, and a narrower definition based on situations where the complaint was considered malicious.<sup>23</sup>

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<sup>21</sup> See Appendix B for the CPS definition of domestic violence.

<sup>22</sup> Note 40% of rapes were in domestic violence situations impacting on victim retractions (see Table 21 in Appendix A).

<sup>23</sup> Note the broader definition includes cases wherein there may be no evidence of the allegation being 'false'.

Intoxication and lack of physical injury were more frequently recurrent themes in cases where the victim and defendant had no prior relationship or a short previous acquaintance.

**Case example:** In one case the victim's friend told her that she had been raped whilst intoxicated; she had no recollection of events and no physical injuries. The friend subsequently admitted she did not know if the victim had been raped but had been concerned about the behaviour of the alleged defendants.

Lack of corroboration and victim withdrawal were more common themes with 'false' allegations in domestic violence cases.<sup>24</sup> A perceived history of false complaints was relevant, irrespective of the relationship between the victim and defendant.

**Case examples:** In one case the victim made an allegation of sexual assault against her step-father. Her mother made a statement that she regularly made up stories to 'get attention'. She had a previous history of complaints and retractions against other people. The police concluded this was a false allegation and the lack of corroborative medical evidence supported their decision.

In another case the victim met the defendant over the internet and alleged 'date' rape. The police did not believe her account due to a lack of corroborative medical evidence, self-reported mental instability and experience of previous complaints in similar circumstances.

A narrower definition of false allegations used amongst police and prosecutors was based solely on situations where the complaint was considered malicious and for which the police or CPS considered they had strong evidence that the complaint was untrue, for example CCTV.

**Case examples:** In one case the victim met the defendant in a pub. She alleged she was raped in a nearby alleyway but CCTV from the pub showed the victim being affectionate to the defendant both before and after the alleged incident. When confronted with this she admitted fabricating the complaint following an argument with her boyfriend.

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<sup>24</sup> See Appendix B for the CPS definition of domestic violence.

In another case the victim met the defendant to go for a walk. She alleged that the defendant pushed her over and raped her in a public space. Text messages 'of a sexual nature' between the victim and the suspect prior to the alleged rape led the police to conclude that she had met with him with a view to consensual sexual intercourse. Although the victim may have changed her mind, she was perceived as having a motive for making a false complaint and there was a lack of forensic evidence to support the allegation.

The narrower definition would result in a lower number of offences classified as false allegations.

Of particular note was the issue of witness retractions which in some cases appeared to be the only evidence of a false complaint, in spite of clear policy guidance that this ought to be insufficient in itself. There was no information in the casefiles to suggest that victim withdrawal led to prosecutions for perverting the course of justice; nonetheless we cannot rely on the casefiles here as it is likely that any such instances would generate a new file that would not have appeared in our sample.

'False allegation' is not an officially recorded case outcome. However casefiles were reviewed to identify those cases that were seen as false. Files indicating a false allegation were then coded by the research team using the broad and narrow definitions highlighted by practitioners as part of the qualitative research.<sup>25</sup> Taking the broader definition of false allegations would classify 12%<sup>26</sup> of cases in the database reported as rape as false. However, the narrower definition focusing on 'malicious' complaints only would suggest a much lower figure of 3%.<sup>27</sup> The prevalence of false allegations in GBH cases was lower than for rape and sexual assault. Some 2%<sup>28</sup> of our sample of cases reported as GBH were considered false by police taking the broad definition covering both 'malicious' and 'non-malicious' allegations.

The classification of false allegations differed between rape and GBH due to the nature of the offences. GBH is typically a violent act with physical injury. The presence of physical injury in GBH always called for an explanation; if there was a false allegation the injuries had to be sustained accidentally, or in some other way, for example self-infliction or infliction by

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<sup>25</sup> The qualitative research purposefully probed the spectrum of different types of situations that might be classified as 'false allegations'.

<sup>26</sup> 36 cases out of 299 reported rape cases.

<sup>27</sup> 9 cases out of 299 reported rape cases.

<sup>28</sup> 12 cases out of 558 reported GBH cases.

someone other than the alleged assailant (which might be described as a partially false allegation).

**Case examples:** In one case the victim went to a party where he became intoxicated. He claimed he was head butted and kicked by two unknown males. Witnesses said that the victim had a fall. The police concluded this was a false allegation, due to the complainant's intoxicated state and poor recollection of events.

In another case the victim alleged he was kidnapped and assaulted by four unknown men. The incident came to police attention via a third party report and both the victim and his girlfriend refused to make formal statements (although their informal accounts conflicted). The police recorded that the victim had been assaulted by someone (probably the person named by his girlfriend), but decided to take no further action as the inconsistency in their stories and unwillingness to make formal statements suggested the account of how he sustained his injuries was untrue and was probably designed to conceal his involvement in criminal activities.

Unlike GBH, the injury from rape might not always be visible. This lack of visible injury or other corroborative evidence could contribute to the increased likelihood of rapes being classified as 'false'. Consequently, the findings here suggest that there was a clear difference in the perceived nature and frequency of false complaints across the sexual/non-sexual divide.

Where the outcome was known for cases defined as false allegations of rape, the police decision was most frequently recorded as 'no further action' (in 42% of the cases that were perceived to be false by police) or 'no crime' (46% of cases perceived to be false) in apparently similar circumstances.<sup>29</sup>

#### **4.12 Practitioners' views on barriers to case handling and examples of good practice**

Barriers to case handling and examples of good practice were drawn from the qualitative elements of the research, particularly the workshops.

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<sup>29</sup> Two cases in the sample were referred to the CPS, of which one was charged on a downgraded offence and found not guilty.

Barriers and challenges were highlighted by participants. Some officers mentioned concern over the process of evidence gathering early in cases that could affect progression. Clear leadership from experienced officers was seen as key to gathering reliable evidence. In particular, engaging the cooperation of witnesses<sup>30</sup> in the Criminal Justice System, for example by having them undergo a medical examination where appropriate, was discussed. Participants felt that if the officer lacked experience, in the early stages of evidence-gathering opportunities might be missed to collect evidence and build the investigation. It was also suggested that the accuracy of crime reports could be improved by including a greater level of detail. In relation to these issues, it was suggested that Sergeants should be more actively involved in instructing response officers, to prevent the likelihood of errors being made and investigative opportunities missed. This was not meant as a criticism of either Sergeants or response officers, more that it should be a priority from a management perspective.

During workshops, practitioners discussed the importance of 'case ownership' by the investigating officer at both the police investigative stage and further down the line at court. Examples were given of the benefits of specialist officers (officers specially trained in investigating rape and other sexual offences) for sexual offences who became actively involved in cases, engaging witnesses and gathering evidence. This is supported by the quantitative evidence, which shows the small number of cases involving specialist officers included a higher level of evidence than those that did not involve a specialist officer (96% compared to 83%).

Workshop participants saw major benefits in cases where there was a close working relationship between the police and the CPS. Whilst this was not seen as necessary in straightforward cases, it was thought that the CPS did, and could, play a pivotal role in guiding and focusing police officers during investigative stages, and examples were given of how useful directions were in pointing to the types of evidence that needed to be collected.

Regular monitoring of OoCDs at the force level was seen as good practice. For example, one force routinely analysed their use of OoCDs to identify trends and then compared local data with national statistics. They also 'dip sampled' files to check for compliance with OoCD criteria.

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<sup>30</sup> Victims and witnesses are referred to as 'witnesses'.

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## Appendix A Data tables

The data tables in this appendix are drawn from the Serious Crimes Database (please note tables may include low bases).

### Gender and age

**Table A1: Cases reported to the police by gender and offence**

Gender	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
<b>Defendants</b>					
Male	90%	90%	67%	78%	82%
Female	2%	2%	14%	7%	6%
Don't know/ No information entered	8%	8%	19%	15%	12%
<b>Victims</b>					
Male	9%	10%	81%	74%	42%
Female	87%	87%	15%	23%	54%
No information entered	4%	3%	4%	3%	3%
Base (n)	292	287	270	266	1,115

Base: All cases where gender identified in casefiles

Note: Percentage may not sum to 100% due to rounding

**Table A2: Cases referred to the CPS by gender and offence**

Gender	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
<b>Defendants</b>					
Male	90%	93%	75%	89%	86%
Female	*	1%	17%	9%	8%
No information entered	9%	6%	8%	2%	7%
<b>Victims</b>					
Male	8%	8%	74%	67%	42%
Female	83%	86%	20%	31%	53%
No information entered	8%	6%	6%	2%	6%
Base (n)	107	85	121	96	409

Base: All cases where gender identified in casefiles

\* less than 1%

Note: Percentage may not sum to 100% due to rounding

**Table A3: Age of the defendant for reported, crimed and charged cases**

Age of defendant for all offences	Reported	'Crimed' cases	Charged cases
Under 10	-	-	-
10–17	9%	9%	7%
18–24	18%	28%	36%
25–34	13%	18%	16%
35–54	20%	20%	23%
55+	6%	3%	4%
No information entered	34%	21%	15%
Base (n)	1,097	387	198

Base: All cases where age identified in casefiles

- less than 1%

Note: Percentage may not sum to 100% due to rounding

**Table A4: Age of the victim for reported, crimed and charged cases**

Age of victim	Reported	'Crimed' cases	Charged cases
Under 13	6%	3%	1%
13–17	18%	9%	6%
18–24	26%	31%	33%
25–34	18%	17%	16%
35–54	21%	25%	26%
55+	3%	5%	4%
No information entered	8%	11%	16%
Base (n)	1,097	387	198

Base: All cases where age identified in casefiles

Note: Percentage may not sum to 100% due to rounding

## The criminal justice process from allegation to outcome

**Table A5: Breakdown of who first reported the offence**

Person who first reported the offence	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Victim	44%	41%	22%	29%	34%
Family (not partner)	19%	17%	6%	11%	13%
Partner	1%	2%	2%	2%	2%
Friends	3%	2%	6%	4%	4%
Other	18%	19%	32%	30%	24%
Don't know/no information	15%	19%	32%	25%	23%
Base (n)	299	292	282	276	1,149

Base: All reported cases

Note: Percentage may not sum to 100% due to rounding



**Table A6: Percentage of victims who withdrew or retracted their statement, by reported offence**

Whether the victim withdrew or retracted their statement at any time	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Yes	20%	6%	7%	11%	11%
No	49%	58%	68%	62%	59%
No information/Don't know	32%	36%	24%	27%	30%
Base (n)	231	197	193	195	816

Base: All cases where a victim witness statement was given

Note: Percentage may not sum to 100% due to rounding

**Table A7: Percentage of victim witness statements retracted, by who first reported the offence**

Whether victim witness statement was retracted	Who first reported offence			Total
	Victim	Third party	No information	
Yes	14%	9%	10%	11%
No	61%	61%	50%	59%
Don't know/ No information entered	25%	30%	39%	30%
Base (n)	312	349	155	816

Base: All cases where a victim witness statement was given

**Table A8: Percentage of victims who withdrew or retracted their statement by relationship between defendant and victim**

Victim withdrew or retracted the statement at any time	Relationship between defendant and victim			Total
	Domestic violence	Non-domestic violence	No information / refused	
Yes	20%	8%	10%	11%
No	54%	63%	41%	59%
No information	21%	17%	5%	21%
Don't know	5%	11%	44%	9%
Base (n)	202	536	78	816

Base: All cases with a witness statement from the victim

Note: Percentage may not sum to 100% due to rounding

Note: Domestic violence is defined as victim relationship to defendant being 'Family – not partner', 'Current partner' or 'Former partner' and Non-domestic violence is defined as victim relationship to defendant being 'Stranger' or 'Known friend or acquaintance'.

**Table A9: Percentage of cases referred to CPS, based on whether victim gave witness statement**

Whether referred to CPS	Cases with an identified suspect			All cases
	With a victim witness statement	No victim witness statement	Don't know/No information	
Referred to CPS	46%	12%	71%	39%
Not referred to CPS	54%	88%	29%	61%
Base (n)	799	196	102	1097

Base: All cases where a suspect was identified

Note: Percentage may not sum to 100% due to rounding

**Table A10: Percentage of cases where the victim gave a witness statement, by offence and whether they were referred to CPS**

Whether they were referred to the CPS	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Yes	40%	41%	60%	47%	46%
No	60%	59%	40%	53%	54%
Base (n)	230	195	188	186	799

Base: All cases where victim witness statement given

Note: Percentage may not sum to 100% due to rounding

**Table A11: Guilty pleas, by reported offence**

	Offence under which reported				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Defendant pleaded guilty	13%	12%	9%	32%	16%
Defendant did not plead guilty	67%	51%	68%	42%	58%
Don't know/ No information entered	20%	37%	23%	25%	26%
Base (n)	64	59	97	71	291

Base: All cases charged

Note: Percentage may not sum to 100% due to rounding

## Understanding decisions and outcomes at key stages

**Table A12: Types of evidence collected by offence**

Type of evidence collected	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Any evidence	87%	76%	79%	82%	81%
Witness statement from victim	77%	67%	68%	71%	71%
Other witness statements*	60%	40%	57%	49%	51%
Case exhibits (e.g. photos, clothing, weapon, bag, etc.)*	45%	25%	57%	49%	44%
Medical statements*	29%	10%	36%	29%	26%
Admitted as inpatient	1%	-	41%	37%	19%
Forensic evidence*	32%	10%	21%	7%	18%
999 tape*	3%	-	10%	5%	4%
Base (n)	299	292	282	276	1,149
*Base (where question not included for all cases)	235	257	245	241	978

\*The last 171 casefiles involved recording of fewer variables (to speed up the data collection process). Variables excluded are those asterisked in the table.

Note: Percentage may not sum to 100% due to rounding.

**Table A13: Evidential testing by offence**

Whether police applied Threshold or Full Code Test	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Threshold Test <sup>31</sup>	11%	4%	10%	5%	8%
Full Code Test	21%	13%	13%	9%	14%
Don't know / no information	68%	83%	78%	85%	78%
Base (n)	299	292	282	276	1,149

Note: Percentage may not sum to 100% due to rounding

<sup>31</sup> The Threshold Test can only be applied in the circumstances outlined in paragraph 5.3 of the Code for Crown Prosecutors. It requires the prosecutor to be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.

## Out of court disposal (OoCD)

**Table A14: OoCDs by offence for which the OoCD was given in youth and adult systems**

	Offence for which OoCD was given			Total
	Sexual assault	GBH without intent	Other (downgraded offences) <sup>32</sup>	
Adult	9	7	8	24
Youth	5	7	1	13
Base (n)	14	14	9	37

## Case outcomes

**Table A15: Conviction rate, based on offence under which defendant was eventually charged**

	Offence under which charged				
	Rape	Sexual assault	GBH with intent	GBH without intent	All offences
Total number convicted under final charge	60%	67%	84%	71%	71%
Base (n)	43	30	38	62	173

Base: All 'outcome'<sup>33</sup> charge' cases

Note: Cases were sampled by the offence under which they were reported. They could be charged under the same offence or a different offence after consultation with the CPS. This is called 'initial' or 'original' charge. As the case progresses, and enters plea bargaining, etc, charges can be changed again, and eventually an outcome charge is given, against which convictions can be brought. The outcome charge may be different from the charge given to a case when it first reaches court. As well as charge altering, cases could also be dropped.

**Table A16: Sentence types, based on offence under which defendant was eventually charged**

Sentence type, given a conviction	Offence under which charged				
	Rape	Sexual assault	GBH with intent	GBH without intent	All offences
Custodial sentence	81%	35%	81%	45%	61%
Suspended sentence	-	15%	9%	25%	14%
Community sentence	8%	40%	22%	27%	24%
Base (n)	26	20	32	44	122

Base: Convicted cases based on whether they received a sentence, pleaded guilty or were found guilty before or at trial for the offence under which they were eventually charged.

Note: Percentage may not sum to 100% due to rounding; as a conviction may result in one or more sentence types, a sentence type not listed in the table or information regarding sentencing was not recorded.

<sup>32</sup> Offences such as common assault, affray and outraging public decency.

<sup>33</sup> This is the total in the sample charged under this offence regardless of the initial reported offence.

**Table A17: Whether convicted case was given a custodial sentence by use of threatening weapon and offence**

<b>Offenders given a custodial sentence on conviction</b>	<b>Used weapons</b>	<b>Did not use weapon</b>	<b>No information about weapon</b>
Custodial sentence	22 (73%)	44 (48%)	48 (54%)
Rape	0 (0%)	9 (10%)	19 (21%)
Sexual assault	0 (0%)	2 (2%)	20 (22%)
GBH without intent	2 (7%)	16 (18%)	5 (6%)
GBH with intent	20 (66%)	17 (19%)	4 (4%)
Base (n)	30	91	89

Base: Number convicted

Note: Percentage may not sum to 100% due to rounding

**Table A18: Case outcomes, by reported offence**

	<b>Reported offence</b>				
	<b>Rape</b>	<b>Sexual assault</b>	<b>GBH with intent</b>	<b>GBH without intent</b>	<b>All offences</b>
Cases proceeding to court	50%	51%	70%	68%	60%
Cases proceeding to court and charged under reported offence	26%	27%	20%	28%	25%
Cases convicted of reported offence	17%	20%	17%	18%	18%
Base (n)	159	162	174	136	631

Base: 'Crimed' cases

Note: Percentage may not sum to 100% due to rounding

### The circumstances of victims and suspects

**Table A19: Percentage of cases with a suspect identified where the victim or defendant was recorded as intoxicated, by offence**

	<b>Reported offence</b>				
	<b>Rape</b>	<b>Sexual assault</b>	<b>GBH with intent</b>	<b>GBH without intent</b>	<b>All offences</b>
Victim recorded as intoxicated	28%	14%	32%	39%	28%
Defendant recorded as intoxicated	16%	12%	27%	28%	21%
Base (n)	292	284	268	253	1,097

Base: all cases with suspect identified

Note: Percentage may not sum to 100% due to rounding

**Table A20: Percentage of cases referred to the CPS where the victim or defendant was recorded as intoxicated, by offence**

	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Victim recorded as intoxicated	22%	10%	29%	34%	25%
Defendant recorded as intoxicated	19%	15%	41%	45%	31%
Base (n)	109	87	130	98	424

Base: all cases referred to the CPS

Note: Percentage may not sum to 100% due to rounding

### The relationship between victim and the defendant

**Table A21: Relationship between defendant and principal victim, by offence**

Defendant's relationship to victim	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Defendant is a stranger	10%	26%	27%	41%	25%
Known friend, acquaintance, other	41%	42%	37%	27%	37%
Family (not partner)	16%	13%	7%	7%	11%
Current partner	10%	1%	9%	9%	7%
Former partner	14%	3%	2%	3%	6%
No information	9%	15%	18%	13%	14%
Base (n)	292	284	268	253	1,097

Base: cases where a suspect was identified

Note: Percentage may not sum to 100% due to rounding

**Table A22: Relationship between defendant and principal victim among cases referred to the CPS**

Defendant's relationship to victim	Reported offence				All offences
	Rape	Sexual assault	GBH with intent	GBH without intent	
Defendant is a stranger	7%	20%	21%	33%	20%
Known friend, acquaintance, other	39%	49%	44%	31%	41%
Family (not partner)	28%	18%	11%	11%	17%
Current partner	8%	-	9%	9%	7%
Former partner	8%	-	2%	5%	4%
No information/refused	9%	9%	13%	11%	11%
Base (n)	109	87	130	98	424

Base: Cases referred to CPS

Note: Percentage may not sum to 100% due to rounding

## The type of physical violence reported during a GBH incident

**Table A23: Types of physical violence reported, for GBH offences**

	Reported offence		
	GBH with intent	GBH without intent	All GBH offences
Violence reported*	95%	93%	94%
*Base (n): All reported crimes	282	276	558
Of crimes where violence reported:			
Major physical violence (e.g. beating choking, biting, etc.)	49%	65%	57%
Minor physical violence (e.g. roughness, pushing, physical restraint)	22%	30%	26%
Life-threatening weapons (e.g. knife, gun etc)	33%	10%	22%
Other weapons (e.g. wooden stick, club, bottle etc.)	45%	18%	32%
Base (n)	267	256	523

Base: Crimes where violence was reported

Note: Percentage may not sum to 100% due to rounding; an offence can be reported as GBH but present no evidence that physical violence has occurred. These cases are not normally GBH and this was reflected in the disposals (for example NFA or downgrading).

## Appendix B

### Definitions of the four offences

The purpose of this section is to provide summary information on the characteristics of the four offences in the sample, with reference to the relevant guidance.

#### Rape

Rape is defined by Section 1 of the Sexual Offences Act 2003 as intentional penetration of vagina, anus or mouth by the penis without consent and where the defendant does not reasonably believe in consent. Penetration of the vagina by other parts of the body or by objects is not rape, but a separate offence (assault by penetration) under Section 2 of the Sexual Offences Act 2003.

CPS guidance on rape states:

*Prosecutors should specify in the indictment whether the vagina, anus or mouth was penetrated. Where penetration of more than one orifice occurs, separate counts of rape should be preferred. Prosecutors should use alternative counts sparingly and only where there are doubts concerning the issues e.g. evidence is unclear whether the victim was penetrated by a penis or other object, an alternative of assault by penetration would be appropriate.*

#### Sexual assault

Sexual assault is defined by Section 3 (s.3) of the Sexual Offences Act 2003 as intentional 'sexual touching' without consent, where the defendant does not reasonably believe in consent. The meaning of 'sexual touching' is ambiguous and potentially very wide.

The CPS guidance notes:

*Touching includes touching amounting to penetration e.g. kissing. Where there is sufficient evidence, penile penetration of the vagina, anus or mouth should be charged as rape, and penetration of the vagina or anus with any part of a person's body or other object should be charged as assault by penetration.<sup>34</sup>*

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<sup>34</sup> [http://www.cps.gov.uk/legal/s\\_to\\_u/sexual\\_offences\\_act](http://www.cps.gov.uk/legal/s_to_u/sexual_offences_act)



The CPS charging guidance on sexual assault states:

*Various activities previously covered by the offence of 'indecent assault' now fall within the definitions of offences under the 2003 Act (e.g. assault by penetration, child sex offences and vulnerable adults subjected to a sexual assault). This means that the offence of sexual assault (section 3) will largely now be used in relation to lesser forms of sexual assault than previously.*

## **GBH with intent**

The offence of GBH with intent is defined by Section 18 of the Offences against the Person Act 1861 and relevant case law. It is committed when a person unlawfully and maliciously, with intent to do some grievous bodily harm, or with intent to resist or prevent the lawful apprehension or detainer of any other person, either wounds another person, or causes grievous bodily harm to another person. Grievous bodily harm means 'really serious harm' and examples in the relevant CPS guidance<sup>35</sup> include:

- injury resulting in permanent disability or permanent loss of sensory function;
- injury which results in more than minor permanent, visible disfigurement; broken or displaced limbs or bones, including fractured skull;
- compound fractures, broken cheek bone, jaw, ribs, etc.;
- injuries which cause substantial loss of blood, usually necessitating a transfusion;
- injuries resulting in lengthy treatment or incapacity.

As the CPS guidance notes 'The distinction between charges under Section 18 and Section 20 is one of intent. The gravity of the injury resulting is not the determining factor, although it may provide some evidence of intent.' It goes on to outline factors which may indicate intent:

- a repeated or planned attack;
- deliberate selection of a weapon or adaptation of an article to cause injury, such as breaking a glass before an attack;
- making prior threats; and
- using an offensive weapon against, or kicking, the victim's head.

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<sup>35</sup> [http://www.cps.gov.uk/legal/l\\_to\\_o/offences\\_against\\_the\\_person](http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person). GBH can include psychiatric injury where supported by appropriate expert evidence.

## GBH without intent

GBH without intent is defined by s.20 of the Offences against the Person Act 1861 and relevant case law. It is committed when a person unlawfully and maliciously either wounds another person or inflicts grievous bodily harm upon another person. Wounds can be minor and if so, according to CPS policy, should be charged as the lesser offence of Actual Bodily Harm; section 20 should be reserved for those wounds considered to be serious (thus equating to serious bodily harm).

## Domestic violence

There is no specific offence of domestic violence, but when any of the four offences in this study take place between intimate partners or family members they meet the government definition and should be handled in accordance with the CPS domestic violence policy.<sup>36</sup>

The Government definition of domestic violence is:

*Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.*

## Vulnerable or Intimidated Witness (VIW)

**Vulnerable witnesses** are defined by section 16 of the Youth Justice and Criminal Evidence Act (YJCEA) 1999 as:

- All child witnesses (under 18); and
- Any witness whose quality of evidence is likely to be diminished because they:
  - are suffering from a mental disorder (as defined by the Mental Health Act 1983);
  - have a significant impairment of intelligence and social functioning; or
  - have a physical disability or are suffering from a physical disorder.

**Intimidated witnesses** are defined by section 17 of the YJCEA as those suffering from fear or distress in relation to testifying in the case. Complainants in sexual offences are defined by section 17(4) as automatically falling into this category unless they wish to opt out.

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<sup>36</sup> [http://www.cps.gov.uk/publications/prosecution/domestic/domv\\_guidance.html#a02](http://www.cps.gov.uk/publications/prosecution/domestic/domv_guidance.html#a02)

Witnesses to certain offences involving guns and knives are similarly defined as automatically falling into this category unless they wish to opt out.

Victims of domestic violence, racially motivated crime and repeat victimisation, the families of homicide victims, witnesses who self-neglect/self-harm or who are elderly and/or frail might also be regarded as intimidated.

In determining whether a witness can be defined as an intimidated witness, the court must take account of:

- The nature and alleged circumstances of the offence;
- The age of the witness;
- Such of the following matters as appear to the court to be relevant, namely
  - the social and cultural background and ethnic origins of the witness
  - the domestic and employment circumstances of the witness
  - and any religious beliefs or political opinions of the witness
- any behaviour towards the witness on the part of
  - the accused
  - members of the family or associates of the accused
  - any other person who is likely to be an accused or a witness in the proceedings

The court must also take into account any views of the witness.

## Appendix C Methodology

The methodology for this study involved the following key elements:

- devising a coding frame;
- drawing a sample;
- populating the database;
- quantitative analysis of the database;
- qualitative work, which included:
  - exploratory qualitative research;
  - workshops with police and CPS practitioners.

This approach enabled the project team to gather a combination of quantitative and qualitative data in relation to serious offences and case handling.

### Devising a coding frame

A brief policy review of guidance on case handling was undertaken to inform the study. A key aspect of the project was the development of a coding frame that formed the basis of the database. The coding frame went through a series of versions with input from analysts and specialist policy units based in the Home Office and the Ministry of Justice. Earlier work on rape casefiles carried out by Feist et al (2007) at the Home Office provided a good starting point. The resulting coding frame included a variety of closed and open answers, which provided a database capable of statistical analysis but also an opportunity for gathering richer data, of a qualitative nature, to provide a more detailed understanding of case histories.

The database covered both information on the process of a case through the criminal justice system and data on the individuals involved. The main database design was organised into 14 sections/themes:

1. general – core information about the case, including reference numbers
2. about the principal victim
3. about other victims
4. about the principal defendant
5. about other defendants
6. details of the offence
7. investigation and evidence gathering

8. cases not referred to the CPS by the police – police disposals
9. cases referred to the CPS, including out of court disposals
10. cases going to trial
11. details on sentencing
12. the outcome of the case
13. liaison between the parties involved
14. other issues (for researchers to add extra information or general comments pertaining to the case)

### **Pilot: exploratory qualitative interviews and database testing**

A small pilot / feasibility study was undertaken to test draft versions of the coding frame for the database on eight actual cases. The pilot included 16 in-depth interviews, conducted in November 2010, with police and CPS practitioners involved in those cases. Respondents included police response officers, investigating officers and those specialising in serious violent and sexual offences, and CPS prosecutors. The in-depth interviews also provided an opportunity to explore the decision-making process, in particular to identify and better understand those aspects of case management that would not normally be captured in the casefiles. A topic guide was developed to structure the in-depth interviews (please see Appendix D). Three of the eight study areas were selected for the pilot, rather than all eight police force areas, due to the time needed to gain security clearance and the stringent timescales required for the project.

Several techniques were utilised to minimise data entry errors and researcher bias:

- Presenting pre-coded lists of question answers as menu options.
- Using instructions at the time of data entry.
- Focusing guidance on question interpretation from within the database itself, i.e. reducing the need for researchers to refer to separate documentation.

As a check on how researchers were interpreting the database variables, some ‘double blind testing’ involving two researchers separately collecting data from the same casefile was carried out during the first month of fieldwork.

### **Data security**

It was crucial to this project to get stakeholders’ agreement on the most secure mode of data transfer. Data were entered directly onto a restricted secure network folder through a two-factor authentication RSA token. Personal information for the serious crimes database was

entered onto a separate database as an added security measure. The only link between the personal identifiers database and the main database was the research reference number.

**Sampling**

**Considerations**

A sample was drawn from eight police force areas. These areas were selected to include a mix of rural and urban, three were predominantly urban, three predominantly rural. In addition a mixture of areas with high, low and average standard detection rates was selected (the highest had a ‘no crime’ rate of 12% and the lowest 3.9%). The sampling for these characteristics was underpinned by a desire to better understand attrition from the earliest decision making processes and the potential influence of local factors on decisions in the context of the application of national guidance where available.

The sampling method took equal numbers from each crime type (the offence category of which it was originally recorded) and equal numbers from each area. Only completed cases were used as the study was concerned with case outcomes, thereby excluding those which were still live. Any changes as a result of appeals will not be taken account of in our database.

The offence codes eligible for the study are detailed in Table B.1

**Table B.1: Offence codes as requested for use in the study**

<b>Broad category</b>	<b>If your force uses upper codes only:</b>	<b>If your force uses lower codes:</b>	<b>Notes</b>
Rape	19A 19B, 19C, 19D, 19E, 19F, 19G & 19H	19/2, 19/3, 19/4, 19/7, 19/8, 19/9, 19/10, 19/16 & 19/17	The study excludes attempted rape. If your force uses upper codes only, it would be useful to note which cases were recorded as rapes and which were recorded as attempted rapes
Sexual assault	17, 17A, 17B, 20, 20A & 20B	n/a	Lower codes not shown as we want all offences under the upper sexual assault codes.
GBH with intent	5A	5/1	This study only includes ‘wounding with intent to do GBH’. If your force uses upper codes only, it would be useful to note which cases were in this category and which were not
GBH without intent	8F & 8H	8/1 (GBH only, not malicious wounding), 8/33, 8/40 & 8/46	

Police contacts provided the research team with a list of all cases (presented anonymously) that were recorded between 1 April 2008 and 31 March 2009, inclusive. A total of 1,200 cases were sampled for the database and police contacts then proceeded to assemble the relevant files in advance of data collection.

### **Populating the database**

The main fieldwork stage involved extracting data from casefiles to populate the database.

The data were inputted electronically onto the database by experienced researchers who were thoroughly briefed on the project. The data were collected from paper or electronic files (depending on how it was held) at police or CPS premises and entered directly onto a secure area of TNS-BMRB's computer server.

The database was designed to capture information held in the casefiles, rather than to act as a questionnaire would in a normal survey. Consequently, it is important to note that data were sometimes missing and it cannot be said that something did not occur; simply that it was not recorded.

Of the 1,200 cases sampled some 1,149 casefiles were available and subsequently coded during an intensive four-month period of data collection.

Variables used for analysis are usually derived from a variety of questions for which information is available. Where information was not available for a specific question, answers to other questions were used to infer what the answer might have been. For example, if a case was recorded as ending in a conviction, it was assumed that a charge was brought, even if there was no information available in the files as to whether the defendant was actually charged.

### **Workshops with police and CPS practitioners**

Once the data had been collected for the database, workshops were held in February 2011 with police and CPS practitioners drawn from two of the participating areas. The first workshop involved 27 participants (25 police officers and two CPS lawyers). There were 24 participants at the second workshop (21 police officers and three CPS lawyers).

The workshops addressed a variety of project objectives:

- To explore reactions to emerging findings and gather views on the types of information held on the database, for example false allegations and out of court disposals.
- To build on the themes identified during the in-depth interviews, in particular the factors influencing decision making.
- To identify suggestions for improvements to case handling and examples of good practice.

The workshops started with a brief presentation on the project, along with summary findings, and then participants were divided into discussion groups. Each discussion group was facilitated by an experienced qualitative researcher using a topic guide developed specifically for the workshops (see Appendix D). Participants were asked to feed back key messages at a plenary session that brought each workshop to a close. The discussions and plenary sessions were transcribed verbatim to allow for the data to be analysed and the findings to be incorporated into this report.

### **Data limitations**

There were wide variations in both case complexity and data quality among the casefiles. Whilst every effort was made to ensure the database reflected the journey of a case, the files themselves were not completed with this purpose in mind. In relation to sentencing it was sometimes not possible to collect data as this was not always routinely recorded by the CPS and court records did not form part of this study. As such there are varying degrees of completeness, and logical routing within the dataset. The dataset mainly follows the path of one victim and one defendant, when in fact cases were often more complex. Additional information on multiple defendants /victims was gathered, but the dataset only had scope to follow the details of cases for one defendant and one victim. A decision was taken early on in the project, in agreement with the Ministry of Justice, that a design that encompassed a variety of relationships between defendants/suspects and victims was beyond the scope of the project, for example in the case of a street fight.



### ***CPS files missing from sample***

The research team drew on both police and CPS files relating to cases in the sample. However, a small number of CPS files were unavailable in each area, and several reasons for this were given:

- a year after a case was closed, files were destroyed;
- some files were being used on other cases involving the defendant;
- several files were being used in an audit at the time of research;
- several files had been sent to archive but due to a delay before the archive system was updated, they were irretrievable;
- in some cases CPS details could not be located because the URN information stored by the police and the CPS did not match (see below); and
- some files were not found on the system for reasons the CPS could not understand;
- there was a lack of correspondence between police and CPS recording systems, e.g. Police URN not recognised on CPS system.

Researchers used a reserve sample to replace files not found in the CPS system, which had a small impact on the proportion of CPS files in the sample. The reserve sample was randomly drawn from the anonymised case information provided by police forces at the same time as the main sample.

### ***Reasons for decision making***

It was noted in the proposal that casefiles did not constitute a complete or comprehensive source of information on an investigation. Although researchers used all available material, little information on the reasons for decisions was provided and the qualitative data were therefore an essential counterpart to casefile analysis.

## Appendix D

### Topic guides: Pilot in-depth interviews with police and CPS

#### Topic guide: Serious Crimes Database Pilot Interviews with police and CPS

##### Aim:

- To provide a more detailed understanding of criminal justice processes than is currently possible, via the creation of a new database covering four serious offence types: rape, sexual assault, GBH with intent, GBH without intent.
- To identify the factors underpinning decision making over the course of the criminal justice process (from allegation to outcome).
- To explore the impact of false or 'difficult' allegations in terms of decisions to not proceed further with cases, whether sexual or violent.
- Whether, and to what extent, practitioners consider rehabilitative and restorative justice options as part of Out-of-court disposals (OoCDs) including conditional cautions (if relevant to case).
- To make suggestions on where the handling of cases could be improved.
- To consider examples of good practice made by practitioners when handling cases.

MOJ-AS has further objectives for the project in relation to rape cases:

- To identify the nature of false accusations of rape.
- To explore the circumstances and reasons why the police publicly release a rape suspect's name.<sup>37</sup>

*Note: These are exploratory interviews. Issues that a respondent is not familiar with, has difficulty in answering, cannot remember, etc., should be noted and understood.*

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<sup>37</sup> The study was unable to meet this objective due to a lack of information in the police and CPS files about whether the defendant's identity had been publicised and whether this had led to further victims coming forward.

## 1 Introduction

- About TNS-BMRB
- Nature of research; study for Ministry of Justice
- Emphasise confidentiality
- Interviews will be audio recorded and transcribed as an aide memoire [gain verbal consent].
- Length: approx 1–1.5 hours. Interview will focus on three areas:
  - a walk-through process from allegation to outcome of the case
  - an examination of the factors that can affect a decision and
  - any gaps or contradictions within the database coding frame.
- We are not expecting you to have a detailed recollection of this particular case – please don't feel pressured to provide more information than you have to hand.

## 2 Background

### 2.1. Respondent and their role

- Briefly explore job title and role
  - Job remit; areas of responsibility
  - Outline typical duties and what these involve
  - Tenure in this post; time they have worked for this force (police)/area (CPS)
  - Any specialist areas they work in now or have worked in previously

### 2.2 Background to casefile

- Check extent of respondent's recollection of the case – in other words, if it is familiar or difficult to remember
- Explore precise role of respondent in the case (*a simple description only – to be explored in detail in the 'walk through' below*)
  - Extent of responsibility for the case
  - Whether other colleagues were involved
    - Who were they
    - What did they do

### 3 'Walk through' of the case

*Researcher note: ask respondent to talk in more depth about the particular case. Ask them to consider the case from start to finish and take you through it, using the files as a reference. Explain it would help if they could give an explanation of what happened at each stage of the process, as they see it; what information was sought and received, and how that information was used in decision-making. In particular, ask them to identify the different points where decisions were made, and how the professionals involved came to their decisions.*

### 4 Case progression

Using journey map alongside casefile as a reference point, ask respondent to move through each decision identified.

#### 4.1 Overview

*[Invite respondent to review casefiles, then provide a brief summary of the case.]*

- Overview of the case: the main stages that occurred, decisions that were made, and outcome:
  - Is it typical of this offence type, or an uncommon example?
  - Provide reasons for views.

#### 4.2 In-depth understanding of each stage of the case – case progression

- For each stage in the case from the point of incident reporting, respondent should give
  - a brief summary of what happened;
  - who was involved; and
  - information that was logged on the system
- Researcher to probe at each stage:
  - Was it in any sense a tricky/problematic case?
  - Any policy and local guidance that was referred to;
  - **Or, additionally/alternatively, was 'standard practice' for similar cases being followed?**
  - IT system in place/information logging; and
  - Police/CPS resource dedicated

## 5 Decision-making in detail

### 5.1 Each decision in detail

For each decision point identified, probe:

- Decisions taken
  - Details of decision;
  - Who was involved in decision making process, including roles of respondent and others;
  - Reasons for these decisions;
  - Probe: How does this vary in comparison with other serious and violent offences?
- Decisions taken by alleged victims and suspects involved in case
  - Details of each decision;
  - Reasons for these, including 'guidance' (probe) or 'standard practice' (probe).

### 5.2 Circumstances of case and factors influencing decisions

*Researcher note: explain to respondent you would now like them to reflect on the particular circumstances of this case, and how these circumstances affected the decisions that were taken at each stage.*

- Description of particular circumstances of alleged victim, probing for:
  - Physical, mental, emotional state – or any use of alcohol or drugs; or the victim being young or vulnerable in any way (including victim credibility issues).
- Description of particular circumstances of alleged offender, probing for:
  - Physical, mental, emotional state
- Any other circumstances
- Impact of other individuals involved in the case, e.g. co-defendants, witnesses and so on
  - Probe: How does this vary in comparison with other serious and violent offences

### 5.3 Local guidance

- Respondent to consider any ways in which local guidance may influence the processes and decisions taken during the case
  - Where possible, draw comparisons between local and national guidance
  - Role of ‘standard practice’ (undocumented) also to be considered.

### 5.4 ‘False or ‘difficult’ allegations’ – sexual and violent cases

- Explore the spectrum of different types of situations that might be classified as ‘false allegations’. Some of the points along this spectrum include:
  - A deliberately false allegation by an alleged victim against a specific person, motivated by malice.
  - An alleged victim knowingly making a false allegation but without identifying a specific offender. (There may be no obvious motivation for this.)
  - Some police officers in particular may classify as ‘false’ a situation where a third party (victim’s boyfriend, parent or friend) reports an offence, which when it is followed up with the alleged victim differs significantly from the alleged victim’s account (i.e. it did not happen at all or was a less serious incident).
    - Probe for whether this happened with this case
    - Explore respondent views on when this occurs in other cases
- Other issues in relation to false or difficult allegations, including complicated cases where there is considerable prior interaction between the victim and offender, involving perhaps a range of behaviours on the part of victim and offender.

### 5.5 Defender anonymity<sup>38</sup>

Explore whether defender anonymity was an issue in this case (especially rape cases)

- If yes, was the defendant’s name released and what impact this had on the case
  - Explore reasons why name was released

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<sup>38</sup> Unable to meet this objective due to a lack of information in the police and CPS files about whether the defendant’s identity had been publicised and whether this had led to further victims coming forward.

## 6 Suggestions for improving case handling

### 6.1 Case overall

- What was handled well on the case and by whom (was there any particular good practice?)
- Thinking back were there aspects of the case the respondent thought at the time ought to have been handled differently / could have been done better. Explore any barriers, including legal and procedural/standard practice issues.
- With hindsight, can they suggest better ways of doing things
- Would the case have been managed differently (with greater hindsight) if it happened now, probing for examples of how better or worse.

## 7 Reflections on casefile contents and coverage

*Researcher note: ask respondent to consider their account of the case and the factors influencing decisions and the outcome, and offer their views both on (1) how well police/CPS manage/share the material on the case within their respective paper and electronic records; and also (2) on how we can best capture this information in order to enter it into the research database.*

- Respondent's views on most important elements to capture, for their area. For both (1) and (2).
- Missing aspects
- Any contradictions between respondent's account and the interpretations that would be made if researcher was using casefiles alone

## 8 Suggestions for improving the research database content

- Respondent to outline areas for inclusion; additions; amendments

## 9 Respondent views on police/CPS joint working

- How well do the two organisations work together, in general?
- How effectively do they share information?
- How effectively do they share decision making?
- Are there important differences between the priorities of the two organisations?
- Did any of those differences affect the handling of the relevant case?
- How far did resource issues affect the handling of the relevant case, within police/CPS?

## 10 Other respondent comments / questions

- Are there any other comments you would like to make that you feel are of relevance to this project
- Check if respondent has any questions for the researcher

**Thank and close**



## Topic guide: Workshops with Police and CPS

### Overall project aim:

- To provide a more detailed understanding of criminal justice processes, than is currently possible, via the creation of a new database covering four serious offence types: rape, sexual assault, GBH with intent, GBH without intent.

### Workshop-specific aims:

- To check whether preliminary findings ring true with experiences 'on the ground'
- To act as a validity check for our analysis
- To explore further the factors that influence the decision making process, for example how decisions are made and by whom, with a particular focus on why some cases are re-graded and others are dropped
- To gather greater understanding of OoCDs and their use, in particular in relation to the seriousness of the offence
- To investigate further the issue of false allegations in rape cases
  - The mechanisms used to monitor the level of false allegations
  - Why in some cases no further action is taken eg proven false allegation, lack of evidence and so on
  - The circumstances for publicly releasing a rape suspect's name and the advantages / disadvantages of doing so.<sup>39</sup>
  - The reasons for not releasing a rape suspect's name.
- To explore suggestions for improvements to case handling
- To identify examples of good practice in relation to case handling

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<sup>39</sup> Unable to meet this objective due to a lack of information in the police and CPS files about whether the defendant's identity had been publicised and whether this had led to further victims coming forward.

## 1 Introduction

- About TNS-BMRB – independent research company
- Nature of research; study for Ministry of Justice. Recount aims of discussions (see above) and remind respondents that we are **focusing on four particular offence types: Rape, Sexual Assault, GBH with intent, and GBH without intent**
- There will be a published report at the end of the project and each participating police area will be given a summary of the findings relating to their location.
- Emphasise confidentiality
- Discussions will be audio recorded and transcribed verbatim to aid reporting process [gain verbal consent].
- Length:
  - **Session 1:** 60 minutes. Group discussion will focus on these areas:
    - Introductions
    - Discussion of emerging findings
  - **Session 2:** 75 minutes. Group discussion will focus on these areas:
    - Scenario testing – discussion of a series of case studies / vignettes
      - Identifying examples of good practice
    - Views on police and CPS joint working
      - Identifying examples of good practice
    - Any other issues that participants would like to raise with regard to case progression and outcomes, for example, National Crime Recording Standard (NCRS)
    - Suggestions for improving the handling of cases
    - Feeding back key points from discussion groups (timing TBC)
- Emphasise to all the importance of respecting each other's viewpoints and that the role of facilitator includes giving everyone a chance to speak.

### **Researcher note:**

There will only be 1 or 2 CPS representatives in each group.

There will be different levels of seniority among the police participants.

## 2 Session 1 (11:30 – 12:30)

### 2.1 Introductions (10 mins)

- Go around the group and briefly explore job title and role
  - Highlight any areas of speciality or experience relevant to four offence types, either in current or previous roles
  - Outline typical duties and what these involve

### 2.2 Reactions to, and reflections on, presentation of emerging findings (30 mins)

- Explore general, top of mind reactions to the initial findings
  - Initial reactions
    - Do the findings ‘ring true’?
    - Anything important missing (bearing in mind the presentation is a ‘snapshot’ of the findings)
  - Explore reactions to each findings presentation slide

**Researcher note:** Refer to *STIMULUS A – A2* sheets of presentation slides, to allow respondents to study the key findings. Go through each slide, one at a time, to help guide respondents through their ‘top of mind’ reactions.

**PLEASE RE-ITERATE THAT FINDINGS INCLUDED ARE PROVISIONAL, RESTRICTED, UNPUBLISHED AND SUBJECT TO CHANGE.**

- Any surprises
- Any concerns
- Any other thoughts on initial findings

### 2.3 Crime-specific findings (20 mins)

#### Rape (15 mins)

**Note to researcher:** Explain that the study is particularly interested in false allegations around rape and sexual assault and that the early part of this section will focus on false allegations. The latter part focuses on media publicity of rape and sexual assault cases

- Explore understanding of the term ‘false allegation’ in regard to rape cases
  - Explore if there are particular definitions used
    - Where do these come from
  - What questions are asked of involved parties to ascertain whether an allegation is classed as false

- Explore the impacts that false allegations by ‘victims’ have on rape cases
  - How does this impact upon the case
    - Explore and pinpoint common and pertinent stages of cases where this impacts; and why
    - Who does this impact upon (police/CPS; offender/defendant; victim; other) and how
    - What are consequences of false allegations for the process and those involved (police/CPS; offender/defendant; victim; other)
      - How do the consequences of false allegations affect the efficiency of other rape cases
    - Why are some victims that falsely accuse treated differently to others, e.g. being charged with wasting police time
      - Why the discrepancies between cases – probe: mental health issues; drug/alcohol dependency
      - What role does a lack of evidence (either that the allegation is true or false) play in this
- Explore the impact that media publicity has on cases of rape<sup>40</sup>
  - How does this impact upon the case
    - Who does this impact upon (police/CPS; offender/defendant; victim; other) and how
    - What are consequences of false allegations for the process and those involved (police/CPS; offender/defendant; victim; other)
  - How can publicity impact on convictions
    - Why
    - Probe: defendant pleas; up or downgrading; other

**GBH with and without intent: (5 mins)**

- Explore the extent to which decision making in GBH cases can be affected by issues relating to domestic violence
  - In what way can this affect decision making; why

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<sup>40</sup> Unable to meet this objective due to a lack of information in the police and CPS files about whether the defendant's identity had been publicised and whether this had led to further victims coming forward.

### 3 Session 2 (13:15 – 14:30)

- Explain that we now wish to discuss some scenarios, based on real-life cases, to help consider what the dilemmas were for the police and CPS staff involved. We wish to explore their views on the decisions made and the outcomes of each case.

#### **Note to researcher:**

Hand out the pen portraits one by one and then read aloud – **spend c5-10 minutes on each.**

#### **For each case, ask respondents to give:**

- Initial reactions / comments on the case
  - Did the case progress in the way they would have expected
- What do they see as examples of good practice
- Could anything have been done differently
  - What affect might this have had on the outcome of the case

#### **Case Study 1 – GBH without intent / case re-graded**

- This case was initially recorded as a S20 – GBH without intent. It consisted of a domestic violence incident whereby the victim, the wife of the defendant, threw an object at the defendant. The defendant then reacted by pulling her to the floor by her hair and punching her in the face twice. The victim also reported the defendant threatened to kill her during the offence. The defendant admitted the offence at the scene but justified his actions by the notion that “*she winds me up*”.
- The defendant had previously received a caution for common assault against the victim 6 years previously.
- Police sought the advice of the CPS given the domestic nature of incident
- CPS advised the crime should be recorded as S47 – assault occasioning ABH. The defendant pleaded guilty at trial and received a 6 month prison sentence, suspended for two years and was ordered to attend the integrated domestic abuse programme.

### Case Study 2 – Rape / false allegation

- A mother reported the rape of her daughter, a 22 year old with moderate learning disabilities. During interview, the victim described how a colleague at work came to her home and kissed her, which she consented to, but also bit her breast. They went for a walk, during which he pulled her down an alley and raped her. There were marks and bruises on her arm and breast that were consistent with the allegation. Her mother gave a statement, supporting the victim, describing the defendant as 'very forward' when he came to the house, which had surprised her.
- The defendant denied the allegation and said the victim had consented. He also showed police two text messages the victim sent him two days after the incident, inviting him to her house to have sex. He suggested the victim was making it up, because he was not interested in a relationship with her.
- The police filed the crime as undetected. The Officer wrote that he disbelieved the victim and that he suspected the mother had forced her to report it.

### Probes:

- What mechanisms are in place for monitoring false allegations
- In what circumstances might they consider releasing a rape suspect's name
  - What advantages are there in releasing suspect's name
  - ... what are the disadvantages
- When might they not release a rape suspect's name<sup>41</sup>

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<sup>41</sup> Unable to meet this objective due to a lack of information in the police and CPS files about whether the defendant's identity had been publicised and whether this had led to further victims coming forward.

### **Case Study 3: Sexual assault / OoCD / restorative justice**

- A daughter reported that her brother-in-law had repeatedly sexually assaulted their mother over a period of eight years. The daughter learned of this after the victim called an elder abuse helpline.
- The victim and defendant were both interviewed. The victim described repeated incidents of unwanted sexual touching that included exposing himself under pretexts, lying in bed next to her when she woke up, requesting her to hold his penis and rubbing the sides of her breasts from behind. The defendant admitted the acts and it was reported that he showed remorse. The defendant had no criminal convictions.
- The police did not refer the case to the CPS and gave the defendant a caution.
- There was no record on the file as to whether the victim was consulted on this decision.

#### **Probe:**

- Could restorative justice options be considered in this case
- What are participants' views on the use of OoCDs in relation to very serious offences
  - Probe for views on adverse media publicity in such instances<sup>42</sup>
  - Could OoCDs be used more in cases that are relatively less serious
    - Probe for examples of types of offences/situations

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<sup>42</sup> Unable to meet this objective due to a lack of information in the police and CPS files about whether the defendant's identity had been publicised and whether this had led to further victims coming forward.

#### **Case Study 4 – GBH with intent / re-grading**

- This case involved the beating and stabbing of a man by his sister's partner. He was stabbed in the upper arm with a knife. The defendant was initially charged with GBH with intent.
- There were two witnesses (the victim and his sister) to the attack and both statements were similar, citing the defendant being the aggressor. The defendant also had a bad character reference based on previous charges and convictions for violent offences. Additionally, the defendant had a history of drug and alcohol misuse and depression.
- The case was referred to the CPS and passed the evidential test. At the Plea and Case Management Hearing the defendant pleaded not guilty to the offences and the charge was reduced to GBH without intent.
- The charge against the defendant was reduced due to a number of factors:
- The victim and the other key witness (his sister/the defendant's girlfriend) withdrew their statements against the defendant.
- The medical evidence was not conclusive enough to prove the use of a knife in the attack
- The victim approached the defendant at the PCMH and told him that he did not want to see him go to prison as he had forgiven him for his crime
- The defendant was then found guilty of GBH without intent and received 20 months imprisonment.

### **3.1 Considering examples of good practice in case handling (15 minutes)**

(Reflecting on the issues raised over the course of the day...)

- Explore spontaneous examples of any memorable cases that practitioners consider to illustrate good practice.
- In particular:
  - Out of Court Disposals
  - Use of evidence gathering to determine whether a case was a false allegation
  - Use of restorative justice options
- More generally, explore practitioners' views on the best approaches to overcoming problems in case handling.

(Researcher note: some of these issues may have been raised through discussion of the presentation findings. Ask practitioners to re-cap and expand on these, where applicable).



- Explore spontaneous examples of good practice by all practitioners involved in the handling of cases. In particular, probe in relation to:
  - Time constraints
  - Gathering independent evidence
  - Victim and witness credibility: managing inconsistencies in evidence.

### 3.2 Suggestions for improving the handling of cases (30 mins)

- Explore spontaneous suggestions of how the general handling of cases could be improved
  - Ask respondents to think of and summarise cases they have worked on and how these could have been handled better – gain overall suggestions
    - What was handled well, and by whom – what impact did this have
    - What was not handled well, and by whom – what impact did this have
    - Are there particularly common ‘sticking points’ throughout a case progression that need addressing?
    - What suggestions do they have that would improve the process
      - How, if at all, would these affect case outcomes?
    - How could these suggestions be implemented – probe barriers and enablers to implementation; other
- If not already mentioned, gain suggestions for how the handling of specific case types could be improved:
  - Rape
    - What specific factors relating to progression of rape cases could be improved. Probe: false allegations; hard to prove allegations; historical cases; other
    - How could these be improved
  - Sexual assault
    - What specific factors relating to progression of sexual assault cases could be improved. Probe: hard to prove allegations, historical cases; other
    - How could these be improved
  - GBH with intent
    - What specific factors relating to progression of GBH with intent cases could be improved
    - How could these be improved

- GBH without intent
  - What specific factors relating to progression of GBH without intent cases could be improved

### **3.3 Views on Police / CPS joint working (10 mins)**

- How well do the two organisations work together, in general?
  - How could this be improved
- How effectively do they share responsibility for case progression?
  - How could this be improved
- How effectively do they share decision making?

### **3.4 Other issues (5 minutes)**

- Explore any other issues that respondents feel are relevant to the handling of cases

### **3.5 Feeding back to the plenary (5 minutes)**

Researcher: Explain we will be feeding back 3 suggestions for improving case handling / outcomes back to the plenary session. Ask for a volunteer to report back on behalf of the group and then work with group to identify the 3 feedback points.

**Thanks and explain that the group will now rejoin the other participants for feeding back session and closing remarks.**

## **Ministry of Justice Research Series 11/12**

### **The progression of serious criminal cases through the Criminal Justice System**

There is wide interest in understanding how cases progress through the Criminal Justice System (CJS). This project was commissioned to improve understanding of attrition for serious offences, in order to inform future policy development. The project focused on four serious offences: rape, sexual assault, grievous bodily harm (GBH) with intent and GBH without intent. A random sample of 1,149 casefiles from eight police force areas was collated and a database was compiled using information that was present in the casefiles. This report summarises some initial findings in relation to the criminal justice process from allegation to outcome, re-grading of offences, decision making at key stages, false allegations and the circumstance of victims and suspects.

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