



HM Government

# **Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales**

## **Research Report**

**Rachel George (Home Office) and Sophie Ferguson  
(Ministry of Justice)**

June 2021





HM Government

# **Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales**

## Research Report

June 2021



# Contents

<b>Executive Summary</b>	<b>8</b>
<b>1. Introduction</b>	<b>13</b>
1.1 Background	13
1.2 Aims of the research	14
1.3 Note on language	15
1.4 Report Structure	16
<b>2. The victim voice</b>	<b>17</b>
<b>3. Methodology</b>	<b>20</b>
3.1 Online surveys with CJS agencies	20
3.2 Focus groups and interviews with key CJS stakeholder groups	22
3.3 Ethics	23
3.4 Further analysis	23
3.5 Limitations and caveats of the research	24
<b>Findings from the primary research</b>	<b>26</b>
Part one: Case journey	26
<b>4. Reporting and recording rape offences</b>	<b>28</b>
4.1 Before entering the system: Prevalence of adult rape and other sexual offences	29
4.2 Changes in the number of police recorded adult rape offences	30
4.3 Changes in cases reported to the police	32
4.4 Changes to police recording practices	35
<b>5. Investigation and charging of RASSO cases</b>	<b>36</b>
5.1 Police investigation	37
5.2 Pre-charge case preparation	38
5.3 Referrals to CPS	39
5.4 Assigned outcomes	41
5.5 Changes in the CPS charge rate	44
5.6 CPS charging decisions	46

<b>6.</b>	<b>The role of digital and third-party evidence in investigation and charging</b>	<b>48</b>
6.1	An increase in digital and third-party material	49
6.2	Obtaining digital and third-party material	50
6.3	Delays linked to increased digital and third-party material	51
6.4	Impact on viability of cases	52
<b>7.</b>	<b>Prosecution of rape cases and the court stage</b>	<b>55</b>
7.1	Rape prosecutions and convictions	56
7.2	Timeliness of adult rape cases at court	57
7.3	Pre-trial hearings	58
7.4	Challenges faced by victims at court	59
7.5	Special measures	60
7.6	Juries	62
	<b>Part two: Cross-cutting themes</b>	<b>64</b>
<b>8.</b>	<b>Victim engagement and withdrawal</b>	<b>65</b>
8.1	Increase in victim withdrawal	66
8.2	Length of the process	67
8.3	Intrusive nature of investigations and feeling disbelieved	67
8.4	Police victim relationship	68
8.5	Victim support	69
<b>9.</b>	<b>Rape Myths and stereotypes</b>	<b>71</b>
9.1	Common Rape Myths	72
9.2	Perceived prevalence of rape myths	72
9.3	Perceived impact of rape myths	73
9.4	Judicial direction	74
9.5	Prosecutorial comments	74
<b>10.</b>	<b>Partnership working, resources and staff capability</b>	<b>76</b>
10.1	Partnership Working	76
10.2	Police resources	77
10.3	CPS resource	79
10.4	ISVA and support service resource	80
10.5	Training and facilities	80

<b>11. Conclusion and research recommendations</b>	<b>83</b>
<b>References</b>	<b>86</b>

## List of tables

Table 1. Retained responses from cross priority survey by participant group	21
Table 2. Qualitative research conducted with participant groups	22
Table 3. Percentage of appeal cases in which digital evidence was identified as playing a relevant part in the case, 2010 and 2018	49

## List of figures

Figure 1. Research methodology and sample	9
Figure 2. How sexual offences progress through the criminal justice system	27
Figure 3. Prevalence of rape (including attempts) in the last year among adults aged 16 to 59 in England and Wales, 2004–05 to 2019–20	29
Figure 4. Number of police recorded adult rape offences in England and Wales, 2005–06 to 2019–20	30
Figure 5. Breakdown of the time between rape offences occurring and being reported to all police force areas in England and Wales by year of reporting, for offences recorded 2015–16 to 2019–20	32
Figure 6. Average time taken in days for police to charge according to length of time between offence occurring and it being recorded by the police, for offences recorded between 2015–16 to 2018–19	33
Figure 7. Number of adult rape offences with an outcome assigned as charged/summonsed by quarter, 2014–15 to 2019–20	42
Figure 8. Police outcomes for adult rape offence for outcomes assigned in 2015–16 to 2019–20	43
Figure 9. CPS pre-charge decisions for rape cases, 2009–10 to 2019–20	45
Figure 10. Impact of R vs Allan case on charge volumes	54
Figure 11. Number of rape defendants proceeded against and offenders convicted, 2010–11 to 2019–20	56

# Glossary of Terms and Definitions

ABE Interviews	Achieving best evidence interviews – a video-recorded interview early in the process which allows a rape victim to give their account of the alleged event and any other information to assist the investigation
BME	Black and Minority Ethnic
CAWS	Citizen Advice Witness Service
CJS	Criminal Justice System
Covid-19	Coronavirus disease
CPIA	Criminal Procedure and Investigations Act – statutory legislation which regulated the procedures of investigating and prosecution of criminal offences
CPS	Crown Prosecution Service –the independent public authority responsible for prosecuting people in England and Wales who have been charged by the police with a criminal offence
CSEW	Crime Survey for England and Wales
DASH	Domestic Abuse, Stalking and Harassment and Honour Based Violence
EIA	Early investigative advice – where the police seek advice from the CPS on charging at an earlier point in the process than is standard
HMCPSP	Her Majesty’s Crown Prosecution Service Inspectorate
HMCTS	Her Majesty’s Courts and Tribunals Service
HMICFRS	Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services
HO	Home Office
IAPT	Improving Access to Psychological Therapies – a programme to treat adult anxiety disorders and depression in England
ISVA	Independent Sexual Violence Advisor – an advisor that works with victims of rape and sexual assault to provide specialist tailored support
MOJ	Ministry of Justice

MOPAC	London Mayor's Office for Policing and Crime
NFA	No Further Action – a police outcome where there is not enough evidence to send the case to the CPS for prosecution, so a decision is made to not take the investigation further
NPCC	National Police Chiefs Council
ONS	Office for National Statistics
PDS	Public Defender Service
PFA	Police Force Area
PRC	Police Recorded Crime
PTPH	Pre-trial plea and preparation hearing – an initial hearing, used to arraign the defendant, and to identify and timetable some issues and steps before the trial begins in the Crown Court
RASAC	Rape and Sexual Abuse Centres
RASSO	Rape and Serious Sexual Offences – please note there is no agreed definition of RASSO across the criminal justice system
RUI	Release Under Investigation – when a suspect is released from custody while the investigation continues, without time limits or conditions being imposed
SARC	Sexual Assault Referral Centre – specialist forensic and medical services for victims of rape and sexual assault
SHPOs	Sexual Harm Prevention Orders – a court order imposed on an individual who is considered to pose a risk of sexual harm which prevents the individual from engaging in a particular activity
UCL	University College London
VAWG	Violence Against Women and Girls
VCO	Victims' Commissioner's Office
YJCEA	Youth Justice and Criminal Evidence Act

# Acknowledgments

We would like to thank colleagues at the Ministry of Justice and the Home Office for their support and contributions to this report, from the Ministry of Justice: Caroline Logue (Analytical Lead), Tina Golton, Anita Krishnamurthy, Wendy Smith-Yau, Jane Becker and Katie Silk; and from the Home Office: Rose Cattermole, Carmen Juravle, Alex Dunnett, Henryk Faas, Rob Fulton, John Jesudason, and Hannah Watts.

Thanks go to Jo Lovett of the Child and Woman Abuse Studies Unit, London Metropolitan University, for her comprehensive literature review.

Thanks also to the peer reviewers of the report for their expertise.

Finally, we would like to thank the individuals across the stakeholder groups for participating in the research and sharing their views and experiences.

# Executive Summary

## Introduction

Between 2016–17 and 2019–20, the volumes of police referrals to the Crown Prosecution Service (CPS), CPS charges, prosecutions and convictions for adult rape and serious sexual offences (RASSO) in England and Wales decreased. This contrasted with an increase in recording of these offences by the police over the same period. In response to these conflicting trends, a cross-government end-to-end review into the Criminal Justice System (CJS) response to adult rape offences across England and Wales was commissioned in 2019.

Unless otherwise stated all statistical data relates to adult rape and qualitative data was asked in the context of RASSO cases.

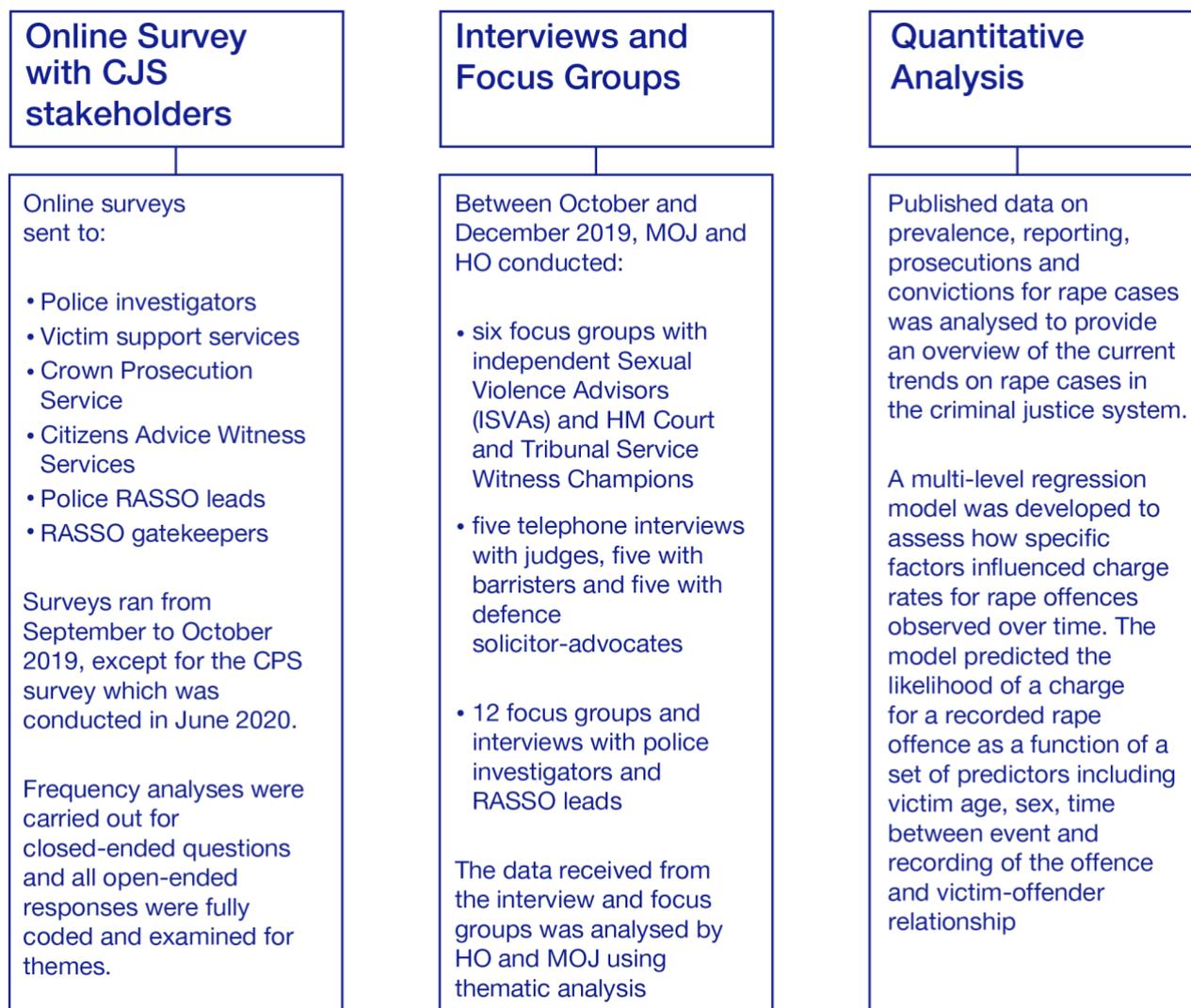
This research forms part of the end-to-end review and aims to explore the experiences and views of the police, CPS, support services, solicitors, barristers, defence practitioners and judges relating to:

1. understanding any changes that have occurred in relation to investigating, charging and prosecuting RASSO cases;
2. examining challenges in relation to these offences; and
3. identifying areas requiring improvement.

Although we did not conduct primary research with victims ourselves, including victims' experiences in the review was a key priority for all involved. Several data sources were made available to us that offered valuable contributions of victims' direct experiences, and to reflect this, this report includes a section outlining these important pieces of recent research undertaken with adult rape victims in England and Wales. All evidence which has been provided to us during the development of the review has been taken into account and considered in forming the recommendations set out in the policy action plan published alongside this research report.

## Methods

This research used a mixed method approach including both quantitative and qualitative methods. Figure 1 outlines the methods and samples included in this research.

**Figure 1. Research methodology and sample**

The survey participants were not randomly selected and may not reflect the views of those who did not participate. The qualitative findings presented are solely the perceptions of participants, they may not reflect wider experiences of all individuals working in these organisations. All data are likely to be affected by personal biases of the participants.

## Key Findings

### ***Reporting, investigation and charging of rape cases***

The number of adult<sup>1</sup> rape offences recorded by the police has increased since 2012–13, with around 43,000 cases recorded in 2019–20 (ONS, 2021a). Police and support service research participants perceive this to have been driven by media coverage of high-profile cases increasing awareness of rape amongst the public, increased confidence in the police response to rape allegations, and improvements in police recording practices.

Adult rape investigations are taking longer to complete due to a variety of factors but, most noticeably, due to the increase in evidential requirements pre-charge. This increase in

<sup>1</sup> Adult refers to victims aged 16 and over.

investigation timescales has created a backlog of cases which has impacted on the number of cases referred to the CPS. Police referrals to the CPS fell by 37 per cent between 2015–16 and 2019–20 (CPS, 2019; 2020a). Some CPS and police participants also linked the fall in referrals to a rise in cases with poor quality evidence, and a change in police decision-making whereby the police did not refer cases that they believed the CPS would no longer charge.

The proportion of all rape-flagged cases charged by the CPS fell from 57 per cent in 2015–16 to 45 per cent in 2019–20 (CPS, 2019; CPS, 2020a). Police investigators suggested this was a result of longer investigations, an increase in cases lacking sufficient evidence and a decline in the quality of police case files. Some police participants also believed the fall in charge rate was a consequence of a perceived reluctance within the CPS to charge anything but the perfect cases. The CPS participants however largely felt they were undertaking a more thorough assessment of the evidence.

### ***The role of digital and third-party material***

Over the last 5 years, the amount of digital and third-party evidence required for adult rape investigations has increased. The police and CPS participants highlighted differences in understanding of requirements for this material. Some police participants saw the requests as excessive whereas the majority of CPS participants viewed digital and third-party material as vital to ensuring robust charging decisions. This change in the amount and use of digital and third-party evidence was linked to a decline in the number of cases charged. According to some police and support service participants the more information that is disclosed increases the chance of identifying material that could be used to undermine the victim's credibility.<sup>2</sup> It could also result in victims withdrawing to prevent the sharing of their personal information.

### ***Prosecution and adult rape cases at court***

There has been a fall in the overall number of adult rape cases prosecuted and convicted since 2015–16 (MOJ 2021a). Adult rape cases are also taking longer to reach court and often face several adjournments before the trial commences. Police and CPS participants felt that this was increasing victim trauma and disengagement with the process. The court experience can be very distressing for victims, especially giving evidence at court (rather than in a pre-court Achieving Best Evidence interview) and undergoing cross examination, which was seen as more challenging when support services or special measures were not available in the court room. Participants across the research groups suggested court buildings were not currently adequate for supporting victims due to poor technology and run-down witness rooms. Participants from all the different stakeholder groups commented on the complex role of juries. They felt juries lacked education to understand the unique complexities of rape cases such as those related to consent and were of the view that juries were often swayed by personal views and biases.

---

<sup>2</sup> It should be noted that any questioning of a victim's credibility in court should be conducted on a lawful basis and in accordance with Section 41 of the Youth Justice and Criminal Evidence Act (1999) and Section 100 of the Criminal Justice Act (2003).

## **Cross-cutting issues affecting all stages of adult rape cases**

The research highlighted three issues affecting all stages of adult rape cases: victim withdrawal; perceived rape myths and stereotypes;<sup>3</sup> and partnership working and resources.

### ***Victim withdrawal***

Victim withdrawal has increased from 42 per cent of adult rape cases being assigned a police outcome of ‘evidential difficulties: victim does not support’ in 2015–16, to 57 per cent of cases in 2019–20 (Home Office, 2020a). Participants from all stakeholder groups offered several reasons for this including:

- the lengthening of the criminal justice process which prolongs victim trauma and prevents victims from moving forward with their lives;
- the intrusiveness of the investigation which heavily scrutinises the victim’s personal life and can make victims feel disbelieved;
- a poor relationship between the victim and the police resulting in the victim feeling ill-informed and often abandoned by the CJS;
- and a lack of available support to help victims progress through the system. Key findings from the literature review highlighted the importance of victim support in mitigating victim attrition.

### ***Rape myths and stereotypes***

Participants across all groups identified several common rape myths in the criminal justice system which they speculated might impact on the outcome of cases. It is unclear whether the presence or influence of rape myths has changed significantly in recent years and therefore their influence on recent trends in adult rape cases is uncertain. However, participants across the groups highlighted the potential for rape myths to cause victim attrition if the victim felt disbelieved and felt they can act as a barrier to successful investigation, charging, prosecution and conviction. Many police, RASSO leads and support service participants reported witnessing rape myths in court and some participants did not think these were sufficiently challenged. All judges said they give judicial directions in RASSO cases, though some judicial and defence solicitor-advocate participants raised concerns about the effectiveness of these.

### ***Partnership working and resources***

Police and CPS participants reported increasingly strained relationships and difficulties in communication between CPS and police which had negatively impacted on the progress and quality of adult rape cases. Less co-location between police and CPS was deemed to be affecting working relationships. In addition, participants reported reduced staff resources, more staff turnover, higher workloads and increased use of less experienced staff, both in CPS and police, as potential drivers of recent trends. There has also been an increase in unmet demand for victims’ support services which means victims may be less willing to continue to engage over a longer time period.

---

<sup>3</sup> Rape myths can be described as prejudicial, stereotyped, false beliefs about sexual assaults, rapists, and rape victims.

## **Conclusion**

Overall, identifying the reasons for the worsening trends in referrals to charge, charging outcomes, number of convictions, and the increase in victims not supporting prosecution is a challenging and complex task. Three overarching factors emerged from the research as affecting adult rape cases: an increase in pre-charge disclosure requirements, an increasingly lengthy criminal justice process, and resourcing challenges. However, it is difficult to disentangle the effect that each of these factors have on the observed trends and outcomes for adult rape cases.

# 1. Introduction

This chapter provides background information to the Government's end-to-end review of the criminal justice response to adult rape and this research. This is followed by an overview of key research exploring the victim experience in this space and illustrates some of the body of work that has informed the rape review policy action plan (Home Office & Ministry of Justice, 2021).

Unless otherwise stated all statistical data relates to adult rape and qualitative data was asked in the context of RASSO cases.

## 1.1 Background

Between 2015–16 and 2019–20, the volumes of police referrals, charges, prosecutions and convictions for rape and serious sexual offences (RASSO) in England and Wales have decreased. During this period the volume of referrals of rape-flagged cases from the police to the Crown Prosecution Service (CPS) have fallen by 37 per cent, and charges by 52 per cent (CPS, 2019; 2020a). Volumes of prosecutions for adult rape have fallen by 59 per cent and convictions by 47 per cent between 2015–16 and 2019-20 (MOJ 2021a). This has coincided with an increase of 79 per cent in police recorded adult rape offences over the same period (ONS, 2021a).

In 2019, the Violence Against Women and Girls (VAWG) inter-ministerial group and the National Criminal Justice Board responded by commissioning a cross-government end-to-end review into the Criminal Justice System (CJS) response to adult<sup>4</sup> rape offences across England and Wales. When commissioned, the end-to-end review committed to both identify the reasons for the decline in numbers of criminal justice outcomes and develop actions to address any problems identified. A Sexual Offences Sub-Group to the Criminal Justice Board was set up to help drive this work forward and feed into the evidence gathering and action development process.

Following this commitment, Cabinet Office analysts undertook a short, primarily quantitative assessment of the CJS response to adult rape offences to inform the scope and prioritisation of the end-to-end review. They focused on two key questions:

- How is performance in the CJS for adult rape changing?
- What areas should be prioritised for further investigation and action by the end-to-end review?

---

<sup>4</sup> For the purposes of this review, adult refers to individuals aged 16 and over.

The Cabinet Office analysis identified four areas of focus for the end-to-end policy review:

**Priority Area 1:** Increase in ‘evidential difficulties: suspect identified, victim does not support prosecution’ outcome.

**Priority Area 2:** Variation in referral to charge (RTC) volumes by Police Force Areas and CPS regions

**Priority Area 3:** Changes in CPS charging outcomes, particularly the decline in charge rate for ‘rape only’ flagged offences.

**Priority Area 4:** Varying conviction rate depending on the flag<sup>5</sup> and age of the defendant.

In support of the policy review, Home Office (HO) and Ministry of Justice (MOJ) commissioned additional new primary analysis.

## 1.2 Aims of the research

Following on from the Cabinet Office analysis, the Sexual Offences Sub-Group identified a key evidence gap relating to the experiences and perceptions of the CJS stakeholders on the changing trends in adult rape cases. To address this, additional qualitative and survey research was commissioned to explore the experience and perceptions of the police, Crown Prosecution Services (CPS), support services, barristers, solicitors and judges relating to:

1. understanding any changes that have occurred in relation to investigating, charging and prosecuting RASSO cases;
2. examining challenges in relation to these offences; and
3. identifying areas requiring improvement.

This report provides the findings of this primary research. In order to provide a more rounded view of the evidence, these findings are supplemented by further analysis of published and previously unpublished quantitative data from the Home Office, the Office for National Statistics (ONS), the CPS and MoJ.

In addition, MoJ commissioned an independent literature review of the published research on the progression of RASSO cases in England and Wales. The Child and Women’s Sexual Abuse Unit at the London Metropolitan University conducted this work. The literature review is at Appendix D.

---

<sup>5</sup> ‘Flag’ refers to the label assigned to rape cases by criminal justice organisations to identify whether the offence was related to another crime, for example domestic abuse or child sexual abuse.

Whilst this report draws on multiple sources of evidence, it is not a comprehensive review of all the relevant evidence available.<sup>6</sup>

### 1.3 Note on language

Throughout this report, rape and serious sexual assault refer to definitions set out in the 2003 Sexual Offences Act:

- Rape: A person (A) commits an offence if
  - (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
  - (b) 'B' does not consent to the penetration, and
  - (c) 'A' does not reasonably believe that 'B' consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps 'A' has taken to ascertain whether 'B' consents.
- Assault by penetration: A person 'A' commits an offence if
  - (a) he intentionally penetrates the vagina or anus of another person 'B' with a part of his body or anything else,
  - (b) the penetration is sexual,
  - (c) 'B' does not consent to the penetration, and
  - (d) 'A' does not reasonably believe that 'B' consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps 'A' has taken to ascertain whether 'B' consents.

Rape is a difficult crime to prosecute as in many cases the act of sexual intercourse is admitted, so the question is around whether there was consent, or not, on the part of the victim. This can lead to a focus on the victim during investigation and prosecution as their state of mind (consenting or non-consenting) is what makes the activity an offence.

Whilst the review examines rape and serious sexual offences, this report predominately references 'rape' rather than 'rape and serious sexual offences'. This reflects the language used in research materials, existing data and by participants. Many of the themes discussed in relation to rape may also apply to cases of serious sexual assault.

The term 'victim(s)' is used to refer to those affected by alleged rape and/or sexual assault. It encompasses other terms such as 'complainant(s)', 'client(s)' and 'survivor(s)', as referred to by survey, focus group and interview participants. Whilst recognising that females make up most victims, 'victim' encompasses both sexes as there are male

---

<sup>6</sup> This report must also be read through the lens of the foundational principles of the English and Welsh criminal justice system: the presumption of innocence, the burden on the prosecution to prove guilt beyond reasonable doubt, and the statutory and common law duties of the investigators and prosecutor to be impartial, holding the complaint up for scrutiny, and the entitlement of the defence to test the prosecution case. If the necessary scrutiny is not conducted by the police and CPS, then poorly prepared cases may go to trial with unnecessary complications and an increased likelihood of judge-directed acquittals or jury acquittals.

victims. Likewise, the term 'suspect' is used to refer to a person accused, charged, prosecuted and/or convicted of rape or sexual assault. It encompasses 'offender', 'perpetrator' and 'defendant'. Other terms may be used when referring to published data or in quotes to maintain consistency with the original source. The use of the term 'victim' during the period prior to any conviction is not intended as any disregard for the presumption of innocence, which is the foundational principle of our criminal justice system.

## 1.4 Report Structure

This report takes a thematic structure presenting the key themes and findings that arose from the data.

The report begins by introducing a summary of existing sources of evidence from England and Wales exploring the lived experiences of rape and serious sexual assault (RASSO) victims. It then moves on to setting out the methodology used in this research (Chapter 3). Chapters 4 to 7 outline the key findings relating to the different stages of a case progressing through the criminal justice system. Each chapter provides quantitative information on the trends in rape cases and then explores, using the qualitative and survey data, stakeholder's perceptions on relevant causes, challenges and responses to these trends. Where appropriate, additional quantitative analysis and key findings from the literature review are included.

Chapters 8 to 10 examine cross cutting themes affecting adult rape cases in the criminal justice system. As far as possible, the report seeks to distinguish more dynamic factors that may influence the recent trends from more static factors. The influence of some more static factors on the trends was often less obvious. However, respondents raised these issues in the context of understanding changes in rape trends and this implies that they do consider these factors relevant. Therefore, understanding them is important to any policy response.

## 2. The victim voice

The victims' voice and experience has remained integral to the overall government end-to-end rape review; understanding the problems and potential solutions related to the criminal justice outcomes for RASSO cases requires an understanding of the victim experience and views as part of the review. This preliminary section therefore summarises recent primary research which has been undertaken with RASSO victims in England and Wales, to understand their experiences with and suggestions for the criminal justice system in responding to RASSO cases.

The research pieces included below offer valuable and unique insights into victims' experiences with the criminal justice system and were selected because they include primary findings taken directly from speaking to victims and examining adult rape case files.<sup>7</sup> This section draws on the externally commissioned literature review (Annex D) and are supplemented with additional research completed after 2019. All studies are referenced in the bibliography.

Each study included below provides important insights which have been considered alongside the findings of this report when forming the proposals outlined in the policy action plan (Home Office & Ministry of Justice, 2021). Many of the authors and commissioning bodies have acted as stakeholder advisors for the rape review policy recommendations and have represented the voice of the victim.

In summer 2020, government social researchers at the Victim Commissioner's Office (VCO) conducted survey research on rape victims' experiences of the criminal justice system, receiving responses from 491 rape victims (Molina and Poppleton, 2020). While this is a stand-alone piece, separate from this research, it fills an important gap in the primary evidence base. Of victims who reported to the police (n = 349), 113 victims (48%) felt they were treated with sensitivity, fairness and respect. Victims who chose to just put the offence on record (n = 28) or withdrew from the process (n = 17), rather than continue through to prosecution feared being disbelieved, were concerned about the low likelihood of success, and wanted to move on with their lives to protect their mental health. Additionally, not thinking they would be believed by the police was the most commonly selected reason for non-reporting; out of the victims who did not report to police (n = 142), 95% reported considering this important in their decision-making. For those victims who continued with the criminal justice process, beyond just reporting the offence to the police, the research found that victims often felt under investigation themselves, were commonly not receiving timely, adequate or sensitive communication from the police or the CPS regarding the progress of their case, and did not have their data protection rights adequately explained to them when handing over their phone to the police. 36 of the 42 victims who attended court agreed that cross examination was retraumatising.

<sup>7</sup> All pieces outlined below have methodological limitations also faced by the research within this report, with findings not being generalisable due to snowball sampling and / or self-selecting participants. This is largely due to the nature of research with hard-to-reach groups.

Victims reported highly valuing the support given by victims' services and Independent Sexual Violence Advisors, with 26 of 37 respondents to this question agreeing that they felt supported by their support workers during the court process. Overall, this research suggested rape victims have low levels of confidence in the criminal justice system's handling of rape complaints, with just 14% agreeing or strongly agreeing that victims could obtain justice by reporting to the police.

Imkaan's publication *Reclaiming Voice* is the first national UK study focused on Black and Minority Ethnic (BME<sup>8</sup>) victims of sexual violence and their experiences with the criminal justice system and support services (Thiara and Roy, 2020). It included 36 interviews with BME victims undertaken in 2017 to 2018. It provides unique insights into how women from different backgrounds face particular challenges when engaging with CJS. Issues faced by the victims interviewed included needing to liaise with male police officers, not being given appropriate information by police about support services or needing to spend many years on waiting lists to access support, inconsistent or absent interpreting facilities used by the police, and CJS practitioners employing unhelpful or damaging assumptions and focusing on problematic narratives or explanations based on 'culture'. Participants felt that the court experience was a traumatic process where the victim needs to put their life on hold and be treated as if they were guilty. They also spoke about not receiving adequate explanation or communication about their cases. Support services were seen as particularly beneficial when BME victims could 'see themselves' as this allowed for greater relatability without assumptions being made based on the victim's ethnicity or religion, while helping victims to transcend language barriers and form supportive social networks.

An online survey undertaken as part of the evaluation of the pilot Sexual Violence Complainant's Advocate Scheme asked 586 victims about their perceptions of RASSO investigations, with a focus on disclosure and privacy issues (Smith and Daly, 2020). Of those who had reported to the police (n = 233), 84% felt that police investigations of sexual violence tend to be invasive, and high proportions agreed that reporting sexual violence meant giving up their phones and personal information, including their medical and sexual history. Just 28% of those who reported felt that police investigations of sexual violence are fair and proportionate overall. Perceptions were more negative among the group of victims that did not report to the police than those who had.

A study which surveyed 62 victims attending the Saint Mary's Sexual Assault Referral Centre (SARC) in 2016 to 17 sought to look into the use of 'special measures'<sup>9</sup> in sexual offence cases, finding out how victims had decided to give evidence in court and what influenced this decision (Majeed-Ariss et al. 2019). This study found that the majority of victims looked at 3–4 forms of special measures on their pre-trial visit, and most found this helpful. The study reveals some issues with the local implementation of special measures, such as the ways that decisions about special measures are made (with some victims not being given a choice); and limitations on the circumstances in which a support worker can be present in court while evidence is given. There was also a failure to offer a combination of special measures, even when this was possible. Some victims interviewed would have

<sup>8</sup> Please note, the wording BME is used here to reflect the wording used in the cited research, but it is standard government practice to now use the wording ethnic minorities.

<sup>9</sup> Special measures, which include screens and live links among other measures, help vulnerable witnesses to give their best evidence and relieve some of the stress associated with giving evidence. For further information please see section 7.5

used the live link special measure, if they could be sure that the suspect could not see their face on the screen in the courtroom.<sup>10</sup>

The review has also drawn on research which utilises case file analysis to investigate the reasons behind victim attrition in regard to prosecution.

Quantitative research conducted by social researchers at the Victims Commissioner's Office analysed 521 sexual offence complaints reported to the police in one police force area in England, of which 33% withdrew from the investigation (Victims Commissioner, 2019). It was found that the most common reasons for victim withdrawal included the criminal justice process being too distressing (26% of cases), disclosure privacy concerns (21%), needing to move on and negative impacts on mental health (13%).

The London Rape Review analysed 501 police case files with an initial classification of rape from April 2016 in London (MOPAC, 2016). Victim withdrawal was the most common form of attrition in the sample of classified cases (58%), followed by no further action by police (29%). Victims who withdrew did so soon after reporting, and the majority within the police investigation stage. Victims typically gave multiple reasons for withdrawal, the most common being: stress and trauma caused or exacerbated by the investigation; a desire to move on; concern for their own safety; concern for the perpetrator's own situation, particularly in domestic abuse cases; the act of reporting in and of itself being enough; and not having wished to report the rape in the first place (such as when a rape was recorded by a police officer asking DASH (Domestic Abuse, Stalking and Harassment and Honour Based Violence) questions as part of a domestic abuse call.<sup>11</sup>

The research included in this report did not include primary fieldwork with RASSO victims. This is a key limitation. There are several reasons for relying on external research with RASSO victims already available and perceptions of criminal justice practitioners. Primary research with RASSO victims often involves ethical and practical challenges, not least around recruitment, informed consent, confidentiality, the protection of participants, and sufficient time which was limited at the outset of this research. Research also needs to consider vulnerable victims and interviewing these groups while protecting their wellbeing would require a specialist support framework and mechanisms. This is because:

- Conducting research with RASSO victims poses considerable risks of causing additional stress or re-traumatisation when asking victims to recount traumatic experiences relating to a rape or sexual assault (van Wijk & Harrison, 2013).
- It is also important to avoid accidental reinforcement of negative social stereotypes concerning particular groups and any further exploitation of vulnerable research participants (Flaskerud & Winslow, 1998; Sullivan & Cain, 2004).
- Finally, some victims may be reluctant to speak to government officials about their experiences of the justice system, depending on their experiences of engaging with Criminal Justice agencies.

Speaking to criminal justice practitioners allowed an understanding of victim experiences at different stages in the process and the broader systemic and structural changes that criminal justice agencies have faced which could be contributing to these declining rates.

<sup>10</sup> For further information please see the full literature review in Annex D.

<sup>11</sup> For further information please see the full literature review in Annex D.

## 3. Methodology

The findings in this report come from a mixed method approach including both quantitative and qualitative elements.<sup>12</sup>

- a suite of online surveys with various CJS agencies;
- focus groups and interviews with key CJS stakeholder groups;
- further analysis of existing criminal justice data.

### 3.1 Online surveys with CJS agencies

Six different stakeholder groups, identified as relevant by HO and MoJ policy colleagues, were surveyed. The aim was to understand stakeholders' experiences of working on rape cases; changes that have occurred in relation to investigating or managing cases through the criminal justice system; and to identify possible reasons behind the recent fall in criminal justice outcomes. Each survey included a core set of questions around changes to rape cases and improvements participants wish to see, with bespoke questions specific to each stakeholder group also included.

It was not feasible to conduct a census or sample survey that was representative of the population of each stakeholder group. Instead, to maximise participation, HO and MoJ sent the survey directly to relevant contacts and asked relevant stakeholders to forward the survey to appropriate staff.<sup>13</sup> The six surveys and sampling approaches were:

- **Support services:** specialist RASSO agencies<sup>14</sup> were asked to disseminate surveys to members who were Independent Sexual Violence Advisors (ISVAs) or worked in a specialist RASSO support service;
- **Police RASSO leads:**<sup>15</sup> RASSO leads in England and Wales, identified from a contact list held by the National Police Chiefs Council (NPCC) lead for rape, were sent a link to the survey to complete;
- **Police investigators:** a survey link was passed onto relevant investigators working on RASSO cases via the RASSO lead;
- **RASSO Gatekeepers:**<sup>16</sup> RASSO Gatekeepers in England and Wales were identified using a contact list held by the NPCC lead for rape and sent a survey link;
- **Citizen Advice Witness Service (CAWS):** a survey link was sent to CAWS staff via an existing CAWS contact;

<sup>12</sup> Focus group, interview and survey materials are included at Appendix F.

<sup>13</sup> It is not possible to calculate a response rate to these surveys, as we do not know the number of individuals that received the surveys and chose not to respond.

<sup>14</sup> LimeCulture, The Survivor's Trust, Rape Crisis England & Wales, Male Survivors Partnership, Welsh Women's Aid and NHS England were the agencies involved.

<sup>15</sup> A RASSO lead is an officer who has strategic oversight of rape and serious sexual offence cases in their force.

<sup>16</sup> These are experienced police supervisors who act as the main point of contact between the police and CPS RASSO unit and determine when a case is ready to be referred to the CPS.

- **Crown Prosecution Service (CPS):** a survey link was sent to the Chief Crown Prosecutors for distribution to RASSO unit heads and prosecutors in RASSO Units.

Most surveys ran from September to October 2019, except for the CPS survey which was conducted in June 2020. Frequency analyses were carried out for closed-ended questions and all open-ended responses were fully coded and examined for themes.<sup>17</sup> Statistical significance tests of differences in scores were not conducted due to the non-random and small samples. Internal quality assurance was conducted on all survey analysis.

Due to the large number of nil or incomplete records for all surveys, responses retained in the final dataset were from participants who had answered a large proportion (at least 70 per cent) of the questions asked in the survey.<sup>18</sup> The table below show the number of completed survey responses retained.

**Table 1. Retained responses from cross priority survey by participant group<sup>19</sup>**

Surveys sent to	Responses
Police Investigators	348
Support Services stakeholders <sup>20</sup>	131
Crown Prosecution Service	111
Citizens Advice Witness Services (CAWS)	52
RASSO Police Leads	36
RASSO gatekeepers	13

- Investigators responded from 28 police forces working in a variety of roles including detective constables, detective sergeants and detective inspectors in both specialist RASSO and non-specialist units.
- A large proportion of victim support service participants were ISVAs, counsellors and other frontline staff. ISVAs were working across a range of organisations including Sexual Assault Referral Centres (SARC), Rape and Sexual Abuse Centres (RASAC), charities and specialist services including Rape Crisis.
- Fourteen CPS areas responded. Participants worked across a range of roles including RASSO prosecutors and RASSO Unit Heads.
- CAWS survey participants were based in 30 police forces. Of those who provided information on their job titles, the majority were team leaders with a small minority in managerial posts.
- RASSO leads from 29 Police Force Areas and RASSO gatekeepers from 12 forces responded to the survey.

Due to the removal of partially completed surveys, the non-random sample and the small sample sizes in some of the surveys, the findings should be treated with caution.

<sup>17</sup> Survey responses from all participant groups were cleaned and analysed using Microsoft Excel.

<sup>18</sup> Judgement on the final dataset was based on: none of the questions were answered (i.e. were nil returns); or were incomplete returns.

<sup>19</sup> It is recognised that, usually, the term 'respondent' is used when reporting survey findings and 'participants' for qualitative work however, throughout this report we have used participants generically for consistency.

<sup>20</sup> Including Independent Sexual Violence Advisors (ISVAs).

Quantitative data from the surveys are presented numerically identifying the prevalence of the views however this was not possible for the large proportion of qualitative data obtained via the survey. Therefore, not all survey data will be presented in a way that allows for prevalence of views to be identified.

### 3.2 Focus groups and interviews with key CJS stakeholder groups

To provide more in-depth data, a series of focus groups and in-depth semi-structured telephone interviews were conducted to explore the views and experiences of a range of criminal justice professionals. The majority of focus groups and interviews were carried out between October and December 2019 and further interviews with Judges and defence solicitor-advocates were carried out between November 2020 and January 2021. Table 2 outlines the interviews and focus groups undertaken with each participant group.

**Table 2. Qualitative research conducted with participant groups**

Participants	Format and number included
Police Investigators	1 interview and 9 focus groups with 29 investigators
ISVAs	5 virtual focus groups with 32 ISVAs
HMCTS Witness Champions	1 virtual focus group with 9 Witness Champions
Barristers <sup>21</sup>	5 in-depth semi structured telephone interviews
Police RASSO Leads	2 focus groups with 16 RASSO leads
Crown Court Judges	5 in-depth semi structured telephone interviews
Defence solicitor-advocates <sup>22</sup>	5 in-depth semi structured telephone interviews

Using existing MoJ contacts and snowball sampling, HMCTS, ISVA, barrister and defence solicitor-advocates were selected to ensure different roles, degrees of seniority and experience.

Police participants were selected according to a range of criteria including working in Police Force Areas with: the highest and lowest volumes of victim withdrawal; the largest changes in the number of rape cases referred to the CPS; the highest and lowest number of recorded rapes; and geographical spread of forces.

Judicial participants were sourced via the Judicial Office and were experienced in RASSO cases, having been Crown Court sex-ticketed judges for between 5 and 10 years. Defence solicitor-advocates were sourced via the Public Defender Service (PDS) and had experience in a variety of solicitor and advocacy roles. Both judges and defence participants worked in a range of locations across England and Wales.

The interview and focus group questions were iterative and changed slightly by participant group, though the core questions stayed the same. All sessions were recorded with the recordings transcribed by an external transcription service provider. The data received

<sup>21</sup> The barristers interviewed were experienced in both prosecuting and defending in RASSO cases.

<sup>22</sup> The defence practitioners interviewed were experienced in working in both private and public practice.

from the interviews and focus groups were analysed by both HO and MoJ analysts using thematic analysis. Internal quality assurance was conducted on all analysis to ensure themes identified reflected the data collected.

When outlining the qualitative findings, the data are not presented in a manner that assigns specific proportions or prevalence to the findings. Instead, the terms ‘many’, ‘some’, or ‘a few’ are used to give a relative indication of how typical views and experiences were across the participant groups. The term ‘many’ is used to mean that a view was widespread within a group of stakeholders, whilst ‘few’ indicates that a finding applied to a small handful. ‘Some’ is used to indicate a middle ground between ‘many’ and ‘few’. This should, however, be considered indicative. Findings reflect the specific views of those interviewed as part of the research and may not be generalisable to all participants or the wider population of the individual groups. Direct quotations come largely from the qualitative interviews and focus groups, rather than the survey data.

Throughout the report the qualitative findings from both the surveys and the interviews and focus groups have been combined given many of the same questions were asked and the same themes emerged during analysis. Where findings related specifically to one or the other, this has been stated in the presentation of the findings as required.

### 3.3 Ethics

Whilst undertaking the research relevant ethical principles were considered:

- Participation: Participation in the research was voluntary and withdrawal at any stage up to analysis was possible for all participants;
- Consent: informed consent was collected from all participants. All participants were given information on the research, including how the data would be stored and used and their rights of withdrawal. Participants signed consent forms prior to the interviews and focus groups commencing, this included consent for the audio recording of interviews;
- Anonymity and confidentiality: participants were assured that all responses would remain confidential and anonymous. Analysis was conducted at a level that would prevent identification of individuals. For example, survey responses from the police were not analysed by Police Force Area given the small numbers of officers responding from certain police forces.

### 3.4 Further analysis

To identify the scale of the problem and complement the findings from the suite of surveys, interviews and focus groups, additional quantitative analysis was undertaken.

#### **Quantitative analysis of administrative data**

Published data on prevalence, reporting, prosecutions and convictions for rape cases were analysed to provide an overview of the current trends on rape cases in the criminal justice system. While the overall review focuses on rape cases with adult victims, it was not possible to separate adult and child rape victims from published CPS data and therefore these data reflect all victims. All data referring to adult victims from the Crime Survey for

England and Wales (CSEW), Police Recorded Crime (PRC) and Criminal Justice Statistics (MoJ) reflect victims aged 16 and over only.

To assess how specific factors influence charge rates for rape offences observed over time and across Police Force Areas, the Home Office conducted quantitative analysis of just over 194,000 rape offences recorded by police between 1 April 2015 and 31 March 2020. A multi-level regression model was developed predicting the likelihood of a charge for a recorded rape offence as a function of a set of predictors including victim age, sex, time between event and recording of the offence by the police, and victim-offender relationship. Data were structured in layers by CPS region and Police Force Area. To estimate potential impact of the 2017 high-profile court case *R v Allan*,<sup>23 24</sup> a regression discontinuity approach was used with a sharp disruption at the time of the verdict. A detailed description of the data and modelling approach used is provided in Appendix E.

### Assessing appeal case summaries for digital evidence

To investigate the increase in the use of digital evidence in criminal investigations, Home Office analysts followed a similar methodology to the research undertaken by McMillan, J., Glisson, W., and Bromby, M., (2013) on the presence of digital evidence in criminal cases heard in appeal courts. The analysis is based on a review of appeal judgements in 2010 and 2018 from three legal databases. In total, approximately 2,850 cases from 2010 and 1,350 cases from 2018 were identified and reviewed. All cases were searched for the presence of key words relevant to the use of digital evidence in the commission of the offence and subsequent investigation (e.g. 'digital', 'mobile phone', 'laptop', etc). These appeal judgements were then reviewed by researchers, and an assessment made as to whether digital evidence played a part in either the original court case or in the appeal judgement. A qualitative assessment was also made of whether the digital evidence was judged to be of low, medium or high relevance to the original conviction or appeal judgement (Richardson et al., forthcoming).

## 3.5 Limitations and caveats of the research

Several limitations and caveats apply to the findings.

As has been stated, this research did not include primary fieldwork with RASSO victims. Additionally, the survey participants were not randomly selected and may not be representative of the whole population of interest. As responses were voluntary there is likely to be selection bias in all survey responses, with individuals with a strong interest in the issues being more likely to respond. Responses were not received consistently across

<sup>23</sup> Mr Allan was accused of rape in Jan 2016. He was charged with 12 counts of rape and sexual assault in early 2017. In Dec 2017, the case against Mr Allan was dropped after several days in court. This was due to late prosecution disclosure – during the trial - to the defence of extensive digital evidence including messages from the complainant that cast serious doubt on the allegations against Mr Allan. The CPS and police review of this case is available at:

<https://www.cps.gov.uk/sites/default/files/documents/publications/joint-review-disclosure-Allan.pdf>

<sup>24</sup> It should be noted that the Allan case was not an isolated incident. Five months, previously, the *R v Iltary* case collapsed due to non-disclosure issues, as did a cluster of other cases. This led to the 2017 joint HMIC and HMCPSI inspection report 'Making it Fair: A Joint Inspection of the Disclosure of Unused Material in Volume Crown Court Cases', followed by the 2020 HMICPS report 'Disclosure of Unused Material in the Crown Court'. By way of balance, the 2019 'HMCPSI Rape Inspection' found that some CPS requests to the police for more evidence were not justifiable.

the different stakeholder groups with findings from the police likely to be more prominent given the larger sample size overall from the three police stakeholder groups compared to other participant groups. The survey responses could not be analysed by Police Force Area (PFA) or CPS area as there was not a representative geographical spread across England and Wales.

The qualitative findings presented were solely the perceptions of participants and may not reflect what is happening across all areas and organisations within the criminal justice system. As specified in sections 3.1 and 3.2 above, sample sizes varied by participant group and for some participant groups the samples were particularly small to draw conclusions from. Caution should therefore be applied when reading the findings of various participant groups to be mindful of these varying sample sizes. Nevertheless, the qualitative research provided rich insights into the experiences of those interviewed but views will be influenced by the attitudes, organisational culture, specific role in the CJS process and inherent individual biases of those providing input. The findings therefore reflect only the views of the individual participants and do not reflect wider experiences of all individuals working in these organisations. As the evidence draws upon individual past experiences, it is also subject to recall bias.

As the findings from the surveys and the qualitative research are the perceptions of the individuals involved, this means that those may not align with the findings from the national published and unpublished data. This does not imply that one set of data is more valid than the other, only that the experiences and perceptions of the respondents do not always reflect the national picture. Both types of findings remain valid and relevant.

In relation to the quantitative analysis, there were some levels of missing values across all variables included in the regression analysis and therefore detail relating to victim demographics was not available for all offences. In addition, there were some changes in recording practices during the period covered by the analysis although inspection of the data suggested that this change would not affect the main conclusions of the analysis. The dataset only includes a selected number of independent variables, reflecting those that were sufficiently well-populated to allow for the quantification of factors previously identified by other studies as significant in affecting charge likelihood. Other data covering more detailed characteristics on the investigation and availability (e.g. existence of injuries, use of forensics and medical records, availability of specialist sexual assault services), were not covered in the source data. Further detail on limitations of this analysis can be found in Appendix E.

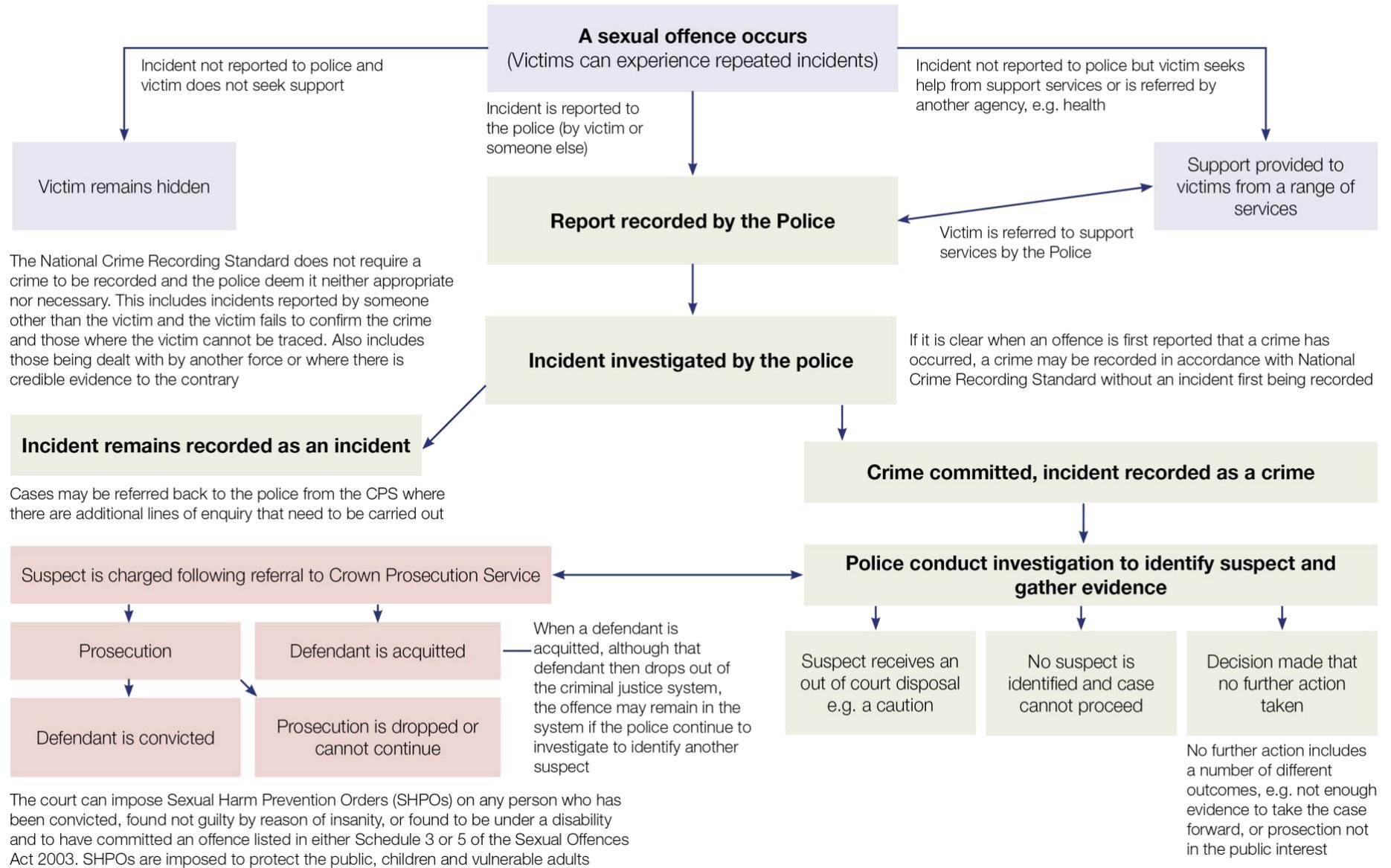
This report does not attempt to represent a comprehensive compendium of research in RASSO cases, and should be contextualised within the wider evidence base. It should also be read in tandem with the policy report which includes recommendations informed by the evidence presented here.

# Findings from the primary research

## Part one: Case journey

The findings from the primary research are reported in two parts. The first part (Chapters 4 to 7) considers findings relating to the challenges and changes experienced in recent years at the different stages of the case progressing through criminal justice system, including reporting, investigation, charging and court. Figure 2 outlines how cases move through the criminal justice system.

**Figure 2. How sexual offences progress through the criminal justice system**



Source: ONS, Sexual offending: victimisation and the path through the criminal justice system, 2018

## 4. Reporting and recording rape offences

This chapter presents findings relating to increases in reporting to, and recording of, adult rape cases by the police. The chapter starts by examining the available administrative data in relation to police recorded crime and the prevalence of adult rape. It then outlines the perceptions of participants on the drivers of increases in recorded offences.

### Key findings

Police recorded adult rape offences have increased since 2013–14. Prevalence however has remained relatively flat suggesting increased police recorded crime is a result of increased reporting to and recording by the police rather than increased numbers of adult rape offences occurring.

According to some police participants the increase in reporting to the police was related to a better understanding of rape amongst the public and increased confidence in the police to believe victims and investigate offences in a professional manner, though it was noted this confidence may not remain when faced with the reality of the criminal justice system.

Many police participants saw changes in the reporting of rape offences, including an increase in non-recent cases and third-party reporting. In addition, there has also been a perceived increase in cases lacking sufficient evidence and cases where the victim wished to report but not progress through the criminal justice system.

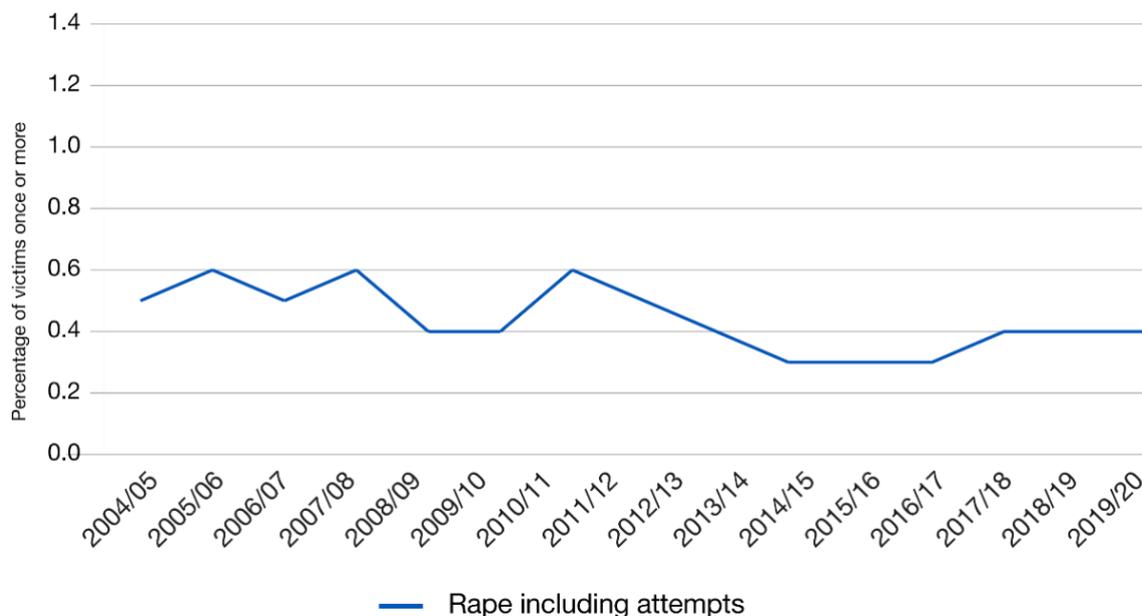
Some police participants also believed the increase in recorded rape was due to changes in police recording practices since 2014. Some police participants believed cases are now officially recorded as a crime more easily than before which has resulted in more cases being recorded. Data from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services suggests some increase in recorded rape offences between 2014–15 and 2019–20 could be attributed to improvements in recording (HMICFRS, 2020).

## 4.1 Before entering the system: Prevalence of adult rape and other sexual offences

The Crime Survey of England and Wales (CSEW) is the main data source for measuring the prevalence of adult rape and other sexual offences. It is considered the most reliable source of data as it is unaffected by changes in police activity, recording practices and propensity of victims to report such crimes to the police (ONS, 2018).

According to the CSEW, there were an estimated 128,000 victims of rape (including attempted rape) within the twelve months prior to completing the survey, based on combined data from the year ending March 2018 to March 2020.<sup>25</sup> This is equivalent to 0.5 per cent of 16 to 74-year olds in England and Wales. Most of these victims were female. The prevalence of adult rape has remained relatively stable between 2004–05 and 2019–20 (see Figure 3) with no statistically significant changes evident (ONS, 2021a). Year-on-year changes in prevalence should be treated with caution due to the small volume of people in the CSEW sample who had reported experiencing rape.

**Figure 3. Prevalence of rape (including attempts) in the last year among adults aged 16 to 59 in England and Wales, 2004–05 to 2019–20**



Source: ONS, Sexual offences prevalence and trends, England and Wales: year ending March 2020, 2021a

Rape and sexual offences are commonly under reported by victims, with many victims choosing not to disclose the offence to the CSEW, police or other individuals or organisations. For example the CSEW estimated that of the victims who experienced sexual assault by rape or penetration (including attempts) since the age of 16 years, fewer than one in six (16 per cent) victims reported to the police (ONS, 2021b). Therefore, it is likely these prevalence figures do not reflect the true extent of these offences within

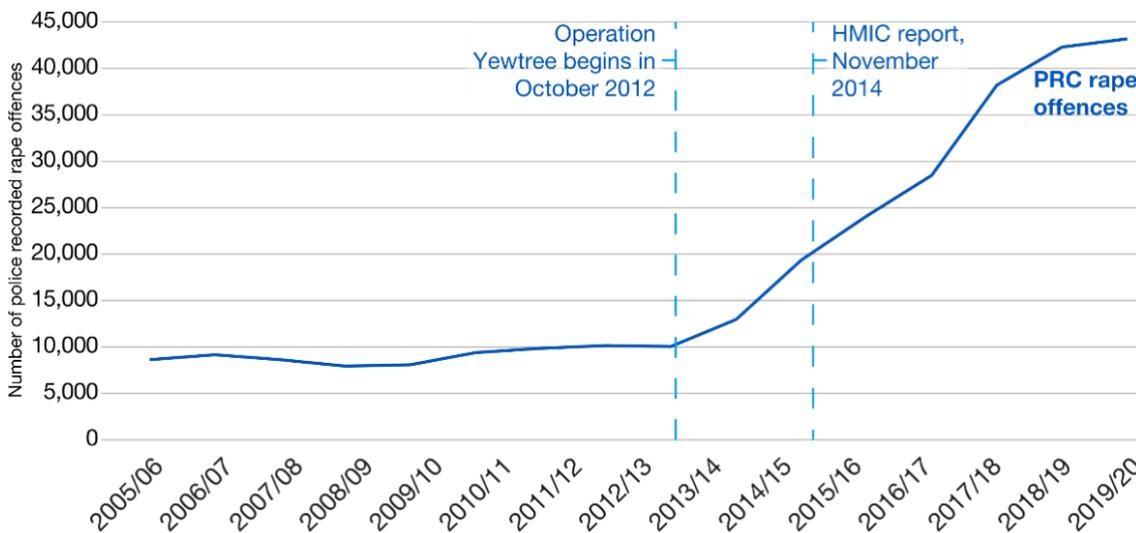
<sup>25</sup> Due to the relatively low number of participants that have been victims of sexual assault, data from the three most recent survey years have been combined and averaged to provide more robust estimates. This covers the year ending March 2018 CSEW to year ending March 2020 CSEW. Data for individual years is not provided due to small numbers.

England and Wales. Reasons for not disclosing rape offences are presented in Appendix A (see tables A2 and A3).

## 4.2 Changes in the number of police recorded adult rape offences

The number of adult rape offences recorded by the police remained reasonably flat between 2004–05 and 2012–13 between 8,000 and 10,000 offences per year. However, the number of recorded adult rape offences rose considerably over the following six years, more than quadrupling to over 43,000 reported offences in 2019–20 (ONS, 2021a). The trend in recorded adult rape offences between 2004–05 and 2019–20 is shown in Figure 4, along with key milestones that may have affected the volume of offences.

**Figure 4. Number of police recorded adult rape offences in England and Wales, 2005–06 to 2019–20<sup>2627</sup>**



Source: ONS, Sexual offences prevalence and trends, England and Wales: year ending March 2020, 2021a

Police, survey and focus group participants cited the increase in recorded adult rape offences as being a major change experienced in the last five years. Many police and support service participants discussed how more victims were now choosing to report, offering reasons for why they believe there has been an increase in victims reporting to the police.

<sup>26</sup> Operation Yewtree is a police investigation led by the Metropolitan Police Service, set up in October 2012 into predominantly child sexual abuse allegations, against Jimmy Savile (who died in 2011) and others. Data for 2019-20 excludes Greater Manchester Police which was not available following the implementation of a new IT system in July 2019.

<sup>27</sup> Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services published a report in 2014 on the crime recording practices amongst the police and outlined changes required to improve recorded crime.

## Understanding of rape and consent

Some police survey and focus group participants believed there was an increased level of understanding of rape, consent and victim behaviour amongst the public in recent years. ISVA participants felt this change in public understanding of sexual violence resulted in victims being more aware of what happened to them and feeling more reassured that police would believe them when reporting. In some police interviews, officers linked engagement work in local communities to an overall increased understanding:

“We did some awareness over the last couple of years in the university... We’ve done a lot of awareness around consent and around the online dating, and within that, that’s seen an increase in reporting from universities ... and we’ve also done some schools events as well, raising the issue of consent, and everybody is understanding of consent, and that has seen a bit of an increase in reporting in sort of early teens ages” [Police RASSO Lead Participant].

## Confidence in the police

Police focus group participants attributed some of the increase in reporting to increased confidence in the police amongst victims. Police focus group participants believed that the police response to rape cases had become more professional which resulted in victims feeling more confident that the police would treat them with respect. Police forces were also, according to ISVAs, perceived to be encouraging victims to come forward. This, if combined with an improved police response, could result in victims being more willing to report the offence.

One ISVA focus group however discussed that this increased confidence might not extend beyond the initial decision to report given that the reality of the criminal justice system often did not match with the public messages shared with victims about the process:

“one of the things which I think is so difficult for people at the moment is that you’ve got a real mismatch between what the public perception is around sexual violence.....So, you’ve got this public discourse which is saying ‘you have these rights, you can report, people can’t treat you badly’ but then actually when women are going forward to have those rights enforced actually the criminal justice system isn’t really responding” [ISVA Participant].

## Media influence

High profile media reporting of cases, such as Jimmy Savile, and campaigns, such as ‘#MeToo’, were additional factors raised by police and ISVA participants in encouraging victims to report. Participants believed media coverage of convictions and non-recent offences helped to convince other victims to come forward. Media coverage was also reported to have raised awareness of the subject, which helped increase the public’s understanding and encouraged more open discussion of such issues.

Some investigators and ISVAs, however, believed that media coverage could be having a negative impact on rape cases. These participants perceived that reporting on the small number of successful prosecutions for rape or on cases dropped mid-trial due to evidential difficulties could have had a detrimental effect, making victims wary of engaging with the criminal justice system.

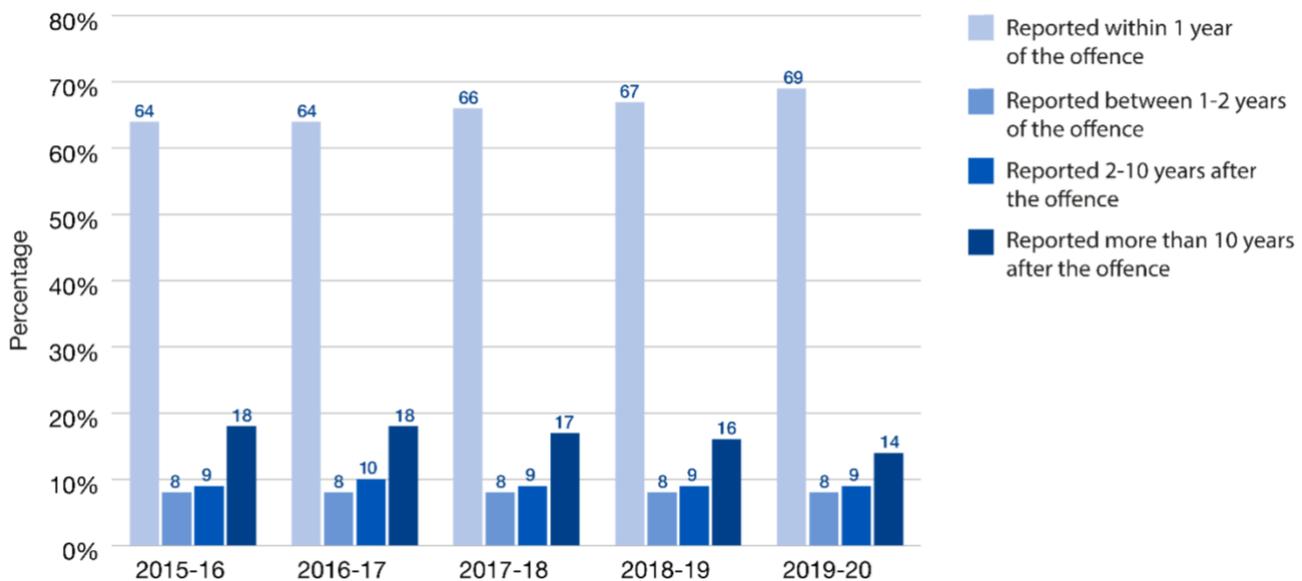
### 4.3 Changes in cases reported to the police

Many police participants perceived there to be changes in cases that come to the attention of and are recorded by the police over the last five years. A vast number suggested this was impacting on police ability to undertake investigations and on the outcome of adult rape cases, with some concerned that these cases detracted from cases where participants believed a charge was more likely.

#### Non-recent rape cases

Many police survey and focus group participants perceived an increase in non-recent cases, these were cases reported to the police a year after the incident occurred. Available police recorded crime data from 2015 onward did not support this perception, however. Between 2015–16 and 2018–19, around two-thirds of those who reported a rape to the police, reported it within a year of the incident taking place. The proportion of offences reported 10 or more years after the event remained consistently around 17 per cent between 2015–16 and 2018–19 (Home Office Data Hub, no date). Figure 5 shows the distribution of reported rape cases according to the length of time between the rape occurring and being reported to the police in recent years. It is possible that the discrepancy between the police perceptions of an increase in non-recent cases and the administrative data may date back further than 2015–16 and reflect ongoing perceptions of increases in non-recent offences when Operation Yewtree commenced in 2012. Data is not available to explore this.<sup>28</sup>

**Figure 5. Breakdown of the time between rape offences occurring and being reported to all police force areas in England and Wales by year of reporting, for offences recorded 2015–16 to 2019–20**

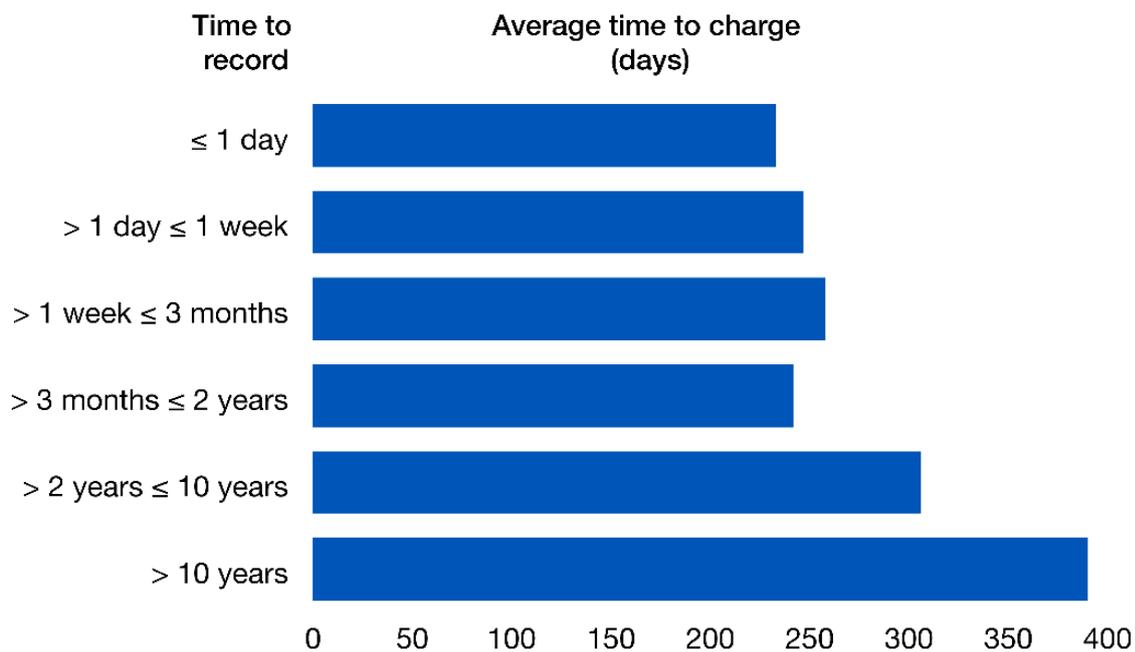


Source: Home Office Data Hub, no date

<sup>28</sup> Due to a change in Home Office recording, it was not possible to look at these trends prior to 2015-16.

Whilst the available police recorded crime data did not indicate an increase in proportion of non-recent offences reported, it did indicate that non-recent cases take longer for the police to assign a charge outcome. Given police spend longer investigating these cases and such cases are more complex for CPS to evaluate so may take longer for charging advice, it may explain why some police participants perceived non-recent cases to be particularly prevalent. Figure 6 shows the average time to charge based on time between offence and recording by the police.

**Figure 6. Average time taken in days for police to charge according to length of time between offence occurring and it being recorded by the police, for offences recorded between 2015–16 to 2018–19**



Source: Home Office Data Hub

### Third party reporting

Several police focus group participants discussed a perceived increase in third-party reporting. These were where a professional organisation, such as a support agency, or family and friends report the incident rather than the victim. Police focus group participants believed these third parties now feel a sense of responsibility to report rape to the police. ISVA focus group participants expressed concern about whether statutory services had misinterpreted whether there was a mandatory requirement to report sexual violence or not. Many participants suggested this reporting was not always with the consent of the victim; some ISVA focus group participants perceived this as the victim's choice to report being taken away. Data are not available to confirm whether these perceptions are evident in police recorded crime.

### Domestic abuse related cases

Amongst the police interview and focus group participants there was a perceived increase in the number of domestic abuse related rape cases recorded. Numerous police focus group participants perceived that the Domestic Abuse, Stalking and Honour Based Violence assessment questions that they ask in domestic abuse cases were contributing to the increase in recording as any reference to sexual violence within the assessment

required recording by the police.<sup>29</sup> Police participants raised that this resulted in indirect reporting by the victim as the rape was often not the reason for contacting the police. In some cases, the victim did not even deem the incident to be rape.

“What we didn’t expect was it to generate a whole issue around something that happens historically, maybe a year, two years ago where we’ve got no chance of ever getting a conviction or success around it. And we know with domestic abuse they’d want what they reported, what they’d phoned you up for is what they want to report. They’re not interested in what happens 5 years ago, but we kick start into an investigation.” [Police RASSO Lead Participant].

A couple of investigators in the survey raised a concern that these domestic abuse related incidents were often more difficult to investigate given they tended to be non-recent, had less evidence available, and might not have the victim’s full cooperation.

### **Cases lacking sufficient evidence**

Police survey and focus group participants also discussed an increase in cases that they think ‘should not be investigated’. Police survey participants provided examples of the types of cases they believed fall into this group, including cases with limited evidence<sup>30</sup> and cases whereby the victim cannot remember what happened. Some police focus group participants also added cases where the victim reported they were raped but the incident did not meet the legal definition of rape.

“there are a proportion of rape reports that early in the investigation ... [give] the police a certain sense that they’re not quite right ... and they lead us to suggest that or to conclude that there’s a question mark over whether there’s been a rape in terms of the legal definition of a rape.” [Police Investigator Participant]

A small number of investigator survey participants also mentioned a possible increase in cases they deemed to be false allegations or ‘regret sex’, where the police perceived victims to be making malicious reports to the police. For these participants, this type of reported rape was detracting from those victims who, had what the police believed to be, more legitimate allegations. It may be that the responses of these officers reflected the presence of rape myths within the police (see chapter 9) or a propensity to disbelieve some victims.

### **Victim does not support further investigation or prosecution**

Police survey participants also reported an increase in victims who wished to simply report in order to make the police aware of the suspect or to access support,<sup>31</sup> but did not want to progress with an investigation or prosecution. A case where a victim does not want an investigation was deemed to make investigations more challenging. During the police focus groups, many flagged that the victim not wishing to support an investigation or

<sup>29</sup> Question 19 of the assessment asks ‘Does (...) do or say things of a sexual nature that makes you feel bad or that physically hurt you or someone else?’ (Richards, 2016).

<https://www.dashriskchecklist.co.uk/dash/>

<sup>30</sup> Whilst police respondents discussed the challenges of investigating cases with limited evidence the requirement for corroborating evidence for sexual offences was removed in Criminal Justice and Public Order Act 1994 and so this should not be a determinate of investigation.

<sup>31</sup> Reporting to the police is not a requirement for victims to be able to access support.

prosecution was particularly prevalent when the initial report came from a third party rather than the victim. The reasons for victim withdrawal are discussed further in Chapter 8.

#### 4.4 Changes to police recording practices

In 2014 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) reported concerns over the integrity of police recorded crime data, concluding 26 per cent of sexual offences were under-recorded by the police (HMICFRS, 2014). Following this, police forces improved their crime recording practices, resulting in large increases in the number of recorded RASSO offences. The most recent HMICFRS report on crime data integrity identified an increase in the accuracy of crime recording for sexual offences since 2014 based on a rolling set of re-inspections, covering all forces, between 2016–2020. Current estimates of under-recording for sexual offences now stand at 6 per cent (HMICFRS, 2020). Assuming that rape offences were subject to the average recording improvement for all sex offences, approximately 20% per cent of the observed total increase in recorded rape offences between 2014–15 and 2019–20 could be attributed to improvements in recording.

Numerous investigators and police leads discussed how the changes to recording practices impacted on the level of adult rape offences recorded. Police focus group participants reported that, prior to these changes to crime recording practices, they would undertake some initial exploration of an allegation before deciding whether to formally record it as a crime. Following the changes, police participants described a more automatic recording of all suggestions of a rape offence prior to any kind of exploration or investigation. Some investigator survey participants discussed how this resulted in rape cases being over recorded, with the perception that cases were officially recorded as rapes 'too easily'.

Whilst the intention behind the changes implemented by the Home Office following the HMIC recommendation was to improve recording of cases, police participants felt these changes increased the amount of time spent investigating cases that, according to these police participants, could not be prosecuted. Police participants reported that they also thought this new approach meant they were unable to cancel the crime report for cases that turned out not to be rape offences.<sup>32</sup> This was perceived to be having a detrimental effect on the numbers of reported offences able to progress, with cases that cannot reach the threshold for charging being classified as a police failure.

Police survey and interview participants suggested the need for changes to crime recording practices to allow for offences to more easily change to a 'no-crime' when information emerges to suggest a legally defined rape did not occur. Some also suggested allowing time to assess the validity of the crime before officially recording so that recorded offences are based on evidence. Police officer participants felt that these changes would improve statistics relating to police performance and allow the police to dedicate their time and resource to what they deem to be more viable crimes.

<sup>32</sup> The National Crime Reporting Standards do allow for crimes to be cancelled should additional verifiable information be available that determines that no notifiable offence has occurred.

## 5. Investigation and charging of RASSO cases

This chapter examines findings relating to perceived recent changes and challenges faced during police investigation, pre-charge case preparation and in relation to the outcomes assigned to RASSO cases.

### Key Findings

Rape investigations are perceived to now take longer due to a variety of factors, most noticeably, a change in pre-charge disclosure practice. According to police and CPS participants, the CPS now required all disclosure prior to making a charging decision rather than at the pre-court stage. This change increased the time spent investigating a case and delayed charging decisions by CPS.

Data from the CPS does suggest an increase in time taken for a CPS charging decision. The average number of days for the CPS to charge rape-flagged cases increased from 53 days in 2015–16 to 145 days in 2019–20.

Some ISVA participants perceived a possible increase in ‘no further action’ decisions made by the police. Police outcomes data corroborates this. Studies included in the literature review indicated that police ‘no further action’ decisions account for biggest proportion of attrition among cases where the victim does not withdraw. Since 2015–16, there has also been an increase in the proportion of adult rape offences assigned the outcome ‘evidential difficulties, victim does not support further action’.

In 2019–20, police referrals to the CPS fell by 37 per cent compared to 2015–16. A variety of reasons were offered by police and CPS participants including: the increase in investigation timescales creating a backlog of cases; a fall in cases with sufficient evidence; improved police decision making, whereby the police feel more able to decide not to refer cases; and improved gatekeeping at police level of weaker cases.

There has been a reduction in the proportion of cases charged by the CPS, falling from 57 per cent in 2015–16 to 45 per cent in 2019–20. Participants suggested similar reasons as for referrals, with the change linked to longer investigations; cases having a lack of corroborating evidence; and poor-quality case files. Some police participants also attributed the fall in charge rate to a perceived reluctance in the CPS to charge although this was not explicitly stated by CPS participants.

## 5.1 Police investigation

Rape investigations take longer than investigations for all other offences given the complexities and sensitive nature of these cases. For offence outcomes assigned in 2019–20, rape cases took on average 98 days for the police to investigate and assign an outcome, compared to 66 days for all sexual offences, 18 days for violence against the person cases and 10 days for all crimes (Home Office, 2020b).<sup>33</sup>

Police and support services survey and focus group participants perceived that rape investigations had become increasingly lengthy in recent years which resulted in less cases being referred to the CPS and delayed charging decisions. However, police recorded crime data showed that since 2015–16 the median number of investigation days prior to an outcome being assigned has fallen, from 138 days to 98 days in 2019–20.<sup>33</sup> It is likely the decrease in time to assign an outcome is driven more by those cases which are assigned an outcome other than charged/summonsed by the police. When looking solely at charged cases, the median number of days for rape cases to be charged increased from 245 days in 2015–16 to 395 days in 2019–20, supporting the perception that those investigations have become longer<sup>34</sup> (Home Office, unpublished; Home Office, 2020b).

Police participants perceived the change in investigation timelines to be driven by the time taken to gather and review all the evidence required pre-charge. Of the just under 400 police survey participants, almost half said that obtaining third-party material was impacting on the time taken to reach a charging decision and 72 per cent said that analysis of digital material was having an impact on duration of the investigation (see chapter 6 for more on digital and third-party evidence).<sup>35</sup> An increase in length of police investigations was a key challenge raised by police participants in relation to progressing cases with police and support services also raising concerns about the impact of these delays on the victim.

Most judges and defence solicitor-advocates perceived that releasing suspects under investigation (RUI) was contributing to delay in the investigation stage. In 2017, there was a change in the law on bail, which means the police are now only able to keep suspects on bail for 28 days before making a charging decision.<sup>36</sup> However, when suspects are instead released under investigation there is no 28-day bail time limit, meaning investigation and charging decisions can take far longer. The police were perceived by these participant groups to be frequently releasing RASSO suspects under investigation or introducing multiple bail periods to give them more time to investigate the case before making a charging decision, resulting in a lack of urgency.<sup>37</sup>

<sup>33</sup> These data relate to all rape offences rather than just adult rape as presented elsewhere in the report.

<sup>34</sup> The time taken for police to assign a charge outcome is calculated from the date the offence is recorded by the police until the date the charge decision is communicated to and recorded by the police. This differs from the time taken for the CPS to assign a charge outcome which is calculated from the time the case is submitted for a charging decision by the police and will therefore exclude the investigation period.

<sup>35</sup> This question was asked of support service participants however comparable figures are not available from the support service survey.

<sup>36</sup> Police and Crime Act 2017, Section 62, available at this link: <https://www.legislation.gov.uk/ukpga/2017/3/part/4/chapter/1/crossheading/time-limits-on-period-of-bail>

<sup>37</sup> In 2020 the Government launched a consultation into pre-charge bail. The findings from the consultation and the evidence review that was published at the same time can be found at: [Police powers: pre-charge bail - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/police-powers-pre-charge-bail)

## 5.2 Pre-charge case preparation

Police and CPS participants discussed how changes with pre-charge case preparation created challenges in relation to progressing adult rape cases.

Police survey and focus group participants perceived there to have been changes to the evidential requirements for pre-charge case files that had lengthened investigations, impacted on their ability to undertake effective investigations and decreased the number of referrals to the CPS and charges. According to some police participants, the expectation appeared to be that the full court file of evidence needed to be ready pre-charge rather than pre-trial, as was the case previously. This required police to spend increasing amounts of time building cases before referring to the CPS.

“Yeah so what you’ve got is the CPS asking for a full code test,<sup>38</sup> it takes quite a long time to get all the information, particularly if there’s forensic or digital information required that can take up to 18 months to get some of that through... the CPS don’t want to do a threshold test they want to do full code test because that prepares them for court and, and of course that comes with timescales.” [Police RASSO Lead Participant].

Some police participants found this challenging when also facing increasing workloads and less resource. Some police participants perceived this change in pre-charge disclosure practice to be unique to rape cases.

According to CPS survey responses, the CPS procedure<sup>39</sup> was to focus on covering all reasonable lines of enquiry pre-charge for each case, with more time spent on identifying all the relevant disclosure material during investigation to ensure the case was solid on charge. They indicated that this resulted in fewer cases being dropped at court. A small number of CPS participants recognised that while this should always have been done, not all lines of enquiry were previously considered pre-charge which could explain why some police participants perceived this to be a change in CPS expectations in relation to the volume of disclosure.

Police participants also discussed how they felt the CPS were issuing increased numbers of requests for additional information to form part of the investigation. Many police survey participants saw these requests as being disproportionate, intrusive and speculative. Some police participants often struggled to see the value of collecting this additional information, rather they interpreted these requests as a tactic to delay or dismiss the case and limiting the number of cases considered for charge.

In contrast, the CPS survey participants were of the view that an increase in requests was a consequence of a change in the quality of police casework. CPS survey participants discussed that case file submissions were often of poor quality, lacking the required

---

<sup>38</sup> The Full Code Test is the approach used by the CPS to determine whether a case has enough evidence to prosecute and a prosecution is in the public interest. The evidential stage of this test is based upon whether the prosecutor is satisfied the evidence is reliable and credible enough that there is a realistic prospect of conviction. In limited circumstances where the Full Code Test is not met, the Threshold Test may be applied. The seriousness or circumstances of the case must justify the making of an immediate charging decision, and there must be substantial grounds to object to bail. For further information please see: <https://www.cps.gov.uk/publication/code-crown-prosecutors>

<sup>39</sup> As required by the Criminal Procedure and Investigations Act 1996 Code of Practice

information for the CPS to be able to make a fully informed decision. CPS participants felt a lack of understanding amongst the police of disclosure requirements and the Full Code Test that determines charging was affecting the quality of police case files and increasing the work required by the CPS to improve the quality of evidence before charging. CPS participants also raised that sometimes the police could cause delays by not promptly actioning CPS requests for more information or points of clarification which prevented cases being charged. A report included in the literature review from the CPS linked a delay in police actioning requests to cases being administratively finalised<sup>40</sup> and therefore a reduction in charges (CPS, 2019).

### Early Investigative Advice

Early investigative advice (EIA) is a process whereby the police can ask the CPS for guidance and advice in serious, sensitive or complex cases or in relation to the evidential requirements for prosecution. EIA can help determine early on whether a case can progress to court and may well save police and CPS time and resource throughout the investigation.

The police and CPS survey participants were asked about their use of EIA. Most participants<sup>41</sup> stated it was only used in a minority of cases (see Table B1 in Appendix B) but it is not clear whether this is because participants have not been in a situation that requires EIA or because they chose not to use it. As such, EIA is unlikely to be a driver of the observed trends.

A few CPS participants were aware of recent changes whereby all rape cases should be receiving EIA. There is an expectation that these changes will increase the proportion of case receiving EIA going forward across some police and CPS areas. Further information on the current use of EIA is contained in Appendix B.

## 5.3 Referrals to CPS

Cases that the police deem to have enough evidence to charge are referred onto the CPS for a formal charging decision. Despite the increase in reported cases, CPS data showed overall the police were referring 37 per cent fewer rape cases for charge in 2019–20 compared to 2015–16 (CPS, 2019; 2020a).

Around two thirds of participants in the investigator and police RASSO leads survey believed there had been a decline in cases referred to the CPS within their force over the last 2 years (67 per cent of investigators (N=348) and 69 per cent of RASSO leads (N=36) respectively).

<sup>40</sup> Administratively finalised decisions are not legal decisions and may not be the end of the case. CPS may ask the police to provide further information where there is insufficient evidence to make a charging decision, or the police are requesting early investigative advice. If the police do not respond within three months, following reminders, the case is closed. This is known as an 'administrative finalisation'. If the police provide additional evidence, the case is reopened and, if possible, a charging decision is made (CPS, 2019).

<sup>41</sup> 40 per cent of investigators (N=348), 39 per cent of RASSO gatekeepers (N=13), 54 per cent of RASSO police leads (N=36) and 41 per cent (N=111) of CPS participants cited using it in only a few cases.

Those police survey participants that cited a decrease in referrals linked this to both a change in the type of reported rapes and a change in investigative demands. As discussed in section 4.3, police survey participants believed that there had been an increase in cases that could never meet the threshold for referral to the CPS. Other reasons mentioned were the increase in investigation timescales for charged cases and the perceived changes to case file preparation with the police taking longer to obtain adequate information to make a referral. During the focus groups, some officers raised the point that a lack of resources exacerbate issues relating to increased workloads and timescales:

“Why is it you know the police aren’t referring, well we’re trying to but because we haven’t got the capability or the capacity, we can’t do it” [Police RASSO Lead Participant].

Some investigator and CPS survey participants felt the poor quality of police work was potentially having an impact on the number of referrals to the CPS. They felt that the police received poor quality training in relation to investigating and preparing cases for charge which meant they struggled to produce work of a good enough standard to submit to the CPS.

In contrast, some police survey and focus group participants thought that referrals had decreased because the police had improved their decision making, becoming more able or willing to make their own assessments on cases. Some police RASSO leads described how officers within their forces were actively encouraged to make the decision themselves rather than simply refer onto CPS. Some police survey and focus group participants believed that they had become more aware of CPS charging expectations and therefore used this knowledge to only refer cases that were ‘stronger’, which according to these police participants were now fewer in number. However, some police and ISVA participants expressed concerns about this. A culture of ‘why bother referring’ was felt to have emerged amongst some police officers.

“oh I had a job like this last time and the CPS didn’t run it so I’m not going to bother putting it in this time...And so I think that quite often you know we don’t actually put in the body of work that we should do because you know we’ve had our fingers burnt before and thought well I won’t bother with that one, it’s just another job I can get rid of” [Police RASSO Lead Participant].

Some CPS survey participants believed RASSO gatekeepers had reduced the number of referrals as they “*prevented a lot of under-developed and unfinished cases from coming to CPS*”. CPS participants perceived this as improving efficiency as the CPS could then deal with cases more quickly and reduce the number of action plans. However, a few police participants deemed this to be overzealous quality assurance by senior police officers.

Despite the overall decline in referrals evident in the quantitative data, some investigators and police RASSO leads believed referrals to the CPS had increased. A large proportion of these participants felt this was a direct result of the increase in the number of adult rapes reported and therefore investigated. Some police and CPS participants thought that the police were referring increased numbers of cases because they were more risk averse. Some police survey participants suggested this was because senior police officers do not want to be held accountable for decisions not to progress with cases.

Both CPS and police survey participants discussed that the police need to feel able and empowered to make decisions early about non-viable cases and be robust in their decision to close cases.

## 5.4 Assigned outcomes<sup>42</sup>

Following investigation, the police assign an outcome to a case (out of a total of 21 possible outcomes) relating to whether the case can progress through the criminal justice system or not.

The number of cases assigned a charged/summonsed outcome rose between 2012–13 and 2015–16. However, the subsequent period between 2015–16 and 2019–20 saw a sharp drop in charge outcomes with a fall of 60 per cent – despite a continuing increase in recorded adult rape offences. Only 3 per cent of adult rape offences assigned a police outcome in 2019–20 were given an outcome of charged/summonsed<sup>43</sup> (Home Office, 2020a; Figure 7). The exact reasons for this fall are unclear although the challenges around collecting evidence during investigation and increased timescales, as well as the perceived change in the type of cases recorded, already discussed in section 4.3, could explain some of the fall.

---

<sup>42</sup> Data on police outcomes comes from Home Office [open data tables](#). These open data tables are frequently updated so numbers relating to police recorded crime and outcomes may change over time. The statistics used in this publication were generated on 29/04/2021.

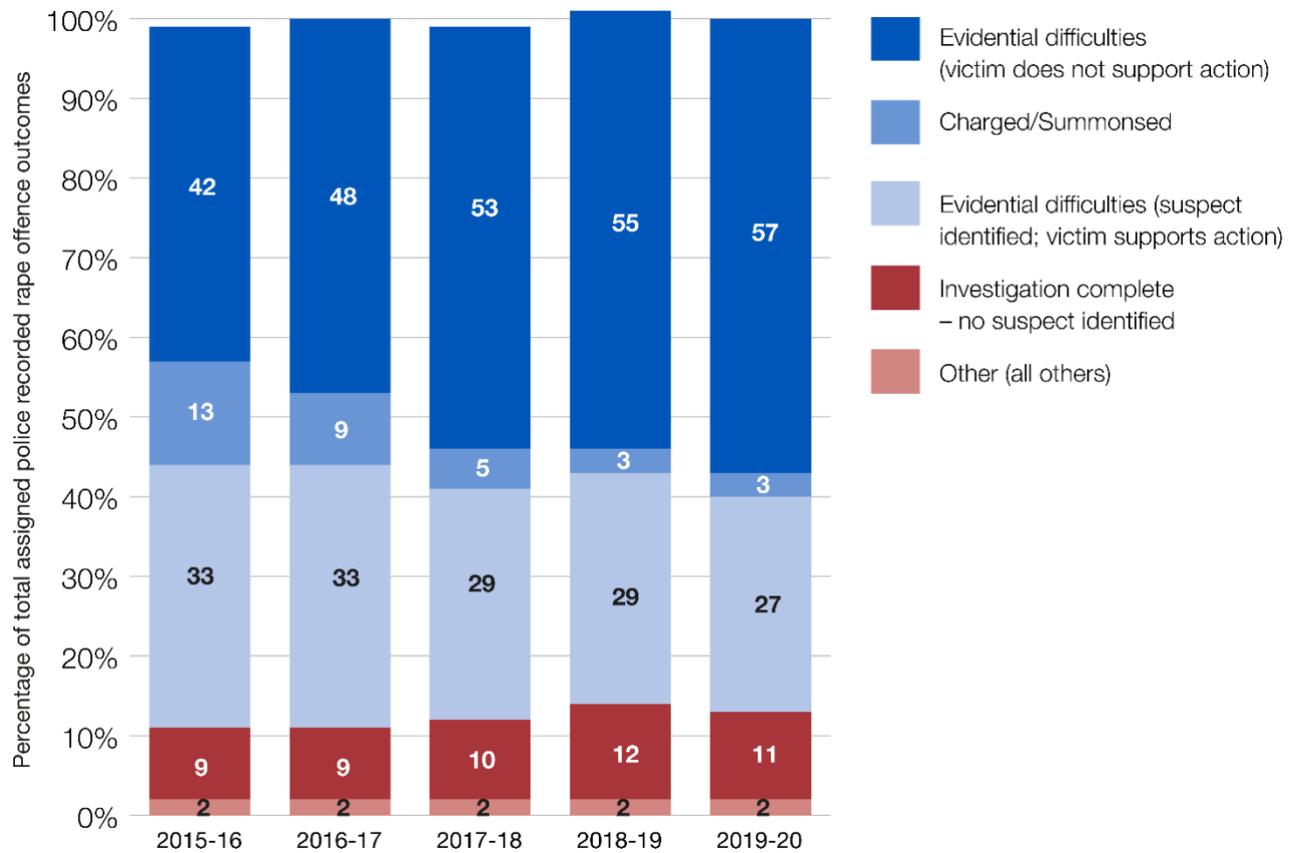
<sup>43</sup> Outcomes data presented in this report are based on outcomes assigned in the financial year, which can relate to crimes recorded in both the same financial year and previous years. Cases with an outcome yet to be assigned are not included in this analysis.

**Figure 7. Number of adult rape offences with an outcome assigned as charged/summonsed by quarter, 2014–15 to 2019–20**



Source: Home Office, Police recorded crime and outcomes open data tables, 2020a

Alongside a reduction in the proportion of adult rape offences assigned a charged/summonsed outcome since 2015–16, there has been an increase in the proportion of adult rape offences assigned the outcome ‘evidential difficulties, victim does not support further action’, which has risen from 42 per cent to 57 per cent (Home Office, 2020a). The increase in this outcome is likely to be one of the drivers behind the falling volume of charges. Figure 8 shows the breakdown of police outcomes for adult rape offences from 2015–16 to 2019–20.

**Figure 8. Police outcomes for adult rape offence for outcomes assigned in 2015–16 to 2019–20<sup>44,45</sup>**

Source: Home Office, Police recorded crime and outcomes open data tables, 2020a

### Increase in cases assigned ‘no further action’ (NFA)

Some ISVA participants discussed seeing an increase in cases assigned a ‘no further action’ outcome at police level throughout 2017–18 and 2018–19. A ‘no further action’ outcome indicates the case cannot progress further.<sup>46</sup> As indicated above, police recorded crime data do indicate a recent increase in cases with outcomes that would be classified ‘no further action’ in particular, cases where victims withdraw from the investigation. It is not possible to determine whether the concerns raised by ISVA relate to all NFA outcomes, however, the data suggest that they were concerned about cases whereby the victim had not withdrawn support prior to the outcome being assigned.

A few ISVA participants discussed inconsistencies within some regions in assigning ‘no further action’ to cases, providing examples of cases under investigation for up to four years before a ‘no further action’ decision was made, while other cases are closed within two to three months. Some ISVAs questioned the thoroughness of police investigation

<sup>44</sup> Other outcomes include responsibility for further investigation transferred to another body, taken into consideration, out of court (formal), out of court (informal), further investigation to support formal action not in the public interest (police decision), prosecution prevented or not in the public interest.

<sup>45</sup> There are insufficient data on non-charge outcomes from forces for earlier years.

<sup>46</sup> No further action includes outcomes relating to evidential difficulties (both with and without victim support); investigation complete-no suspect identified and where further police investigation or prosecution was not in the public interest.

cases with a ‘no further action’ outcome within a matter of months, especially given the increase in scope and time for investigations. ISVA participants believed certain types of rape cases were potentially more likely to have this outcome assigned, including:

- Rape within marriage;
- Cases involving a partner or ex-partner and those with links to domestic abuse;
- Where there had been contact by social media;
- Non-recent cases, in particular, cases where a considerable period of time has elapsed and cases with little corroborating evidence.

In addition, studies included in the literature review indicated that police NFA outcomes account for the biggest proportion of attrition among cases where the victim does not withdraw. Cases where there were inconsistencies in victim’s account, previous allegations and victim-survivor mental health issues or psychosocial disorders had an increased likelihood of police NFA outcomes (Hohl and Conway, 2017; Mayor of London Office for Policing and Crime, 2019).

There was some debate among ISVA participants as to whether the use of rape myths and stereotypes was a factor in cases assigned an NFA outcome by the police. During focus group discussions, ISVAs gave examples of cases where they perceived rape myths or stereotypes were used as the rationale for no further action decisions.

“It almost appears that you have to be a saint with no sexual history or nothing against you in terms of mental health to actually get a case to go forward” [ISVA Participant].

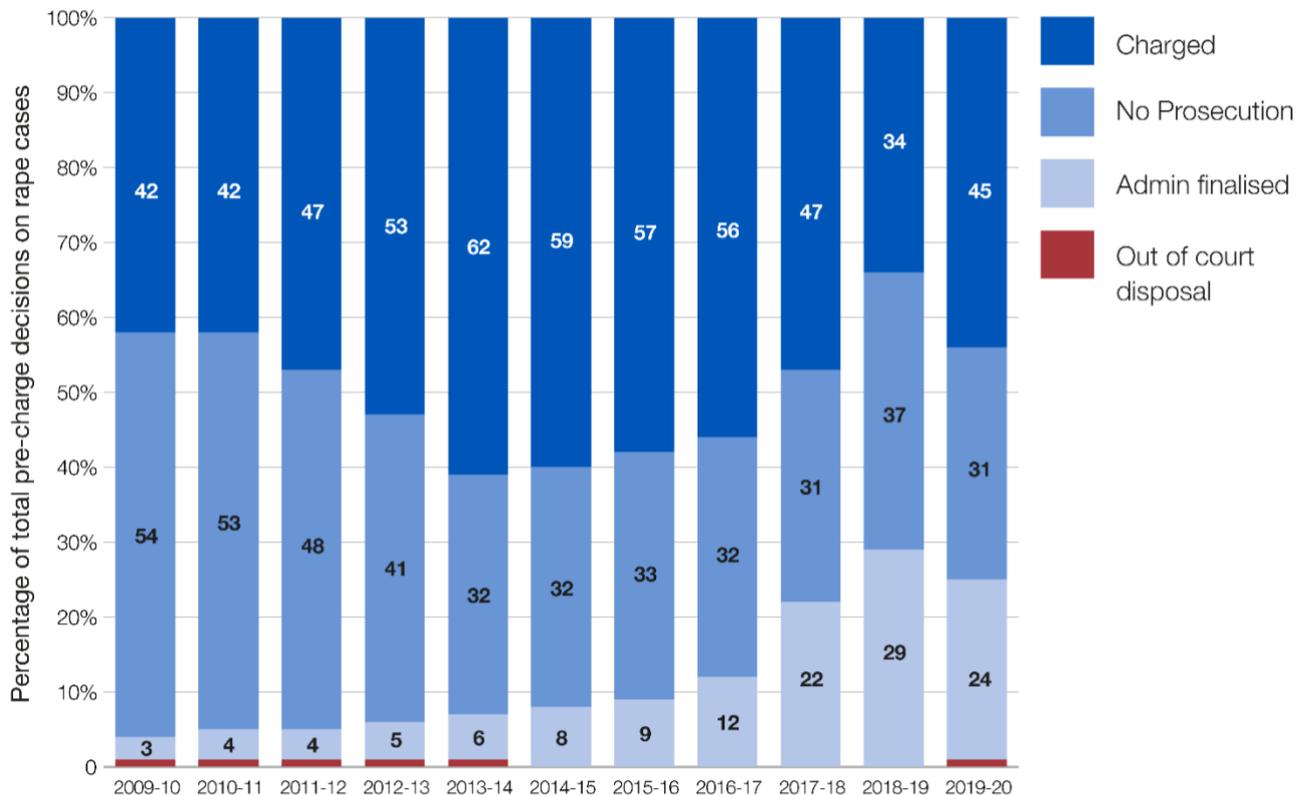
## 5.5 Changes in the CPS charge rate

To charge someone with a criminal offence, the CPS must be satisfied that there is enough evidence to provide a realistic prospect of conviction, and that prosecuting is in the public interest. Offences of rape resulting in a charge by the CPS will align with those rape offences recorded with an outcome of charged/summonsed by the police. However, figures in relation to charge rates differ because of differing denominators; CPS charge rate is a proportion of all cases referred to the CPS for a decision whereas police charge rate is calculated as a proportion of all recorded crimes.

The proportion of rape cases charged by the CPS has fallen from 57 per cent in 2015–16 to 45 per cent in 2019–20 (CPS, 2019; CPS, 2020a). Alongside the fall in charges the proportion of cases deemed ‘administratively finalised’<sup>47</sup> has increased, accounting for 24 per cent in 2019–20 compared to less than 10 per cent of cases between 2009–10 and 2015–16 (CPS, 2019; CPS, 2020a). An inspection conducted by HM Crown Prosecution Service Inspectorate (HMCPSI) in 2019 linked the fall in the charge rate to the increase in administratively finalised cases. Figure 9 outlines the changes in CPS charging outcomes over the last 10 years.

<sup>47</sup> Administratively finalised decisions are not legal decisions and may not be the end of the case. CPS may ask the police to provide further information where there is insufficient evidence to make a charging decision, or the police are requesting early investigative advice. If the police do not respond within three months, following reminders, the case is closed. This is known as an ‘administrative finalisation’ (CPS, 2019).

**Figure 9. CPS pre-charge decisions for rape cases, 2009–10 to 2019–20**



Source: CPS, Violence Against Women and Girls (VAWG) report 2017–18, 2018, Violence Against Women and Girls (VAWG) report 2018–19, 2019 and CPS data summary Quarter 4 2019–2020, 2020a

Police and support service survey and focus group participants recognised there had been a fall in the charge rate. A large proportion of ISVAs suggested a link to a fall in the number of cases where they were attending court:

“it seemed to be a standard throughout the first three years that I would be supporting at around somewhere around kind of six to eight trials per year, that would be about standard.... In this last 12 months even though I’ve supported 50 to 60 clients at the moment I don’t have any trials coming up. I have no criminal justice things happening and that has just really impacted on my role and the support that I give; it’s been really noticeable” [ISVA Participant].

CPS participants did not mention a fall in the charge rate.

Police and support services survey and interview participants offered reasons for this decline, linking the challenges with investigations and pre-charge case preparation to the fall in CPS charging decisions. It is likely these challenges were driving the increase in admin finalised cases. Participants felt that with cases taking longer, having less available evidence and case files being poor quality, there were less cases available for the CPS to charge.

The literature review also suggested factors that may affect the charge rate. Cases were more likely to be charged when the suspect had a criminal record; in non-recent cases; in cases where there was a specialist rape investigation unit; and where the victim was receiving specialist support. A charge was less likely where: the victim’s account was inconsistent; the victim had mental health conditions; and in acquaintance or intimate

partner rapes (Hester and Lilley, 2017; Hohl and Conway, 2017; Rumney, McPhee, Fenton and Williams, 2019; Lilley Walker, Hester, McPhee, and Patsos, 2019).

Quantitative analysis looked to identify any significant drivers for the fall in charges based on available Home Office record-level crime data (see Appendix E for details). Analysis explored whether shifts in victim demographics, the proportion of historical offences or the distribution of recorded rape offences across police force and CPS areas could explain the observed declines in the charge rate. Analysis indicated that only a small proportion of the decline in charge rate observed could be explained by a change in the mix of cases or shift of caseload to (relatively) poorly performing forces or CPS areas.

## 5.6 CPS charging decisions

Police survey and focus group participants suggested that the charge rate was falling because the time taken by the CPS to make decisions had increased, with a perception amongst police that the CPS did not stick to agreed timescales. Data from the CPS supported this. The average number of days to charge rape cases increased from 53 days in 2015–16 to 145 days in 2019–20 (CPS, 2019; CPS, 2020a). CPS survey participants implied delays in charging were due to the increased complexity of cases.

Police survey and focus group participants linked the decline in the charge rate to a perception that the CPS were now reluctant to charge cases unless they had a 100 per cent chance of conviction. Many police and ISVA participants believed the CPS had increased the threshold for charge to avoid having to charge anything other than the ‘perfect’ case. Police and ISVA participants were concerned that the CPS were trying to pre-empt the jury because of a fear of getting non-guilty verdicts. There was some suggestion from these police and ISVA participants that the CPS were now actively searching all digital and third-party material for undermining evidence and potentially ‘second guessing’ whether the jury would perceive the victim to be credible. Some police participants believed these charging decisions were driven by performance figures rather than an assessment of the evidence:

“They are measured on attrition so they’ll only put through the ones that they know they are going to get conviction rates, so their conviction rates are quite high, but they’re only putting, charging 3 per cent nationally, so they are getting 2 per cent conviction rate which is you know, it just shows that they’re not willing to take a chance on a wider range of cases.” [Police RASSO Lead Participant].

On the other hand, a few judicial participants perceived an increase in weaker cases coming to court, believing the CPS to be charging cases that did not meet the evidential test of a reasonable prospect of conviction. These judges felt it is challenging for the CPS who need to take care not to apply rape myths, while still applying the evidential test of a reasonable prospect of conviction.

The position of the CPS is that there has not been a formal change in their approach to charging and overall CPS participants did not explicitly discuss whether there had been such a change.<sup>48</sup> There has however been an increase in the proportion of convictions

<sup>48</sup> This is a complex area and there has recently been a judicial review into this issue. The ruling can be found here: <https://www.matrixlaw.co.uk/wp-content/uploads/2021/03/EVAW-v-DPP-Final-150321.pdf>

for rape-flagged cases since 2015–16 (see section 7.1) alongside the fall in charges which could be perceived to be an indication of a change in approach to charging more ‘certain’ cases.<sup>49</sup>

Many CPS participants stated their focus was on the credibility of the allegation, not the credibility of the victim, when making charging decisions and that they were not influenced by perceived jury opinions. Some CPS survey participants acknowledged the increased focus on the credibility of the allegation and frontloading of cases with disclosure material could identify undermining evidence or reduce the number of cases charged. Some CPS participants believed the attention on the credibility of the allegation and a more thorough analysis of disclosure material resulted in some types of cases being charged more, such as sex workers.

A small number of CPS participants however did acknowledge a potential change, referencing a perceived move away from a Merits Based Test, whereby charging decisions should only be informed by how convincing the evidence was rather than whether the jury would deem victims’ evidence to be less credible.<sup>50</sup> Some police officers who participated in the research perceived a change in CPS’ charging approach as key reason for the changes in the number of cases progressing to trial.

Police survey participants highlighted a perceived need for a change in CPS approach to charging whereby decision making is quicker, more consistent and based on the evidence or needs of the victim rather than organisational need or performance targets. CPS participants raised similar suggestions regarding the processes in place at police level.

---

<sup>49</sup> Further exploration of this area can be found in the HMCPSP report (HMCPSP, 2019).

<sup>50</sup> Cross reference footnote 34 and also the Director of Public Prosecution’s Guidance.

## 6. The role of digital and third-party evidence in investigation and charging

This chapter examines the role that digital and third-party evidence now play in the investigation and charging stages of the criminal justice process. Many of the findings discussed here also relate closely to the challenges explored in chapter 5 relating to delayed investigations, pre-charge case preparation and declining charge rates.

### Key findings

In the last 5 years, the amount of digital and third-party evidence required as part of adult rape investigations has reportedly increased. Participants linked this to a perceived increase in the use of digital communication in society and to the outcome of the R v Allan case.

Collating digital and third-party material during an investigation can be challenging given perceived differences in police and CPS understanding of reasonable lines of enquiry. Many CPS participants reported requesting all digital and third-party material was vital to robust charging decision however some police participants indicated that they did not always understand or agree with the amount of material requested by the CPS.

Accessing digital and third-party material is deemed to cause investigation delays as some police participants felt they did not have the training or facilities to access and analyse digital material quickly. The literature review supports these findings pointing to the impact of the amount of digital data on investigation timescales and delays as well as contributing to an increase in admin finalised cases.

The increase in the level of digital and third-party material required was linked to a decrease in the number of cases available for charging. Some police participants felt more disclosure increased the chance of identifying material which in their view might not be directly relevant to the case but could be used as justification not to charge. It was not possible for this study to establish the validity of these perceptions. It could also result in victims withdrawing if victims do not wish to share personal information. Quantitative analysis indicated that the R v Allan case affected charge volumes, supporting the narrative that increased scrutiny of digital evidence is driving the falling charge rate.

## 6.1 An increase in digital and third-party material

Digital evidence, from mobile phones and social media, and third-party material from agencies such as healthcare and social services, appear to now form a prominent part of all police investigations into adult rape. Police participants cited this as being one of the main changes and challenges experienced in adult rape cases in the last 5 years.

Police, CPS, and most defence solicitor-advocate participants reported an increase in the amount of digital material now included in investigations. The role of digital evidence on the shape and length of an investigation has increased in recent years. With increased use of social media and mobile phones in society police participants said the scope of adult rape investigations has expanded as more cases involved some form of digital communication. Many police and CPS survey participants linked this to the outcome of the *R v Allan* case and other similar cases that collapsed due to disclosure issues.

“I think it’s because of what happened in the Met, the disclosure that was filed late on in in during a trial a mobile phone had been downloaded and reviewed and the defence barrister found messages from the victim which undermined the victim’s account ... we’re so scared that happened again that we want it for everything” [Police Investigator Participant]

The review of digital evidence in appeal case summaries from 2010 and 2018, showed a marked increase in the proportion of sexual offences in which digital evidence<sup>51</sup> was identified as being relevant to the court case (whether initial sentence/conviction or at appeal). Just under one-third of sexual offence appeal cases were assessed as having a digital element in 2010 (32 per cent). This increased to just under half in 2018 (47 per cent). When examining rape offences only, the percentage of offences with a digital element doubled between 2010 and 2018 (up from 22 per cent to 45 per cent; see Table 3). These data support the perception that the volume of digital material in investigations has increased (Richardson et al., forthcoming). This also demonstrates that the courts regard this evidence as relevant to the facts in issue in the trial.

**Table 3. Percentage of appeal cases in which digital evidence was identified as playing a relevant part in the case, 2010 and 2018**

	2010	2018
<b>Total number of cases reviewed</b>	2,871	1,358
<b>% of all sexual offences<sup>52</sup> with digital evidence</b>	32% (n=181)	47% (n=126)
<b>% of rape cases with digital evidence</b>	22% (n=51)	45% (n=51)

Source: Richardson et al, forthcoming, *Using appeal case summaries to assess changes in the presence of digital evidence in police investigations* Home Office publication

Since the data relate to appeal cases heard in 2010 and 2018, there will be, for some offences, an extended time lag between when the offence was initially recorded and when the appeal took place. In addition, some offences were non-recent (i.e. there was a further

<sup>51</sup> Digital evidence was limited to mobile and computing technology held by victims, witnesses and suspects. Evidence from CCTV and body worn camera footage was not included.

<sup>52</sup> Note that there were 16 rape cases across 2010 and 2018 which have been captured within the category, violence against the person because the defendant was convicted of murder/manslaughter.

lag between the offence taking place and it being reported to the police). This means that the proportions are likely to underestimate the extent to which digital evidence features in 'current' cases being recorded by the police. More generally, these findings relate to a distinct sub-set of cases which reach conviction and are subsequently appealed. They will not necessarily represent the pattern of cases recorded and investigated by the police. Nevertheless, the analysis does show the increasing proportion of rape offences with a digital element over time for this sub-group of appeal cases (Richardson et al., forthcoming).

## 6.2 Obtaining digital and third-party material

The police and the CPS participants expressed different views about what constitute reasonable lines of enquiry (as investigators are required by the Criminal Procedure and Investigations Act (CPIA) 1996 Code C paragraph 3.5 to pursue) in relation to obtaining digital and third-party material in adult rape cases.<sup>53</sup>

Police survey participants reported a perception that the CPS had changed the expectations of what should form part of a rape investigation which was driving the increase in the amount of digital and third-party material required. They felt that requests for third-party and digital evidence had become a standard CPS request for all rape cases rather than specifically for cases where there was a direct link to the incident, with CPS lines of enquiry described as being too broad and a 'fishing expedition'. Police RASSO leads indicated there might be some element of misunderstanding within the CPS as to why they were requesting material, despite CPS commonly relying on such material for charging.

CPS survey participants, however, described the importance of obtaining as much digital and third-party evidence as possible in all cases to ensure prosecutors could make robust charging decisions. The CPS were said to be taking a more proactive approach in relation to disclosure and addressing reasonable lines of enquiry and therefore were subjecting cases to a more rigorous review.<sup>54</sup>

A small number of CPS survey participants discussed frustrations with how defence requests for digital and third-party evidence were fuelling the volume of material the police and CPS were required to obtain. A few CPS participants felt that these requests were often unjustified and were sometimes spurious as the defence rarely used the material they received, causing participants to conclude that the request was a device for delay. One CPS participant felt there needed to be more judicial direction on this.

Some defence solicitor-advocates raised concerns about not getting all the relevant disclosure evidence for the defence case from the CPS, with two participants giving

<sup>53</sup> Despite differing perceptions, it should be noted that the CPIA, together with the Attorney General's Guidelines on Disclosure 2020, establish the legal framework for disclosure within which the police and CPS must operate at all times following receipt of the complaint. The Attorney General's Disclosure Guidelines were issued in response to the recommendations of the 2018 National Disclosure Improvement Plan which itself was set up in response to the cluster of nondisclosure highly publicised scandals (see footnote 19).

<sup>54</sup> CPS regularly publish and update legal guidance, relating to disclosure, social media communications and reasonable lines of enquiry among other subjects. For a full list of CPS guidance please see: <https://www.cps.gov.uk/prosecution-guidance>

examples of cases where, in their opinion, the CPS had not disclosed relevant information. Most defence solicitor-advocates said they frequently challenge or seek further disclosure in RASSO cases. Although judicial participants felt that digital evidence was often relevant or legitimate in RASSO cases, some perceived the evidence gathering to be unnecessarily extensive sometimes.

CPS and police participants agreed that guidance on collecting and reviewing digital and third-party evidence should be created to establish proportionate and standardised approaches across both organisations to help manage the volume of work created by these requests. There was also a need for a consistent approach in relation to handling electronic devices between police and the CPS to alleviate frustrations and misunderstanding between the two agencies. Some police participants also said changes should be made so CPS were less reliant on digital material when deciding whether to charge cases.

### 6.3 Delays linked to increased digital and third-party material

Many participants from the police, CPS, support service groups, judiciary and defence linked the increase in requests for digital and third-party material to longer delays in the criminal justice process. The police described how they now spend, at times, months trying to identify and access all digital and third-party information without any indication of whether a case would be charged. Support service survey participants raised that not only did the interest in this material lengthen investigations, but considerably increases the time the CPS spend reviewing the evidence submitted by the police. Whilst the CPS did not reference delays resulting directly from having to review this material, they raised concerns that they were having to spend disproportionate amounts of time on unused material which delayed charging decisions.<sup>55</sup>

Delays in case progressions were attributed by some police, CPS and ISVA participants to a lack of appropriate technology and training in accessing and analysing digital material. Participants described there was often a long wait to download information from phones as police officers did not have the resources and technology required to review the information. The police digital units had seemingly not been resourced or equipped with the necessary IT to manage the change in use of digital media and the increased focus on digital material in disclosure which creates a backlog of material. The increasing complexity and storage size of mobile phones added to this problem, with some police officers raising that there were models of phones the police were currently unable to even access.

“Everything else has moved on so fast and so quick we are so far behind it is embarrassing to sit here in 2019 and say that nobody has given us the tools and we’re still investigating like it was 20 years ago... We can’t download a phone; we literally don’t have the tools. Give us the right capability, give us the right technology, we know what we need to investigate, we are literally still in 1989, 1990.” [Police RASSO Lead Participant].

<sup>55</sup> “Unused material” is evidence relevant to the investigation but which the prosecution chooses not to make part of its case.

CPS participants were concerned about the impact these delays had on cases if potentially crucial information was not available until after charge which then changed the position or nature of a case.

Judicial and defence solicitor-advocates also spoke about the impact of digital and third-party material on delays in the post-charge case preparation stage. Most defence participants raised concerns that they sometimes get disclosure from the police very late, such as on the day before or day of the trial, in contradiction to the obligations the police have under the CPIA (1996). A few judges similarly raised concerns that digital evidence can cause last-minute delays leading to adjournments if new evidence is found and there has not been enough time to review it. Most defence solicitor-advocates felt that they should have access to the third party and disclosure material earlier to help reduce delays.

## 6.4 Impact on viability of cases

As well as having an impact on the time and scale of investigations some police and support service participants also raised the concern that the increase in digital and third-party material was having a detrimental effect on the viability of cases and the number progressing through to charge. Several ISVA participants reported this affected 'acquaintance rape cases' in particular, perceiving a large proportion of these cases to be dropped pre-trial due to digital material perceived to undermine the victims' credibility.

Some CPS survey participants felt that this approach to gathering as much evidence as possible before charge could put a different slant on cases meaning prosecution was no longer viable. This was a view shared by the police participants who felt that digital and third-party material could be used to undermine a victim's credibility and justification by the CPS not to continue a case.<sup>56</sup>

The viability of cases may also be affected by whether victims consent to submitting their phones and private records for examination. Police focus groups participants discussed how difficult it was to explain to victims why they were asked to share personal information which did not always appear to them to be relevant to the incident being investigated. Police participants reported that victims could often feel pressured into agreeing to share this information because of a possibility their case could not proceed without this. The perception amongst these police participants was that the CPS were often unwilling to consider cases without this information despite concerns of the police and the victim that the information was not relevant to the investigation.

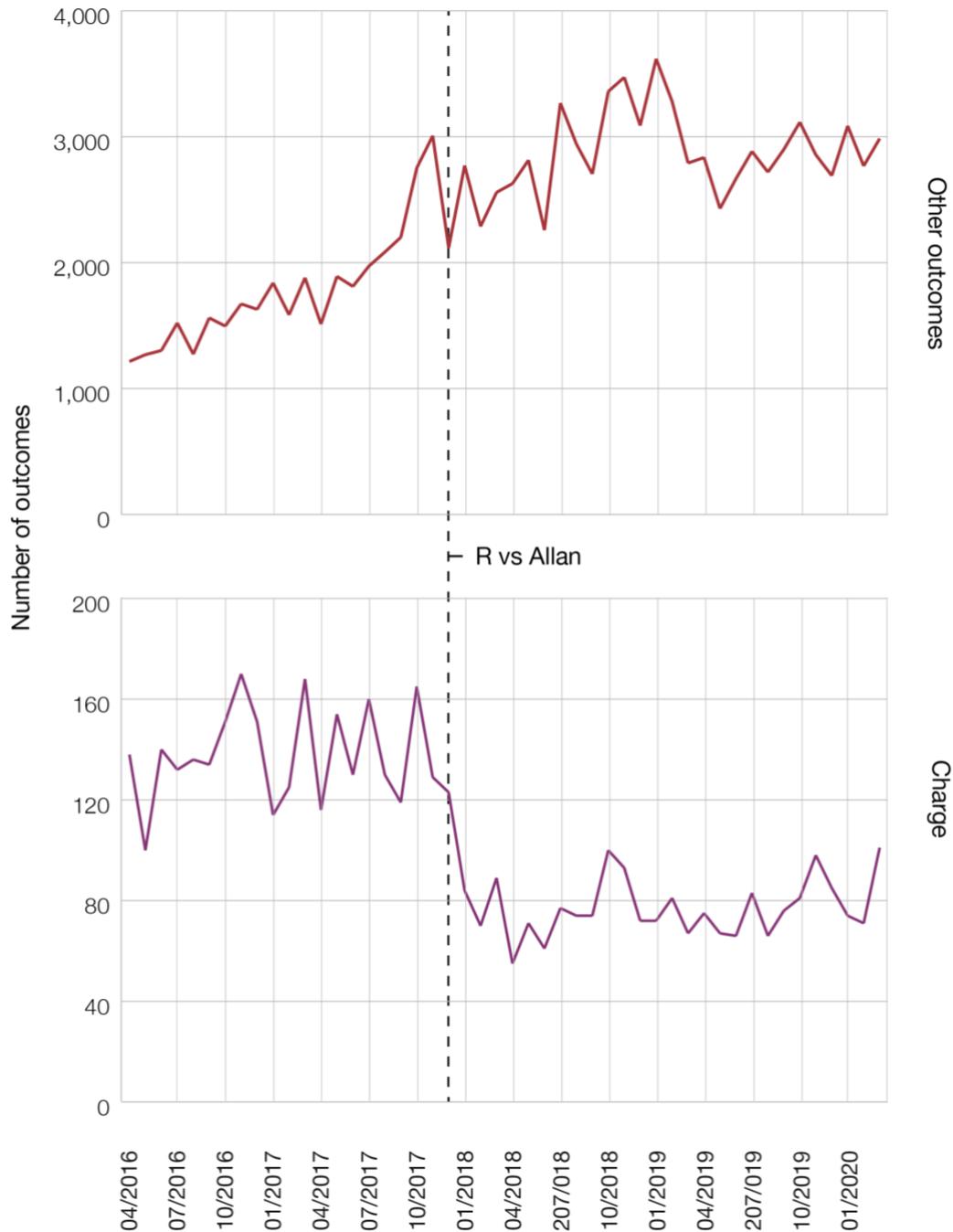
"I had a completely supportive victim, an absolutely viable investigation, was sending it to the CPS and then all of a sudden they decided that they wanted counselling records because in the victim's ABE [interview] she said that she's received counselling for a completely unrelated matter to what was being reported and CPS would not drop the fact that they needed to see sight of those counselling records otherwise they would not charge, went to the victim to say this is what the CPS have said even though it's got no bearing on your actual investigation she said I'm not sharing, I'm not exposing my childhood life and my issues with anybody else, that's private and the CPS then dropped the case" [Police Investigator Participant].

<sup>56</sup> It should also be noted that further discovery of evidence can also strengthen the prosecution case.

It is not clear whether the CPS were reluctant to progress cases whereby the victim did not consent to sharing information. It was not possible to determine whether either organisation was placing undue pressure on victims, but it could be that pressures felt amongst the police to have this information available pre-charge was leading to victims feeling pressured to consent.

Given that participants drew a link between the increase in digital material, the R v Allan case and the changes in charge volumes, an analysis was undertaken to examine whether the R v Allan outcome (the prosecution calling no further evidence after crucial prosecution disclosure was made mid-trial) did impact on charge volumes. Figure 10 shows that the R v Allan case is associated with a sharp drop in charge volumes for adult rape offences. This drop remains significant when controlling for other factors over the period 2016–2019, such as delay to recording, sex and age of victims, police force or CPS area. Notably the effect of R v Allan was less significant for offences with victims aged under 13 years and/or for non-recent offences, in which less digital evidence was likely to be available. This supports the narrative that increased scrutiny of digital evidence is driving the falling charge rate.

**Figure 10. Impact of R vs Allan case on charge volumes**



Source: Home Office Data Hub, unpublished

## 7. Prosecution of rape cases and the court stage

The final chapter in this case journey section outlines the findings relating to the prosecution of rape cases and the court stage. It examines issues relating to timeliness of rape cases at court as well as the challenges that victims may face at court and the role of juries.

### Key findings

There has been a fall in the number of adult rape cases prosecuted since 2016–17. However, the conviction rate for rape-flagged cases increased from 58 per cent in 2015–16 to 69 per cent in 2019–20.

Rape cases are taking longer to reach court and often face several adjournments before the trial commences. For cases that complete in court, between 2011 and 2019, the average number of days taken from offence to completion for adult rape cases increased by 73 per cent. Many participants from all participant groups felt that this prolonged delay was increasing victim trauma.

Pre-trial hearings were seen as most effective if trial counsel rather than substitute counsel were present, and if all evidence was prepared. Some judicial and defence participants spoke positively about the move to remote pre-trial hearings in response to the Covid-19 pandemic.

Court can be distressing for victims, especially giving evidence and cross examination. This becomes more challenging when support for victims is not available in the court room. Court buildings were not seen as currently adequate by many participants for supporting victims due to poor technology and run-down witness rooms.

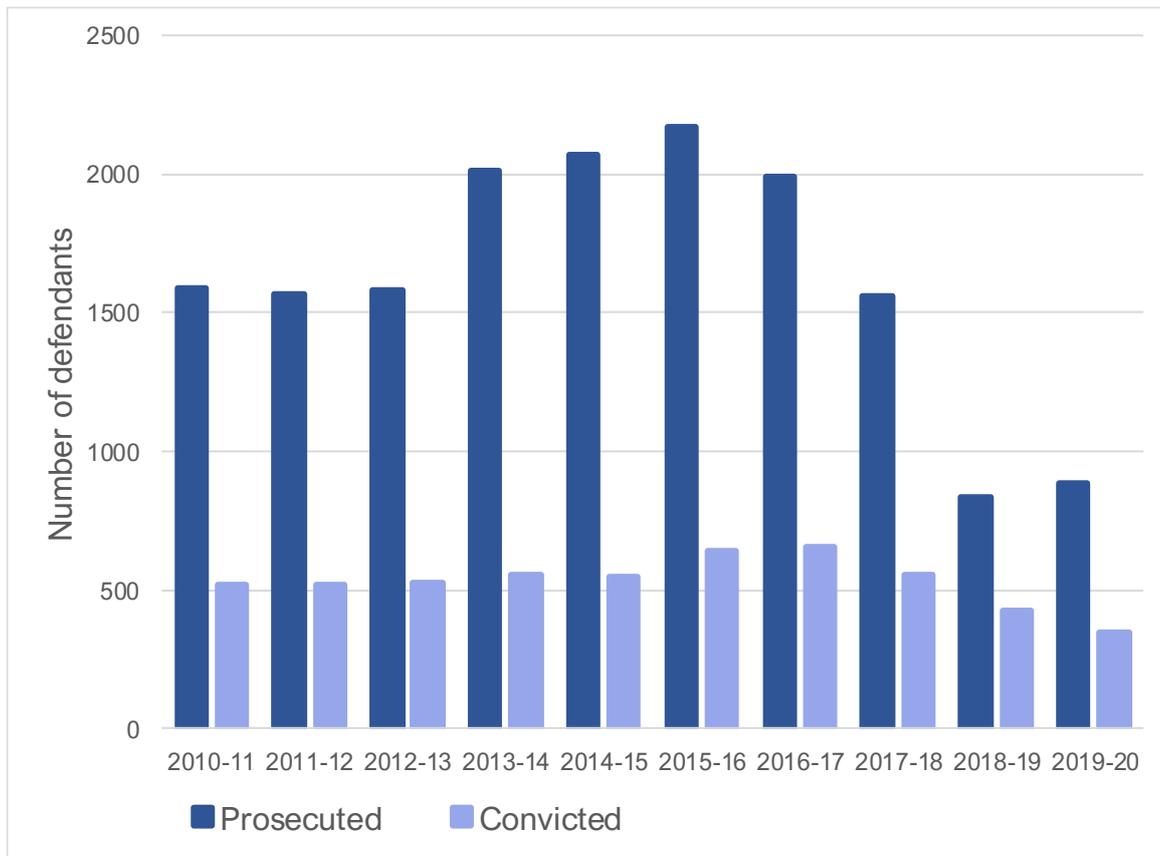
Most participants suggested that special measures such as screens can both improve victim engagement and the quality of evidence given by victims by removing some of the stress associated with court.

Juries were a complex aspect of the process for all participant groups. Some participants from all groups perceived that juries often lacked adequate understanding of the complexities of rape cases and felt they could be swayed by personal views and biases. The impact of personal views and biases on juror decisions in rape cases could not be verified in this research.

## 7.1 Rape prosecutions and convictions

After the CPS have made a charging decision, the case moves on to be prosecuted. The number of defendants proceeded against for rape of an adult reached a peak of 2,168 in 2015–16, falling to 885 in 2019–20. The number of offenders convicted increased between 2010–11 and 2016–17, rising from 519 convicted defendants in 2010–11 to 656 in 2016–17. However, since then the number has fallen, with only 344 defendants convicted in 2019–20 (MOJ 2021a).<sup>57</sup>

**Figure 11. Number of defendants proceeded against and offenders convicted for adult rape, 2010–11 to 2019–20**



Source: MOJ, Criminal Justice System statistics quarterly December 2020

CPS data can be used to show conviction rates for all rape cases, as opposed to adult rape cases included in the statistics above.<sup>58</sup> Since 2015-16 the conviction rate for all rape-flagged cases has increased year-on-year, from 58% in 2015-16 to 69% in 2019-20 (CPS 2019, CPS 2020a).

The proportion of offenders sentenced for rape of an adult who have received a custodial sentence (custody rate) has remained steady, with 97 per cent receiving a custodial sentence in 2010–11 compared to 96 per cent in 2019–20. In 2010, the average custodial

<sup>57</sup> Please note prosecutions are counted when a defendant is prosecuted against at the Magistrates Court. These figures relate to the volumes of prosecutions and convictions at the time period specified, so are not referring to the same cases.

<sup>58</sup> Please note the CPS conviction rate also includes cases initially flagged as a rape, that may result in a lesser charge. For full CPS data caveats please see: <https://www.cps.gov.uk/publication/cps-data-summary-quarter-2-2020-2021>

sentence length for those sentenced for committing adult rape was 79.2 months. This increased to 109.4 months by 2020 (MOJ 2021a).

Data were not available on the likelihood of convictions for different types of rape offences. Studies included in the literature review found that convictions were less likely in cases of rapes in the context of domestic violence, acquaintance rapes and where the victim had multiple vulnerabilities and/or mental health issues (Lovett and Kelly, 2009; MOJ, HO and ONS, 2013; Hester and Lilley, 2017; Lilley Walker et al, 2019).

## 7.2 Timeliness of adult rape cases at court

Time taken for cases to reach court is increasing. Data from the MOJ indicated that in 2019 the median time between charging a case and the case first attending Magistrates Court was 19 days compared to a low of only 1 day in 2012 (MOJ, 2020b). For adult rape cases that complete in court, between 2011 and 2019, the median number of days taken from the offence being committed to completion increased by 73 per cent (from 338 to 584 days respectively) (MOJ, 2020b).

Police, CPS, and support service survey participants and judicial interview participants recognised this increase, highlighting that it was taking longer to get court dates assigned following charge, due to lack of courtroom availability and available sitting days. The lack of sitting days and subsequent backlog may be linked back to funding issues at the time. When trial dates were allocated, participants flagged that adjournments could often occur several times before the trial commenced. CAWS survey participants indicated how frequent adjournments could be, with 40 per cent of CAWS participants (N=52) estimating only half to three quarters of cases progressed to trial as scheduled while 12 per cent felt this was as low as quarter of cases progressing as specified. Common reasons offered by CAWS and judicial participants for trial adjournment included a lack of court time and issues relating to needing additional evidence or new evidence emerging. All judicial participants commented on the impact of the Covid-19 pandemic worsening delays due to the three months' pause on jury trials resulting in an increased backlog.<sup>59</sup>

After a suspect has been charged with the crime, they can either be remanded in custody or released on bail. If they are remanded in custody, there is a time limit of 182 days for their Crown Court trial to begin, imposing an immediate limit on when those cases will need to be heard. This time limit does not however apply to suspects released on bail awaiting their trial. Most judicial participants felt that RASSO suspects frequently being on bail rather than being held in custody while awaiting trial was contributing to delays, as bail cases do not need to be held within the custody time limits meaning that trials for other serious crimes often end up taking priority.

Barrister, most judicial and some defence solicitor-advocates raised concerns about the impact that delays at court had on the quality of victims' (and suspects') evidence with memories and details fading over time, particularly in cases involving older complainants and non-recent cases, and subsequently the implications this could have for conviction. Judicial participants highlighted that they give judicial directions on the potential impact of

<sup>59</sup> Please note, many of the findings relating to the court come from interviews done with a small sample of each practitioner group (5 interviews each with judges, barristers and defence solicitor-advocates). Findings are indicative, based on perceptions and should be interpreted with caution.

delay when summing up to attempt to mitigate this. Most defence participants also discussed the impact of bail-related restrictions placed on suspects' lives while waiting for their court hearing, including suspects being required to move out of their homes, being unable to work and not being able to see their children. Some defence solicitor-advocates commented on the perceived impact of delay on the suspect's mental health.

Police and CPS participants were concerned about the impact of adjournments on victims, linking withdrawal post charge to the length of time taken to reach court. The mental preparation victims undergo for court could potentially cause re-traumatisation, only made worse each time a case was postponed. This re-traumatisation, pressures related to waiting for court, and fears around giving evidence were factors cited by participants as potentially impacting on a victim's willingness to give continued support. Support service participants raised the need for improvements to the number of sitting days at court and court listings, so cases were heard more quickly and there was less changing of court dates.

### 7.3 Pre-trial hearings

Pre-trial plea and preparation (PTPH) and case management hearings are used to arraign the defendant, and to identify and timetable some issues and steps before the trial begins. If the defendant pleads not guilty, then the PTPH is directed at identifying the issues in the case, and any specific legal issues to be argued before trial or in the absence of the jury such as: applications to admit bad character or Youth Justice and Criminal Evidence Act (YJCEA) section 41 on previous sexual history; setting a timetable for steps in the pre-trial preparation of the case, such as dates for disclosure to be made and for submission of the defence statement; and scheduling of any section 28 pre-trial cross-examination hearing. At least one PTPH hearing is required and further case management hearings may take place depending on the case.

Judicial and defence solicitor-advocates presented varied views on the effectiveness of pre-trial hearings. A few judges felt pre-trial hearings were effective as they give trial counsel additional time to understand all the evidence in the case and identify the outstanding issues. Two judges commented that pre-trial and case management hearings are more effective if trial counsel and defence are present for them, rather than substitute counsel. Defence and judicial participants who commented on the move to video conferencing for pre-trial hearings following the Covid-19 pandemic felt that this provision should remain after the pandemic, as it is more efficient and facilitates the presence of trial counsel.

Ensuring prosecution and defence have their evidence fully prepared was seen as important for an effective hearing. Some defence and judicial participants raised concerns about evidence or applications not always being served in time, which can cause additional delays in hearings and the main trial. One defence solicitor-advocate pointed out that there are no consequences for missing the evidence or application deadline. Two judges had concerns about the timing of the PTPH hearing, which takes place shortly after a case is sent to the Crown Court. They felt it was too long before the actual trial and therefore too early in the case preparation for counsel to really understand the case issues. Case management hearings, which can take place closer to trial, were felt to happen at a more useful time.

RASSO cases also can have a ground rules hearing to establish how vulnerable witnesses can be enabled to give their best evidence. All defence solicitor-advocates felt ground rules hearings were generally well utilised, with some specifying that they perceive them to be useful in planning and agreeing questions to ask the victim in cross-examination, consistent with the vulnerable witness training.

## 7.4 Challenges faced by victims at court

For many victims and witnesses, giving evidence in court can be a stressful and often unpleasant experience. This is not a new occurrence, victims have faced challenges at court for many years, however the court experience warrants exploration given the impact it could have on victim experience.

Police survey participants said that victims were often concerned about the court process early in the investigation in particular in relation to giving evidence. Several police, ISVA and barrister participants recognised that having to recount the incident could retraumatise victims especially during cross-examination by the defence where the victim's account was often heavily scrutinised and their private life brought into question in a way which many victims found intrusive, embarrassing and traumatising. ISVAs highlighted the experience could make some victims regret starting the process altogether.

Having support available during the court case could help victims manage some of the challenges associated with giving evidence. However, several ISVA participants raised that they were not always able to support and advocate for their clients in the court room. In general, there appeared to be a lack of clarity as to whether ISVAs could sit with and support their clients. It was not clear from evidence whether resistance to the presence of ISVAs in the courtroom by barristers, CPS or court staff was due to a lack of understanding of the role ISVAs play in supporting clients, or greater confidence in other services such as Citizens Advice Witness Service.<sup>60</sup> There was a general perception amongst ISVAs that more awareness raising was needed to improve understanding of the cross-cutting nature of the ISVA role among those working in the CJS, a view also shared by barristers and HMCTS Witness Champions, as well as to standardise and strengthen guidance around the use of victim support services in courts.

ISVAs support victims throughout the criminal justice process, from the early reporting stages to post verdict, whereas Witness Services solely support victims when they are at court. Whilst all judicial participants were aware of the ISVA role and seemed open to having ISVAs present in the courtroom, their formal involvement with them varied, with some judges noting they grant applications for ISVAs to be present in the courtroom, whilst others were unaware if and when they were present. Judicial participants perceived Witness Services to be effective in supporting the victim in feeling comfortable at court, by ensuring there is someone by their side and able to arrange the logistics of the day. Concerns were raised that because Witness Services are (generally older) volunteers, they may opt out of coming into court due to the Covid-19 pandemic.

---

<sup>60</sup> If a case goes to court, police will pass details to the Witness Service and this is run by the Citizens Advice Witness Service. They are based at the court and will help victims with information and support throughout the trial, including some limited assistance within the limits of the law to help them prepare for giving evidence at trial.

Challenges associated with the court building itself were raised by some HMCTS Witness Champions, ISVA and judicial participants. These participants discussed how despite best efforts of court staff to make the experience manageable for victims, the design of the court building could exacerbate victim anxiety for example if there is an absence of separate entrances or ability to access the courtroom through a secure route.

“We’ve got some buildings where to actually get to the court room through a secure route...It’s quite an arduous walk, it’s on a different floor, it’s along a corridor where both the jurors and the judges and the staff walk across. So, you know, you’re getting more and more anxious when you’re seeing someone in robes or see a jury walk past you. Obviously, we do... we ensure that we put them in a room if we know they’re coming, but sometimes you’re in the middle of a corridor and there’s 12 people walking towards you and a judge” [HMCTS Witness Champion Participant].

Most judicial participants felt that courtrooms were not technologically advanced enough to support victims giving evidence remotely effectively, as they felt that equipment is not reliable or well maintained, audio is often poor and cameras are placed in the wrong place within the court room causing issues with making eye contact with witnesses on live links. A few judicial participants noted that vulnerable witness rooms/ suites could be run down and would need an upgrade to make the experience more comfortable for victims. A lack of investment in courts was believed to be a key reason for court buildings not currently being good enough to support victims.

Police survey and focus group participants provided numerous suggestions for changes to the court process to reduce victim attrition. Many related to making it easier for victims to give evidence, including: having more sensitive questioning; less shaming and intrusion into the victims’ private life, having suspects also give evidence or have their video interview played in court and allowing the victim to meet with the prosecution team more frequently prior to trial in the same manner that the suspect could meet with the defence team. CAWS participants also suggested that making rape cases priority trials might help alleviate some of the challenges around timings for court cases. Judicial participants suggested informal ways to support victims at court, including allowing the victim to be accompanied by another individual over lunch for support, ensuring victims have enough breaks and judges being personable.

## 7.5 Special measures

Given court is often a difficult experience for victims, the YJCEA provides for a series of provisions that help vulnerable witnesses give their best evidence and to relieve some of the stress associated with giving evidence. Special measures could reduce the number of victims withdrawing from the process by making the court experience less traumatic. The special measures available, with the agreement of the court, include:<sup>61</sup>

- Screens
- Live link
- Evidence given in private
- Removal of wigs and gowns by judges and barristers

<sup>61</sup> <https://www.cps.gov.uk/legal-guidance/special-measures>

- Video recorded interviews<sup>62</sup>
- Pre-trial recorded cross-examination or re-examination (available currently only to child complainants and adults with a mental or physical disability, with an ongoing pilot in three Crown Courts for adult complainants of sexual assault)<sup>63</sup>
- Examination of the witness through an intermediary<sup>64</sup>
- Aids to communication

The prevalence and use of special measures are unknown. Apart from the limited implementation of pre-trial recording of cross-examination for some categories of vulnerable witnesses, the special measures mentioned above have been in place for a number of years and are well-established. All judicial participants said they accepted the majority of special measures applications and remained open and flexible to requests, with a few judicial participants specifying that they would not require formal applications to be made where the victim was automatically entitled to these. Over half of police investigators and support service staff (54 per cent (N=348) and 57 per cent (N=131) respectively) surveyed stated that, when applied for, special measures were always granted indicating that it is common for judges to accept applications, a view also echoed by CPS participants. ISVA and barrister participants raised that the use of special measures appears to vary across regions with some reporting that special measures were not often used in their area.

Participants did not highlight significant changes in relation to special measures. Therefore, it is unlikely that they drive the observed trends in rape cases. However, participants agreed that the impact of special measures to help victims could not be underestimated. Eighty-nine per cent of police investigators (N=348) and 93 per cent of CAWS survey participants (N=52) believed that special measures were either very or somewhat likely to help victims carry on with the process.

All participants were asked whether there were particular special measures that were more likely to improve victim engagement and the evidence given. Screening the witness from the suspect and providing evidence by live link were cited by police, support service and CAWS survey participants as the most effective. CPS survey participants cited the benefits of using video-recorded cross examinations for child and vulnerable adult witnesses (Section 28). Barrister, defence and judicial participants also considered screens to be the most effective type of special measure used with a few barrister participants also deeming intermediaries to be helpful.

While participants from all groups spoke of the perceived benefits of special measures in reducing victims' stress, giving evidence via pre-recorded or live link was seen by CPS, barristers, defence and judicial participants to create a barrier to the jury who are believed to prefer the victim being in the witness box. Live links were seen as reducing the impact of the victim's evidence on the jury, by making them seem 'detached'. Defence solicitor-advocates felt that victims using live links typically benefitted the suspect, who would normally be present in the court room, leading to a perceived increased chance of acquittal. Defence solicitor-advocates suggested that the use of special measures for

<sup>62</sup> Conducted under the official guidance Achieving Best Evidence in Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, known as 'ABE interviews'.

<sup>63</sup> Also known as Section 28 recording.

<sup>64</sup> A registered intermediary is a self-employed communication specialist who helps vulnerable witnesses and complainants to give evidence to police and to the court in criminal trials.

victims needs to be more tailored due to this, and that victims who can give evidence live should be encouraged to, so they have more of an impact on the jury.

This belief among criminal justice practitioners that the use of remote special measures can diminish the believability of a victim's evidence has been frequently reported in the literature (Fairclough, S., 2020), although research to understand the impact of live links and pre-recorded evidence in mock jury trials has found no compelling evidence to suggest that remote special measures impact on verdict outcomes (Munro, 2018). As there are no statistics collected on special measures it is unclear what impact using live links has on conviction rates. An upcoming study by the UCL Jury Project has been commissioned by the Judicial Office which will test the validity of these perceptions through interviews with actual jurors about the use of special measures.

All defence solicitor-advocates and some barristers noted a lack of support available for suspects. Participants gave limited examples of support, including the use of intermediaries for defendants with communication difficulties or language barriers and breaks for suspects with medical problems. Special measures were perceived as less likely to be granted for suspects. A few defence solicitor-advocates also highlighted that they were the only support available for the suspect and their families, which they were not trained to do.

Further details of current context and potential benefits and limitations of special measure are in Appendix B.

## 7.6 Juries

Participants from across all groups discussed how juries were perceived to be problematic for rape trials. Again, this was unlikely to be a recent change but is considered here given the impact research participants felt juries had on the outcome of rape cases.

The perception amongst participants was that jurors did not always understand the impact of the offence on victims and lacked the necessary knowledge of victim behaviour, rape trauma and forensic science to make an informed assessment of the case. A few barrister and CPS participants suggested the personal characteristics of individual jurors could make them inclined to apply rape myths to certain cases. For example, in relation to consent issues, older jurors were seen to hold certain stereotypes involving alcohol consumption or the clothing/behaviour of victims (rape myths and stereotypes are discussed in chapter 9). A few judicial participants felt that the principle of consent is difficult for juries to understand, particularly in cases with evidence of a prior consensual relationship or sexual activity between the victim and suspect where there may be limited or contradictory evidence.

A few of the barristers, some CPS and most judicial participants also thought jurors are less likely to convict a young suspect. This is in line with other research which showed that mock jurors are less willing to convict young suspects of rape for fear of consequences a 'rapist' label could have on their future (see Willmott, 2018).

"It is often quite difficult to convict young men of good character – basically [they are] quite normal looking. They don't look like a pervert or anything. I think jurors find it very difficult to convict those people because they know what the consequences are.

So I don't think it's necessarily a matter of changing societies attitude, but I think it's where the jury is faced with a particular type of defendant that doesn't fit the stereotype, then it makes their job really hard and they find it difficult to convict in those circumstances" [Barrister Participant].

Barrister and judicial participants suggested several other reasons as to why younger suspects were likely to be acquitted by juries, including the fact that often these cases were acquaintance rapes, involving alcohol or parties, could involve social media evidence and might often hinge on one person's word against another.

Many participants across some participant groups suggested that juries needed to receive more education on rape myths, consent, biases and rape trauma. Police and support service participants provided other suggestions for changes to juries, including: allowing the use of expert witnesses to educate on grooming, the effects of rape and impact of trauma; the use of specialist juries; or to replace juries with a panel of expert witness or specially trained judges. CPS survey participants did not reference removing juries from rape trial.

## Part two: Cross-cutting themes

Part two of this report examines the themes identified in the research which cut across and impact on all the different stages of the criminal justice process. They are: victim engagement and withdrawal; rape myths and stereotypes; and partnership working and resourcing in the criminal justice system.

## 8. Victim engagement and withdrawal

This chapter examines findings relating to increased victim withdrawal exploring when victims are more likely to withdraw, and the key reasons proposed in the research for why victims may withdraw. As the research did not include victims directly, all views presented in this chapter are based on the perceptions of those working in criminal justice agencies supplemented with the literature review of studies on this topic.

### Key findings

Victim withdrawal has increased. 57 per cent of adult rape offences recorded in 2019–20 were assigned a police outcome of ‘evidential difficulties: victim does not support’, an increase from 42 per cent for offences recorded in 2015–16.

Findings from the literature review suggest that victims are more likely to withdraw in domestic abuse related cases, acquaintance cases and cases where the victim has mental health conditions.

Participants offered several possible reasons for increased victim attrition including:

- the increased timescales of the overall criminal justice process which increases victim trauma and prevents victims from moving forward in their lives;
- an intrusive investigation which heavily scrutinises the victim’s personal life and is used as an assessment of the credibility of the allegation. This makes victims feel disbelieved;
- a poor relationship between the victim and the police resulting in the victim feeling ill-informed and often abandoned by the CJS. Higher police workloads, a lack of available time for victim liaison and changes in staff were said to be damaging the relationship;
- and a lack of available support to help victims progress through the system. Key findings from the literature review highlighted the importance of victim support in mitigating victim attrition.

It remains unclear to what extent there have been shifts in the above reasons for victims’ withdrawal that might have contributed to observed increases in likelihood of withdrawal in recent years.

## 8.1 Increase in victim withdrawal

As discussed previously, in recent years more cases have been assigned an outcome of 'evidential difficulties, victim does not support further action'. For adult rape offence outcomes recorded in 2019–20, 57 per cent of offences received this outcome, an increase from 42 per cent in 2015–16 (Home Office, 2020a). The data do not allow for exploration of this outcome in relation to different types of rape cases. However, improvements in police recording are known to be significant over this period (HMICFRS, 2020).

Findings from the literature review suggested that there is a greater likelihood of withdrawal in domestic abuse related cases, acquaintance cases and where the victim has mental health conditions, while for non-recent cases and those involving younger males, victims are less likely to withdraw (Hester and Lilley, 2017 and Jordan and Mossman, 2019).

The survey participants were asked at what point in the process victims were more likely to withdraw. Police and support service participants saw victim withdrawal as most common pre-charge, either during the investigation or awaiting a charging decision. Most participants perceived less victim withdrawal as cases progressed through the criminal justice system. Findings from the literature review supported this perception, with two studies also identifying that victim withdrawal was most likely during the investigation phase (Lovett and Kelly, 2009; MOPAC, 2019). However, 29 per cent of CPS participants (N=111) felt post-charge withdrawal was common (see Appendix Table B3).

Whilst there is no evidence that the most likely stage of victim withdrawal has changed, the recent trend of increasing length of police investigations does allow more opportunity for victims to withdraw from the process at the investigative stage.

### Reasons for victim withdrawal

Survey participants were asked what they thought the most common reasons for victims not supporting prosecutions were. Different participant groups felt that there were different reasons, although issues around feeling disbelieved or judged, needing to move on, and delays in processing were prevalent across all groups. Table B4 in Appendix B shows the different proportions of each participant group citing different factors as leading to victim withdrawal.

As there is no trend data available from the survey, we cannot identify shifts in the reasons for victims' withdrawal that might have contributed to observed increases in likelihood of withdrawal in recent years. Therefore, the remainder of this chapter focuses on reasons for victims' withdrawal where there is evidence, or a strong hypothesis, of change occurring which could influence this factor. Other, more static, factors are likely to be important to victims and therefore should not be discounted.

## 8.2 Length of the process

As highlighted above, the criminal justice process is lengthy with an increase in the amount of time taken to charge cases and to reach court (see sections 5.6 and 7.2). Participants from all groups believed that the length of the process was a key reason for victim withdrawal.

Police focus group participants raised that victims often do not have realistic expectations, or a full understanding of the timescales associated with a rape case. Police participants described that victims commonly believe that cases progress quicker, often fuelled by the way the media presents cases, and therefore they are disappointed and frustrated with the length of time the investigation takes. Some of the police focus group participants highlighted the importance of being honest and transparent with victims in relation to the overall length of the process, a view echoed by ISVAs, however this comes with the risk of this being off putting for victims.

### Impact of delays on victim protection and attrition

The length of the criminal justice process was said to be directly causing victim attrition as it prevents some victims from being able to move forward with their lives. Police focus group participants discussed how delays to cases reaching court meant some victims already feel as though they have moved on from the incident and choose not to continue as they do not wish to resurface the trauma. On the other hand, ISVA, judicial and defence solicitor-advocates discussed how the delays may also prolong victims' trauma, with ISVA participants commenting on some victims having to withdraw in order to seek support.

“An investigation that goes on for years has a detrimental effect on wellbeing and I think that comes into play at some point it stops, and they've got to look after themselves before they can even think about continuing through the criminal justice system” [ISVA Participant].

A few defence solicitor-advocates perceived that the delays can negatively impact on victims' views of the criminal justice system which reduces trust in the system and can discourage victims from wanting to report crimes.

ISVA participants also discussed the impact that increased timescales have on victim protection in relation to bail for suspects. They discussed that release under investigation (RUI) appears to be favoured more than bail and ISVA participants flagged that this has a perverse effect by removing protective measures for victims. ISVA and barrister participants were concerned that with the protections of bail removed and the process taking longer, victims could be at greater risk of harassment or intimidation by perpetrators to encourage victim withdrawal.

## 8.3 Intrusive nature of investigations and feeling disbelieved

Many police and support service participants discussed how they believed a key reason that victims withdraw was the increasingly intrusive nature of investigations. As discussed above, participants raised a perception that investigations now are perceived as having an increased focus on victim credibility which can cause victims to feel disbelieved. Not being believed was reported as a key driver in victim withdrawal.

Increased intrusion was not flagged by CPS participants as a primary cause of victim withdrawal. This may be due to the CPS view that a thorough exploration of a victim's digital or third-party material was vital to a robust charging decision and the necessity to explore this material if it is a reasonable line of enquiry as per the CPS code, or CPS participants may not have perceived an observable change in evidence collection. Only one CPS participant felt that intrusive questioning might explain why a victim may withdraw.

Participants across the different groups highlighted that the emphasis on victim credibility is not required for other crimes and so questioned why it happens for rape cases. Several police participants, and a small number of participants from the support sector, also raised that in their experience the intrusion into the victim's life and judgement of credibility is not mirrored for the suspect. Investigator survey participants suggested a need for a fairer, more balanced approach to assessing credibility of victim and suspect.

“...We do a lot more around the complainant, it's all around her credibility, how credible the victim is, but that's never replicated for the suspect. And we do find stuff that suggests a perpetrator lied it would never get used.... So, it's certainly like the emphasis, the spotlight is certainly on the victim” [Police Investigator Participant].

A few CPS survey participants agreed that there were still cases where too much focus was on the victim rather than on the suspect.<sup>65</sup>

Police and support service participants felt that in order to encourage more victims to continue with the process, there needs to be less intrusion into a victim's life, less perceived pressure to share phone and private information; and, according to the police participants, less of a perceived desire to undermine them through unrelated third party and digital material.

## 8.4 Police victim relationship

ISVA focus group participants cited the police-victim relationship as another reason for withdrawal. This is supported by findings from one study included in the literature review, which found a central factor in victim attrition was the police-victim relationship (Hohl and Stanko, 2015).

Some working in the support services sector felt the police were often insensitive in their approach and may use poor judgement in their interactions with victims. Police survey and focus group participants recognised that communication with victims can be poor. However, many police participants deemed this was not due to a lack of desire from the police to engage with victims but rather a lack of available time for these tasks.

Police participants perceived the difficult nature of conversations with victims to be affecting the relationship. The perception amongst police participants was that it is often the police who must relay difficult messages to the victim regarding delays or the requirement for more evidence which can damage their relationship with the victim. CPS

<sup>65</sup> This is especially true at the trial stage, as the defence can introduce good character evidence for the suspect, yet good character evidence is not permitted for the victim unless it is to rebut something the defence has raised.

survey participants however felt they were increasingly having to speak to the victims as police were often reluctant or unwilling to have these difficult discussions with victims.

Participants highlighted several challenges with resourcing that might be negatively influencing police victim relationships. Support service and police participants highlighted that the increase in reporting, and therefore workloads, combined with a reduction or static levels of staff could be impacting on police officers' ability to develop a good relationship with victims. There is not always the staff or time available to dedicate to victim liaison and failing to undertake these tasks can potentially leave the victim becoming frustrated, ill-informed and subsequently withdrawing from the process as they almost feel abandoned by the police.

Police, ISVA and judicial participants recognised honest, regular conversations with the victim are vital to a positive relationship with the victim. Good communication ensures the victim is informed about the progress, with police survey participants suggesting that victims are likely to be more accepting of delays or problems with the investigation if they are in regular contact with the police. Problems relating to victim attrition can arise when the victim is uninformed and pondering what is happening with their case.

## 8.5 Victim support

Victim support was a further reason offered by participants across all groups for why victims may choose to withdraw from the criminal justice process. Having support from a victims' organisation was reported to have a positive impact on victim withdrawal, for example the support services survey found that around 90 per cent of ISVAs reported experiencing less than 30 per cent of victims they supported withdrawing from the process. However, a large portion of police and support service participants reported that there was a lack of available support for victims which was concerning for police who deemed ISVA support to be vital:

"I don't think I'd have got any of my jobs to Court without ISVAs and I genuinely mean that... without them I don't know where we'd be" [Police Investigator Participant].

Participants highlighted several recent perceived trends that might be negatively influencing victim support. Firstly, ISVA participants discussed how an increase in reporting resulted in increased demand for support services that was often unmet. Most ISVAs in the focus groups had seen a rise in the number of new clients they were working with as well as an increase in the time they now retain clients for given cases are now taking longer to reach an outcome. Some ISVAs also perceived that their role had changed from supporting victims to navigate the criminal justice system to helping clients not engaged with the CJS come to terms with 'a lack of justice'. ISVA participants felt these changes impacted on the amount of time available to dedicate to each client.

Secondly, ISVAs perceived other statutory and counselling organisations to be increasingly reluctant to engage with ongoing cases, reporting some specialist services were deemed unable or unwilling to provide targeted support due to the possibility of having to disclose therapeutic or medical records of a victim. This changed the type of work ISVAs undertook, increasing the amount of support provided that would ordinarily have come from other statutory or third sector agencies. A few ISVA and police

participants were concerned this meant they were having to 'plug a gap in services' not provided by specialist agencies.

The third change discussed was an increase in delays in victims accessing long term therapeutic support. Victims could access limited pre-trial therapy but were not able to talk about anything in their police statement or related to their case. It is clear from the research that not being able to access what some ISVAs described as 'proper therapeutic support' until after the trial, could be extremely distressing to victims. ISVA and police participants linked a lack of access to appropriate support, combined with extended trauma arising from increased delays to victim attrition.

Findings from the literature review also highlighted the role that specialist support, including Sexual Assault Referral Centres (SARC), Independent Sexual Violence Advisors (ISVAs), advocacy and Rape Crisis Centres, have in mitigating victim withdrawals. Brooks and Burman (2017) found that support improved victim experience and assisted sustained victim engagement. A study conducted by Lilley Walker et al (2019), found victims receiving specialist support were 49 per cent less likely to withdraw from the process.

Participants from the police, support services and judiciary suggested that there should be increased victim support, counselling and advocates available throughout the process to help improve victim engagement and the victim experience. Support should be available early on to help victims with reporting and contacting the police, with some police participants suggesting it should be based at the police station. Increased support can reassure victims, allow them to process the trauma they have experienced and improve their understanding of the criminal justice system.

## 9. Rape Myths and stereotypes

Rape myths can be described as prejudicial, stereotyped or false beliefs about sexual assaults, rapists, and rape victims.<sup>66</sup> They often serve to excuse sexual aggression and create hostility toward victims.

There are various academic views on the impact, if any, of rape myths and stereotypes in the criminal justice system. There is an absence of research detailing the decision-making process of actual jurors in rape cases, so it is not possible to know the impact of rape myths or stereotypes on convictions. Survey research with real jurors to understand believability of rape myths, as well as deliberation research with mock jurors has been recently conducted on this topic (Thomas, 2020; Munro, 2019).<sup>67</sup>

Both the suite of surveys and the qualitative research explored the presence of rape myths and stereotypes in the criminal justice system. It is unclear, from these data, whether the prevalence or impact of rape myths has changed significantly in recent years and therefore their influence on recent trends in rape cases remains uncertain. Despite this, they warrant exploration given the challenges some participants linked to them concerning the outcomes for rape cases. Additional findings on rape myths and stereotypes are contained in Appendix C.

### Key findings

Participants identified several common rape myths in the criminal justice system linked to victim appearance and behaviour; the nature of the rape (e.g. whether it was violent or whether the suspect was known to the victim); implied consent; and myths held by victims about the criminal justice process.

Rape myths can cause victim attrition if the victim feels disbelieved and can also act as a barrier to reporting, successful investigation, charging, prosecution and conviction. No quantitative administrative data is available from CJS agencies to determine the impact of rape myths on case progression.

<sup>66</sup> The language used in this section should be treated with some caution as there are varying academic definitions.

<sup>67</sup> See also the important body of work in this field by Dr Dominic Willmott and Dr Olivia Smith.

Participants had different views on the prevalence and impact of rape myths with many participants highlighting that their decisions to charge and proceed with the case were evidence driven. Many investigators, RASSO leads and support service participants reported witnessing rape myths in court and some participants did not think these were sufficiently challenged by prosecutors.

All participant groups deemed juries to be the group most strongly affected by rape myths. All judges said they give judicial directions in RASSO cases, however some judicial participants raised concerns about the effectiveness of directions in ensuring juries do not apply rape myths in their deliberation.

Some participants felt the use of rape myths had reduced but it is unclear, from these data, whether the prevalence of rape myths and stereotypes has changed significantly in recent years and therefore their influence on recent trends in rape cases is uncertain.

## 9.1 Common Rape Myths

The most common rape myths deemed to be affecting the progression and outcomes of cases discussed by participants were:

1. The 'perfect' victim: this related to the idea that victims must behave and dress in a certain way. This included reporting immediately to the police, actively fighting back and not taking drugs, drinking alcohol, flirting with men, or being a sex worker;
2. Only one kind of rape: rape was believed to take one format, that is to be committed by a stranger, cause injuries, be vaginal and only against women. Rape that occurs in other circumstances, such as between acquaintances, within relationships, rape of men and anal or oral penetration are not deemed to be rape;
3. Consent was 'given': this myth assumes that consent for sexual intercourse has been given either directly or indirectly through other actions of the victim, such as not explicitly saying no; consenting to other forms of sexual activity or previously engaging in sexual intercourse; or previously sending sexual messages or pictures via social media or dating apps;
4. Investigation based myths: police survey participants discussed some myths in relation to the investigation process, including that the police are never going to believe the victim, or in the opposite sphere, are always going to implicitly believe the victim; if the victim has mental health conditions they can't go to court or that if there is no corroboration or witness then it automatically means no prosecution.

## 9.2 Perceived prevalence of rape myths

Participants' views diverged on the prevalence of rape myths. There were mixed views from within police survey participants on whether rape myths were a problem during investigation. Support service participants were clearer about the presence of rape myths during investigation; over 80 per cent (N=131) cited witnessing rape myths either

frequently or very frequently during investigation. Police survey and focus group participants discussed witnessing rape myths and stereotypes during referral to the CPS as did over 70 per cent of support service survey participants (N=131). However, CPS participants felt rape myths are less prominent at these early stages of the process. The use of rape myths was also witnessed in courts by different criminal justice agencies with over half of the investigators (N=348), over half of RASSO leads (N=36), and over 80 per cent of support service stakeholders (N=131) experiencing them 'very' or 'somewhat' frequently. The use of rape myths by judges and defence counsel were flagged as a particular challenge, however defence solicitor-advocates themselves commented that they do not often hear rape myths voiced formally by defence. A few defence solicitor-advocates said that they warn the jury against employing myths and stereotypes in their closing speeches. Section 41 of the YJCEA 1999, which restricts the ability of the defence to use arguments in court based on the victim's sexual history, and vulnerable witness training, which teaches advocates how to conduct cross-examination of vulnerable witnesses<sup>68</sup> sensitively, were both seen as drivers behind the reduction in defence advocates using these types of arguments.

Some participants from all groups perceived juries as being the group most strongly affected by rape myths. Participants thought juries would judge victims based on how they believe they would personally behave in that situation rather than by impartially assessing the evidence. It was felt that perhaps unlike other crimes, most jurors would have personal experiences of relationships so may be more likely to apply their understanding of consent or what they would (or wouldn't) do in a situation, which could in turn impact how they view the evidence and accounts given.

### 9.3 Perceived impact of rape myths

Participants highlighted how rape myths have the potential to increase victim attrition, if the victim feels disbelieved, but also act as a barrier to reporting, successful investigation, charging, prosecution and conviction if they form part of the decision making of cases. Although many police and CPS participants highlighted that decisions to charge and proceed with the case were evidence driven.

The literature review provides some additional insight into the possible impact of rape myths. A number of studies speculated that the use of rape myths at trial to undermine credibility may also be a factor affecting conviction levels (Smith and Skinner, 2017; St George and Spohn, 2018; Temkin, Gray and Barrett, 2018).

The perception amongst police and support service participants was that rape myths are rarely challenged at court, which could have a detrimental effect on case outcomes. Fifty-seven per cent of investigators (N=348), 78 per cent of police lead participants (N=36) and 59 per cent of support service participants (N=131) reported that rape myths were not very frequently or were never dispelled during court cases. Both ISVA and barrister participants suggested more needs to happen to dispel rape myths, whether this

---

<sup>68</sup> Vulnerable witnesses are defined by section 16 of the Youth Justice and Criminal Evidence Act 1999, and include victims under 18, or whose evidence quality is likely to be diminished due to a physical or mental disability. Not all rape victims are classed as vulnerable witnesses.

was through improving training for judges and prosecutors or by raising the awareness among jurors.

## 9.4 Judicial direction

Judges give judicial directions to the jury to help counter any risk of stereotypes or assumptions related to sexual behaviour or victims' reactions to rape from influencing juries. All judges said that they will give some directions for RASSO cases after evidence and before the closing prosecution and defence arguments, with most saying they also give some directions at the start of a case before any evidence is heard.

The Crown Court Compendium gives advice to judges on what topics judicial directions can cover. Judicial participants found the Compendium to be sufficient, and no judges gave examples of additional myths and stereotypes to be added. All judges viewed the Compendium as guidance which they adapted to fit each particular case, rather than using it verbatim. A few judges felt that defence lawyers may resist expansion to the Compendium, as it could be seen as weighting the case too far in favour of the victim.

A few judges raised concerns about the effectiveness of judicial directions, with three judges giving specific examples of cases where they had given directions but felt rape myths had come into play in the juries' deliberation. In their view, based on the evidence presented, they did not know how the suspect could have been acquitted without rape myths' influence. All defence solicitor-advocates felt that juries could be influenced by rape myths and stereotypes and felt the message to not apply rape myths was not getting through to juries. However, there was no consensus among judicial or defence solicitor-advocates on the perceived impact of rape myths and stereotypes on convictions.

## 9.5 Prosecutorial comments

Aside from judicial direction, challenging the use of rape myths in court is also done through prosecutorial comments. However, the perception amongst police and support service participants was that rape myths were rarely challenged at court.

CPS survey participants discussed that they were acutely aware of myths and stereotypes and actively considered how rape myths and stereotypes would manifest in court during case preparation, given that the role of dispelling myths fell to counsel. Some CPS participants assumed the court would give proper direction to the jury on myths to help counteract any 'prejudicial' views they may hold, although given concerns raised about the use of myths amongst the judiciary these CPS participants perceived that this may not be enough.

Some ISVA participants felt that prosecution advocates did not sufficiently challenge rape myths and stereotypes used as a line of defence. Some CPS survey participants acknowledged this, discussing challenges with adequately addressing rape myths used by defence teams. These participants felt it was difficult to address the imbalance in place whereby the focus is on discrediting victims rather than looking at evidence to support their credibility given that they cannot introduce good character evidence or utilise expert evidence. These challenges were felt to affect the extent to which the prosecution could minimise the impact rape myths may have on a trial.

Some barrister, HMCTS staff, CPS and support services participants raised the issue that it may not be possible to eliminate the use of rape myths and stereotypes by juries entirely.

## 10. Partnership working, resources and staff capability

This chapter considers the perspectives of both police and CPS participants on the working relationship between the two organisations in relation to adult rape cases. It goes on to discuss the findings relating to resourcing across the criminal justice system, including staff numbers and skills, training and facilities across CJS organisations.

### Key findings

Both police and CPS participants reported communication issues and a strained working relationship. Experience of hostile or unprofessional attitudes from both organisations impacted on the ability and desire for staff to work together. A lack of direct and frequent communication created challenges in understanding organisational needs and made it difficult to progress cases.

Resourcing across the criminal justice system was seen as negatively impacting on the progression of adult rape cases and outcomes. Both the police and CPS were reported to be struggling with reduced resources, high staff turnover, increased workloads following increased reporting, and in the case of the police, a loss of experienced and specialist officers. A loss of specialist officers was also linked to declining quality of investigations and victim experience. No data is available from the police or the CPS on resourcing and staffing levels in RASSO roles and units.

Support services felt they were unable to meet the demand from victims due to less funding. A reduction in funding and resource for specialist services was leaving ISVAs managing differing and complex needs with minimal staff.

Challenges associated with partnership working, communication, resourcing and staff capacity were felt to have impacted negatively on the progress and quality of adult rape cases and outcomes. Suggestions for improvement focused around greater investment in co-location, specialist units, staffing across organisations, training, and police facilities.

### 10.1 Partnership Working

Police participants from all groups raised the working relationship between the CPS and the police as being a challenging factor in the response to adult rape cases. CPS participants in general felt that their working relationships with police at a local level were

positive. Participants from both organisations felt at times that the two organisations worked in silos creating a feeling of working at odds rather than in partnership. A few participants from both the police and the CPS described experiencing ‘master/servant’ or ‘them and us’ mentalities.

Participants felt strained relationships came from wider systemic issues such as insufficient resources and high turnover in the case teams rather than individual attitudes.

Different ways of working also caused frustrations for participants. CPS participants highlighted that a change in recent years in the CPS approach to frontload cases with the evidence does not align with the police focus on charging cases quickly and resolving outstanding matters afterwards. This, combined with a lack of understanding of the priorities and requirements of each organisation, would result in frustrations and a clash in priorities which can affect the way in which agencies are able to work together.

Throughout the research, participants from both the police and the CPS discussed the impact of poor communication on the working relationship between the two agencies. A large proportion of participants raised that they feel less able to talk to each other, no longer being able to just pick up the phone or discuss cases face to face as standard. Support service participants and some defence solicitor-advocates also mentioned that ineffective communication between the police and CPS significantly increases the length of the process. There was a concern amongst police survey participants that this lack of direct communication was affecting the progression of cases. Some police participants mentioned that the CPS were previously co-located in the same office as the police, which was felt to improve communication and working relationships in general.

In addition to co-location and direct communication, other suggestions included: joint training sessions; proactive line management to foster good relations; shared goals and a joint approach to casework; increased specialisation for RASSO police officers and CPS prosecutors; holding regular RASSO clinics to discuss cases and seek advice; and debriefs on cases to improve understanding and identify good working practices.

## 10.2 Police resources

A reduction in numbers of police and in their experience was an issue raised by many survey and interview participants across participant groups.<sup>69</sup> Participants from both the police and the CPS surveys deemed the increasing lack of police staff to have affected the quality of work.

Police participants highlighted specific changes that might have negatively affected police staffing levels. During the focus groups several police participants mentioned that their forces were losing staff on what seemed like a monthly basis. The view was that staff were either choosing to move into other departments, due to exhaustion from the workloads associated with investigating rape cases or were forced into other roles. Police participants raised the issue that when staff leave RASSO roles the posts are then either left vacant or filled by moving staff, involuntarily, into these roles which can result in unmotivated

<sup>69</sup> Neither published police workforce statistics (Home Office, 2020c) or CPS annual reports (Crown Prosecution Service, 2020c) provide a breakdown to identify resource allocated *specifically* to rape offences. As such no quantitative data associated with resource levels or trends is presented for discussion here.

officers. RASSO leads participating in the focus groups raised that this was a direct consequence of limited recognition from some senior policing officers that rape cases are a priority.

“So, it’s not going to make a jot difference to me because is rape on the agenda of the communities? No, it isn’t. Is rape on the agenda of my senior leaderships in my organisation when they’ve got so few resources to deal with, people being murdered, people being shot at, people being, no it’s not. So, if that question comes up of we need more resources, it’s not going to happen” [Police RASSO Lead participant].

Participants reported increased use of less experienced officers in rape investigations. Both police and CPS survey participants reported that there had been a substantial reduction in experienced staff who know how to conduct rape investigations and undertake victim liaison. Some police participants reported their forces relying on inexperienced officers straight out of their probation period in order to get investigations done. Police and CPS participants deemed this to be problematic because these inexperienced officers have simply not been able to develop the experience and skills needed to undertake this type of investigation.

Participants linked the reduced number of specialist RASSO units to the challenges faced in investigating adult rape cases. Participants from both CPS and police reported that instead of having teams focussed purely on RASSO cases, many officers now work in cross priority teams on a variety of cases. Only 16 of the 36 RASSO lead survey respondents reported their force having a dedicated unit for adult RASSO cases. The loss of specialist RASSO units over recent years was directly linked by the police and CPS participants to the lack of experienced officers and the declining quality of investigations and victim experience. Barristers, ISVAs, judicial and defence solicitor-advocates alike shared the concern that the loss of specialist staff was having a negative impact on adult rape investigations, such as by increasing delays at this stage.

Several suggestions were made for improvements to police resourcing. Police participants from the surveys and focus groups were clear that in order to improve police work there needs to be more investment in staff working on rape cases. This would reduce the workloads of individual officers so they can dedicate more time to each investigation.

There was a call from many police and CPS survey participants to reintroduce dedicated, specialised investigation units given the positive impact they have on rape cases. Dedicated specialist teams allow for experienced, knowledgeable officers, with a clear set of expectations, taking a consistent approach to rape cases. Police and CPS participants indicated that specialists improved the quality of the investigation, reduced timescales, placed less burden on CPS staff and in some cases improved working relations between police and CPS. Research by Rumney et al. (2019) included in the literature review indicated that specialist units can have an impact on charging levels even in cases involving victims with additional vulnerabilities, suggesting they may offer more careful investigation and better levels of victim care.

Some police survey participants felt the reintroduction of specialist units should coincide with the creation of designated roles for different aspects of adult rape investigations, such as digital evidence reviews, disclosure management, and victim care. Police participants felt this would allow individual staff to receive the relevant training, ensure enough time

was dedicated to these aspects and reduce the burden placed on individual officers managing investigations.

### 10.3 CPS resource

Many of the issues with police resourcing were echoed in relation to CPS resource. All participant groups recognised that the CPS were also facing increased workloads with less staff. One CPS participant referenced a 30 per cent reduction in resources impacting on their time and ability to deliver training and develop relationships with professionals. In a similar manner to the police, CPS participants raised that this lack of staff was resulting in higher caseloads for lawyers with a few reporting carrying in excess of 60 RASSO cases at once. They felt these higher workloads have been accepted as normal with little recognition from senior management that rape cases are complex and require a lot of dedicated time. The police participants perceived that because of the lack of staff available, the CPS was struggling with the number of cases being referred which was contributing to delays in reviewing files and making decisions. Some solicitor-advocates and judicial participants raised concerns about lack of CPS resources resulting in disclosure evidence being served at very late notice, which in turn could contribute to delays.

“there’s no doubt that I think they need more resources, they need more lawyers and more experience of dealing with this type of offence, but I know you know the thing with lawyers they’re under the same stretches and strains as us and they are actually they’re working overtime and they’re working themselves to the bone just like we are and it shouldn’t be that way because at the end of the day it’s not hard and we’re letting people down” [Police Investigator Participant].

A few defence solicitor-advocates commented on a perceived decrease in quality among CPS prosecutors, which they felt was due to a lack of training, resources and specific RASSO accreditation. A few CPS survey participants also noted that there had been a loss of experienced staff, with a lack of available lawyers to replace those who have left. Whilst it is not possible to definitively state why experienced staff have left the CPS, participants provided examples of challenges facing CPS RASSO units which could be contributing to staff attrition. Some CPS participants highlighted that there are unrealistic targets set to review rape cases, just 7 hours in some cases, and that often the case management systems assign targets without any consideration of whether there is resource available and time taken to undertake often complex RASSO work. This was said to place pressure on lawyers, negatively impacting on lawyer mental health. Some CPS survey participants also felt the negative media scrutiny and apparent scapegoating of the CPS was affecting mental health and morale.

In relation to suggestions for improvement, CPS and police participants called for better resourcing to allow CPS staff to have a sensible workload to manage. Improvements to resourcing would enable lawyers to: dedicate more time to review cases thereby improving quality; ensure early charging decisions preventing victims from enduring lengthy delays for a decision; offer advice; have consistency in the allocated lawyer and to work with the police on building cases.

## 10.4 ISVA and support service resource

Over the last few years, demands on ISVAs have increased given the increase in reporting but funding had not increased proportionally. One CPS participant mentioned that *“ISVAs are at the lowest funding I have ever seen and cannot support most victims through this process”*. There are now more clients coming to an ISVA service for support but without greater resourcing and funding, managing the differing and often complex needs becomes difficult.

In terms of improvements, ISVA participants felt that their services required proper and adequate resourcing to ensure that there were enough ISVAs in each region to respond to demand. Some ISVA participants felt ISVA services should be based within a wraparound specialist service with access to specialist sexual violence counsellors, advocacy and child and family services providing victims with a holistic programme of support. ISVA participants also discussed the importance of resourcing more mental health services and including this in the wraparound specialist service. Improving access to this type of support for victims of sexual violence was important to prevent victims being denied the specialist support required

*“as soon as somebody mentions sexual violence within a counselling session, they are refused any further service, their case is closed, and they are referred over to a specialist sexual violence service. However, we are not a mental health service. We cannot prescribe. We cannot provide mental health case care and that then means the ISVA is left holding someone that has mental health needs and they can’t provide that service. There needs to be a joined-up approach between specialist sexual violence services and IAPT<sup>70</sup> services and it is completely inappropriate that these people are left without mental health services and ISVAs are left to hold that work”* [ISVA Participant].

## 10.5 Training and facilities

Participants also highlighted that increased investment in training and facilities was vital across the criminal justice system, especially for the police in order to improve case progression and outcomes.

### Police facilities

RASSO leads interviewed as part of this research highlighted that the problems are not just with the number of officers available but also with how well-equipped staff are to do the required job. A lack of on-going investment in modern facilities and equipment were seen as impacting the case quality and potentially victim experience:

*“my investigators do not even have the ability to take an image at a scene okay. They were using their own personal phone to do that..... They’re taking their own laptops to go and show, I mean this is how under-invested my department is in terms of you know, assistance for investigators”* [Police RASSO Lead Participant].

<sup>70</sup> Improving Access to Psychological Therapies is a programme to treat adult anxiety disorders and depression in England.

Many police participants highlighted that there was a lack of investment in the facilities and equipment, especially in relation to technology and software for digital material reviews. A few police participants reported officers regularly rely on taking screenshots and photos on personal phones in order to collect evidence from social media platforms.

### **IT systems**

The systems that agencies use were mentioned by both police and CPS as needing investment, with the current IT systems not being compatible between agencies. A few CPS participants mentioned that the four Police Force Areas they covered all had different IT systems in place, none of which were particularly compatible with their own IT system. This lack of compatibility was felt by some CPS participants to increase timescales and create tension between the two organisations.

### **Police training**

There was a view amongst a large proportion of police focus group and survey participants that training for the police was increasingly lacking. The lack of training was linked to on-going budget cuts, as this was deemed by some RASSO leads to be an easy way for senior staff to cut costs but was leaving officers without the necessary investment for development.

Police and CPS participants suggested that police staff needed to receive more and regular training on how to investigate rape cases better, including disclosure, trial preparation and Achieving Best Evidence interviews. Some police focus group participants felt that generic investigative training was not enough for rape cases. Police participants reported training on working with and understanding victims was lacking and requiring improvement, especially for first responders who often had the initial contact with the victim. Police participants also raised a need for training on digital material as many felt they had not received the necessary training to download and analyse this type of information. Investing in training on this may speed up the process.

### **Criminal justice agency training**

Many survey, focus group, and interview participants across the different groups raised the need for more training for themselves or other agencies.

CPS participants expressed a need for refresher RASSO training as well as additional training in relation to:

- understanding of digital/social media material and how to obtain digital data (this includes refresher courses);
- youth focussed RASSO training;
- forensic training (i.e. the logistics around examination; what evidence can be given in court).

ISVAs and HMCTS Witness Champions felt that more work was needed to raise awareness and improve understanding of the impact of trauma on victims not just among court staff but also among juries, defence barristers and CPS. Police officers involved in the interviews and focus groups expressed that more training and guidance for judges should be arranged as there was a concern that judges were not adequately trained to understand the complexities of rape cases.

However, all judicial participants said they attend mandatory courses on serious sex offences run by the Judicial College at least once every three years in order to preside over RASSO cases. This course includes up to date information on rape stereotypes and assumptions, relevant case law and jury research. All judicial participants felt that this training was very good. Most defence solicitor-advocates said they had undertaken the vulnerable witness training, but not specific training related to rape myths, with some participants saying that specific rape myths training could be beneficial.

# 11. Conclusion and research recommendations

## Conclusion

Participants in this research discussed a variety of interconnected reasons that may have driven the recent rise in victim withdrawal and the fall in numbers of cases progressing to charge and prosecution, witnessed alongside the increase in police recording of adult rape and serious sexual offences.

This research does not provide a definitive and exhaustive list of the causes and drivers of the changes in investigating, charging and prosecuting rape and serious sexual offences but it does provide insights into possible factors affecting the outcomes of adult rape cases. These have been grouped into three overarching and interlinked factors:

### 1. The increase in evidential requirements.

The increase in the amount of material required during investigations, specifically digital and third-party material, and the increase in CPS requirements for evidential disclosure pre-charge are influencing the fall in the number of cases referred by the police to the CPS and subsequently charged. The quantitative data analysis indicates a possible link between the sharp decline in charge volumes from early 2018 and the timing of the *R v Allan* aborted prosecution and other similar collapsed prosecutions as a result of non-disclosure on CPS practice.

This supports the emerging narrative that the acquisition and processing of digital evidence has become a key pinch point in the system. Whilst additional disclosure allows for more robust, better informed CPS charging decisions, it also appears to negatively impact on the number of cases available for charge by creating backlogs, lengthening investigations and increasing the number of cases assigned as no further action due to what is perceived as weaker evidence. Increased digital and third-party material requirements can place pressure on overstretched CPS and police units and potentially cause additional strains on their working relationship. The perceived risk with having excessive amounts of information relating to a victim's personal life is that this information may be used to reinforce rape myths and as justification for not charging or convicting a case. The emphasis now placed on digital and third-party material and the requirement for early disclosure may directly increase victim withdrawal, by intruding into a victim's life, by making them feel disbelieved, and by lengthening the time taken to resolve cases.

### 2. Resourcing, training and facilities

The increase in police recording of adult rape cases appears not to have been matched with an increase in available specialist staff or training to match the rise in demand to deal with these often complex cases. This was the view of those who

participated in this research and they also felt the rise in demand had contributed to resourcing problems right across the criminal justice system, creating challenges in progressing adult rape cases through the system and having a detrimental effect on the victim experience. They felt the decline in well trained, experienced police and CPS staff in fully resourced, specialist RASSO units made it challenging for staff to collate and review the increasing amounts of evidence required for adult rape cases, highlighting the need for more specialist staff with suitable training on how to conduct rape investigations and prepare good quality case files. Limited resources across police forces and the CPS were seen to negatively impact on working relationships; without time to dedicate to joint working, develop relationships and understand the requirements and ways of working of other agencies, cases become harder to progress. Victims ultimately suffer when agencies do not have the resources to investigate cases quickly, provide updates or to assign a timely court date. This may be one factor in why victims are less willing to support further action.

The need for specialist support for victims was also highlighted. Insufficient access to support tailored to victims' specific needs and vulnerabilities, alongside limited support during the criminal justice process, are also likely to play a role in victim withdrawal.

### 3. The length of the criminal justice process

The increase in the length of time required for cases to progress through the system is another factor influencing the final outcome of adult rape cases. The additional complexity of investigations due to digital and third-party evidence, combined with limited resource and appropriate technology or training, results in cases taking longer to be charged, creating a backlog at each stage. The delays and lack of case completion can create increasing levels of frustration amongst victims and CJS staff. This increase in the length of the process, alongside insufficient specialist support, can also contribute to prolonged victim trauma and attrition. Even when victims decide to persevere with the process, a long wait for a case to reach court can negatively affect case outcomes through impacting on the quality of the evidence given.

Overall, identifying the reasons for recent changes in volumes of referral to charge, charging outcomes, conviction rates and the increase in victims not supporting investigation is a challenging and complex task. This report summarises the views of some participants from different CJS stakeholders about the potential drivers of the recent changes and potential barriers to improvement. It does not offer a definitive and exhaustive list of answers nor does it offer policy solutions, beyond recounting some suggestions for improvements made by participants. The report should be read in conjunction with the policy report.

## Recommendations for further research

There are several evidence gaps presented in this report which would benefit from further research. Suggestions for additional research include:

- additional research with victims to seek their views and understand their experience of the criminal justice process, particularly in relation to reasons for victim withdrawal, decision making around reporting, what is most effective in terms of support and the impact of procedural factors (including delays, change of staff etc.) on victim willingness to engage;
- further research to examine the specific challenges for CJS organisations and victims relating to courts and trials;

- exploration of the reasons why cases are 'no further actioned' by both the police and CPS to identify common themes and examine reasons for the increase;
- in-depth analysis of rape offence case files to aid understanding of key case characteristics and explore any differences in processes and outcomes between victims with different characteristics;
- improvements in data collection of victims' demographics, especially protected characteristics, and the use of special measures to allow for further research in these areas.

## References

Brooks, O. and Burman, M., 2017, Reporting rape: Victim perspectives on advocacy support in the criminal justice process. *Journal of Criminology and Criminal Justice*, 17(2): pp. 209–225

Carline, A. and Gunby, C., 2017, Rape Politics, Policies and Practice: Exploring the Tensions and Unanticipated Consequences of Well-Intended Victim-Focused Measures. *Howard Journal of Crime and Justice*, 56(1): pp. 34–52

Crown Prosecution Service, 2019, Violence Against Women and Girls (VAWG) report 2018–19, available at: <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf>

Crown Prosecution Service, 2020a, CPS data summary Quarter 4 2019–2020: Violence Against Women and Girls Annual Data Tables Year Ending March 2020, available at: <https://www.cps.gov.uk/publication/cps-data-summary-quarter-4-2019-2020>

Crown Prosecution Service, 2020b, Special Measures, available at: <https://www.cps.gov.uk/legal-guidance/special-measures>

Crown Prosecution Service, 2020c, Annual reports and business plans, available at: <https://www.cps.gov.uk/publication/annual-reports-and-business-plans>

[Fairclough, S., 2020, Special Measures: Literature Review](#), London: Victims' Commissioner for England and Wales

HM Crown Prosecution Service Inspectorate, 2019, 2019 Rape Inspection: A thematic review of rape cases by HM Crown Prosecution Service Inspectorate, available at: <https://www.justiceinspectors.gov.uk/hmcpis/wp-content/uploads/sites/3/2019/12/Rape-inspection-2019-1.pdf>

HM Inspectorate of Constabulary and Fire and Rescue Services, 2014, Crime-recording: making the victim count. The final report of an inspection of crime data integrity in police forces in England and Wales, available at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/crime-recording-making-the-victim-count.pdf>

HM Inspectorate of Constabulary and Fire and Rescue Services, 2020, State of Policing The Annual Assessment of Policing in England and Wales 2019, available at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/state-of-policing-2019.pdf>

Hester, M. and Lilley, S., 2017, Rape investigation and attrition in acquaintance, domestic violence and historical rape cases. *Journal of Investigative Psychology and Offender Profiling*, 14(2): pp. 175–188

Hohl, K. and Conway, M., 2017, Memory as evidence: How normal features of victim memory lead to the attrition of rape complaints. *Criminology & Criminal Justice*, 17(3): pp. 248–265

Hohl, K. and Stanko, E., 2015, Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales. *European Journal of Criminology*, 12(3): pp. 324–341

Home Office, 2011, Police force area population, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/116249/population-police-force.csv/preview](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116249/population-police-force.csv/preview)

Home Office, 2020a, Police recorded crime and outcomes open data tables, available at: <https://www.gov.uk/government/statistics/police-recorded-crime-open-data-tables>

Home Office, 2020b, Crime outcomes in England and Wales, year ending March 2020: Data tables, available at: <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2019-to-2020>

Home Office, 2020c, Police workforce, England and Wales: 31 March 2020 second edition: Data tables, available at: <https://www.gov.uk/government/statistics/police-workforce-england-and-wales-31-march-2020>

Home Office, No Date, Home Office Data Hub, unpublished

Home Office and Ministry of Justice, 2021, The end-to-end rape review report on findings and actions, Crown Copyright

Jordan, J. and Mossman, E., 2019, Police Sexual Violence File Analysis Report: Women Rape and the Criminal Justice Process. Wellington: Institute of Criminology, Victoria University of Wellington

Lilley Walker, S., Hester, M., McPhee, D. and Patsos, D., 2019, Rape, inequality and the criminal justice response in England: The importance of age and gender. *Criminology & Criminal Justice*, pp.1–19. DOI: 10.1177/1748895819863095

Lovett J. and Kelly, L. 2009, Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries. London: Child and Woman Abuse Studies Unit.

Majeed-Ariss, R., Brockway, A., Cook, K. and White, C., 2019, 'Could do better': Report on the use of special measures in sexual offences cases. *Criminology & Criminal Justice*, <https://journals.sagepub.com/doi/10.1177/1748895819840396>, pp.1–18

Mayor of London Office for Policing and Crime, 2019, The London Rape Review: A review of cases from 2016. London: MOPAC

McMillan, J., Glisson, W., and Bromby, M., 2013, Investigating the Increase in Mobile Phone Evidence in Criminal Activities, 2013 46th Hawaii International Conference on System Sciences, available at: <https://ieeexplore.ieee.org/document/6480435>

Ministry of Justice, Home Office and Office for National Statistics, 2013, An Overview of Sexual Offending in England and Wales. London: Ministry of Justice, Home Office and Office for National Statistics, available at: <https://www.gov.uk/government/statistics/an-overview-of-sexual-offending-in-england-and-wales>

Ministry of Justice, 2021a, Criminal Justice System statistics quarterly: December 2020, available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

Ministry of Justice, 2020b, Timeliness by offence: Time Period: Q2 (Apr–Jun) 2010 to Q4 (Oct–Dec) 2019, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875728/time\\_offence\\_tool.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875728/time_offence_tool.xlsx)

Molina, J. and Poppleton, S. 2020, Rape survivors and the criminal justice system, London: Victims' Commissioner for England and Wales

Munro, V., 2018, The impact of the use of pre-recorded evidence on juror decision-making: An evidence review, Edinburgh: Scottish Government

Munro, V., 2019, Judging juries: the “common sense” conundrums of prosecuting violence against women, New Zealand Women's Law Journal (3), pp.13–34

Office for National Statistics, 2018, Sexual offending: victimisation and the path through the criminal justice system, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffendingvictimisationandthepaththroughthecriminaljusticesystem/2018-12-13>

Office for National Statistics, 2021a, Sexual offences prevalence and trends, England and Wales: year ending March 2020, available at: [Sexual offences prevalence and trends, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesprevalenceandtrendsenglandandwales/yearendingmarch2020)

Office for National Statistics, 2021b, Nature of sexual assault by rape or penetration, England and Wales: year ending March 2020, available at: [Nature of sexual assault by rape or penetration, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/natureofsexualassaultbyrapeorpenetrationenglandandwales/yearendingmarch2020)

Office for National Statistics, 2021c, Sexual offences victim characteristics, England and Wales: year ending March 2020, available at: [Sexual offences victim characteristics, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesvictimcharacteristicsenglandandwales/yearendingmarch2020)

Richards, L, 2016, The Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH 2009) Risk Identification, Assessment and Management Model, available at: <https://www.dashriskchecklist.co.uk/wp-content/uploads/2016/09/DASH-2009-2016-with-quick-reference-guidance.pdf>

Richardson et al, forthcoming, Using appeal case summaries to assess changes in the presence of digital evidence in police investigations, Home Office Publication

Rumney, P. McPhee, D, Fenton, R. and Williams, A., 2019, A police specialist rape investigation unit: a comparative analysis of performance and victim care. Policing and Society. DOI: 10.1080/10439463.2019.1566329

- Smith, O. and Daly, E., 2020, Evaluation of the Sexual Violence Complainants' Advocate Scheme. 2020. Loughborough: Loughborough University
- Smith, O. and Skinner, T., 2017, How Rape Myths Are Used and Challenged in Rape and Sexual Assault Trials. *Social & Legal Studies*, 26(4): pp. 441–466
- St George, S. and Spohn, C., 2018, Liberating Discretion: The Effect of Rape Myth Factors on Prosecutors' Decisions to Charge Suspects in Penetrative and Non-Penetrative Sex Offenses. *Justice Quarterly*, 35(7): pp. 1280–130
- Temkin, J., Gray, J. and Barrett, J., 2018, Different functions of rape myth use in court: findings from a trial observation study. *Feminist Criminology*, 13(2): pp. 205–226
- Thiara, R. and Roy, S., 2020, Reclaiming Voice: Minoritised women and sexual violence key findings. London: Imkaan
- Thomas, C., 2020, "The 21st Century Jury: Contempt, Bias and the Impact of Jury Service", *Criminal Law Review* (11), pp. 987–1011
- Victims Commissioner, 2019, The reasons why victims of rape and sexual violence withdraw from the criminal process without seeking justice, available at: <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2019/08/OVC-analysis-victims-complaints-withdrawal.pdf>
- Willmott, D., 2018, An Examination of the Relationship between Juror Attitudes, Psychological Constructs, and Verdict Decisions within Rape Trials (Doctoral thesis). University of Huddersfield







© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3)

This publication is also available on our website at [www.gov.uk/government/publications](https://www.gov.uk/government/publications)

Any enquiries regarding this publication should be sent to us at [researchsupport@justice.gov.uk](mailto:researchsupport@justice.gov.uk)