



From Report to Court: Rape cases and the criminal justice system in the North East

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Introduction

This research was commissioned by the Northern Rock Foundation to examine progression of individual cases relating to rape through the criminal justice system, from reporting to conviction, across three police force areas in the North East of England. The study came about due to concerns within the criminal justice sector in the region that little is known about the detailed pattern of progression, attrition or related criminal justice system practice in rape cases.

Nationally the data on rape cases progressing through the criminal justice system is unable to provide a clear picture of what happens to individual cases from policing through to court outcomes (MoJ et al. 2013). A few previous studies have examined progression of individual cases, however one of these was prior to the Sexual Offences Act 2003 (which came into force in 2004) (Kelly et al. 2005), and none were concerned with the North East¹ (Metropolitan Police 2007; McMillan 2010). The current research thus provides a unique picture of the nature of rape cases reported to the police in the early 2010s in the North East of England and adds considerably to our understanding of the progression of individual cases through the criminal justice system.

What is ‘rape’?

Rape is a gendered crime in that only men can carry out the offence, although both women and men can be raped. The 2003 *Sexual Offences Act* defines rape as an offence involving intentional penetration of the vagina, mouth or anus of another person with his penis; where that person does not consent to the penetration; and where the alleged perpetrator does not reasonably believe that the person consented. The notion of consent is important, defined as where ‘a person consents if he agrees by choice, and has the freedom and capacity to consent’. Absence of consent can be assumed in certain situations such as violence or threat of violence, where the victim is unconscious, or has a disability that limits capacity to consent. For guilt to be proven the alleged perpetrator must have been found to have committed an act that meets the legal definition of rape, and must not have reasonably believed that the victim/survivor consented.

Aggregated data from the Crime Survey for England and Wales (CSEW) across the years 2009/10, 2010/11 and 2011/12, suggests that 0.5 per cent of women over age 16 were a victim of the most serious offences of rape or sexual assault by penetration in the previous 12 months, equivalent to around 85,000 victims on average per year, and less than 0.1 per cent (around 12,000) of men. Only 15 per cent of female victim/survivors of the

¹ Northumbria was however included in the rape thematic inspection that led to *Without Consent* (HMIC/HMPCSI 2007).

most serious sexual offences said they had reported the most recent incident to the police. Even so, victim/survivors are more likely to report the most serious sexual offences (MoJ et al. 2013).

Rape can have a devastating impact on every aspect of victim/survivors' lives, and make them vulnerable to further episodes of sexual abuse or violence (McMillan and Thomas 2009). In a recent study for the Sentencing Council victim/survivors stressed the long term physical, psychological and wider impacts of being the victim of a sexual offence. This included:

post-traumatic stress disorder, depression, anxiety, inability to sleep and other effects such as physical disability... the secondary effect of reducing their ability to work or study, to forge new relationships or maintain positive relationships with family and friends, or their ability to care for others, such as their children. Suicide attempts were also reported. (McNaughton Nicholls et al. 2012: 21)

Policy context and background

The research is situated in an ongoing process of review, policy and debate regarding criminal justice approaches to sexual offences and sentencing taking place both nationally and regionally. A series of government reports and reviews have highlighted the large attrition ('drop-out') in rape cases, and there have been considerable attempts by the police, the Crown Prosecution Service (CPS) and the courts to improve their responses to the investigation, prosecution and conviction of rape offences through training, better recording and provision of information, support and anonymity for victims, and monitoring of files. A Victims' Code of Practice was issued by the Home Secretary under the *Domestic Violence, Crime and Victims Act 2004* in 2006, and there have been attempts to improve victim treatment via Sexual Assault Referral Centres (SARCs) and Independent Sexual Violence Advisor (ISVAs) to support victims through the criminal justice process. This has included ISVAs based in a number of voluntary sector organisations and attached to Sexual Assault Referral Centres in the three police force areas within the current research.

Home Office figures have, since 2003, shown an increase nationally in the number of rapes recorded as crimes, and an increase in the actual number of convictions. In the three years to the beginning of 2012 there was a 26% increase in the number of rapes recorded by the police (HMIC/ HMPCSI 2012). Fifty-eight per cent of rape prosecutions in 2008 and 2009 resulted in a conviction for rape or another offence (Stern 2010), increasing to 63% in 2012-2013 (CPS communication). None the less, there has been a continual decrease in the overall proportion of such crimes reported to the police resulting in conviction, leading a succession of inspections, including *Without Consent* (HMIC/HMPCSI 2007) and *Forging the Links* (HMIC/HMPCSI

2012), to conclude that the justice gap for victims of rape has been widening. While policy has generally been viewed as positive and adequate, the justice gap and high attrition rate have been seen to result from failures 'in the implementation', with possible shortcomings in the working of police and Crown Prosecution Service (Stern 2010: 9).

The issue of false allegation has also been an ongoing concern. The Stern Review (2010) highlighted that perceptions that women often make false allegations of rape are strongly held by sections of the public, and may affect the way rape complaints are dealt with by police, prosecutors and juries. Sexual offences, and rape in particular, are often perceived in terms of 'myths' linked to ideas about appropriate female behaviour, drinking and clothing. This includes the myth that 'real rape' is carried out by a stranger, involves force and active resistance. Following a small number of controversial cases, where victims of rape were prosecuted after withdrawal of allegations (in particular in contexts of domestic violence), the CPS (2011) issued guidance on how prosecutors might deal with cases that appear to be 'false allegations' of rape. Moreover, a report to the Director of Public Prosecution (Levitt & CPSEDU 2013), covering a 17 month period where all CPS areas were required to refer relevant cases, indicates that of 5,651 prosecutions for rape only 38 (less than 1%) were for making false allegations of rape or rape and domestic violence. A report from the Association of Chief of Police (ACPO 2011), exploring and endorsing the use of specialised police rape units, also highlighted the importance of criminal justice practice moving beyond a focus on stereotypes.

The *Sexual Offences Act* 2003 includes a range of sexual offences some of which had not existed under earlier legislation, and was followed by definitive sentencing guidelines in 2007. The Government Green Paper, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* in 2010 noted that victims' views should be taken into greater account in the sentencing process (see McNaughton Nicholls et al. 2012).

Method

The research involved accessing criminal justice data held on the police and CPS databases to track a set of rape cases initially reported to the police during May or November 2010 in three police force areas. The research is what Daly and Bouhours (2009) describe as a 'flow' study, that is looking at individual cases from report to police through prosecution and trial, rather than merely a 'snapshot' at a particular time. Individual cases took up to 23 months to progress through the criminal justice system, and were tracked over that period of time.

Based on concerns that victim/survivors will not report rapes if they become aware that only a small proportion of cases reported to the police eventually reach the courts, Baroness Stern (2010), echoing the view of the Crown Prosecution Service, recommends that conviction rates should focus only on the prosecution stage and be reported as the proportion of cases resulting in conviction from charge. However, in the current research it was important to explore the entire progression and drop-out through the system from when cases are reported to the police and to conviction, as this allows us to understand practice within the criminal justice system more fully, and more closely echoes the experiences of victim/survivors.

Initially the intention was to examine both rape and sexual assault cases. However, given the timeframe and resources available this did not prove possible. For ethical reasons only cases where the victim was 16 or over at the time of reporting were accessed, thus excluding by default a number of teen rapes and child sexual abuse cases.

Data on rape cases reported to the police during the months of May and November 2010 were accessed in the three police headquarters, and anonymised by removing all names and other identifiers. In two of the police force areas, access was provided to the police data base, working alongside a police staff member, and it was possible to examine all cases from when they were recorded on the initial police log, through crime reports and information on outcomes held on the police national computer. In the third area only police summaries of cases were made available, some were not readily available and it was deemed too costly by the police for the files to be recalled, although a member of staff was available to answer more detailed questions about cases. In all three areas only closed cases were examined, and as the research progressed it was possible to include cases where outcomes had initially been pending. Where cases had proceeded to prosecution, the CPS nationally gave permission for case files to be accessed. CPS files were made available in the CPS headquarters in the North East, and anonymised data was compiled. This resulted in police data on 87 rape cases, and CPS and court related data on a further 17 cases that proceeded to court.

To provide further context for the progression of cases, interviews were carried out with a range of 16 professionals from criminal justice and non-criminal justice agencies (3 police officers, 1 CPS prosecutor, 4 ISVAs, 1 ISVA manager, 3 rape crisis counsellors, and 4 other sexual violence support staff). They were asked about the rape cases and range of victims worked with, victim/survivor expectations and experiences of the criminal justice system, attrition points, and what they considered to work well/or not so well.

The possibility of developing viable samples of victims to interview was also explored with practitioners in the three force areas, but time and resource constraints meant it was not possible to carry out such interviews. However, during the same period another study was commissioned by the Northern Rock Foundation that included women's perceptions about accessing the criminal justice system in cases of rape (Westmarland & Brown 2012). Also, a study for the Sentencing Council during the same period, included victim/survivors' views on conviction and sentencing of sexual offenders (McNaughton Nicholls et al. 2012)².

The tracking methods and analysis of the data built on those previously developed in research on domestic violence and the criminal justice system (Hester 2006 & 2013). The research was given ethical approval from the University of Bristol Ethics Committee and CPS nationally.

Terminology

A range of terms are used within the criminal justice system to denote victimisation and perpetration, such as victim or injured person, and offender or defendant for perpetrators to indicate the role and position of individuals at different stages of the criminal justice process. Non-criminal justice agencies may talk about victims and/or survivors, and offenders and/or perpetrators. For the sake of simplicity, this report will use the terms victim or victim/survivor and perpetrator throughout.

FINDINGS

Who was involved – the victims and perpetrators

The research examined 87 cases of rape reported to the police involving a total of 98 victims and 97 alleged perpetrators. All but four of the victims were female. As would be expected in rape cases, the perpetrators were all male, although one grandmother was seen as colluding in historical child sexual abuse. The ages of victims at the time of reporting to the police ranged from 16 to 57 and for perpetrators at the time of reporting from 17 to 85. Some of the historical cases, involving child sexual abuse, took place more than 30 years ago and this is reflected in the wide age range for the perpetrators.

While information available regarding ethnicity was incomplete, none of the victims were described as anything other than white British. The perpetrators also appeared to be largely white and probably British, with only two cases where the perpetrators were described in police records as a

² Research on behalf of the Sentencing Council (McNaughton Nicholls et al. 2012) included discussions with 46 victim/survivors or parent/guardians of victims of sexual offences of whom 27 cases had been sentenced.

group of ‘Asian men’, or involved perpetrators described as black French and Nigerian.

Echoing the national data on serious sexual offences (MoJ et al. 2013)³, the perpetrators were nearly all known to the victims in some way. Most were partners or ex-partners (27, 31% of cases), or were people who had known the victim more than 24 hours often via friends and family (25, 28.7% of cases), or were family or step family (21, 24.1% of cases). A small number had known the victim/survivor less than 24 hours (12, 13.8% of cases), perhaps meeting in a bar or at a party, but few could be classified as absolute ‘strangers’. At least 15 (17%) of the perpetrators had previously been arrested or possibly convicted for criminal offences, although not necessarily for sexual offences, including at least 4 of the 10 who were convicted⁴.

Rape case progression and attrition

Once reported to the police, cases may progress through the criminal justice system across three stages:

- Police involvement and investigation
- CPS involvement – advice, charging decisions and preparing the case to go to court
- Court - crown court with a jury trial and sentencing if found guilty

Cases may ‘drop-out’ (result in attrition) at any point during these stages. Kelly et al. (2005) suggest that institutional rules, previous and predicted experience and gendered expectations of behaviour interact to provide the contexts for such attrition. In the current research operational issues and decisions within the criminal justice system about different types of cases, as well as decisions by victims to withdraw, meant that cases were not deemed to be crimes or did not result in arrest, or failed to progress from arrest through charges and to conviction. Gendered expectations played a part to different extents in these decisions, and were evident in victim and perpetrator accounts. The cases that progressed furthest through the criminal justice system were likely to be those McMillan (2010) calls ‘good cases’, characterised by a combination of particular victim features (e.g. mental health, articulation, compliance) and incident features (supporting evidence, socio-sexual/alcohol consuming situation, injury consistent with account, even if no injury). There was less onus on perceptions of stereotypical ‘real rape’ (stranger, assault, public places, resistance, force),

³ The MoJ et al. (2013), using Crime Survey for England and Wales data from three years, found around 90% of victims of the most serious sexual offences in the previous year knew the perpetrator, compared with less than half for other sexual offences.

⁴ In another study the Metropolitan Police (2007) found in a two month sample that 27 out of 36 (75%) convicted rape offenders had a history of offending recorded on the Police National Computer.

although the latter may have played a more important role in the court stage⁵.

Four main groups of cases, with different victim and incident features could be identified with seemingly different trajectories and patterns of progression through the criminal justice system:

1. **Acquaintance** – this constituted the biggest group, and was where the perpetrator was known to the victim longer than 24 hours, or less than 24 hours, but was not a partner or family member. It included the two ‘stranger rapes’. (N=32, 36.8%).
2. **Historical** – where the rape took place in the past. The term ‘historic’ may sometimes be used by the police for cases reported seven or more days after the incident. In the current research it made sense for analytical purposes to categorise cases that took place further in the past, usually more than one year ago, as historical. Most involved child sexual abuse although there were also two historical domestic violence cases. (N =28, 32.2%).
3. **Domestic violence** – where perpetrators were current partners or ex-partners. (N=25, 28.7%).
4. In addition, two cases involved **recent** rapes by perpetrators who were **family members** (cousin and brother).

Since the late 1990s there has been increasing reporting of acquaintance rape seemingly as emphasis on ‘stranger rape’ as the real rape has decreased (Flowe et al. 2009). In the current research acquaintance rapes were not only the largest category reported to the police, but there were only a couple of rapes by actual strangers reported – one of which the police decided was a fabrication, and another which resulted in conviction.

The general pattern of progression of the 87 rape cases is set out in diagram 1 (see next page). Half (44/87, 50.6%) of the cases reported to the police were deemed to be crimes, and resulted in arrest⁶. The perpetrators in domestic violence rape cases were more likely to be arrested, and those in historical cases least so. However, cases involving rape as part of domestic violence were also the most likely to be withdrawn in the early stages due to fear and threats faced by the victims. Just over half the cases deemed to be crimes (23/44, 52.3%) were referred to the CPS for charging. Three quarters of the cases thus dropped out at the police stage. This is a larger drop out at the police stage than identified in other UK or international comparative research;⁷ however this may be the result of the sample omitting current

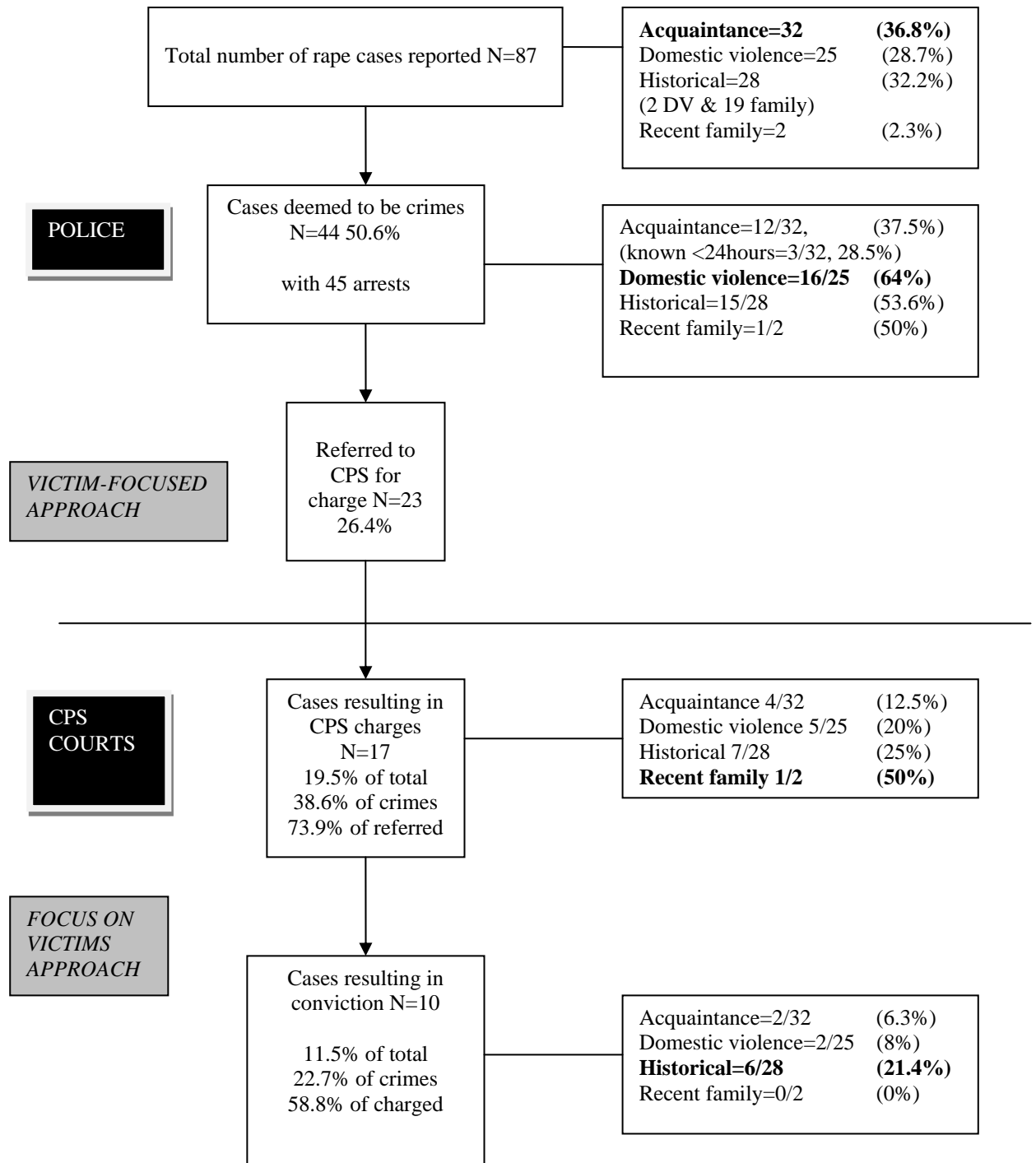
⁵ No court observation was carried out in the current study, but some court related information was available in the CPS files for some of the cases. See also Smith & Skinner (2012).

⁶ One further case resulted in arrest, where the police decided to ‘leave open’ the option of criming.

⁷ McMillan (2010) and Daly & Bouhours (2009) found that 65% of cases dropped out at the policing stage.

under 16s⁸. More than a third of cases deemed to be crimes resulted in CPS charges and proceeded to court (17/87, 38.6%), and a little over half of these resulted in conviction of any sexual or other offence (10/17, 58.8%)⁹.

Diagram 1 –case progression



⁸ Cases involving under 16s are more likely to proceed to prosecution (Temkin & Krahe, 2008).

⁹ The same conviction rate from charge as across five countries found by Daly & Bouhours (2009).

Historical cases were most likely to result in conviction, and tended to have supporting evidence via more than one victim and multiple disclosures. The rate from charge to conviction is the same as the national figures reported in the Stern Review (2010), and higher than the three year average reported by the Ministry of Justice et al. (2013), although none the of national figures reflected individual case progression.¹⁰

The following sections will consider different aspects of the progression of rape cases through the criminal justice system and explore in more detail when cases dropped out and the elements that appeared to feature in whether or not cases remained in the system.

Work across agencies

Following *Without Consent* (HMIC/HMPCSI 2007) the CPS and ACPO developed a sexual offences Protocol aimed at improving joint working to build effective cases and support victims, including through ‘full and early consultation’. Since 2011 the Director of Public Prosecutions has also introduced bi-annual Violence Against Women & Girls Assurance to assess performance in rape cases. Echoing these developments, police forces in the North East of England installed Police Rape Champions and police officers trained in sexual offence investigation techniques. The CPS set a standard for the role of rape specialist prosecutor and developed training to achieve this as well as enhancing the role of Area Rape Coordinators¹¹ to monitor case files for quality. Greater co-ordination was developed between criminal justice and other agencies. In the current research, interviews with both police and CPS highlighted these shifts as positive in enhancing the criminal justice approach in rape cases.

It should be noted that the force area with a well developed ‘strategy group’ involving a wide range of criminal and non-criminal justice agencies was also the most effective in achieving progression of cases through the criminal justice system (see below). However, non-criminal justice agency staff also highlighted that different ways of organising links across agencies had led to differential degrees of information exchange and access to support for victims.

Police involvement

Court and Crown Prosecution Service inspections indicate that the initial police response to sexual offences has improved in recent years, including improvements to the way victims of rape are treated. Call handling systems have been found to be more responsive, there is increasing use of specially

¹⁰ The Sexual Offending Overview found 49% of rape cases proceeded against resulted in conviction, but a further 12% of cases still had outcomes outstanding (MoJ et al. 2013).

¹¹ CPS Rape Co-ordinators have more recently become VAWG Co-ordinators.

trained officers or their equivalents, victim/survivors tend to have access to SARCs, and use of early evidence kits is widespread. (HMIC/HMPCSI 2012). These practices were also evident within force areas in the current research.

Analysis of police records as well as interviews indicated that the police were to varying degrees adopting the ‘victim-focused’ approach recommended in the *Rape Experience Review* (Payne 2009) with an emphasis on believing victims from when they report and supporting them to remain in the criminal justice system. One force area in particular had made a considerable effort to adopt such an approach, alongside a concerted effort to develop multi-agency links, and also had the highest proportion of cases proceeding through to charges, more cases going to court and a higher rate of convictions (significantly different at Chi-Square, $p < .05$)¹².

From report to crime

As indicated earlier, only half of the cases reported to the police ended up being defined as crimes. Two aspects (potentially contradictory but often intertwined) appeared to underpin decisions by the police as to whether a case could be seen as a crime: the victim-focused approach, that a report would automatically be deemed a crime until investigation showed otherwise; and that a crime would require a ‘rational victim’¹³ with a consistent story. Cases deemed not to be crimes tended to be those:

- where someone other than the victim reported the incident
- where the victim had mental health problems or learning disabilities, or was in the care of social services
- where the victim had reported previous incidents to the police that did not progress
- where the incident appeared to have been fabricated for a variety of reasons including fear of reprisal from partners or parents
- where individuals (victim/survivors and others) appeared to be contacting the police for advice and to ‘talk’ and did not expect, or did not want, cases to proceed.

Echoing the national picture (MoJ et al. 2013) the largest proportion of cases not considered to be crimes (at times following consultation with the CPS) were where individuals other than the victim/survivor had reported the rape allegation to the police. Less than a third of cases (13/44, 29.5%) where the parent, partner, other family, friends, perpetrator, or professionals had contacted the police in the first instance were deemed crimes. In one instance the victim’s mother reported that her daughter had been raped by a

¹² The finding applied across the three force areas, and also when only the force areas with the most detailed data were included.

¹³ See also Smith & Skinner (2012).

male acquaintance at their house. The police decided as a result of their investigation that this incident was not a rape and that 'consensual sexual activity appears to have taken place'. The daughter appeared to be trying to hide a relationship between her and the male acquaintance from her mother. 'On the balance of probabilities' the police deemed that no offences had been disclosed and no crime had been committed. In another instance a friend had contacted the police after a woman said a man had followed and attacked her. After discussion with the police the woman agreed that she had not been raped, but was angry that the alleged perpetrator had asked her if she wanted sex as it made her look, and to get a name of being, 'easy'. She made a retraction statement to this effect. In different ways these cases indicate how women may be negotiating gendered sexual norms and expectations and consequently end up engaging with the criminal justice system.

In one case, which the police recorded as a 'false allegation', two young women said that six Asian men had taken them to a derelict flat and that they had been raped by one or two men each. The police began their investigation, obtained medical evidence from both women and interviews. However the women had placed information on Facebook and in emails that indicated that the sex had been consensual and no crime had occurred. As the case involved very young women (aged 17) and sex with multiple partners, questions may perhaps be asked as to whether the women were subject to a wider context of exploitation and sexual grooming. Following the current research the police carried out further checks to ensure that the case was indeed a fabrication.

In some cases the police took into consideration previous criminal justice system involvement, as indication both of vulnerability and of potential credibility as a witness if the case was to proceed. For instance, in a domestic violence case the victim reported that she was raped a week ago by her ex-partner, and had been so previously. The police had a number of incidents of rape of the victim by the same perpetrator recorded, but also of rape by another ex-partner where she had withdrawn her complaint. Following an interview with the victim the police decided to discuss the case with the CPS 'due to history of victim' and the fact that she was vulnerable to further abuse. The victim withdrew her complaint, and provided a withdrawal statement. The case was not recorded as a crime.

Mental health and learning disabilities

Cases involving very vulnerable victims, such as those with extensive mental health problems, were also those least likely to progress through the criminal justice system or to be seen as crimes in the first place. Mental health issues

were found to be a significant feature in cases that did not result in conviction (Chi-Square, $p < .05$).

Nearly one in five victims (17/87, 19.5%) had a mental health problem according to the police record. Most were historical cases (11/17, 64.7%), with rapes and sexual abuse taking place when the victims were children, and the abuse possibly attributing to the mental health problems. Only about a third (35.2%) of cases where the victim had mental health problems resulted in arrest, compared to half of the cases where no such problems were recorded (54.9%). Previous studies have shown that cases involving victims with mental health problems or learning disabilities rarely result in prosecution of the offender (Harris and Grace 1999; Lea et al. 2003; Kelly et al 2005). This pattern is repeated again in the current research. Kelly et al. (2005) also point out that 'This is especially concerning given the accumulation of data that women in these groups are targeted for sexual assault'. In the current study police records also describe the particular vulnerability of such women, with further instances of abuse by parents, siblings, partners and/or others recorded.

In more than half the cases where victims had mental health problems someone other than the victim, often a mental health or other social care professional, reported the rape to the police, sometimes without the victim's agreement. For instance, one social worker felt she was obliged to report her client's disclosure of historical child abuse to the police although her client did not want any police involvement and the worker would have preferred some other report mechanism to be in place but did not know what else to do:

[According to the police record] The caller states that she is obliged to report this to the police...and that there is no arrangement in place where they can speak to the Vulnerability Unit.

Some victims with mental health problems were described as difficult to understand, confused or even delusional. The police saw their stories as inconsistent and did not take the cases further. In one instance paramedics had been called by the victim's brother 'due to her state of mind', and they called the police when she mentioned she had been raped. The police recorded that: 'She was very difficult to understand and took to rambling about random matters but kept returning to the rape...'. The officer did not believe there was any credence to the claims made regarding rape by two ex-partners whom the victim intimated visited her as demons. She was subsequently taken to the local mental health unit 'for professional advice and treatment'.

Five victims were reported to have learning difficulties. One case resulted in arrest, where the victim told the police that she had had sex with a neighbour 'but did not like it', but no further action was consequently taken. None of the cases where victims had learning disabilities were referred on to the CPS for charge or advice, and none resulted in conviction.

From crime to 'no crime'

In official crime statistics 'no crimes' are considered the first stage where a criminal offence can drop-out once a crime has been initially recorded by the police¹⁴. In the current research between half and two thirds of the cases recorded by the police (53/87, 60.9%) were initially deemed to be crimes. However, following further investigation by the police, nine of these cases were reclassified as 'no crime' (9/53, 17%). Three were changed to 'no crime' following retraction of the complaint by the victim, and, following the pattern outlined earlier for cases not deemed to be crimes, in four cases someone other than the victim/survivor (a parent, other family member, friend or professional) reported the case to the police.

One of the cases where the victim/survivor retracted the complaint involved a very drunk woman who thought she had been raped by two men she met in a bar. The police arrested and bailed both men, but in the subsequent police investigation CCTV evidence and interviews with others present indicated that the events were not as the woman remembered.

Also in this group of cases was the second, and only other, acquaintance case labelled specifically by the police as a false allegation. This involved a report of 'classic' attempted rape, where a woman says she has been approached from behind whilst walking across the road to her own home and a stranger pulls her into an alley, tries to force open her legs, and she struggles at which the attacker ran off. The woman was taken by the police to the SARC for interview and examination, and the police arrested the alleged perpetrator. When told that an arrest had been made 'she broke down and confirmed that she had not been attacked and that she was drunk and when trying to tell her partner about what really happened the whole thing was taken out of context resulting in the Police being notified and a rape allegation being made'. The police were concerned that she might be frightened of her boyfriend and checked if she was in a domestically abusive relationship.

The inspectorate report *Forging the Links: Rape investigation and prosecution* (HMIC/HMCPSI 2012) outlines the 'no crime' rates for rape as 11.8% for 2010/11, and 10.8% for 2011/12. The figure from the current research, that

¹⁴ That is, in official figures 'no crimes' are a proportion of cases that were initially recorded as crimes (see MoJ et al. 2013).

nearly one in five cases was reclassified as ‘no crime’ thus appears high. The reason can possibly be attributed to the victim-focused approach of the police, and the force area that placed most emphasis on this approach also had a high rate of ‘no crime’ cases.

Alcohol

The police talked about there having been a major change in their approach to cases where victims had been drinking due to the changes in the notion of consent since the 2003 *Sexual Offences Act*. In particular, if a victim is so drunk that they are unaware what has happened, this also means that they cannot have consented to the sexual activity.

Alcohol was a feature in at least a third of cases, and victims were recorded as drunk in about one in five cases (19/87, 21%). Three-quarters of instances with a drunk victim were acquaintance cases (14/19, 73.7%). Half were with perpetrators known less than 24 hours and these were slightly less likely to be seen as a crime although more were initially arrested. The police were often careful to investigate (via CCTV, forensics, interviews) whether an incident where the victim was too drunk to know what had taken place had actually been consensual. However, as the following incident indicates, this was not the only or even main feature in their decision whether or not to proceed. In this instance, reported by the victim/survivor’s friend, the woman was very drunk and could not remember what had taken place, but had assumed when she realised she had had sex with a man 33 years older than her (she was in early 20s) it must have been rape as ‘she would not have had sex with him if she was sober’. The police found that her clothes were intact and interviews with others present suggested that the events probably involved consent, and the incident was therefore not recorded as a crime. The question remains, however, whether the woman would have been able to consent given her highly intoxicated state.

Most cases involving a drunk victim were initially recorded by the police as crimes (13/19, 68.4%) although three of these were later changed to ‘no crime’. Four of the 16 cases that proceeded to trial had a victim who was very drunk at the time of the rape, but only one of these resulted in conviction.

From police involvement to prosecution

‘Victim-focus’ and ‘focus on victims’

As indicated earlier, the police were developing an increasingly ‘victim-focused’ approach that aims to support and believe victims so that they may remain in the criminal justice system and so that there is a more realistic possibility of progression and apprehension of the perpetrator. In contrast, analysis of CPS files indicated that the CPS may be characterised as having

an approach with ‘focus on victims’, where what matters and is deemed central to decisions about taking a case forward is: the credibility of the victim (consistency of account and with other witnesses, i.e. victim believable); supporting evidence (through other witnesses, other victims or forensic evidence); seriousness of offence (fits legal definition of penetration); and that it is in the public interest that the perpetrator is convicted (behaviour is part of a pattern). Thus, in the CPS ‘focus on victims’ approach, belief in the victim’s account is central and is at issue. What prosecutors assume juries will accept is also important, and there was some evidence that prosecutors were questioning whether juries would necessarily take a ‘stereotypical’ view of rape cases. The ‘victim focused’ and ‘focus on victim’ approaches are none the less quite different and potentially contradictory where the victim/survivor’s experience of the criminal justice system is concerned, with the former more positive and the latter more negative.¹⁵

Prosecution

The police considered that 23 cases should be referred to the CPS for charging decisions. The CPS consequently decided to apply charges in three-quarters of these cases (17/23, 73.9%). Whereas most cases reported to the police had involved acquaintance rape, many of these dropped out at the policing stage, and were least likely to result in charges. Only 12% of acquaintance cases resulted in charges. Many of the domestic violence rape cases had been deemed crimes and resulted in arrest due to the very serious nature of the incidents. However, often due to withdrawals by the victims, only 20% of domestic violence cases resulted in charges. Historical cases were most likely to result in charges (25% of all historical cases), often because there was more than one victim, because victims had disclosed similar accounts to a variety of people at different times, and because medical or social services records provided supporting evidence.

It was apparent from case files that the police did not always agree with the CPS decisions. In one instance, where a male victim reported child sexual abuse the CPS said that there was not enough evidence to proceed. However, the police queried this decision and the file was resubmitted. None the less the case resulted in no further action and the police subsequently recorded that it was undetected.

Only four cases involving mental health problems were referred by the police to the CPS for charges, and of these only one resulted in CPS

¹⁵ In recent speeches Keir Starmer QC, the Director of Public Prosecutions, has similarly suggested that one of the problems in child sexual abuse cases is that the system is focusing on victim credibility rather than alleged offenders.

charges. Another was left on file as a rape that was undetected. None resulted in conviction. In one of the three cases with mental health problems not to result in charges following CPS involvement, a woman was reported to have been repeatedly raped by her brother-in-law some years previously. The police interview took place with a care co-ordinator present due to victim suffering from PTSD depression and psychosis. The police record that the victim made ‘clear disclosures’ of historical rapes, and the alleged offender was arrested. The CPS deemed that no further action was possible due to inconsistencies between the victims account and accounts by other family members. The CPS were concerned that a defence counsel would be able to capitalise on the fact that family members had different accounts and had heard differential degrees of disclosure by the victim. The CPS therefore did not see a realistic possibility of conviction – although ‘aware that there can be understandable reasons why immediate disclosures were not made’.

In another instance that resulted in no further action, an acquaintance was reported to have raped a woman when she was asleep. The CPS highlighted the large amount of psychiatric intervention that the victim had had over time and that she was very vulnerable. They emphasised that there were inconsistencies in her account that made it difficult to recommend that the case progress any further, and also pointed out that cases involving people with psychiatric problems are always very difficult to take forward.

Proceeding to Trial

In all of the 16¹⁶ cases that proceeded to trial in Crown Court, the perpetrators initially denied and pleaded not guilty to carrying out any sexual or other offence, and most continued to deny that they had done anything wrong. Ten cases resulted in conviction (see diagram 2).

Diagram 2

Cases proceeding to Crown Court N=16							
Acquaintance N=4		Domestic violence N=4		Historical* N=7		Recent family N=1	
conviction	acquittal	conviction	acquittal	conviction	Acquittal	conviction	acquittal
2	2	2	2	6	-	-	1

* Case results in hung jury, and victim withdraws before retrial

In two instances the perpetrators inadvertently admitted during statements to the police that they had raped the victim, but they did not see this as expression of guilt. For one of the men it was because he did not understand the legal meaning of penetration. He said his penis did enter the

¹⁶ One further case, involving historical domestic violence rape, appeared to drop out at the pre-trial stage when a victim said she did not want to attend court.

woman's vagina, but was not inserted all the way in, he just moved it a little bit but not in the manner of 'having sex'. The CPS decided that within the legal definition he was saying that he did penetrate the woman. In the other case, the perpetrator argued that the woman had consented. He described the sexual activity that had taken place, including penetration, to show the woman's consent and that she was 'up for it', despite her being extremely drunk and probably asleep and thus incapable of making decisions. The CPS wanted analysis of forensic samples to determine whether the rape was vaginal and/or anal, however in the interests of saving public money submissions were not prepared to send off the samples, although indicated this would be done if the perpetrator at a later stage pleaded not guilty on the basis that no intercourse took place (which did not happen). The jury appeared to accept that the victim consented because she seemed to assent despite being asleep, possibly because she thought that it was her boyfriend in the bed rather than the perpetrator. Neither case resulted in conviction.

In five cases the jury decided the perpetrator was not guilty. Of these, the judge ordered that an acquaintance rape should 'lie on file', and applied a restraining order 'for life' on a domestic violence perpetrator.

Conviction

The cases resulting in conviction were, perhaps unsurprisingly, where there was possibility of supporting evidence via other witnesses, strong forensic evidence such as DNA (in two cases), and the victim was not drunk or unduly under the influence of alcohol. In total, ten cases resulted in conviction, of which most (6/10) were historical, two involved an acquaintance (one a stranger) and two were in the context of domestic violence. Two of the cases had two or more victims who provided similar accounts. One of the acquaintance cases involved a stranger at a party and his DNA was found in the victim's clothes. Another acquaintance rape was corroborated by a friend who was present and also DNA evidence. The historical cases also tended to have evidence in medical, social services or personal records that supported the victims' accounts.

In the one case involving historical rape by the victims' brother-in law, the file indicated that the jury could not decide on a verdict and the case was considered for retrial. However, despite support from an ISVA and the police, the victim did not want to go ahead and was concerned that she had not been believed. She did not want to go through it all again. The police talked with her and consequently recommended that the case be withdrawn.

In a further case a domestic violence rape victim refused to give evidence in court despite extensive support at court from an ISVA. However the perpetrator pleaded guilty to assault, albeit not to the rape. In the other

domestic violence case the perpetrator also eventually pleaded guilty to non-sexual offences. The DNA evidence in the stranger rape case led to the perpetrator pleading guilty to rape, and in one of the historical cases (involving the rape of three victims by the same perpetrator) the perpetrator pleaded guilty to a smaller number of less serious sexual offences. The perpetrators in the remaining six cases resulting in conviction continued to deny any wrongdoing.

Conclusions

- Cases involving the most vulnerable victims were least likely to progress to any extent through the criminal justice system. For those with a mental health problem or learning disability in particular, it may still be argued, as do Kelly et al. (2005: 55) that the justice gap is a chasm, which will not be bridged unless specific attention is devoted to developing prosecution strategies that provide redress for extremely vulnerable victims. While victim vulnerability is identified as an aggravating factor in the 2003 *Sexual Offences Act*, in practice vulnerability is deemed to undermine victim credibility.
- Three quarters of the cases dropped out at the police stage, and many involved very vulnerable victims.
- Some voluntary sector agencies also wanted clear pathways for information exchange and links to support for victim from the criminal justice system. Others sought advice from the police but did not want to proceed through the criminal justice system. This suggests a need for a range of clear referral and care pathways.
- There were four different groups of cases with different progression trajectories: acquaintance, domestic violence, historical and recent family. Although domestic violence cases were most likely to be seen as crimes, historical cases were more likely to result in conviction.
- The victim-focused approach increasingly adopted by the police (emphasis on believing victims and supporting them to remain in the criminal justice system), and the ‘focus on victims’ approach (credibility of victims, supporting evidence) applied by prosecutors and courts are contradictory.
- There was some evidence that prosecutors were questioning whether juries would necessarily take a ‘stereotypical’ view of rape cases.
- Use of a victim-focused approach, alongside a concerted effort to develop a wide range of multi-agency, led to the highest proportion of cases proceeding through to charges, more cases going to court and also a higher rate of convictions.
- The research found the same rate from charge to conviction as in analysis of sexual offences cases by the Ministry of Justice (2010) and the Stern Review (2010) and higher than the three year average reported by the Ministry of Justice et al. (2013).

References

- Daly, K. & Bouhours, B. (2009) Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries, *Crime and Justice: An Annual Review of Research*, 39.
- Flowe, H.D., Shaw, S.E., Nye, E. & Jamel, J. (2009) Rape stereotyping and public delusion, *British Journalism Review* 20(4): 21-25.
- HMIC/HMCPPI (2007) *Without Consent*. London: HMIC & HMCPPI.
- HMIC/HMCPPI (2012) *Forging the links: Rape investigation and prosecution. A joint review by HMIC and HMCPPI*. London: HMIC & HMCPPI.
- Harris, J. & Grace, S. (1999) *A Question of Evidence? Investigating and Prosecuting Rape in the 1990s*. London: Home Office.
- Hester, M. (2006) Making it through the Criminal Justice System: Attrition and Domestic Violence, *Social Policy and Society* 5 (1): 79-90
- Hester, M. (2013) Who does what to whom? Gender and domestic violence in English police records, *European Journal of Criminology*, online April 2013.
- Kelly, L., Lovett, J. and Regan, L. (2005) *A gap or a chasm? Attrition in reported Rape cases*. Home Office Research Study 293. London: Home Office
- Lea, S., Lanvers, U. & Shaw, S. (2003) Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors, *British Journal of Criminology* 43:583-99.
- Levitt QC, A & Crown Prosecution Service Equality and Diversity Unit (2013) *Charging Perverting the Course of Justice and Wasting Police Time In Cases Involving Allegedly False Rape and Domestic Violence Allegations. Joint report to the Director of Public Prosecutions*. London: CPS
- McMillan, L. (2010) *Understanding Attrition in Rape Cases*, End of Award Report to ESRC. Swindon: ESRC
- McMillan, L. & Thomas, M. (2009) Police interviews of rape victims, in Horvarth, M. & Brown, J. (eds) *Rape: Challenging contemporary thinking*. Cullompton: Willan Publishing. McNaughton Nicholls, C., Mitchell, M., Simpson, I., Webster, S. & Hester, M. (2012) *Attitudes to Sentencing Sexual Offences*. London: Sentencing Council
- Metropolitan Police (2007) *The Attrition of Rape Cases in London: A Review*. London: Metropolitan Police.
- Ministry of Justice, Home Office and Office for National Statistics (2013) *An Overview of Sexual Offences in England and Wales*, Statistical bulletin.
- Payne, S. (2009) *Redefining Justice: Addressing the individual needs of victims and witnesses* London: Home Office
- Smith, O. & Skinner, T. (2012) Observing court responses to victims of rape case and sexual assault, *Feminist Criminology* 7(4): 298-326.
- Stern, V. (2010) *The Stern Review: A report by Baroness Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales*. London: Home Office
- Temkin, J., & Krahé, B. (2008). *Sexual assault and the justice gap: A question of attitude*. Oxford: Hart.
- Westmarland, N. & Brown, J. (2012) *Women's views on the reporting of rape, domestic violence and stalking within the Cumbria/Durham, Cleveland/Northumbria Constabulary area*. Durham: Durham University & Northern Rock Foundation.

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