

# Report of the Independent Review into The Investigation and Prosecution of Rape in London

Rt Hon Dame Elish Angiolini DBE QC

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Rape Crisis South London - RASASC

Rape Crisis West London - Women and Girls Network

Respond

Her Centre

Eaves Housing

Eaves for Women

Victim Support

Open Doors

SWISH

Camden LGBT Forum

Terence Higgins Trust

Survivors UK

Migdal Eemunah

Women Against Rape

GALOP

The review also spoke to numerous survivors of rape who had, and had not, reported to police. The review is extremely grateful to them all.

# Foreword

On 9 June 2014 Sir Bernard Hogan-Howe, the Commissioner of the Metropolis, announced the intention to launch an independent review of how the Metropolitan Police Service and Crown Prosecution Service investigate and prosecute rape in London. He explained, 'There is no doubt that in recent years we have made fundamental and significant changes in our approach to rape investigation and I am proud of how far we have come. But it is an area which always tests us and there is always more we can do to improve our service to the most important people; the victims.'

I was privileged to be invited by the Commissioner and the Director of Public Prosecutions, Alison Saunders CB, to carry out this independent review of how allegations of rape are investigated and prosecuted in London. For over 27 years the investigation and prosecution of the harrowing crime of rape and other sexual offences have formed a significant part of the duties I carried out in various different capacities as a Public prosecutor and later, as a Law Officer.

Rape cases present some of the most difficult and complex challenges for the police and prosecution in London. Overcoming those challenges requires a sound legal framework, appropriate policies, the highest levels of investigative and communication skills and appropriate resources. Addressing the robust evidential requirements and any ingrained prejudice or stereotypical beliefs about those who deserve the protection of the law also demands exceptional and creative preparation and advocacy.

The effectiveness of each of the police and the prosecution in this respect is very much dependent on the effectiveness of the other. Likewise, both the Police and Prosecution in London rely heavily on the cooperation, support and effectiveness of a number of other critical agencies and professionals, including staff of the NHS, Sexual Assault Referral Centres, Local Authorities, members of the Bar, the Courts and Independent Sexual Violence Advisors.

Any examination of the Metropolitan Police Service and Crown Prosecution Service cannot sensibly be looked at in isolation from their interactions with these other organisations and their members, nor can it be divorced from the law that governs this area of criminality and the policies that set out how their respective obligations should be implemented.

Most importantly, the professionalism of the response to complainants and the need for fairness to suspects has to be at the heart of any assessment of how effectively the police and Crown Prosecution Services response is carried out. While the recommendations contained in this report are aimed at the effectiveness of the police and prosecution they must, inevitably, consider what adjustments to law, policy and the working practices of all of the involved agencies might also facilitate significant improvement or, in some instances, radical change to the investigation and prosecution of rape allegations.

This interdisciplinary context for the review required the support of over 250 interviewees and 50 focus groups. I am enormously grateful to the very wide range of participants who shared their knowledge and views in such a constructive and frank manner. I am especially grateful to those complainants who shared their experiences of the system with me and showed great courage and dignity in recounting these experiences in the hope of improving matters for future victims of this dreadful crime.

I hope the suggestions for change included in this report will assist the Commissioner and the Director of Public Prosecutions to put into practice that which they genuinely wish to deliver in the public interest but which cannot be achieved consistently because of the operation of the complex set of factors discussed in this report.

Some of the recommendations will require a willingness to undertake radical change in the approach to these cases. They also require a sincere commitment from Government to resource the enormous burdens being carried by officers of both Services in undertaking this most serious and anxious set of responsibilities. Successive Governments have actively promoted the increase in reporting of rape. There is an urgent need to ensure that the system is not overwhelmed because of a failure to fund the positive outcome of that policy.

Throughout this review I have been assisted by Charlotte Triggs OBE, a Senior Policy Advisor in the Crown Prosecution Service and Detective Superintendent Jason Ashwood of the Metropolitan Police Service who were both seconded to the review as my Secretariat. Their outstanding expertise, knowledge and dedication to this review have been crucial to this report and I am enormously grateful to them both.

Managing the logistics of the review and securing the support and attendance of over 250 individuals at various locations throughout London was achieved through the exceptional efforts of SOIT Officer Richard Unwin, Detective Sergeants Hannah O'Sullivan and Mark Simpson and Detective Constable Rachel Blackwell of the Metropolitan Police Service, all of whom also ensured the whole process ran to time and without any hitches. I am very much indebted to them for their work.

Finally, many thanks to my Executive Assistant, Amanda Moss BEM, for her unstinting support throughout the review.

A handwritten signature in black ink that reads "Elish Angiolini". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

Elish Angiolini

# Introduction

1. In May 2014 The Right Honourable Dame Elish Angiolini DBE QC, former Lord Advocate and Principal of St Hugh's College, University of Oxford, was asked by the Commissioner of the Metropolis, Sir Bernard Hogan-Howe QPM and the Director of Public Prosecutions, Alison Saunders CB to undertake an independent review into the investigation and prosecution of rape in London. The review was instructed to evaluate a range of complex issues on which both the Commissioner and Director of Public Prosecutions wished an independent perspective. Dame Elish was asked to evaluate current services and assist the improvement of the response of the Metropolitan Police Service and Crown Prosecution Service to rape allegations in London.

## Terms of Reference of the Review

*'Independent Review into the Investigation and Prosecution of Rape in London by Dame Elish Angiolini DBE QC.*

*The purpose of the review is to carry out an independent examination of the police and prosecutorial responses to rape in London in order to identify how victim confidence, reporting and attrition of rape can be improved. The review will take an evidence based and victim centred approach to developing a range of recommendations for the Metropolitan Police Service and Crown Prosecution Service by February 2015. The review will include,*

1. *An evaluation and benchmarking of current practice including,*
  - 1.1 *An assessment of police and Crown Prosecution Service data;*
  - 1.2 *Consideration of the effectiveness of police and Crown Prosecution Service structures and processes;*
  - 1.3 *Professional standards, governance and performance management; and*
  - 1.4 *Consideration of feedback from complainants on the police and Crown Prosecution Service.*
2. *Completion of a review of a sample of cases at each stage of the investigation and prosecution including,*
  - 2.1 *Consideration of procedural issues to identify areas of change to policy and practice;*
  - 2.2 *Identification of any attitudinal barriers which might prevent an effective criminal justice response particularly on issues related to consent, vulnerable complainants and sexual exploitation;*
  - 2.3 *Consideration of support provided to complainants and approach to offenders; and*
  - 2.4 *Consideration of quality of decision making.*
3. *Consultation with panels of experts and practitioners (including third sector victim organisations, the National Health Service, police, prosecutors, judiciary and other partners) on issues highlighted in this review. This will include consideration of,*
  - 3.1 *Support complainants require to report rape;*
  - 3.2 *Pathway outlining how the police, Crown Prosecution Service and health services can interact with each other in order to combine victim care with the criminal justice response;*
  - 3.3 *Defining what successful outcomes for complainants may be including, but not limited to, a criminal justice outcome; and*
  - 3.4 *Arrangements for external organisations to hold the police and Crown Prosecution Service accountable.*
4. *In carrying out the review, Dame Elish will,*
  - 4.1 *Have access to details of all relevant information including policies, procedures, management information, files (with full access);*
  - 4.2 *Have access to members of staff within the Metropolitan Police Service and Crown Prosecution Service;*

- 4.3 Seek information from outside sources especially third sector organisations;
- 4.4 Build on learning from key activities including Baroness Stern's Review into the Handling of Rape Complaints by Public Authorities in England and Wales (2010) and the Police/Crown Prosecution Service National Scrutiny Panel on Rape (2014);
- 4.5 Report findings and recommendations from her review to the Crown Prosecution Service and MPS, including highlighting best practice, ahead of publication; and
- 4.6 Liaising with and taking into account the 2014 Crown Prosecution Service Review of Rape and Serious Sexual Offences Units'.

The review relates only to the service provided to complainants of rape and serious sexual offences who are supported by Sapphire investigation teams. Offences that are perpetrated against children within parent or carer relationships are within the remit of the Child Abuse Investigation Teams and fall outside the scope of this report. Serious sexual offences against children falling outside of parent or carer relationships are dealt with by Sapphire investigation teams. However, the remit for this review focusses on the response to adult complainants only as the specifics of managing child complainants demand a further and distinct skill set which was outwith the scope of this review. There are, therefore two sets of data. Appendix A relates to all allegations of rape and penetration which are investigated within the Metropolitan Police Service. Appendix B relates only to rape and penetration offences investigated by Sapphire investigation teams. Sapphire crime data will include complainants who are children.

2. The review took place in three distinct phases,
  - Phase 1. Benchmarking of current structures, service provision and performance of both the police and Crown Prosecution Service.
  - Phase 2. A review in London of a broad sample of police and Crown Prosecution Service case files with a particular emphasis on any attitudinal barriers that may 'prevent an effective criminal justice response'.
  - Phase 3. Consultation with panels of experts, practitioners and complainants of rape in order to identify how the service to complainants can be improved.

# Executive Summary

3. Rape is one of the most serious but misunderstood crimes and presents investigators and prosecutors with unique challenges. In its variety and complexity rape often presents difficulties far in excess of those encountered in investigating other crimes, including homicide. Rape has a devastating and long-lasting effect on its victims and yet it is highly probable that in most cases there will be no visible sign of injury. Contrary to popular stereotyping, rape is most commonly perpetrated by someone known to the complainant, who is often a current or former spouse or partner.
4. Rape is a crime that occurs across all communities regardless of the socio-economic background of the victim and perpetrator. However a number of different pressures may add to the profound trauma of rape. These include mental ill-health, learning disability, and previous sexual abuse. Religious or cultural pressures, immigration status and language barriers are evident in many cases. Reasons such as self-blame, shame and guilt result in many complainants never reporting, or finding the strength to do so only weeks, months or even years after the event. Self-loathing, a desire for privacy and a compulsion to carry on as normal are common responses to trauma. Complainants who choose to report, even relatively soon afterwards, may provide an inconsistent account for a variety of reasons including fear, trauma, embarrassment and genuine error, rather than for the more commonly assumed reason of dishonesty.
5. With a population in excess of 8 million, London's size and geography make unique demands on policing. It is also by far the most ethnically and culturally diverse city in the United Kingdom, a diversity that is reflected in the profile of complainants and suspects who the police encounter when investigating cases of rape. The rise in the number of reports of rape year on year present the police with an enormous challenge in London, especially given the complexities of investigating rape, a challenge which is not made any easier by overstretched resources.
6. This is the context in which the Metropolitan Police Service's Sapphire investigation teams respond to complainants of rape, support their needs and investigate offences. These teams are situated within five geographical 'hubs' across London. It is the role of the Crown Prosecution Service in London to determine whether to prosecute the offences submitted by the police for a charging decision and, where they authorise charge, to prepare the case for prosecution and the court process.
7. Although this review relates specifically to London, a study of recent national studies that have examined how rape is investigated and prosecuted was essential. These reports have informed the way the Metropolitan Police Service and the Crown Prosecution Service handle rape today.
8. The review found a history of intensive study and a high level of consensus among the various independent reports with many shared themes and core recommendations. A key finding was the consistent approval of the policies applied to the investigation and prosecution of rape, and the identification of an inability to implement those same policies comprehensively and successfully. This review agrees with those findings and found the same situation in London.
9. Proving that the complainant did not consent and the defendant did not reasonably believe that the complainant consented, is the key issue in many rape cases. The Sexual Offences Act 2003 states, 'a person consents if he agrees by choice and has the freedom and capacity to make that choice.' Today, many cases investigated by the Metropolitan Police Service involve a complainant who is incapacitated by alcohol or drugs. The legislation, unlike the corresponding legislation in Scotland, does not address the issue of self-induced intoxication and it has been left to the Court of Appeal in the case of Bree to clarify the situation. Following this review it is recommended that consideration is given to amending the Sexual Offences Act 2003 to incorporate the principles set out in Bree so that the impact of severe intoxication from substances including alcohol is embedded in the legislation and that a powerful social message is established.

10. The review examined the wealth of policy and guidance available to the police and prosecutors, much of it invaluable for keeping practitioners up to date. However, the review questions whether the information is published in a way that best meets the needs of police officers and prosecutors, whose working lives involve overwhelming workloads and competing priorities. The review recommends that the police and Crown Prosecution Service ensure policies are consolidated, updated and presented in a way that practitioners can easily access and absorb; and that they are reinforced by effective training.
11. Complainants also told the review how hard it can be to access information when seeking help following rape. Attending a police station can be an insurmountable barrier and they considered it vital to have alternative places to report. The review suggests that much more information, including improved signposting to specialist support services, and in languages other than English, is needed. It should be more conspicuously available on the internet, in pharmacies, GP surgeries, community centres, churches, supermarkets, public toilets and educational as well as other public buildings.
12. The review heard about the sense of isolation felt by male victims of rape, which is not helped by the emphasis in sexual violence terminology on 'violence against women and girls', a term approved by the United Kingdom's Government and the United Nations. For transgender complainants and gay men the obstacles to reporting are even greater, and it was clear to the review that there is an urgent need for a wider recognition and debate across society of the issues facing male and transgender complainants, to address and challenge myths and build greater support for and understanding of the barriers they face.
13. When reporting rape the complainant's first contact with the police is likely to be with a uniformed first response officer. Complainants described this as a 'make or break' stage. This engagement is critical both for capturing early evidential opportunities and giving the complainant confidence in the criminal justice process. Although some first responders provide a good response, others have little idea of what to say or do, largely due to a lack of appropriate training. The review recommends new mandatory training is made available to ensure that all first responders provide a consistent level of service to those who report rape. This must include more training on the use of forensic kits to obtain early evidence. It must also include an in-depth understanding of the possible complexities of a complainant's behaviour following the trauma of rape.
14. Once notified of a report of rape, a specialist officer trained in sexual offences investigative techniques (SOIT officer) should meet with the complainant within an hour, taking over from the first response officer. Where the alleged offence is recent the officer should arrange for a forensic medical examination at a Sexual Assault Referral Centre, known in London as a Haven. The review heard, however, that SOIT officers almost never manage to meet the complainant within the hour and that despite the rise in reported rapes, appointments with the Haven have not increased. This position is a major concern. A recent study in London has shown that if a complainant attends the Haven the prospect of attrition is halved.

## The Change Required

15. London has three Sexual Assault Referral Centres, the Havens, whose core function is to provide forensic medical examinations for complainants of sexual assault. In 2013/14 the Havens saw 1,900 clients, of which 1,447 were police or self-referrals who received a forensic medical examination. As mentioned above, the review was concerned that referral rates to the Havens did not reflect increased reporting to the police. The retrieval of forensic evidence; provision of medical support; and improving the wellbeing of complainants are key to rape investigations and central to maintaining complainants' confidence. Although some complainants choose not to undergo a forensic examination, the review concluded that the way first responders and SOIT officers communicate with complainants may profoundly influence their choice. Each Haven is different but none provide a comforting physical environment, despite the warmth and professionalism of their staff. Nor are they commissioned or equipped for the anticipated increase in police reporting levels.

16. The Havens are key to increasing reporting of rape and reducing attrition. It is recommended that a review of the scope and nature of service provision and of the nature and location of the Haven estate is conducted with a view to replacing the existing arrangements with a single large central facility appropriate to the status of the United Kingdom's largest city in the 21st century. Co-location of specialist SOIT officers in a discrete section of the Haven would ensure that the Haven, rather than police stations, becomes the default gateway for all complainants. Current facilities and resources could not deliver such a service. The new facility could become a centre of excellence for the whole of the United Kingdom and incorporate a training facility for practitioners.
17. A new facility would enable greater resilience and peer review for the practitioners serving in the centre while allowing visiting police officers to work while waiting. It would include special separate facilities for children and detox accommodation for those recovering from alcohol and/or drugs. The addition of sound proofed recording rooms would allow recorded interviews with complainants to be carried out where appropriate. Vulnerable complainants and forensic medical examiners and psychologists could give evidence remotely to the court from a live link at the Haven. The existence and general location of the Haven must become well known throughout London. Complainants in several focus groups had no knowledge of the existing Havens or their whereabouts.
18. There are approximately 20 Independent Sexual Violence Advisors (ISVAs) who provide specialist support services for the whole of London. Given their invaluable role, which was very much appreciated by complainants and practitioners at the focus groups, the Government should address the need for greater numbers and longer term funding in order to meet levels of demand, increased resilience and stability of their service provision.
19. Although there has been an increase in reported rapes in London in recent years the number of charged offences has not risen proportionately. Rape and penetrative offences recorded by the Metropolitan Police Service as a whole increased from 3,079 in 2005/2006 to 5,179 in 2013/2014, a rise of 68%. During the same period offences charged only increased by 17%, from 836 in 2005/2006 to 982 in 2013/2014. Between 2009/2010 and 2013/2014 the number of rape and penetrative offences dealt with by Sapphire investigation teams rose from 2,192 to 4,083 - a rise of 86%. Within Sapphire alone, the number of detections has risen from 273 in 2009/2010 to 621 in 2013/2014 (see Appendix B) - a rise of 127% over the past five years. It is of concern that the proportion of cases that are not charged are being categorised for no further action, a decision made by a Detective Inspector in the vast majority of such cases, without legal advice from the Crown Prosecution Service. The number of cases categorised in this manner is not counted or measured by the Metropolitan Police Service. This needs to change. Whatever the reason, it is clear that the increase in reporting is putting an overwhelming burden on staff and concern is expressed about the Metropolitan Police Service's ability to effectively manage its increasing workload.
20. The review was also concerned about the impact of excessive workloads on the effectiveness of both police and prosecutors, on delay and on police and prosecution staff welfare. Investigating and prosecuting rape is demanding and time consuming, as well as emotionally draining. The increased evidential opportunities presented by electronic and digital communication and burgeoning social media has added significantly to the type and volume of material that investigators and prosecutors must consider for evidence and disclosure.
21. High levels of anxiety were observed in both organisations which, unless additional resources are forthcoming, can only become worse as staff struggle to meet increasing crime reporting. This situation has the ability to undermine complainant confidence, increase attrition and ultimately diminish reporting. Government policy has, quite rightly, helped to encourage increased reporting but the Government must ensure that the resources to respond match the outcome of the encouraging rhetoric.

22. A fundamental difficulty expressed throughout the review was the absence of early consultation during the investigation between the rape specialist prosecutor and the investigator, with the aim of building an effective strategy for presenting the case. This is a pillar of police and Crown Prosecution Service (CPS) rape policy but one that CPS London applies only in exceptionally complex cases. This is explained on the basis that the CPS Rape and Serious Sexual Offences Unit lacks the necessary resources. It is recommended that resourcing of the London Rape and Serious Sexual Offences Unit is urgently addressed with a view to ensuring that quality commitments made by the Crown Prosecution Service are realistic and achievable.
23. Relations between the police investigators and the specialist prosecutors were under considerable pressure at an operational level. An absence of joint case building means that police supervisors are constantly submitting case files without any Crown Prosecution Service advice. This process leads to a cycle of cases being sent back to the police with time wasted and consequent delay. Measures introduced to ensure improved file quality were not only time consuming and labour intensive but also ineffective. While the precise number of files rejected at each stage was not shared with the review (and it is unclear whether records are actually kept) there was anecdotal evidence to suggest the figure remained high at around 50%.
24. To improve efficiency and effectiveness and ensure the early involvement of prosecutors in the investigation phase, it is recommended that multi-disciplinary working should be carried through to the Hub offices of the police Sapphire investigation teams. Specialist prosecutors from the Rape and Serious Sexual Offences Unit should be co-located in the Hubs on a rotating basis to provide early advice and guidance to Detective Inspectors on legal and evidential issues affecting the case and particularly on how the prosecution case will be presented to best effect. The current arrangement of locating a Detective Inspector from Sapphire in the Rape and Serious Sexual Offences Unit should also continue, but for the purposes of liaison and advice rather than as an additional tier of checking of the quality of case reports. Once the appropriate level of trained resources has been established in both the Metropolitan Police Service and the Rape and Serious Sexual Offences Unit, consideration should be given to reducing the multiple layers of review evident in the Sapphire investigation teams.
25. It became apparent during the course of the review that while relatively few victims of rape suffer genital or other injuries, many are left with serious psychological effects that require professional intervention to help them recover. Psychologists attending the focus groups were keen to provide expert evidence setting out their diagnosis and an opinion on the cause of the complainant's condition. The review considers that more use should be made of this type of expert evidence.
26. Furthermore, the review heard of frustration that while the physiological and psychological responses to trauma (both at the time of the traumatic event and afterwards) are outside the experience of the public at large, the prosecution is not permitted to lead expert evidence to counteract misleading stereotypes amongst jurors about how rape victims behave. It is recommended that such evidence should be admitted at trial to explain what, to many, appear as counter-intuitive responses and inexplicable behaviours.
27. The review also heard of guidance on pre-trial therapy being interpreted in such a way as to prevent complainants receiving appropriate treatment for psychological harm, for months and even years before trial. It is recommended that greater clarity around the provision of appropriate therapy is established to ensure that the potential recovery of complainants is not delayed by an unnecessarily over cautious approach.
28. Baroness Stern, in her 2010 report, deplored conflicting police and Crown Prosecution Service performance targets. Although official national targets no longer exist, it is a matter of concern that the way in which the Metropolitan Police Service and the Crown Prosecution Service measure success continues to be in conflict. Sapphire has only one outward facing performance objective, in addition to

a number of internal performance measures. The sole external objective is to increase the number of charges for rape compared with the previous year. Meanwhile, as part of its Violence against Women and Girls assurance regime, the Crown Prosecution Service monitors a broad range of measures and publishes details of its performance in an annual crime report. Of all these measures, the conviction rate is the most prominent and the most scrutinised. These dislocated measures encourage the delays and disputes about whether sufficient information has been provided by the police to the Rape and Serious Sexual Offences Unit prosecutor. It is considered that alternative outcome measures such as the specialist assistance and the counselling and support that complainants receive should also be measured and recognised by these agencies and the wider community as important positive outcomes.

29. The Government's encouragement to victims of rape to come forward and report is a welcome and sincere development. It needs to be matched with the determination and resources to provide the best opportunity for the investigation and support of complainants, particularly as numbers of reports rise so dramatically. While the conviction of perpetrators is of great importance, the ability to support and keep safe some of the most vulnerable individuals in our community is also critical. Those objectives cannot be properly achieved on the scale required with the current resources or arrangements.

# Part I – The Review in Context

## The Crime of Rape

30. The crime of rape is arguably one of the most serious but misunderstood offences against the person, described in a Home Office Research Study in 2005 as, ‘a unique crime, representing both a physical and psychological violation’<sup>1</sup>. In 2010 Baroness Stern<sup>2</sup> went further, observing,

*‘It is unique in the way it strikes at the bodily integrity and self-respect of the complainant, in the demands it makes on those public authorities required to respond to it and in the controversy it generates’.*

Not only is the crime itself unique, but it presents investigators and prosecutors with unique challenges, which in their variety and complexity often far exceed the difficulties encountered in investigating other offences, including the most serious, such as homicide.

31. Rape and penetrative sexual offences have a devastating and long-lasting effect on those who are victims of these crimes and yet it is highly probable that in most cases there will be no visible sign of injury<sup>3</sup>. The crime is most commonly perpetrated by someone known to the complainant, often a current or former spouse or partner. In London, only 7% of reported rapes are carried out by total strangers and a further 23% carried out by someone the complainant has met less than three times. As such, in some 70% of cases the complainant will know the suspect and be able to identify the suspect to the police. Since her appointment in 2013 the Director of Public Prosecutions has sought to raise the profile of these issues across the media and the wider community, including through the publication of a Toolkit for Prosecutors on Violence against Women and Girls Cases Involving Vulnerable Victims<sup>4</sup>. This toolkit refers to and includes research carried out by Dr Nina Burrowes, referred to later in this report, outlining the tactics used by offenders to minimise the risk of detection and punishment.

32. Homicide is rare compared with rape. In 2013/2014 there were 100 homicides in London and 4,608 reports of rape<sup>5</sup>. As will be discussed later, despite this high number, it is known that rape is severely under-reported. The complexity and labour intensity of a rape investigation is often similar to that of some homicide investigations. The combination of such a serious crime as rape at such a high volume of reporting presents a unique challenge to law enforcement in London. Whereas the resources will be made available for the much more limited number of homicides, providing adequate resources to address the sheer number and investigative needs of reports of rape is a formidable challenge for both the police and prosecution services in London.

33. Extensive forensic examinations, scrutiny of telephone records, texts and email exchanges as well as wide-ranging CCTV coverage and an ever evolving spectrum of social media platforms present just a few of the evidential opportunities, and corresponding demands now operating for police officers involved in investigating this very serious crime. In addition, many complainants in rape cases are vulnerable individuals. A number of different issues may add to the profound trauma caused by the crime itself. Mental ill-health, previous trauma or sexual abuse, religious or cultural pressures, immigration status, language barriers and fear of the consequences if the suspect is a spouse or partner are often

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1 A Gap or a Chasm? Attrition in reported rape cases (2005) Home Office Research Study 293 Kelly, Lovett and Regan.

2 The Stern Review (2010) Government Equalities Office and Home Office.

3 Female genital injuries resulting from consensual and non-consensual vaginal intercourse McLean I, Roberts S, White C, Paul S (2010) Forensic Science International.

4 Toolkit for Prosecutors on Violence against Women and Girls Cases involving Vulnerable Victims <http://www.cps.gov.uk/publications/equality/vaw/index.html>.

5 Metropolitan Police Service Crime Recording Information System data.

characteristics in the complainant's life. All too often a number of these issues can operate at once. Adult and child complainants often suffer from trauma and from a range of health needs that create significant challenges for both the police and complainant alike during, sometimes, protracted investigation and prosecution processes.

34. As well as being one of the most serious crimes and one of the most challenging to investigate and prosecute, rape also remains the most misunderstood. The general perception that rape is predominantly a crime undertaken by a stranger<sup>6</sup> somewhere out in the open, and that the complainant will have sustained some form of injury and resisted the rape, still persists. Many in our community will also expect that someone who has experienced a rape will call the police immediately and will tell the officer exactly what has happened in a consistent fashion and want the offender prosecuted. However, experience in London and elsewhere shows otherwise. Contrary to common belief, in most cases a complainant of rape will know their assailant and may not have suffered any form of physical injury. The suspect may well admit that sexual acts took place but will allege that the complainant consented. It will be highly unlikely there were any witnesses to the rape, which may well have been undertaken in circumstances where the complainant and/or the suspect has consumed alcohol, drugs or where other aspects of vulnerability are evident.
35. The complainant may well report weeks, months or even years later and may appear inconsistent in their account of the crime or crimes for a whole variety of reasons other than the common presumption of dishonesty. Inconsistency related to shock, fear, trauma, cultural pressures, embarrassment and genuine error are very common features of the evidence of complainants in rape cases.<sup>7</sup> The complexities and personal challenges that the complainant faces following the act or acts in question will lead to a whole host of emotions which may or may not result in a desire to report the suspect for prosecution.
36. It is in this context that the police and detective officers of the Sapphire investigation teams (situated within the Metropolitan Police Service's Sexual Offences, Exploitation and Child Abuse Command (SOECA Command)) respond to complainants of rape, support their needs and investigate the offence. It is the role of the Crown Prosecution Service to determine whether to prosecute those offences that the police submit to them for a charging decision. The task for the Metropolitan Police Service and the Crown Prosecution Service is therefore one of the most challenging in crime investigation and prosecution. It is both complex and emotionally draining on those who work in this area. It is vitally important that those who investigate, prosecute and manage the processes for this crime type are properly selected, trained and resourced in order that the appropriate services can be provided to those who allege rape. As in many other areas of criminality, the need for the highest levels of joint training and working among a number of agencies and disciplines is critical to successful outcomes.
37. This review seeks to evaluate how well the Metropolitan Police Service and Crown Prosecution Service currently investigate and prosecute rape in London with a view to understanding how public confidence, the reporting of rape, its investigation and prosecution can be further improved.

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<sup>6</sup> See for example *A Gap or a Chasm? Above fn 1.*

<sup>7</sup> *Ibid.*

# The Methodology of the Review

## The Approach the Review Took and Why

38. There have been a variety of well publicised and detailed expert reviews into rape investigation and prosecution in England and Wales over the last decade, most notably the Stern Review<sup>8</sup> and Without Consent<sup>9</sup>. While the discussions and conclusions of those reports are highly relevant, this review is quite distinct as it focuses exclusively on London, specifically on the Metropolitan Police Service and the Crown Prosecution Service (CPS London). Further, it addresses some specific practical questions in the London context that require close examination of working practices and systems to gain appropriate insight into the nature and quality of the processes and how high level policy is being understood and implemented.
39. The methodology deployed enabled the review to obtain as much information as possible from both a qualitative and quantitative perspective. In addition to obtaining the data, policies, practice, and undertaking file reviews it was considered critical to hear from representatives of parties involved in the process (both from within and outwith those organisations), as well as from those who have experienced this awful crime.
40. **File reviews.** In order to assess the quality of information influencing decision making and of decision making per se, a dip sample of 70 police 'no crime' and 'no further action' case files was examined. In addition the review examined a random sample of 30 Crown Prosecution Service case files, comprising 15 cases resulting in no further action, 3 in no evidence being offered at court, 6 acquittals following jury trial, and 6 in which the defendant was convicted.
41. **Focus groups.** A central part of the review has been the discussions with 53 focus groups involving police investigators and first responders, prosecutors, judges, barristers, National Health Service specialists, members of a range of third sector agencies, complainants, the Independent Police Complaints Commission and academics. The review has consulted with some 250 people. A vital part of the review has been the need to engage with complainants of this crime, whether they had reported the crime or not. To this end the review held four focus groups with a range of complainants whose voices have now been heard and are reflected within the report.
42. **Quantitative analysis.** In order to underpin the review from a quantitative viewpoint there has also been an analysis of a range of data to assess some key indicators of performance. These have included police detections and 'no crime' rates, police and Crown Prosecution Service workloads, sickness levels and staffing ratios.

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<sup>8</sup> The Stern Review. Above fn 2.

<sup>9</sup> Without Consent A report on the joint review of the investigation and prosecution of rape offences (2007) Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary.

# Rape Reviews 2002 to 2015 – A Summary

43. Although the purpose of this review was to carry out an independent examination of the police and prosecutorial responses to rape in London, it was considered important to re-visit past reviews that have examined the question of attrition in rape cases and profoundly influenced how rape is handled by the Metropolitan Police Service and the Crown Prosecution Service. In addition to the undernoted list of reviews, further relevant key activity providing contextual background to the report includes:
- the CPS and Police National Rape Action Plan<sup>10</sup>, which was developed in response to findings from the National Rape Scrutiny Panel and calls for ‘a focus on the actions of the offender, rather than those of the victim’, the need for investigators and prosecutors to have ‘the right tools for the job’, and for continuous improvement and accountability;
  - the Coalition Government’s Strategy and Annual Action Plans, ‘Call to End Violence Against Women and Girls’<sup>11</sup> ;
  - the Coalition Government’s work on Sexual Violence Against Children and Vulnerable People<sup>12</sup>;
  - the work of the cross-Government Rape Monitoring Group including force-level reports on rape<sup>13</sup> ; and
  - the Crown Prosecution Service Violence against Women and Girls Annual Crime Reports<sup>14</sup>.

The following list is not intended to be exhaustive.

## Joint Thematic Inspection Review (2002)

44. In 2001 a joint thematic review was conducted, ‘To ascertain, if possible, the reasons for the high attrition rate, and to identify good practice and make recommendations to address this’<sup>15</sup>. Assessments were made of the quality of investigations; of Crown Prosecution Service advice and decision-making and handling cases at court; policy and guidance; and the treatment of complainants and witnesses. The review published its findings in 2002.
45. The literature accompanying the inspection review identified four key attrition points at which rape cases fall out of the criminal justice system, namely:
- the decision to report;
  - during the investigation (defined as where an allegation has been recorded as a crime, but the alleged offender has not been charged or cautioned including where the Crown Prosecution Service advised the police to take no further action);
  - where the Crown Prosecution Service drops/discontinues a case; and
  - acquittal after trial.
46. The literature review concluded that 20% of reported rape cases reached trial out of which half or fewer resulted in a conviction for rape or attempted rape, while a third resulted in acquittals. (These outcomes are referred to for the sake of completeness, although they relate to a time before the Sexual Offences Act 2003 changed the legal definition of rape.)

<sup>10</sup> Joint Crown Prosecution Service and Police Action Plan on Rape (June 2014) [http://www.cps.gov.uk/publications/equality/vaw/rape\\_action\\_plan.pdf](http://www.cps.gov.uk/publications/equality/vaw/rape_action_plan.pdf).

<sup>11</sup> <https://www.gov.uk/government/policies/ending-violence-against-women-and-girls-in-the-uk>.

<sup>12</sup> <https://www.gov.uk/search?q=sexual+violence+against+children+and+vulnerable+people>.

<sup>13</sup> <https://www.justiceinspectorates.gov.uk/hmic/about-us/working-with-others/rape-monitoring-group/>.

<sup>14</sup> <http://www.cps.gov.uk/publications/equality/vaw/>.

<sup>15</sup> A Report on the Joint Inspection into the Investigation and Prosecution of Cases involving Allegations of Rape (2002) Her Majesty’s Crown Prosecution Service Inspectorate and Her Majesty’s Inspectorate of Constabulary.

47. Recommendations from the review that informed future policy included:
- ‘All forces carry out an immediate review of existing facilities for victim examination so that both victim care and the integrity of evidence are maximised’;
  - ‘ACPO (Association of Chief Police Officers) and National Police Training review the training of officers who deal with rape complainants, so that the appropriate skills and competences are enhanced in officers at an appropriate level and are made available to complainants across the service’; and
  - ‘All rape cases be allocated to specialist lawyers, who should be responsible for the case from advice stage to conclusion of any proceedings’.
48. The review recognised that, ‘The difficulties faced by the police when investigating allegations of rape cannot be overstated’. It challenged the ‘perception that the majority of rape offences are committed by a lone male against a female who is unlikely to be known to him’ and emphasised that it was, ‘more likely that the victim (male or female) has formed a relationship with the accused, albeit in some cases not long before the commission of the offence’ and that there was ‘unlikely to be independent evidence to support a victim’s allegation’.
49. The review also recognised the factors influencing prosecutors’ case reviews including, ‘The risk that consideration of the victim’s credibility can result in inconsistent decision-making’. The review identified that prosecutors ‘too often’ concentrated on ‘considering any weaknesses, rather than also playing a more proactive role in seeking more information and trying to build or develop the case’. The Government’s response<sup>16</sup> to the 2002 review included the acceptance of virtually all of the 18 recommendations in a Rape Action Plan.

## National Stocktake (2005)

50. In 2005 a National Stocktake involving the Home Office, the Association of Chief Police Officers and the Crown Prosecution Service was conducted, to assess progress in implementing the Action Plan. This relied upon self-survey reports from police forces and Crown Prosecution Service Areas, and a survey of key stakeholders on complainants’ perspectives. The stocktake revealed that although there had been improvements, gaps in delivery remained.

## A Gap or a Chasm? Attrition in Reported Rape Cases (2005)

51. Home Office research into attrition in rape cases<sup>17</sup>, published in 2005, identified a tendency to concentrate on perceived weaknesses in the complainant’s account. It reported that,

*‘The most important recommendation from this study is that a shift occurs within the Criminal Justice System from a focus on the discredibility of complainants to enhanced evidence gathering and case-building’.*

52. The authors also called for,
- ‘Increased recognition of the significance of alcohol in rape and sexual assault, including further exploration of the extent to which men target unknown women who are drinking and the strategies they use to make initial contact’; and

<sup>16</sup> According to the Introduction to Stocktake of implementation of the Rape Action Plan 2002 Results Report September 2005.

<sup>17</sup> A Gap or a Chasm? Above fn 1.

- *'In light of the Sex Offences Act 2003, development of a public education campaign on the meaning of consent and the realities of rape, alongside more detailed training for Criminal Justice System personnel, explicitly designed to expand the concept of 'real rape'.*
53. On the subject of attrition the research study concluded that, 'The vast majority of cases did not proceed beyond the investigative stage'. A review of previous studies in the United Kingdom showed this was 'between half and two-thirds'. Withdrawal by complainants was identified as an important contributory factor as were 'evidential issues' including the complainant's learning difficulties, mental health issues or being unable to give a clear account. Although Home Office data showed 'a continuing and unbroken' increase in reporting to the police over the past two decades, the conviction rate remained 'relatively static' thereby increasing the 'justice gap'. The conviction rate for all reported cases was eight per cent. Addressing police perceptions of false allegations the study identified that,

*'Nine per cent of reported cases were designated false, with a high proportion of these involving 16 to 25-year-olds. However, closer analysis of this category applying Home Office counting rules reduces this to three per cent. Even the higher figure is considerably lower than the extent of false reporting estimated by police officers interviewed in this study.'*

## Without Consent (2007)

54. A second joint thematic review, published in 2007<sup>18</sup> assessed progress against the 2002 inspection's recommendations, while taking account of the stocktake findings, 'A Gap or a Chasm?' and legislative changes including not only the Sexual Offences Act 2003 but new provisions in relation to the admissibility of bad character and hearsay evidence<sup>19</sup>. The inspection examined the quality and effectiveness of investigations and prosecutions and explored the reasons for continued high attrition in rape cases. On attrition the review concluded,

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

55. Amongst its 'areas for improvement' the review identified, 'inaccuracies in 'no criming' levels' and, 'variations in interpretation of the HOCR [Home Office Counting Rules]....skewing recorded crime figures and undermining the ability to gain an accurate understanding of attrition'. On progress in implementing the recommendations of the 2002 inspection the review recognised that,

*'The police and the Crown Prosecution Service have made considerable efforts since the inspection in 2002 to develop and improve their responses to the investigation and prosecution of rape offences.'*

They found, however, that delivery was patchy and concluded that,

*'in many cases it is not necessarily about changing what is done, but ensuring instead that what is done is effective and is carried out to a consistently high standard, and that the efforts of those involved are properly supported and co-ordinated.'*

56. The policies, they found,

*'are sound and in place. It is not a question of changing the approach, but of ensuring that what should be done is actually done in practice and that full effect is given to the existing sound policies and good practice.'*

<sup>18</sup> Without Consent. Above fn 9.

<sup>19</sup> Criminal Justice Act 2003.

Without Consent made the following recommendations:

**Recommendation 1** - *That police forces specifically include auditing of rape 'no crimes' within routine auditing processes to ensure that all 'no crimes' are sustainable and compliant with the HOOCR [Home Office Counting Rules].*

**Recommendation 2** - *That police forces:*

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

**Recommendation 3** - *That police forces issue guidance to first response officers on the action to be taken when attending a report of a rape, including taking an initial account from a victim, in line with the ACPO [Association of Chief Police Officers] Guidance on Investigating Serious Sexual Offences.*

**Recommendation 4** - *That ACPO, in consultation with the CPS, revisits the procedures for taking a victim's statement in rape cases, taking into account the evaluation of pilot schemes for the relevant special measures and duties of disclosure of unused material.*

**Recommendation 5** - *That police forces ensure that review processes are established for the investigation of rape and that the quality of reviews is monitored.*

**Recommendation 6** - *That where expert opinion is to be sought from an FP [forensic physician]:*

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

**Recommendation 7** - *That the CPS should:*

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

**Recommendation 8** - *That police forces and the CPS ensure that rape cases receive full and early consultation between the IO [investigating officer] and the rape specialist prosecutor.*

**Recommendation 9** - *That Chief Crown Prosecutors ensure that one specialist prosecutor is involved in, and accountable for, a rape prosecution from beginning to end. Consultation with a second specialist should be recorded and the second specialist identified.*

**Recommendation 10** - That Chief Crown Prosecutors ensure that a conference with trial counsel and the officer in the case takes place in every case involving an allegation of rape. This is essential where consideration is being given at a late stage to stop the case, or to accept pleas to alternative charges, in order to analyse the evidence and explore ways of overcoming any difficulties.

**Recommendation 11** - That the CPS produces and circulates a rape checklist to address all relevant issues at the advice stage.

**Recommendation 12** - That Chief Crown Prosecutors ensure that there is continuity of counsel, as well as of specialist prosecutor, throughout the case, and the caseworker in the case should attend court throughout the trial.

57. With the exception of Recommendation 12 (the attendance of the caseworker throughout the trial, which was rejected due to resourcing issues) the Crown Prosecution Service accepted all recommendations relating to the Crown Prosecution Service and embarked on their implementation via a delivery plan managed by a new Rape Prosecutions Delivery Unit in the Business Development Directorate. The Association of Chief Police Officers offered a Rape Support Programme, providing tailored advice and guidance to individual forces on issues relating to rape including the implementation of recommended policy and good practice. This culminated in 2009/2010 in a joint Association of Chief Police Officers/Crown Prosecution Service review of the way in which rape cases were dealt with by individual police forces and Crown Prosecution Service Areas.

## The Stern Review (2010)

58. The terms of reference agreed with the Commissioner for the Metropolitan Police Service and the Director of Public Prosecutions for this current review include building on learning from Baroness Stern's Review<sup>20</sup> of the Handling of Rape Complaints by Public Authorities in England and Wales. As a result, the Stern Review is of particular interest. In 2009 Baroness Vivien Stern, CBE was invited by the Government Equalities Office and Home Office to carry out a comprehensive independent review of how public authorities respond to rape complaints and to examine how more complainants could be encouraged to report. This was one of a number of reports designed to inform the Government's Violence against Women and Girls Strategy. Others were, Rape, The Victim's Experience<sup>21</sup> and Responding to Violence Against Women and Children<sup>22</sup> on the role of the National Health Service.
59. Baroness Stern's terms of reference included: exploring ways of reducing the attrition rate and fairly increasing the conviction rate; identifying how to increase victim and witness satisfaction and confidence in the criminal justice system; and exploring public and professional attitudes to rape and how they impact on outcomes. The Stern Review took as its starting point 'the pathway a complainant would take, from the initial reporting of a rape to the court case'. It also looked at the wider policy issues including misunderstandings and myths about rape that are prevalent in society.
60. Baroness Stern's main conclusions were:
- The policies are right
  - Implementation is patchy and must be improved
  - Positive obligations to complainants must be recognised
  - The conviction rate has taken over the debate.
61. Addressing priorities, and the investment needed to deliver services, Baroness Stern recognised current resourcing issues. She identified the need to make 'difficult choices', in particular about prosecuting 'more and more' cases; resourcing 'targeted and intelligence-led policing to ensure that the most serious perpetrators are identified and charged'; and providing counselling for complainants.

<sup>20</sup> The Stern Review. Above fn 2.

<sup>21</sup> The Victim's Experience (2009) Sara Payne MBE, the Victim's Commissioner.

<sup>22</sup> Responding to violence against women and children – the role of the National Health Service by the Taskforce on the Health Aspects of Violence Against Women and Children chaired by Professor Sir George Alberti (March 2010).

Recognising the importance of ‘changing the public’s attitudes to rape’ she asked, ‘How much are we going to allocate to the education of young people and society more generally about rape?’

62. Baroness Stern recognised the need for a multi-agency response to sexual violence and noted the important role of Sexual Assault Referral Centres saying,

*‘The development of Sexual Assault Referral Centres is a groundbreaking development that has transformed the experience of complainants reporting rape and has enabled the police to provide a much more effective service. Sexual Assault Referral Centres offer more than good medical care. They offer a sympathetic ear and support, regardless of what happens to the case in the legal system. We feel it is important for future Sexual Assault Referral Centres to be set up in a way which promotes cross-agency working in responding to rape complainants’.*

63. Baroness Stern made 23 recommendations. The following is a summary of those of particular relevance to the police and Crown Prosecution Service nationally:

**Chapter 1** - Recommendations relating to the clarification of crime statistics for the public; publicity relating to the law on sexual offending; and the publication of research on false allegations. Baroness Stern was concerned at the political and media attention given to conviction rates, especially the (then) 6% conviction rate for reported rape. She considered this a potential deterrent to complainants thinking of reporting and questioned whether conviction rates are an appropriate measure of success.

**Chapter 2** - Recommendations for the transfer of commissioning of Sexual Assault Referral Centres from the police to the National Health Service; and Sexual Assault Referral Centres in every police force area with strong partnerships. Visually recorded interviews of complainants (known as Achieving Best Evidence interviews) were a cause for concern and Baroness Stern recommended their use be re-examined. Effective implementation of the joint national guidance on investigating/prosecuting rape was recommended, as was the assessment of specialist rape investigation units, working in partnership with other agencies and the implementation of robust intelligence systems. The review also recommended the evaluation of forces in respect of complainant satisfaction, local complainant support referrals and the use of intelligence.

**Chapter 3** - The Crown Prosecution Service booklet - Crown Prosecution Service Policy for Prosecuting Cases of Rape<sup>23</sup> – should be made widely available; the need for joint police and Crown Prosecution Service performance measures to replace separate conflicting targets was identified and individual ownership of cases by lawyers was recommended. The need for the Crown Prosecution Service, Association of Chief Police Officers and Local Government Association to resolve difficulties and update the protocol between the Crown Prosecution Service, police and local authorities on the exchange of information was expressed. Baroness Stern was especially critical of conflicting targets for the police and the Crown Prosecution Service. While the police were required ‘to charge a certain number of suspects’, ‘the Crown Prosecution Service’s ‘unsuccessful outcomes’ target influences Crown Prosecution Service decision-makers to take forward to trial only cases with the strongest evidence’.

**Chapter 4** - Baroness Stern was impressed by the role of the Independent Sexual Violence Advisors, which she recognised as intrinsic to the service to complainants. Her review called for adequate funding where demand exists.

**Chapter 5** - Annual reporting to parliament on how the police and Crown Prosecution Service are implementing the 2009 Guidance on Investigating and Prosecuting Rape, was recommended.

64. In 2011 the Government published a response<sup>24</sup> to Baroness Stern’s report, welcoming it as, ‘wide-ranging and authoritative’. The response recognised that,

23 Crown Prosecution Service Policy for Prosecuting Cases of Rape <http://www.cps.gov.uk/publications/prosecution/rape.html>.

24 The Government Response to the Stern Review (2011) HM Government.

*'A clear understanding of the nature and extent of rape will help all partners in preventing violence from occurring, in ensuring complainants are properly supported and in holding perpetrators fully accountable for their crimes'.*

Of the 23 recommendations, 16 were 'generally agreed', including the transfer of funding and commissioning of forensic medical services from the police to the National Health Service; exploring concerns in relation to 'achieving best evidence' interviews; and assessing the benefits of specialist police units. Five were only 'partially agreed' including the development of joint police/prosecution performance measures on the basis that the Government was not in a position to prescribe performance measures but that the Rape Monitoring Group was considering validation measures that may be used to better measure joint working.

65. Two recommendations were not agreed including annual reporting to Parliament. Instead the Government recognised that the Crown Prosecution Service publishes an annual report on its performance in relation to Violence against Women and Girls, and that the national multi-agency Rape Monitoring Group was revising its measures to take account more fully of police performance.

## Responding to Violence Against Women and Children – The Role of the National Health Service (2010)

66. The role of the Taskforce<sup>25</sup> was,

*'To identify the role and the response of health services in preventing, identifying and supporting women and girls who are complainants of violence and abuse, and to make recommendations on what more could be done to meet their needs'.*

Recognising that boys as well as girls are complainants of physical and sexual violence, the Taskforce chose to refer throughout its report to 'women and children' rather than to 'women and girls', as included in its terms of reference.

67. The Taskforce provides a disturbing picture of the impact on health of long term physical and sexual violence. It explains,

*'Physical and sexual violence and abuse have direct health consequences and are risk factors for a wide range of long-term health problems, including mental health problems, alcohol misuse, trauma (including maternal and foetal death), unwanted pregnancy (including teenage pregnancy), abortion, sexually transmitted infections and risky sexual behaviour. It is less well recognised that a number of health problems such as obesity and dental neglect due to dental phobia can also be caused by abuse. Action to tackle the causes and consequences of violence against women and children therefore contributes to the health and well-being of the population'.*

It also argued strongly that the health consequences it described needed to be taken seriously. Comparing the incidence of rape with the incidence of stroke, the Taskforce reported that, 'more women suffer rape or attempted rape than have a stroke each year'. Commenting on the impact of the way National Health Service staff respond to those who disclose abuse the Taskforce said,

*'The initial reaction of the person they tell and the follow-up within and beyond the National Health Service (including, where appropriate, in the criminal justice system) can have a profound effect on their ability to re-establish their life, health and well being'.*

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<sup>25</sup> Taskforce on the Health Aspects of Violence Against Women and Children. Above fn 22.

## Forging the Links (2012)

68. Noting that the number of rapes recorded by the police had risen by 3,261 (26%) in the previous three years, the review by Her Majesty's Inspectorates of Constabulary and the Crown Prosecution Service<sup>26</sup> expressed 'very real cause for concern' about managing the increase and called for action,

*'not only to maintain and improve the victim experience of the criminal justice system but to identify strategies to manage increasing numbers of cases, and ensure that the response of police and prosecutors is robust and effective'.*

69. The review reported that the initial police response had 'improved' identifying:

- *call handling systems are more responsive*
- *specially trained officers or their equivalents have been widely introduced*
- *training for police and prosecutors is improved*
- *access to Sexual Assault Referral Centres is either in place or planned in all forces*
- *use of early evidence kits is widespread.*

70. Addressing an issue previously highlighted by Baroness Stern, the authors identified a need for 'greater emphasis on intelligence gathering and analysis'. This included the need to identify patterns of offending and to access intelligence on foreign nationals committing rape offences. These actions would assist, 'in identifying serial and repeat offenders earlier'. The review also recognised the need for earlier consultation between investigators and prosecutors. While it found evidence of 'good analysis of rape cases by the Crown Prosecution Service.....detailed case strategies were sometimes lacking'.

## Complaints of Rape and the Criminal Justice System, Fresh evidence on the attrition problem in England and Wales (2015)

71. A study<sup>27</sup> based on a sample of rape allegations reported to the Metropolitan Police Service during April and May 2012 analysed 587 cases of female rape to provide an up to date picture of attrition. This study is included in this summary of national reports, listed above, because of its specific relevance to London and to the terms of reference of the current review.
72. The analysis identifies two distinct attrition pathways. The first involves a complainant's decision to withdraw; and the second a police or Crown Prosecution Service decision to discontinue the case. The latter includes a,

*'police decision to 'no crime' the case instead of further investigating it as a crime, a police decision to close the case with 'no further action' instead of referring the case to the Crown Prosecution Service for charge, and a Crown Prosecution Service decision to take no further action instead of prosecuting in court'.*

The authors report that attrition in the sample,

*'mirrors official statistics (Home Office and Ministry of Justice, 2013), 7% of allegations were police 'no crimed', 40% ended with a police decision to take 'no further action', of the remaining allegations 30% dropped out through a Crown Prosecution Service decision to take no further action rather than prosecute in court. At the time of data collection 15% of non-withdrawn cases were awaiting trial'.*

26 Forging the Links, Rape Investigation and Prosecution (2012) Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate.

27 Complaints of Rape and the Criminal Justice System: Fresh Evidence on the Attrition Problem in England and Wales (2015) Stanko et al.

73. The study identified that complainant withdrawal was responsible for almost half of the attrition, with most complainants, 'withdrawing early in the process, and withdrawal becoming less likely once the case was referred to the Crown Prosecution Service for charge'.

74. Examining the part that rape 'myths' play in police decision-making the study found,

*'As far as police decisions (but not the victim decision to withdraw) are concerned, the intractable 'respectable woman' image is significant, voluntary alcohol consumption prior to the rape, a history of consensual sex with the perpetrator, mental health problems and learning difficulties, and a woman's 'misunderstanding' of the meaning of consent explain police decisions to discontinue a case'.*

75. Investigators' and prosecutors' perceptions of credibility were found to be extremely influential.

*'Only 2% of complaints in which police officers noted doubt about the allegation resulted in a Crown Prosecution Service charge. None of [the] cases in which there was independent evidence casting doubt on the allegation, the police record noted a prior false rape allegation by the victim, or inconsistencies in the victim's account of the rape, resulted in a Crown Prosecution Service charge'.*

76. Nor were such perceptions outweighed by independent supporting evidence for the complainant's account. Rather the study identified,

*'a stark asymmetry between the non-significant impact of supporting evidence and the large, statistically significant effect of evidence that casts doubt on the allegation'.*

## Common Themes and Recommendations

77. What this summary makes clear is that there is a history of intensive and detailed study of the problems surrounding the investigation and prosecution of rape across England and Wales. Also apparent is the high level of consensus among the various independent reports and the many shared themes and core recommendations, including: Recommendation 10 from the 2002 joint inspection and Recommendation 9 from 'Without Consent' in 2007, advising that only specialist prosecutors should be responsible for rape cases with a second specialist involved in any decision not to proceed. Both the 2010 Stern Review and 2012 Forging the Links (Recommendation 10) advocate the need for protocols between the police, the Crown Prosecution Service and Social Services to facilitate the handling of third party material. A protocol was agreed in 2013.

78. While many recommendations have been adopted as policy, some nonetheless remain largely unimplemented. They include,

- Recommendation 14 from the 2002 joint inspection and Recommendation 10 from 'Without Consent', requiring a conference with trial counsel and the officer in the case in every rape case.
- Recommendation 6 from 'Without Consent' requiring that the forensic physician is always included in the conference with trial counsel unless there are particular reasons for not doing so; and is always called as a live witness in a trial.
- The Stern Review's recommendation that visually recorded Achieving Best Evidence interviews are revisited to find a solution to preserve the benefits for the complainant while being more effective in the court. While efforts have been made, including new guidance in 2011 and a recent inspection of Achieving Best Evidence interviews in child sexual abuse cases<sup>28</sup>, the issues raised with this review strongly resemble those which informed earlier reports.

79. A key finding of many reports has been the consistent approval of the policies applied to the investigation and prosecution of rape, to which this review adds its endorsement. A significant inability to comprehensively and successfully implement those same policies is also clear from the literature. Despite all but the last report (which is London focused) being national studies, this review made remarkably similar findings of ongoing issues to those which preceded it. This suggests that the problems and difficulties in quality of service delivery are not unique to any one locality but may be more widely spread across other police forces and Crown Prosecution Service Areas.

<sup>28</sup> Achieving Best Evidence in Child Sexual Abuse Cases – A joint inspection (2014) HM Inspectorates of Constabulary and Crown Prosecution Service .

# Part 2 – Understanding Rape – Reality and Perceptions

## The Law Relating to Rape

80. Offences of rape committed after 1 May 2004 in England and Wales are governed by the Sexual Offences Act 2003. All references to the 'Sexual Offences Act' in this section refer to this Act. The Sexual Offences Act defines the offence of rape as follows.

*'Section 1*

*(1) 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.*

*(3) Sections 75 and 76 apply to an offence under this section.*

*(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.'*

81. Section 79 makes it clear that references to a part of the body include a part that is surgically constructed (in particular through gender reassignment surgery) and that vagina includes vulva. As well as requiring the prosecution to prove the physical act of rape, Section 1 also requires the prosecution to prove the complainant did not consent to the act and the defendant did not reasonably believe the complainant consented. However, where a complainant is under the age of 13 the prosecution does not have to prove either the absence of consent or the lack of any reasonable belief in consent. Only the act of penetration by the defendant and the age of the child need be proved.<sup>29</sup>

## Consent

82. Whether or not the complainant consented is the main area of dispute between the prosecution and defence in many rape trials. Prior to the Sexual Offences Act there was no statutory definition of consent. The Court of Appeal in the 1981 case of *R v Olugboga*<sup>30</sup> said of consent,

*'It covers a wide range of states of mind in the context of intercourse between a man and a woman, ranging from actual desire on the one hand to reluctant acquiescence on the other'.*

The Court also highlighted the complexities observing that,

*'the dividing line in such circumstances between real consent on the one hand and mere submission on the other may not be easy to draw'.*

83. In July 2000 an independent consultation paper<sup>31</sup> was published by the Home Office and the law on sexual offences was reviewed. The paper was critical of the reliance on case law to define consent and recommended the introduction of a statutory definition.

<sup>29</sup> Section 5 of the Sexual Offences Act 2003.

<sup>30</sup> [1981] EWCA Crim 2.

<sup>31</sup> *Setting the Boundaries – Reforming the law on sexual offences 2000*, para 2.10.2.

*'The common law on consent has developed over the years to deal with many of the circumstances that come before the courts. However, common law is essentially case law. Case law may change with new judgements and its meaning is often not clear to most people. If it is difficult for legal practitioners to research and understand the case law, it is much more difficult for the rest of us. Nor is it always clear what the common law means by 'consent'. Although it is argued that the common law allows continuing development to meet society's needs, that process can lead to uncertainty, as in the case of Olugboja. In an area of human behaviour where there are debates within society about what is and is not appropriate, it is more than ever important that the law is clear and well understood, particularly about what behaviour is criminal.'*

84. The recommended introduction of a statutory definition of 'consent' was implemented in the Sexual Offences Act, 'Section 74 - A person agrees by choice if he has the freedom and capacity to make that choice.'
85. The statute provides no further specification about the nature of the agreement at this point. However, in a later section the Sexual Offences Act provides a list of circumstances giving rise to a presumption of an absence of consent. It is open to the defendant to rebut these presumptions, which are:

*'Section 75 (2)*

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;*
- (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;*
- (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;*
- (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;*
- (e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;*
- (f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.'*

86. This section is followed by a further list, referring to circumstances which give rise to conclusive presumptions of an absence of consent. The presumptions, which cannot be rebutted, apply where,

*'Section 76 (2)*

- (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;*
- (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.'*

87. Crown Prosecution Service Legal Guidance<sup>32</sup> issued by the Director of Public Prosecutions advises that when approaching the question of whether there was consent, prosecutors should adopt a two stage process and ask themselves,

*'Whether a complainant had the capacity (i.e. the age and understanding) to make a choice about whether or not to take part in the sexual activity at the time in question. Whether he or she was in a position to make that choice freely, and was not constrained in any way. Assuming that the complainant had both the freedom and capacity to consent, the crucial question is whether the complainant actually agreed to the activity by choice at the time.'*

88. Despite the introduction of a statutory definition of consent its meaning continues to give rise to misunderstanding. The finding by the National Rape Scrutiny Panel<sup>33</sup> that some police investigators and prosecutors find consent difficult to comprehend led to the following action in the Joint Crown Prosecution Service and Police Action Plan on Rape,<sup>34</sup>

32 Crown Prosecution Service legal guidance on Rape and Sexual Offences [http://www.cps.gov.uk/legal/p\\_to\\_r/rape\\_and\\_sexual\\_offences/](http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/).

33 National Rape Scrutiny Panel attended by police, prosecutors, academics and complainants' groups, on 4 April 2014.

34 Joint Action Plan on Rape. Above fn 10.

*‘Ensure proper understanding and application of legislation on consent from investigation through to presentation at courts. This includes focusing on steps taken by an individual to seek consent before engaging in sexual activity as well as the freedom and capacity of complainants to make a choice.’*

This has now been addressed with the publication in January 2015 of new toolkits on consent for prosecutors and a document, ‘What is consent?’<sup>35</sup> which is available on the CPS website.

## Capacity to Consent

89. Capacity to consent may be affected by a mental health condition or a learning disability and is particularly relevant when a complainant is temporarily intoxicated by alcohol or affected by drugs. The Sexual Offences Review<sup>36</sup> in 2000 recommended a non-exhaustive statutory list of circumstances where consent was not present, to include,

*‘Where a person was asleep, unconscious, or too affected by alcohol or drugs to give free agreement’.*

90. The reference to alcohol and drugs was not included in the Sexual Offences Act and it was left to the Court of Appeal in 2007 in the case of R v Bree<sup>37</sup> to clarify the law in relation to their effects.

91. The Bree judgment refers to loss of the capacity to consent and states that,

*‘If, through drink (or for any other reason) the complainant has temporarily lost her capacity to choose whether to have intercourse on the relevant occasion, she is not consenting, and subject to questions about the defendant’s state of mind, if intercourse takes place, this would be rape. However, where the complainant has voluntarily consumed even substantial quantities of alcohol, but nevertheless remains capable of choosing whether or not to have intercourse, and in drink agrees to do so, this would not be rape. We should perhaps underline that, as a matter of practical reality, capacity to consent may well evaporate well before a complainant becomes unconscious. Whether this is so or not, however, is fact specific, or more accurately, depends on the actual state of mind of the individuals involved on the particular occasion’.*

92. The Sexual Offences (Scotland) Act 2009 was informed by the Scottish Law Commission’s review of the Sexual Offences Act and by the English and Welsh experience of interpreting and applying the provisions. While broadly similar to its English and Welsh equivalent, the Scottish Act includes some notable differences, amongst them the definition of consent,

*‘Section 12 - ‘Consent’ means free agreement’.*

93. Also, in contrast to the Sexual Offences Act, the Sexual Offences (Scotland) Act specifically refers to the impact of alcohol on the ability to provide free agreement. Prior to the passing of the Scottish Act the Scottish Law Commission proposed<sup>38</sup> that the list of situations in which consent was to be deemed as absent should include,

*‘Where the person had taken or been given alcohol or other substances and as a result lacked the capacity to consent at the time of expressing or indicating consent unless consent had earlier been given to engaging in the activity in that condition.’*

94. The final amended reference is included in a list headed ‘Circumstances in which conduct takes place without free agreement’ and states,

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<sup>35</sup> [http://www.cps.gov.uk/publications/equality/vaw/what\\_is\\_consent\\_v2.pdf](http://www.cps.gov.uk/publications/equality/vaw/what_is_consent_v2.pdf).

<sup>36</sup> Setting the Boundaries, Recommendation 5. Above fn 31.

<sup>37</sup> [2007] EWCA 256.

<sup>38</sup> Rape and Other Offences (2006), Scottish Law Commission Discussion Paper No 131.

*'Section 13(2)(a)*

*Where the conduct occurs at a time when B is incapable because of the effect of alcohol or any other substance of consenting to it.'*

95. The review consulted prosecutors and legal policy officials in Scotland, who advised that section 13(2) can be very useful. However, while 'free agreement' (consent as defined by section 12) is absent when the complainant is incapable of consenting because of the effect of alcohol or any other substance, the prosecution must still prove that the defendant had no reasonable belief that the complainant consented. So in such cases it is necessary for the Crown to establish that the complainant was 'incapable' as a result of intoxication (and the evidential burden for that is appropriately high) and that the accused must reasonably have known this.
96. The Act does not provide a definition of 'incapable', and the concept of 'reasonable belief' is not further defined, so it is a matter for the jury whether the complainant is so intoxicated as to be 'incapable' of consenting and whether any belief said to be held by the accused is reasonable. Although some practitioners regard the statutory provision as simply confirming the common law position, they nonetheless regarded this as advantageous. The non-exhaustive list of scenarios within section 13(2) provide a benchmark for the types of behaviour which Parliament envisaged as falling within the remit of non-consensual sexual offending.

**Recommendation 1.** It is recommended that the Director of Public Prosecutions requests the government to give consideration to an amendment to the Sexual Offences Act 2003. This amendment would incorporate in the Act the principles set out in the case of Bree so that the impact of alcohol and other substances on capacity to consent is embedded in legislation.

97. When dealing with cases involving a complainant who may have lost capacity to consent due to alcohol or the effect of drugs Crown Prosecution Service Legal Guidance<sup>39</sup> suggests,

*'Prosecutors should carefully consider whether the complainant has the capacity to consent, and ensure that the instructed advocate presents the Crown's case on this basis and, if necessary, reminds the trial judge of the need to assist the jury with the meaning of capacity.'*

98. The guidance continues,

*'Prosecutors and investigators should consider whether supporting evidence is available to demonstrate that the complainant was so intoxicated that he/she had lost their capacity to consent. For example, evidence from friends, taxi drivers and forensic physicians describing the complainant's intoxicated state may support the prosecution case. In addition, it may be possible to obtain expert evidence in respect of the effects of alcohol/drugs and the effects if they are taken together. Consideration should be given to obtaining an expert's back calculation or the opinion of an expert in human pharmacology in relation to the complainant's level of alcohol/drugs at the time of the incident.'*

99. The significance of capacity is not always obvious and may be overlooked by investigators and prosecutors who concentrate instead on whether there was actual consent. The Court of Appeal in the case of H<sup>40</sup> allowed the prosecution's appeal against the judge's terminatory ruling, stating that the jury should have been allowed to decide whether the complainant had capacity to consent and, if she had, whether she had consented. The case involved a 16 year old girl, drunk and separated from her friends on New Year's Eve who ended up in a car with strangers and who was digitally penetrated and raped. Because she could not remember whether she had actually said the words 'yes' or 'no',

<sup>39</sup> CPS legal guidance. Above fn 32.

<sup>40</sup> [2007] EWCA Crim 2056.

the defence argued that the possibility of her consenting could not be excluded. This argument was accepted by the Judge and the case terminated.

100. In its judgment the Court of Appeal expressed the view,

*'It would be a rare case indeed where it would be appropriate for a judge to stop a case in which, on one view, a 16-year-old girl, alone at night and vulnerable through drink, is picked up by a stranger who has sex with her within minutes of meeting her and she says repeatedly she would not have consented to sex in these circumstances'.*

101. Following the Court of Appeal's decision the trial continued and the defendant was convicted. The case usefully confirms that lack of consent does not have to be communicated verbally and may be implied from the circumstances.

## Reasonable Belief in Consent

102. Prior to the introduction of the Sexual Offences Act 2003 the mental element required for a defendant to be found guilty of rape was that he either knew that the complainant did not consent to the sexual intercourse or was reckless as to whether or not the complainant consented. This meant a man was not guilty of rape if he had a mistaken belief that the woman was consenting even if his belief was unreasonable.

103. The Sexual Offences Act 2003 introduced objectivity in the form of 'reasonableness' into the mental element of the offence. This means the prosecution must prove that the defendant did not reasonably believe that the complainant consented. When deciding upon the 'reasonableness' of the defendant's belief the jury is directed to have regard to all the circumstances at the time, including any steps that the defendant may have taken to establish that the complainant consented<sup>41</sup>. If the steps taken by the accused are to be available as evidence this must be explored with the complainant. It is also crucial that investigating officers use a suspect's interview to actively explore with the suspect what steps he says he took and to challenge his account as appropriate. In Scotland one of the objectives in legislating for the concepts of 'free agreement' and 'reasonable belief' was to shift the focus away from the complainer and her/his actions and encourage instead consideration of the accused and his actions. Prosecutors consider this has been successful.

## Consent – Ongoing Developments

104. As if the situation was not sufficiently complex, the concept of 'consent' is not static. The ongoing caselaw continues to have an impact on its interpretation. Recent cases have resulted in further consideration of Section 74 by the High Court and the Court of Appeal, in particular where ostensible consent in relation to sexual offences was considered not to be true consent, either because a condition upon which consent was based was not complied with or because of a material deception (other than one which falls within section 76 of the Sexual Offences Act 2003). The resultant judgments identified three sets of circumstances in which consent to sexual activity might be vitiated where the 'condition' was breached.

105. In *Assange*,<sup>42</sup> an extradition case, the Court considered the situation in which it was alleged Assange knew that AA would only consent to sexual intercourse if he used a condom. Rejecting the view that the conclusive presumption in section 76 of the Sexual Offences Act 2003 would apply in these circumstances the President of the Administrative Court concluded that the, 'issue of materiality ... can be determined under section 74 rather than section 76'. The judgment continued,

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<sup>41</sup> Section 1(2) Sexual Offences Act 2003.

<sup>42</sup> *Julian Assange v Swedish Prosecution Authority* [2011] EWHC 2849 (Admin).

*'It would plainly be open to a jury to hold that if AA had made clear that she would only consent to sexual intercourse if Mr Assange used a condom, then there would be no consent if, without her consent, he did not use a condom, or removed or tore the condom ..... His conduct in having sexual intercourse without a condom in circumstances where she had made clear she would only have sexual intercourse if he used a condom would therefore amount to an offence under the Sexual Offences Act 2003.'*

106. In R<sup>43</sup> the High Court examined an application for judicial review of the refusal of the Director of Public Prosecutions to commence a prosecution for rape and/or sexual assault of the complainant by her former partner. 'Choice' and the 'freedom' to make any particular choice must, the Court said, be approached in 'a broad common sense way'. Against what the Court described as the 'essential background' of the complainant's partner's 'sexual dominance' and the complainant's 'unenthusiastic acquiescence to his demands', the Court considered a specific incident when the claimant alleged she consented to sexual intercourse only on the clear understanding that her partner would not ejaculate inside her vagina. She believed that he intended and agreed to withdraw before ejaculation, and he knew and understood that this was the only basis on which she was prepared to have sexual intercourse with him. When he deliberately ejaculated inside the complainant,

*'She was deprived of choice relating to the crucial feature on which her original consent to sexual intercourse was based. Accordingly her consent was negated. Contrary to her wishes, and knowing that she would not have consented, and did not consent to penetration or the continuation of penetration if she had any inkling of his intention, he deliberately ejaculated within her vagina. In law, this combination of circumstances falls within the statutory definition of rape.'*

107. The third case, McNally<sup>44</sup> was concerned with the material deception of the victim by the Appellant. The Court of Appeal dismissed McNally's appeal against her conviction on six counts of assault by penetration contrary to section 2 of the Sexual Offences Act and allowed her appeal against sentence. The 'undeniably unusual' facts considered by the Court involved the relationship between two girls which, over 3 ½ years, developed from an internet relationship to an 'exclusive romantic relationship' that involved their meeting and engaging in sexual activity. From the start McNally presented herself as a boy, a deception she maintained throughout the relationship. Examining the nature of 'choice' and 'freedom', the Court determined that 'deception as to gender can vitiate consent'.

*'Thus while, in a physical sense, the acts of assault by penetration of the vagina are the same whether perpetrated by a male or a female, the sexual nature of the acts is, on any common sense view, different where the complainant is deliberately deceived by a defendant into believing the latter is a male. Assuming the facts to be proved as alleged, M chose to have sexual encounters with a boy and her preference (her freedom to choose whether or not to have a sexual encounter with a girl) was removed by the appellant's deception.'*

108. Recognising that not all deceptions will be capable of nullifying consent the Court explained,

*'In reality, some deceptions (such as, for example, in relation to wealth) will obviously not be sufficient to vitiate consent.'*

109. As will be apparent from the above discussion, if 'consent' is a difficult concept for practitioners, including investigators and prosecutors, how much more so for jurors? Given the complexity and intricacy of the legal framework on the subject and acknowledging the lack of juror research, and of any requirement for jurors to explain their decisions, the review can only speculate about how juries apply section 74 to the specific circumstances of the cases which they try. In practice any communication between individuals, especially in a sexual context, is likely to be highly nuanced. This was highlighted by the authors of a report<sup>45</sup> which stated,

43 R (on the application of F) v the Director of Public Prosecutions [2013] EWHC 945 (Admin).

44 Justine McNally v R [2013] EWCA Crim 1051.

45 Sex without consent, I suppose that is rape, How young people in England understand sexual consent (November 2013) Coy M, Kelly L, Elvines F, Garner M, Kanyeredzi A, Office of the Children's Commissioner.

*'A frequently cited idea is that non-consensual sex is the result of 'miscommunication'. This creates expectations for sex to be refused with a clear verbal 'no', unlike other forms of human interaction where declining is typically much less direct'.*

- I 10. When force was a constituent requirement of the crime of rape the prosecution of such cases was more straightforward. The greater understanding of the need to protect the autonomy of the individual has resulted in an important refinement which is much more appropriate for the 21st century but which brings with it a significantly more challenging task in proving the case beyond reasonable doubt. Rape is a unique crime in that it is the state of mind of each of the suspect and the complainant that transforms what in other circumstances would be a normal, lawful human interaction, into an indictable crime. In any discussion of such cases it is therefore vital for there to be recognition of the inherent unique challenges and complexity of investigating and prosecuting these crimes when compared to other serious crimes against a person, including homicide.

## Rape – Policy and Guidance

- I 11. In 2009 the Stern Review's terms of reference included, 'To make recommendations, with particular reference to improving the implementation of current policies and procedures'. Having considered the policies, Baroness Stern's review concluded that, 'the policies are the right ones, but there is still much to be done to turn the policies into reality everywhere'.
- I 12. Having considered the implementation of current policies in London in 2015 this report reaches much the same conclusion. The Stern Review recommended, 'That the booklet Crown Prosecution Service Policy for Prosecuting Cases of Rape should be widely available to all complainants and witnesses'. First published in 2004 and significantly revised in 2009 (with a small amendment in 2012) the Policy booklet (accessible on the Crown Prosecution Service website) provides a comprehensive statement of how the Crown Prosecution Service intends to deal with rape and what complainants should expect.
- I 13. As well as explaining the legal definition of rape including consent and issues relating to intoxication and capacity, the Policy recognises the 'myths and stereotypes' to which rape is subject and identifies some of the barriers to reporting which complainants face. It also explains that the Crown Prosecution Service has set a standard for its network of specialist rape prosecutors that includes mandatory training emphasising the need to build effective cases while focusing on support for complainants. Experts explain the nature and extent of the forensic medical examination and the effects of rape, including psychological injury. On working with the police the Policy says,

*'Early consultation will take place between the specialist prosecutor and the police to ensure that all possible avenues of evidence are explored and that the correct charge is identified'.*

- I 14. The Policy emphasises the benefit of having one prosecutor responsible for a case from beginning to end and includes an explanation of the two-stage test that prosecutors apply to all offences when deciding whether to charge a suspect. The test, which is set out in the Code for Crown Prosecutors, is different from the one the court uses when determining whether a defendant is guilty of an offence. Prosecutors must be satisfied that, 'there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge'<sup>46</sup>. This is based on whether,

*'an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged'<sup>47</sup>*

When deciding whether there is enough evidence prosecutors should ask themselves: 'Can the evidence be used in court? Is the evidence reliable? Is the evidence credible?'

<sup>46</sup> Code for Crown Prosecutors, 7th edition (2013) paragraph 4.4.

<sup>47</sup> Ibid paragraph 4.5.

I 15. Where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether prosecution would be in the public interest. A prosecution will usually take place unless,

*‘the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour’*<sup>48</sup>.

I 16. Due to the seriousness of rape a prosecution is likely, other than in the most exceptional circumstances, to be in the public interest. Crown Prosecutors apply the Full Code Test wherever possible. However, there will be circumstances when, following arrest but before all the evidence is gathered, the suspect is considered unsuitable to be granted bail. In such cases the prosecutor may decide to charge the suspect applying the lower Threshold Test, providing all the following are met:

- there is insufficient evidence to apply the Full Code Test;
- there are reasonable grounds for believing that further evidence will be available in a reasonable time;
- the seriousness of the circumstances justifies the making of an immediate charging decision; and
- there are continuing substantial grounds to object to bail.

I 17. The Policy also sets out the special measures available to help witnesses give their best evidence (see Part 5: Trials and the Court Process for more on special measures) and states,

*‘When we have decided whether we are going to make an application to the court for special measures, we will ask the police to find out if the witness would like to meet the prosecutor’*<sup>49</sup>.

The Policy states that,

*‘Wherever possible, the Crown Prosecution Service prosecutor will ensure that the advocate who will be conducting the trial attends the meeting between the Crown Prosecution Service prosecutor and the witness’*<sup>50</sup>.

I 18. The Policy booklet also refers to the joint national protocol between the police and Crown Prosecution Service as an agreement, ‘to adhere to best practice and policies in the investigation and prosecution of rape cases’. This model protocol is designed to be implemented locally between police forces and their respective Crown Prosecution Service Area, tailored to meet local arrangements. First introduced in 2008 it has been updated following consultation with interested parties, and a new version was published in January 2015 as part of the National Rape Action Plan<sup>51</sup>.

I 19. Amendments to the protocol that reflect recent developments in investigating and prosecuting rape include:

- the use of Intermediaries where witnesses are vulnerable by reason of their age or for reasons connected to physical or mental disability, disorder or significant impairment of intelligence and social functioning;
- Reference to Rape and Serious Sexual Offences Units which have been introduced across the Crown Prosecution Service;
- The need for cases submitted for a charging decision based on the Full Code Test to have been confirmed as meeting the required standard by an officer of at least the rank of Inspector; and
- References to Independent Sexual Violence Advisor services, including where the complainant wishes to withdraw their support for a prosecution.

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48 *Ibid* paragraph 4.8.

49 CPS Policy Paragraph 7.9. Above fn 23.

50 *Ibid* Paragraph 7.10.

51 A Protocol between the Police and Crown Prosecution Service in the Investigation and Prosecution of Allegations of Rape (8 January 2015).

120. Guidance on Charging<sup>52</sup> published by the Director of Public Prosecutions and issued under section 37A of the Police and Criminal Evidence Act 1984 sets out the arrangements for joint working between police officers and prosecutors during the investigation and prosecution of criminal cases. It includes the direction,

*‘Specific cases involving a death, rape or other serious sexual offence should always be referred to an Area prosecutor as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail’*<sup>53</sup>.

121. The guidance also provides authority for police decisions to take no further action without the need to refer cases to the Crown Prosecution Service, stating that,

*‘The police should take decisions to no further action cases before referral unless the decision requires the assessment of complex evidence or legal issues’*<sup>54</sup>.

When seeking a charging decision from the Crown Prosecution Service the police should first be satisfied that the Full Code Test can be met. The guidance directs that,

*‘Cases should not be charged by the police or referred to prosecutors unless this standard can be met or unless the making of a charging decision in accordance with the Threshold Test is justified. This means the case must be capable, through the gathering of further evidence of meeting the Full Code Test of realistic prospect of conviction’.*

122. The review was told that a 6th edition of the Director’s Guidance on Charging, due to be introduced in 2015, will further clarify the referral and charging requirements for rape cases. In the meantime explanatory guidance on seeking early investigative advice and charging advice in rape cases was disseminated in October 2014 as part of the National Rape Action Plan.

123. A policy of applying a ‘merits-based’ approach was introduced in 2009 in response to a decision of Toulson LJ<sup>55</sup> in which he said,

*‘There are some types of case where it is notorious that convictions are hard to obtain, even though the officer in the case and the crown prosecutor may believe that the complainant is truthful and reliable. So-called ‘date rape’ cases are an obvious example. If the crown prosecutor were to apply a purely predictive approach based on past experience of similar cases (the bookmaker’s approach), he might well feel unable to conclude that a jury was more likely than not to convict the defendant. But for a crown prosecutor effectively to adopt a corroboration requirement in such cases, which Parliament has abolished, would be wrong. On the alternative ‘merits based’ approach, the question whether the evidential test was satisfied would not depend on statistical guesswork. ....’*

124. Explaining this approach to prosecutors Alison Levitt QC, then Principal Legal Advisor to the Director of Public Prosecutions, said,

*‘In other words, the prosecutor should proceed on the basis of a notional jury which is wholly unaffected by any myths or stereotypes of the type which, sadly, still have a degree of prevalence in some quarters’.*

125. Also in 2009, joint Guidance on Investigating and Prosecuting Rape was published, the first combined professional practice for investigators and prosecutors<sup>56</sup>. The document merged the recently published

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52 The Director’s Guidance on Charging 5th Edition (May 2013).

53 *Ibid* paragraph 7.

54 *Ibid* paragraph 8.

55 [2009] EWHC 106 (Admin).

56 Guidance on Investigating and Prosecuting Rape (2009) Association of Chief Police Officers, the National Police Improvement Agency and the Crown Prosecution Service.

Crown Prosecution Service Rape Manual (available on both the Crown Prosecution Service intranet and its publicly accessible website) with updated police professional practice. Publication was marked by a number of joint police and Crown Prosecution Service regional workshops to encourage the embedding of a prosecution team approach that included early consultation and effective case building.

126. In 2011 the Crown Prosecution Service Strategy and Policy Directorate undertook a major overhaul, updating the organisation's legal guidance. This involved the renaming and updating of the Rape Manual as the Rape and Sexual Offences Legal Guidance, available with other legal guidance on the Crown Prosecution Service website. The guidance is a resource for prosecutors as well as members of the public. The College of Policing has also undertaken a major overhaul of guidance for police officers investigating rape and serious sexual offences. At the time of publication of this report in 2015 new Authorised Professional Practice is due for publication.
127. The Crown Prosecution Service website is also home to a substantial amount of policy and guidance relating to complainants and witnesses, much of which is relevant in rape cases. The issues addressed include special measures (designed to assist witnesses give their best evidence); dealing with witnesses with mental health issues or learning disability; the Code of Practice for Victims of Crime; and Provision of therapy for child and vulnerable or intimidated adult witnesses (pre-trial therapy is discussed later in Part 6: The Complainant's Experience - Broader Issues Impacting on Complainant Satisfaction). At the time of this review the Crown Prosecution Service held a public consultation on its draft guidance on Speaking to Witnesses at Court, aimed at making witnesses feel better prepared and more informed about the court process.
128. Finally, the most recent relevant guidance was launched at a National Rape Conference addressed by the Director of Public Prosecutions and Assistant Commissioner Martin Hewitt on 28 January 2015. The guidance on the issue of consent provides a reminder to investigators and prosecutors of what they should consider when consent is the disputed issue in a case.
129. A reading of the above section provides an indication of the depth and breadth of the policy and guidance available to prosecutors, which has been developed and published over a number of years. This review commends the excellent standard of the available information and the underpinning aim of keeping practitioners' knowledge up to date. There is a serious concern, however, about whether the information is published and organised in a way that best suits the needs of busy police officers and prosecutors. During the life of this review we were able to observe the publication of a number of relevant documents:
- The National Rape Action Plan, in which the Director of Public Prosecutions and Policing Lead for Rape, Assistant Commissioner Martin Hewitt, set out their 'commitment to addressing the issues preventing rape cases from successfully progressing through the criminal justice system'<sup>57</sup>;
  - Rape Cases – Police Referral to the Crown Prosecution Service for Early Investigative and other Advice, providing clarification on applying the Director's Guidance on Charging;
  - The updated Police/Crown Prosecution Service Protocol on Investigating and Prosecuting Rape; and
  - Toolkits on Consent.
130. Constant developments surrounding the investigation and prosecution of rape must result in inevitable adjustments to this body of advice and are demonstrative of a very clear desire to improve by raising standards and delivering the best possible service. However the review questions whether publication is sufficiently informed by an understanding of the ability of individuals, whose working lives routinely involve competing priorities, to absorb the often subtle changes which the Director of Public Prosecutions is conscientiously seeking to articulate and promulgate. So much information, delivered in the context of constantly getting to grips with new cases and changes in organisation, can be overwhelming to those at the receiving end.

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57 Crown Prosecution Service Website Latest News 6 June 2014.

131. Despite a host of Crown Prosecution Service performance measures designed to monitor the delivery of policy and good practice and overseen by the Director of Public Prosecutions personally, the gap between policy and practice observed by Baroness Stern persists. This review was especially concerned that policies involving a ‘merits-based’ approach to decision making, early consultation between prosecutors and investigating officers, and challenges to the myths and stereotypes were not routine. If a consistent approach is to be achieved, particularly by prosecutors managing the heavy caseloads that were witnessed in London during this review, the information needs to be brigaded online in such a way that it is consolidated in one place, regularly updated, with the date of each version clearly visible, so as to enable prosecutors to recognise instantly whether the document is one with which they are already familiar. Furthermore all such developments need to be reinforced by new or updated training to ensure the messages are fully integrated. To do otherwise risks the continuing disparity between well intentioned policy and guidance from the police and Crown Prosecution Service hierarchy and its adoption by those who investigate and prosecute on the frontline.
132. The review is aware of recent steps by the Crown Prosecution Service to consolidate relevant information, primarily through the Rape and Sexual Offences Legal Guidance but, more recently, through the establishment of a Casework Hub, an online resource where information on rape and other aspects of violence against women and girls is updated. However if the disparity between policy and practice is to be finally eradicated a survey of staff, to ensure that these arrangement best satisfy their needs, could be beneficial.

**Recommendation 2.** It is recommended that in order to tackle the long standing gap between policy and practice, the Police and Crown Prosecution Service develop a strategy to ensure that policy and guidance on investigating and prosecuting rape is published in a way that practitioners will best be able to access and absorb. Such policy should be reinforced by relevant and effective training.

## Perceptions Surrounding Rape

133. While experts in this field have made considerable progress in understanding rape, including the deliberate targeting by perpetrators of vulnerable complainants and its serious psychological impact, this understanding has not filtered down into public awareness. Instead, despite efforts such as the ‘This is abuse’ campaign, run by the Home Office and aimed at children of 13 to 18, gaps in understanding are filled by what are commonly referred to as societal ‘myths’ or, as the authors of ‘A Gap or a Chasm?’ preferred to describe them,

*‘powerful stereotypes that function to limit the definition of what counts as ‘real rape’, in terms of the contexts and relationships within which sex without consent takes place’.*

134. These stereotypes influence public understanding of rape, suggesting for example that rape by a violent, masked stranger is the norm. While some offending falls within that category, rape by someone known to the complainant is far more prevalent than by a stranger. According to a 2013 Overview of Sexual Offending,

*‘Around 90 per cent of complainants of the most serious sexual offences in the previous year knew the perpetrator, compared with less than half for other sexual offences’<sup>58</sup>.*

(The Overview defines ‘most serious sexual offences’ as all rape, attempted rape and sexual assault offences.)

135. A recent report<sup>59</sup> exploring children’s and young people’s understanding of consent described how societal stereotypes act to diminish the perpetrator’s responsibility and blame the complainant. The authors found,

<sup>58</sup> An Overview of Sexual Offending in England and Wales (2013) Ministry of Justice, Home Office and the Office for National Statistics.

<sup>59</sup> Sex without consent, I suppose that is rape. Above fn 45.

*‘Sex without consent but where the parties know each other, including when the complainant clearly is not willing or is too intoxicated to know what is happening, is frequently seen as somehow different from rape. The complainant, usually a girl (but boys are complainants too), is invariably blamed for their own assault. They should not have gone to visit the boy; should not have worn a tight top; should not have had the drink; have ‘done it before’ so have no right to say ‘no’.*

136. Nor are attitudes that blame complainants restricted to young people or the public at large. The same report<sup>60</sup> also revealed,

*‘It was truly shocking to encounter professionals across many agencies and in prominent positions who espoused the sorts of attitudes expressed by a chair of a local safeguarding children board who told us there was no sexual exploitation of children in his area but there were two young girls of 13 and 14 who were ‘prostituting themselves up and down the high street’. Many professionals told us that the complainants of sexual exploitation were simply ‘making bad choices’ or ‘choosing to engage in risky behaviours’.*

## False Reporting of Sexual Violence

137. False allegations of rape are extremely serious and can have a devastating impact on the person who is falsely accused. However, there is reliable evidence that the number of such cases is small, especially when compared with the number of rape prosecutions that are authorised by the Crown Prosecution Service. Where an innocent person has been put at risk of arrest or wrongful conviction the appropriate charge is attempting to pervert the course of justice. This offence can only be tried on indictment (in the Crown Court) and carries a maximum sentence of life imprisonment. In less serious cases the offence of wasting police time<sup>61</sup> may be appropriate. This is a summary only offence (triable in the magistrates’ court) and carrying a maximum sentence of 6 months imprisonment.

138. There is, however, no official definition of a ‘false allegation’ and the term is used loosely to describe a wide range of circumstances. This was confirmed by research published by the Ministry of Justice in 2012<sup>62</sup> following a review of 299 rape files and workshops with practitioners. According to the research,

*‘A variety of definitions of false allegations of rape were found to be in operation amongst police and prosecutors. These ranged from a broadly drawn definition of false allegations relating to intoxicated complainants (and poor recollection of details), delays in reporting, witness retractions, lack of physical injury and lack of medical evidence, and a narrower definition based on situations where the complaint was considered malicious’.*

139. The review identified that where the ‘broadly drawn’ definition was used 36 cases out of the 299 (12%) could be classified as false. Using the ‘narrower’ definition, just 9 cases (3%) qualified as false. In February 2011, following the conviction of a woman for perverting the course of justice<sup>63</sup> on the basis that she had falsely withdrawn true allegations of rape made against her husband, the Director of Public Prosecutions launched a public consultation on new interim guidance<sup>64</sup> for prosecutors. This Guidance, and the subsequent final version, provided advice on ‘Perverting the Course of Justice - Charging in cases involving rape and/or domestic violence allegations’. In reaching a decision to prosecute, prosecutors must,

*‘be able to prove that the allegation was in fact false. If there is any question as to whether the original allegation might have been true, then there is not a realistic prospect of conviction, and no charge of perverting the course of justice should be brought’.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Section 5(2) Criminal Law Act 1967.

<sup>62</sup> Understanding the progression of serious cases through the Criminal Justice System, Evidence drawn from a selection of case files (2012) Ministry of Justice research, Burton et al.

<sup>63</sup> R v A [2010] EWCA Crim 2913.

<sup>64</sup> Perverting the Course of Justice - Charging in cases involving rape and/or domestic violence allegations (2011) Crown Prosecution Service.

140. The guidance published by the Director of Public Prosecutions recognised the pressures applied to complainants which could lead to their retracting or even claiming their original allegation was untrue, to avoid having to give evidence at trial. These included,

*'fear of violence, or intimidation, which may itself constitute a criminal offence. Other factors which may also be relevant include, a desire to give an existing relationship another chance; the impact upon children; embarrassment; a fear of going to court; family/community pressure which may stem from the immediate and extended family, the wider community and from cultural traditions; insecure immigration status; and mental health issues/learning disabilities'.*

141. Following the launch of the public consultation, all cases involving an allegedly false allegation of rape and/or domestic violence were referred to the Director of Public Prosecutions personally for a decision on charging. The key findings formed the basis for a report<sup>65</sup>.

142. The report considered charges for perverting the course of justice and wasting police time in the context of the total number of rape and domestic violence prosecutions. During the 17 months of the review, there were 5,651 prosecutions for rape and 111,891 for domestic violence by the Crown Prosecution Service across England and Wales. During the same period only 159 cases were referred to the Director of Public Prosecutions for charging decisions relating to alleged false allegations. The table below also sets out the Metropolitan Police Service's data for investigations on 'wasting police time' and 'perverting the course of justice' for both rape and other sexual offences in London<sup>66</sup>.

Rape Complainants Subsequently Investigated For 'Wasting Police Time' And 'Perverting The Course Of Justice'						
Year	2010	2011	2012	2013	Up to Sept 2014	Total
Number	4	15	5	7	10	41

Table 1

143. Out of those 159 cases referred from the Crown Prosecution Service nationally to the Director of Public Prosecutions, 121 concerned allegedly false allegations of rape, 27 allegedly false allegations of domestic violence (not including sexual violence), and 11 allegedly false allegations of both rape and domestic violence. Out of those cases, the Director of Public Prosecutions authorised:

- 35 prosecutions for making false allegations of rape (25 for perverting the course of justice and 10 for wasting police time);
- 6 for making false allegations of domestic violence (5 for perverting the course of justice and 1 for wasting police time); and
- 3 for making false allegations of both rape and domestic violence (all for perverting the course of justice).

When compared with the number of charges for rape and domestic violence these numbers are small. Table 2 below sets out the Metropolitan Police Service data for investigations into wasting police time and perverting the course of justice for 'other sexual offences' in London.

'Other Sexual Offence' Complainants Subsequently Investigated For 'Wasting Police Time' And 'Perverting The Course Of Justice'						
Year	2010	2011	2012	2013	Up to Sept 2014	Total
Number	2	4	1	4	0	11

Table 2

65 Charging Perverting the Course of Justice and Wasting Police Time in cases involving allegedly false allegations, Joint report to the Director of Public Prosecutions (2013) Alison Levitt QC and the Crown Prosecution Service Equality and Diversity Unit.

66 MPS Crime Reporting Information System. Above fn 5.

144. The Crown Prosecution Service report also highlighted the prevalence, amongst those making allegations, of young and often vulnerable people. The review found,

*'About half of the cases involved people aged 21 years old and under, and some involved people with mental health difficulties. In some cases, the person alleged to have made the false report had undoubtedly been the complainant of some kind of offence, even if not the one which he or she had reported'.*

It concluded that these cases are not straightforward and warrant careful analysis, not just of the behaviour and credibility of the person making the allegation, but of all those involved.

145. A striking finding of the 2013 review was that in a significant number of the referred cases the initial complaint of rape had been made by someone other than the person subsequently alleged to have made the false allegation. This was so in 61 cases (38%) and out of those 61 nearly all (92%) related to rape. According to the report,

*'It was a feature of these cases that the suspect later reported that the whole thing had spiralled out of control and he or she had felt unable to stop the investigation'.*

146. There have been other approaches by the Crown Prosecution Service to issues concerning false reports including:

- dip sampling at least 15% of relevant charging decisions as part of the Violence against Women and Girls assurance scheme, resulting in initiatives such as the introduction of a ratification process to ensure greater consistency;
- face-to-face training and webinars; and
- sharing lessons learned with the police at both national and local levels.

147. The focus groups revealed a wide range of opinions about false allegations. There was no consensus on what makes an allegation false, or on the proportion of reporting which might be false. As discussed above there is no accepted definition of a false allegation and research published by the Ministry of Justice in 2012<sup>67</sup> identified a 'broadly drawn' as well as a 'narrower' definition. This review's findings were similar.

148. A focus group of first response officers believed there to be a high level of false allegations, seemingly made by individuals for their own ends. The officers provided examples which included detainees at an immigration centre falsely alleging rape to avoid deportation. One explained, 'Men agree to rape each other'. Other examples included reporting rape to cover up a one night stand or an affair. Detective Constables referred to 'regret sex', describing a situation where, following consensual sex, one person has regrets and makes a false report to create some form of justification for the event.

149. A focus group of Haven staff accepted that people sometimes, 'make up something to explain things'. This included, 'saying a man climbed through a window and raped me' to avoid having to admit they were in bed having sex with their boyfriend. However Haven staff identified another category distinct from the deliberately untruthful.

*'Troubled people often have something that happened in life, even if it's not what they've reported. It could be a flashback or something that happened years ago'.*

They also suggested some people report because they want help.

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67 Understanding the progression of serious cases. Above fn 62.

150. A focus group of Independent Sexual Violence Advisors (ISVAs) suggested that false allegations are 'misunderstood' and while an allegation may not be wholly accurate, it may not necessarily follow that it is a deliberate lie. They told the review such reports may 'stem from abuse' and indicate 'a cry for help'. They explained that, 'Things are unclear when a person is traumatised'. According to the ISVAs false allegations were, in their experience, rare. One explained that, 'in four years as an ISVA I've never met a woman I felt made a false allegation'. There was also a belief that so-called 'false allegations' can be re-living earlier, including childhood, experiences. One ISVA suggested that she had encountered, 'Hundreds of clients who have not been believed' by criminal justice agencies and that the system had 'failed them'. She did not deny that false allegations take place, but maintained that, 'this is the minority'.
151. Crown Prosecution Service staff involved in compiling the 2013 report on false allegations<sup>68</sup> noted a striking similarity between the cases referred to in that report and those examined by the national Rape Scrutiny Panel, as part of a sample of cases in which the police decided to take no further action. Both sets of cases shared a similar pattern of complainant vulnerabilities including: mental health issues; learning disability/difficulties; repeat victimisation; and people seeking attention and or affection.
152. Some specialist officers trained in sexual offences investigative techniques (SOIT officers) who participated in the focus groups reported that they regularly encountered false allegations. One estimated it might be as high as 30% of cases though this was an extreme view. Many appeared to rely on the 'broadly drawn' definition<sup>69</sup> featuring 'young girls' and 'those with vulnerabilities'. Young people lying their way out of trouble were considered not uncommon, and as in the Crown Prosecution Service report on perverting the course of justice and false allegations<sup>70</sup> SOIT officers said they had encountered complainants who, having embarked on a lie, found it difficult to 'stop the ball rolling'. A Detective Constable described making a rape report as like 'unleashing the dogs of war', as once started it was almost impossible to halt the investigation. Criminal compensation claims were also suggested by a minority as a potential motive for a false allegation.
153. While these views were not shared by all the SOIT officers who spoke to the review, there was widespread agreement that many complainants needed specialist support. Problems relating to housing, health or social needs were not issues the police could resolve in isolation. Concern, and sometimes resentment about the resources taken up dealing with false allegations, was expressed in focus groups. First response officers described such cases as 'a complete waste of time'. SOIT officers identified there being insufficient resources to investigate all reports and that they had to 'filter the false jobs out' to focus on the 'real jobs'. Detective Constables expressed concern that time spent on false allegations diverts officers away from genuine reports.
154. Some police officers perceived a reluctance at senior level to admit or discuss the true level of false or 'delusional' reporting, and that this was down to political pressure and inextricably bound up with attitudes towards 'no criming'. The impression formed during the review and from experience is that this is an enormously complex area. It was a matter of serious concern that there was a ready assumption that so many allegations are false and about what the explanation for this might be. Reasons why officers might be inclined to label a report as false could include the type of issues linked to allegations of rape. Some complainants are extremely challenging to deal with and there were a number of examples of aggressive, drunken complainants often with underlying mental health issues. Police officers may simply not be equipped in terms of expertise, let alone time, to unravel the heavy emotional and other baggage and decipher the reality of the complainant's experience. Human nature dictates that in such circumstances officers may be more empathetic to those whom they perceive as more obviously 'deserving complainants', those who are co-operative and whose circumstances potentially point towards, rather than away from, a successful prosecution.

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68 Charging Perverting the Course of Justice and Wasting Police Time. Above fn 65.

69 Understanding the progression of serious cases. Above fn 62.

70 Charging Perverting the Course of Justice and Wasting Police Time. Above fn 65. 71 Understanding the progression of serious cases. Above fn 62.

155. Police officers may also find it hard to come to terms with repeated acquittals. As one explained to us,

*‘There can be a sense of ‘here we go again’ with some investigations as you know from the start that the factors will lead to a not guilty verdict. The fatigue comes from dealing with so many cases of drunkenness etc. where you know what the outcome is likely to be.’*

Some Detective Inspectors were concerned that the impact of ‘burn-out’ on those working in this field and of ‘compassion fatigue’ due to unacceptable workloads has left some officers incapable of recognising any but those they consider the most deserving of complainants. Similarly, senior staff at the Havens suggested that the lack of occupational health support available to SOIT officers leaves them susceptible to ‘vicarious trauma’. This, we were told, can de-sensitise officers, leading to fatigue, lack of ability to cope and, significantly, lack of ability to empathise.

156. Turning to the ‘narrower’ definition<sup>71</sup> of false allegations, Judges, prosecutors and police officers expressed strong views that deliberately malicious accusations of rape against specific individuals should always be prosecuted. ‘The public needs to know we take them seriously’.

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<sup>71</sup> Understanding the progression of serious cases. Above fn 62.

# Part 3 – The Police and Crown Prosecution Service – Current Service Provision

## The London Landscape

157. London is a unique city both in a global and national context. It provides a significant range of challenges for the Metropolitan Police Service. Its size, geography, demography and capital status are all factors which make the demands on the policing response as diverse as the population itself and difficult to compare with other force areas. It is these diverse needs which place particular demands on the ability to investigate and prosecute rape in London in the context of reduced public spending. The following data have been taken from the Metropolitan Police Service's London Landscape 2012-2021<sup>72</sup>.

## Population Size

158. Over the past decade London's population has grown significantly and is predicted to continue. Between 2001 - 2011 London's population increased by 11.6% to 8.17 million, with 850,000 more residents and a population density 15 times higher than the rest of England and Wales. It is estimated that London's population will grow by 11.7% to 9.126 million by 2021. This equates to a further one million residents. Within these overall numbers 5-19 year olds, historically the most criminally active age group, increased by 8.2% in London between 2001 - 2011. The largest absolute increase was in working age 25-64 year olds, a key demographic for driving economic growth and relative prosperity. In addition to its resident population, London also hosted some 69,000 non-United Kingdom short term residents in 2011, by far the highest of any English region. As the rail network expands, so the daily commuter population also increases.

## London's Diversity

159. The diversity of London, by far the most ethnically and culturally diverse city population in the United Kingdom, continues to expand. London's non-United Kingdom born population grew by almost a quarter between 2004 and 2011 to nearly three million or 36%. London's black and minority ethnic population grew by more than a third from 2001 to 2011 to 2.9 million or 35.5%. Mixed race residents recorded the strongest percentage growth to 2011. Over half of all births in London in 2011 were to mothers born outside of the United Kingdom and over half of pre-school and school children aged 5 to 14 are now born to black and minority ethnic families. Additionally, London accepted over 30% of international migrants to England and Wales, most for formal study and work. Analysis shows that London's black and minority ethnic population is projected to grow by almost a quarter between 2011 and 2021 to 3.55 million, nearly two-fifths of London's population, but will make up over half of the population in seven London boroughs.

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72 MPS London Landscape 2012-2021. Strategy and Planning, Corporate Development DCP.

## Crime and Deprivation

160. Though the economy is recovering, growth has been associated with both increasing inequality and economic volatility as those boroughs with the strongest population growth to 2011 also exhibit relative low income, deprivation and high unemployment. These challenges are demonstrated in East London boroughs, notably Newham, Tower Hamlets and Hackney, which had amongst the highest levels of deprivation in the United Kingdom in 2010. There is more child poverty, for example, in London than anywhere else in the United Kingdom. The rise in unemployed 16-24 year olds in London, particularly amongst Black and Asian youths, will intensify pressure on policing and increase overall costs to the taxpayer. This, with economic drag, may exacerbate serious social challenges in London's areas of concentrated deprivation, such as Tower Hamlets, Hackney and Newham.
161. The links between deprivation itself on the incidence of types of crime are well documented. Inadequate housing, low income and unemployment are drivers of crime and of demand for policing services. Increasing levels of unemployment among 16-19 year olds pose a key risk to increased criminality, notably through gang involvement. Serious crime, such as gun crime, open drugs markets and organised criminal network activity are coterminous with London's most deprived neighbourhoods. Rape, however, occurs across all communities and is not restricted to any particular social strata.

## Challenges and Implications

162. The changing London landscape will provide the Metropolitan Police Service and Crown Prosecution Service with additional challenges as the decade progresses in terms of both demand and the complexity of delivering services. The first challenge will be the demand on existing services. Serious sexual violence is already significantly under reported by some 85%<sup>73</sup>. Should public confidence and the willingness to report sexual violence increase then even if there are no demographic changes in London, demand on existing services will be considerable. However, rape reporting is increasing year on year and as the resident and transient population expands over the next decade then, coupled with existing reporting trends, the overall levels of reported rape could be exponential over the next ten years. The particular rise in school age children and young people produces additional potential risks for the prevalence in child sexual exploitation, sexual offending within gangs and child abuse, especially noting the increasing levels of deprivation and child poverty.
163. This rise in reporting will, however, also be dependent upon the extent to which sexual violence services are advertised to the population and how long the 'Operation Yewtree Effect' will influence reporting trends. This anticipated continued rise will also lead to increasing challenges in managing the complexity of investigations. The growth in the diverse ethnicity of London requires a response that is able to manage the cultural barriers that complainants of sexual violence feel in many growing communities as well as providing services which are relevant to those communities. Increasing levels of transient and commuter populations provide additional challenges to investigators where both suspects and complainants may not reside in London. As the population of young people grows, the use of social media (with its increasing accessibility) will put additional demand on investigators to recover evidence within multi-media devices and across telecommunication platforms. People trafficking, prostitution, the global nature of communication and grooming will all provide growing pressures.
164. Against these predictions, the London Landscape states resources for the Metropolitan Police Service have reduced by 20% over 2011/12 to 2014/15. An extra 1% reduction in 2013/14 and 2% in 2014/15 or combined £235m, are also likely to impact policing budgets in 2014/15. The Crown Prosecution Service, like other Government departments, has also had to accommodate significant cuts to its budget. As part of the 2010 comprehensive spending review it has had to achieve a 25% reduction in its expenditure by 2015.

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73 Crime Survey website. [www.crimesurvey.co.uk](http://www.crimesurvey.co.uk).

## The Strategic Framework

165. The Metropolitan Police's strategy is set through the Mayor of London's 'Police and Crime Plan 2013 - 2016'<sup>74</sup>.

166. The strategy seeks *'To deliver;*

- *A Metropolis considered the greatest and the safest big city on earth.*
- *A Metropolitan Police Service that becomes the UK's most effective, most efficient, most respected, even most loved police force.*
- *A capital city where all public services work together and with communities to prevent crime, seek justice for complainants and reduce reoffending'.*

167. The Mayor's plan prioritises a variety of crime types as a result of a public survey in 2012 which indicated that the biggest concerns to Londoners were 'anti-social behaviour; gangs; stop and search; and the relationship between young people and the police. Other issues that are commonly raised are the accessibility and visibility of the police, burglary and drug related crime as well as gun and knife crime and street crime'. This was further reinforced by a poll carried out for MOPAC in 2013 that identified burglary, street crime and anti-social behaviour as the issues that concern the public most.

168. Though not prioritised in the public surveys, sexual violence is a clear manifesto pledge.

*'His pledges are to;*

- *Strengthen the Metropolitan Police Service and drive a renewed focus on street policing.*
- *Give complainants a greater voice.*
- *Create a safer London for women by tackling violence against women and girls.*
- *Develop smarter solutions to alcohol and drug crime.*
- *Help London's vulnerable young people'.*

169. These policing objectives have to be met within the context of the Mayor's '20,20,20 Challenge' which will 'Challenge the Metropolitan Police and other criminal justice agencies to deliver value for money for the taxpayer and meet the challenge of service delivery with fewer resources in the years ahead'. The Challenge seeks to ensure the following objectives;

- *Reduce key neighbourhood crimes by 20%, which means up to 250,000 fewer crimes.*
- *Boost public confidence in the police by 20%, up to 75%.*
- *Cut costs by 20% by delivering £500m savings.*

170. Though not expressly set out as a neighbourhood priority, the Mayor does require the Metropolitan Police Service to increase confidence and reporting of offending - in particular in sexual violence. There are significant budgetary challenges upon the Metropolitan Police Service who are required to achieve more for less as the budget objectives seek to cut costs by 20%. The Plan states policing in London is far more expensive per capita than the rest of the country with 'total expenditure (excluding national functions) at £366 per head of population, compared with the national average of £192'. With a budget of £2.6bn, and a requirement to save £500m from it by 2016, the Mayor seeks to protect front line delivery by primarily reducing the estate by some 200 buildings, back office functions and supplies and services, and reducing the senior supervision structure by one-third and middle to senior management by 1,000.

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<sup>74</sup> Mayor's Office for Policing And Crime (MOPAC) Police and Crime Plan 2013 - 2016.

## The Police

### Sapphire Investigation Teams – their History and Development

171. The way in which the Metropolitan Police Service investigates rape has evolved significantly over the past 15 years. Originally, as with most crime types, rape was investigated by Criminal Investigation Departments at local police stations and all detectives were expected to be able to investigate a rape. However, this attitude changed as the organisation began to recognise the significant challenges of investigating this crime and benefits of having dedicated units to deal with rape investigation. To address this, new teams called Sapphire Units were developed independently across London starting in 2001 at local police stations utilising officers who only investigated rape and were trained in dealing with both the investigative and complainant care aspects of this complex crime type. Sapphire Units were, however, locally resourced which led to a range of unconnected responses and working practices across London. Although there was some central policy oversight, the responses were independent across the 32 boroughs.
172. Three significant events led to a transformation in the Metropolitan Police Service's response to rape investigation in 2009 when the service centralised the Sapphire response from 32 separate boroughs to 1 centralised Sapphire Command within the then Specialised Crime Directorate (now called Specialist Crime and Operations Department). Firstly, in 2009 John Worboys, a London cab driver, was convicted of 19 offences, having been found guilty of drugging and raping women in his cab. He is believed to have committed some 81 offences. The Metropolitan Police Service referred what it felt were failings in the investigations to the Independent Police Complaints Commission as Worboys was initially arrested in 2007 yet was not charged until 2008. The Independent Police Complaints Commission published their report and made a series of recommendations<sup>75</sup>.
173. At about the same time, in 2009, Kirk Reid was convicted of 27 offences which had remained undetected by the local Sapphire Unit between 2001 and 2008. According to the Independent Police Complaints Commission report, Kirk Reid is believed to have committed 80-100 offences during this time and it was only after the involvement of the Homicide and Major Crime Command who were tasked with the re-investigation that some forensic opportunities were seized and Kirk Reid charged with the offences. Due to the failures involved, the Independent Police Complaints Commission launched an investigation and again made a series of recommendations<sup>76</sup>. In summary, both reports found failings by officers but also focused on the need to improve the standard of investigation within Sapphire teams.
174. Lastly, in 2013 the Independent Police Complaints Commission published a report into allegations of unethical rape reporting practices within the Southwark Borough's Sapphire Unit<sup>77</sup>. The report made a variety of key recommendations including the need to improve resourcing as set out below,

#### *'Finding 2 – Resources*

*20. The lack of resources and experience in the unit meant that improving performance using complainant-focused methods was hard to achieve. Further, the lack of experience and pressure on officers caused low morale and high stress, which can compound under-performance.'*

175. As a result of these three Independent Police Complaints Commission investigations and concern about public confidence in the ability of the Metropolitan Police Service to investigate rape, the Management Board of the Metropolitan Police Service decided to centralise all Sapphire Units into one specialist command. This command was called Sapphire and was formally established in

<sup>75</sup> IPCC Independent Investigation into the Metropolitan Police Service's Inquiry into Allegations Against John Worboys.

<sup>76</sup> IPCC Independent Investigation into the Metropolitan Police's Inquiry into Allegations Against Kirk Reid.

<sup>77</sup> IPCC Southwark Sapphire Unit's Local Practices for the Reporting and Investigation of Sexual Offences July 2008 - September 2009.

September 2009. The new Command sat within the Specialist Crime Directorate (as existed at the time) under one senior management team and took responsibility for investigating all rape, penetration and other serious sexual offences across London. A new approach included the formation of a dedicated intelligence unit which serviced just Sapphire and focused especially on the need to monitor offending to ensure linked series crimes such as those by Reid and Worboys, were identified and quickly acted upon. The dedicated, centralised response, sought to standardise and improve the investigative and intelligence response to this crime type.

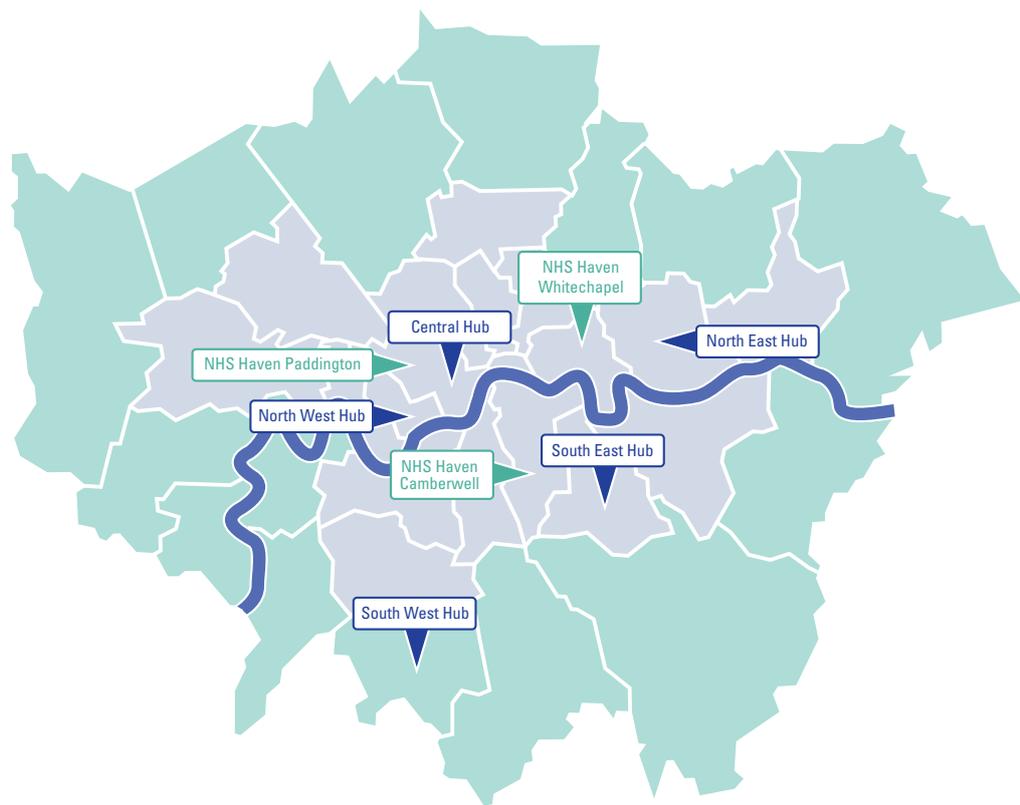
176. In May 2013 the Metropolitan Police Service decided to merge the Sapphire Command and the separate Child Abuse Investigation Command into one new command under a single senior management team called the Sexual Offences, Exploitation and Child Abuse Command (SOECA Command). As part of this process the Sapphire Intelligence Unit was disbanded and its functions absorbed into a centralised intelligence structure.
177. In terms of comparison with other forces, Her Majesty's Inspectorate of Constabulary found in 2014<sup>78</sup> that;
- the Metropolitan Police Service records the highest numbers of rape per head of any force but is ranked 33rd (of 43) for its rape detection rate.
  - it has the 7th highest rate for recording 'other sexual offences' but is ranked 39th in solving them, by detection rate.
  - the Metropolitan Police Service is ranked 40th when measured against its ratio of all solved crimes against recorded crimes.
  - the Metropolitan Police Service records the second lowest level of complainant satisfaction in UK (42nd).

## Police Structure and Response to Rape

178. The SOECA Command of the Metropolitan Police Service is responsible for investigating rape, serious sexual offences and child abuse within London. The command is split into a variety of areas of responsibility. Rape and serious sexual offences, which are not committed within familial relationships, are investigated within units now known as Sapphire investigation teams. Rape and serious sexual offences committed by family members against children are investigated by the SOECA Child Abuse Investigation Teams (CAIT) and fall outside the remit of this review.
179. Under certain circumstances the Homicide and Major Crime Command investigates 'linked series' rapes. Some rapes relating to human trafficking may also be investigated by other units. The numbers of rapes investigated by these units are small and fall outside the remit of this Review.
180. The Sapphire investigation teams are situated within five geographical Hubs based in Holborn (Central Hub), West Brompton (North-West Hub), Stratford (North-East Hub), Lewisham (South-East Hub) and Sutton (South-West Hub).

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<sup>78</sup> Her Majesty's Inspectorate of Constabulary Crime and Policing Comparator (2014). <http://www.justiceinspectorates.gov.uk/hmic/crime-and-policing-comparator/#chart1>.



**Table 3**

181. The Sapphire response is led by one Detective Superintendent and each hub is led by a Detective Chief Inspector. The Detective Chief Inspector is responsible for four teams within the hub, each led by a Detective Inspector. Those investigation teams will be responsible for investigating all allegations of rape and other penetrative offences within their region. The Detective Chief Inspector is responsible for all the crime investigation in that region, undertaking investigative reviews on all stranger rape allegations as well as all the leadership and management functions that would be associated with a large department.
182. The Detective Inspectors are responsible for the leadership of their team - including oversight of all investigations within their team, undertaking investigative reviews on all rape allegations as well as undertaking the day to day management of their staff. Under each Detective Inspector are three teams of Detective Constables and specialist officers trained in sexual offences investigative techniques (SOIT officers) who are supervised by a Detective Sergeant. The Detective Inspector is responsible for the allocation of staff to investigations and the supervision of their workload. This will include a review of the crime within one day of the crime being reported as well as interactive supervision at seven day intervals. Additionally, the Detective Inspector is responsible for the day-to-day supervision and management of their team and liaison and communication with the full range of stakeholders.
183. The Detective Constables will be allocated crimes to investigate and will maintain a database of all their own investigations on a central electronic Crime Recording Information System. Detective Constables will manage their own workloads and assist others where necessary. For example, if a rape is reported which requires a team of officers to assist with enquiries then Detective Constables from the team, or that Hub, will be tasked to assist. They will also be required to manage their own workloads.

184. The SOIT officers have the primary responsibility for engaging with the complainant of the reported rape, assisting them through the Haven process, undertaking the statement or video recorded interview with them and supporting them through the investigation and court process. They may also assist with other investigative functions where necessary. In addition, SOIT officers identify complainants' wider needs and refer them to other support services where appropriate.

185. Table 4 sets out the total staffing allocated to Sapphire as of September 2014<sup>79</sup>.

Investigative Structure of the Sapphire Investigation Teams by Rank	
Detective Chief Superintendent (Also responsible for all SOECA functions)	1
Five Investigative Regions	
Detective Superintendents	1
Detective Chief Inspectors	5
Detective Inspectors	18
Detective Sergeants	68
Detective Constables	201
SOITs	151
<b>Total staff</b>	<b>445</b>

Table 4

186. Table 5 shows the trend in the number of allocated posts to Sapphire since it was formed in September 2009.<sup>80</sup> During 2014/15 there have been a variety of staff attached to the command - primarily from the Homicide and Major Crime Command - in order to support vacancies on a temporary basis. In February 2015 a decision was made by the Management Board to increase the strength of Sapphire by 70 posts, though these are yet to be recruited. As the data show, since its formation staffing in Sapphire rose until the Financial Year 2011/12, after which staffing levels reduced against a trend of increasing reports (see Appendix B). It has not been possible to identify how many staff were actually in place during each year, or how many of those were Detective Constables or SOIT officers to enable an accurate evaluation of investigative workloads. Analysis of workloads is set out in Table 13.

Total Allocated Officer and Staff Posts in Sapphire by Year					
Year	09/10	10/11	11/12	12/13	13/14
<b>Total staff</b>	349	477	490	463	438

Table 5

## Sickness and Welfare Within Sapphire

187. The review heard evidence from staff at all levels regarding workloads and their impact on stress and sickness. This is documented throughout this review. Table 6 shows that Sapphire officers and staff have higher sickness levels than the Metropolitan Police Service average<sup>81</sup>. The Occupational Health Department has also stated that Sapphire officers undergo more counselling than any other department and the predominant theme is staff suffering from excessive workloads<sup>82</sup>. Officers who undergo counselling do so confidentially and may not necessarily take sick leave at the time. The numbers of officers undergoing counselling were not disclosed.

79 Data held by SOECA.

80 'SOECA Business Case 2014' Metropolitan Police Service.

81 Metropolitan Police Human Resources data.

82 Data. Above fn 79.

Sapphire and MPS Sickness Averages. October 2012 to June 2014	
<b>Police officer sickness</b>	
Metropolitan Police Service average working days lost through sickness.	6.3
Sapphire average working days lost through sickness.	8.2
<b>Civilian staff sickness</b>	
Metropolitan Police Service average working days lost through sickness.	8.7
Sapphire average working days lost through sickness.	9.2

Table 6

188. Sickness can impact on career prospects as the policy states that having more than ten days sickness in three years may prevent an officer from applying for posts or promotion. The review felt that there was a perception within the command of sickness being seen as a weakness and that officers may hide their illness because of this perception. As a consequence, the quality of their work may suffer. One Detective Inspector summed this situation up,

*‘They don’t always take the sick, I mean I’ve had a number of officers that should have actually been sick - we’ve even been in possession of their (sick) certificates where they refused to go sick and that’s because of how they feel about under performance procedures around sickness. And it’s for a number of reasons. They know that, they also know in order to get off (the command) they’ve got to have a perfect sick record so they won’t take the sickness they need to take, just to get a break’.*

189. The welfare of the Sapphire investigation teams was of great concern during the review. Despite the extremely stressful nature of this role and increasing reporting rates, there seemed little support for staff. The review learned that SOIT officers only received one hour of Occupational Health support a year and other staff none at all. During the review many members of staff gave evidence (documented later) of feeling ‘burnt out’, stressed and having a strong desire to leave the command. Even with many of its staff not taking sick leave when they should, Sapphire has above average sickness rates and its staff make up the largest group of clients receiving self-referred counselling from Occupational Health. The review understands that there are future plans to outsource Occupational Health for the Metropolitan Police Service, but the review has not been provided with any additional detail.

190. While not all staff were either unwell or suffering from stress, it was clear that many were. The review heard from NHS Haven psychologists that, in their clinical opinion, the conditions under which officers worked (especially the SOIT officers) would not only have a detrimental impact on some officers through ‘burn out’ but also on the quality of the support provided to complainants. This is a critical issue for the review’s central themes of complainant confidence and attrition as unless Sapphire is adequately resourced and the staff are supported, it will not be possible to maximise the support the command gives to complainants and, in turn, improve complainant confidence and reduce attrition.

191. The sickness policy certainly appeared to the review to have a negative impact on staff working in this area, in terms of being able to seek help and prevent longer-term absences from work. Rather than a process designed to maintain the wellbeing of the workforce, the policy appeared to have a punitive effect and stigmatised staff. Evidence from Haven psychologists in the focus groups provided an entirely different perspective on maintaining staff welfare. Many members of staff employed in the Sexual Assault Referral Centres (known as the Havens) have mandated ‘clinical supervision’ sessions which ensure that staff are encouraged to discuss their cases and how they managed them in order to both improve their professional development as well as manage their own welfare. Sapphire needs to review its sickness policy so that it becomes far more pro-active and supportive and health risks are managed in advance. There is also an obvious need to ensure officers have a sustainable workload.

**Recommendation 3.** The way in which the sickness policy is applied within Sapphire should be reviewed and a preventative strategy implemented. This strategy should include an equivalent of NHS ‘clinical supervision’ for all staff so that health and welfare problems may be pro-actively identified and supported in advance of a need for sick leave. Central to this should be an evaluation of culture to ensure staff feel that they can disclose the need for help within the workplace and receive adequate support in return.

## Reporting - Why and How People Report Sexual Offences

192. That rape is significantly under-reported has been repeatedly illustrated by the British Crime Survey, now the Crime Survey England and Wales. A 2013 Overview of Sexual Offending<sup>83</sup> reported that amongst female complainants of the most serious sexual offences,

*‘Around a quarter (28 per cent) ... had not told anyone about the incident. One in seven had told the police ... (15 per cent), and all of these respondents had also told somebody else. Fifty-seven per cent of females told someone about the incident, but did not tell the police. For those who did tell someone about their experience, the main group that complainants confided in were friends, relatives or neighbours (65 per cent)’.*

193. According to 2005 research<sup>84</sup> key factors preventing complainants from completing the initial investigative process included ‘being disbelieved and fear of the criminal justice system’. However, in the 2011/2012 British Crime Survey, female complainants’ most frequently cited reasons for not reporting were that it would be ‘embarrassing’, they ‘didn’t think the police could do much to help’, that the incident was ‘too trivial/not worth reporting’, or they saw it as a ‘private/family matter and not police business’<sup>85</sup>. The review was keen to explore reasons for the continuing low reporting rates and how improvements could be achieved. Focus groups of complainants told the review that failure to report was less to do with attitudes towards the police and more to do with their own feelings of guilt, shame and wanting to protect their privacy. Psychologists, Independent Sexual Violence Advisors and police officers trained in sexual offences investigative techniques confirmed that such feelings, as well as self-blaming and even self-loathing, are common responses to the trauma of rape.

194. There was a perception that the word ‘rape’ carries a stigma that other types of personal violence, such as being mugged, do not share. One victim described society’s attitude towards rape as ‘negative’. She had not reported being a victim for fear of the potentially adverse impact on her life. Others suggested that rape is ‘taboo’, a view expounded upon by a woman who was the victim of an archetypal serial stranger rapist. In a letter to the review she explained,

*‘Even some friends and family found it extremely difficult to deal with me after it happened and I was shocked by the ignorance and insensitivity I encountered. I realised that rape is still a very misunderstood crime and, because it is such a taboo subject that people prefer not to think or talk about, it became and remains my ‘dirty, little secret’. The fact that a victim accepts anonymity - something I did not for myself but to protect other members of my family - just adds to that sense of secrecy and hidden shame’.*

195. Complainants who had experienced sexual abuse from their partner or husband described additional barriers to reporting such as feeling unsafe, trapped in the relationship and not having the economic and emotional resources to deal with their situation. Staff from the Havens spoke too of the cultural barriers that some clients must overcome when their family and/or community prefer to keep rape hidden in order to protect ‘honour’. The review heard that these complainants need to manage not just the criminal justice process but also how they are viewed by their family and/or community. One victim from a minority ethnic background told the review that since reporting rape to the police, she is regarded by her sister as the wrongdoer and of bringing shame on the community, something regarded as worse than the rape. In her family’s opinion she should have forgiven the perpetrator and kept

83 An Overview of Sexual Offending. Above fn 58.

84 A Gap or a Chasm? Above fn 1.

85 British Crime Survey. Above fn 73.

silent. The review also heard that some communities do not recognise the concept of a woman's right to withhold consent to sex within marriage. A member of the Haven staff explained that within such communities, 'Wives belong to their husbands'.

196. Maintaining support for the prosecution in the face of opposition from those who would otherwise be the source of support and comfort in times of crisis is incredibly difficult for complainants and demands immense courage. The complainant criticised by her sister told us, 'When I'm alone I cry. I am dying inside'. This sense of isolation, disapproval and alienation from friends and family and the pressure not to report, are not restricted to minority ethnic groups. The parents of a victim, raped by a 'rich and powerful' family friend, told her in no uncertain terms that reporting was not an option. For them the overwhelming need was to protect the reputation of the family and of the alleged perpetrator from any scandal. She received no sympathy, all evidence was swiftly removed from the family home and she was left with a sense that she was to be the source of shame and trouble in the eyes of her family thereafter, while the perpetrator was immune from blame in perpetuity. Furthermore, pressure not to report is not exclusive to any single cultural or religious group, as explained to the review by a woman from a conservative religious background. Her community regarded her as 'foolish' for involving the police. Doing so had also revealed the local police's lack of awareness about the nature of her community. To improve this she had worked with them on a voluntary basis to increase mutual understanding.
197. Complainants who spoke to the review also cited the reporting mechanism as a further obstacle. They explained how difficult it can be to use home computers or visit internet cafes to search for information about 'rape' and few knew about the Havens and their self-referral policy. Attending a police station is an insurmountable barrier for many who regarded it as vital to have alternative places to report. Better information, including improved signposting to specialist support services, and in languages other than English, is much needed. It was suggested that this information should be prominently displayed on the internet but also available in pharmacies, GP surgeries, community centres, churches, supermarkets, public toilets and educational as well as other institutions, facilities and public places. Haven staff also identified the need for a safe neutral place to report and the Haven was suggested by participants in the focus groups as potentially a suitable facility for all reporting and not simply for self-referrals.
198. Given all of these barriers, it is not surprising that so few victims report rape immediately or that they delay so long (sometimes years) before doing so. Yet, the stereotypical view of how a rape victim will respond to the crime is still based on the image of a distressed individual who, having actively defended herself against her assailant, wastes no time reporting her experience to the nearest family member or police officer. This simplistic view overlooks the self-blaming incredulity, the efforts to normalise the situation by carrying on as usual and the profound post traumatic stress disorder that sometimes accompany such a traumatic event.
199. A victim who had been raped following an encounter on a dating website explained in a letter to the review,
- 'It took such a long time to actually come to terms with what happened, and to be able to allow myself to accept this was rape as [I] went into complete denial about it and experienced really bad dreams and flash backs. Admitting you are raped is a very difficult thing as it not only caused me real trauma but also having to admit that this person did this to you. I did not want to believe anyone is capable of this. In many ways I felt responsible for what happened for a long time.'*
200. Staff from the Havens explained that many of their clients are coping with innumerable issues beyond rape. These may include: housing issues, including living on the street; alcohol or drug dependency; mental health issues; learning disability; physical disability; child care issues and domestic abuse. Uncertainty about their immigration status and not speaking English present additional challenges.

Simply not having an oyster card<sup>86</sup> can prevent complainants from accessing help. The same staff questioned the likelihood of complainants who cannot manage their own basic needs being able to cope with navigating the criminal justice process.

201. From a victim's perspective a chaotic lifestyle and multiple problems may mean, however startling this appears to others, that rape is not their most pressing priority. A significant number may report another, less serious offence such as a theft or burglary to the police with no mention of the sexual violence, disclosing the rape only at a later stage. This delay can cause others to question a complainant's credibility, based on a stereotypical assumption about how 'real complainants' should behave. This assumption fails to comprehend the desperation experienced by some very poor or vulnerable complainants for whom the theft of a telephone or personal possession has a far greater significance than many of us, from the perspective of a more stable financial or social setting, would regard as proportionate. For some complainants a positive response from the police officer to the less serious allegation may provide a platform to summon up the courage to report the rape. Even the victim of the violent stranger rape referred to above was undecided about reporting immediately after the incident. In her letter to the review she explained her predicament,

*'I wasn't sure if I could ever tell anyone what had just happened to me, but I also felt I had a duty to tell the police because that man was still out there with a knife. I was not hysterical, just in shock. I did have slashed clothes and a few scratches and bruises but I thought people - and especially the police - would expect someone of my age to have put up more of a fight and have been beaten black and blue into submission.'*

202. A further challenge for investigators and prosecutors is that complainants may, for various reasons, not disclose their experiences all at once. An Independent Sexual Violence Advisor (ISVA) told the review of a girl with learning difficulties who gradually remembered and reported more information about the incident. Her feeling that she was not believed led eventually to her withdrawing her complaint. In another example, again from an ISVA, a woman who was naked and bleeding was arrested for assault. It took her two days to report that she had in fact been raped. In a letter to this review, a consultant clinical psychologist suggested that self-blame and shame following sexual abuse can explain why some complainants make incomplete or partial reports. While prepared to disclose some aspects from the start, some may balk at revealing what they consider to be more degrading aspects of the crime until later. Not only can this lead to forensic medical evidence being missed, but at trial it may open the complainant to accusations of exaggeration or dishonesty by the defence.
203. Also potentially problematic for complainants is the testing, particularly by children, of the person to whom they choose to disclose. Before trusting that person with a true account a victim may make an incomplete or inaccurate disclosure in order to gauge the response of the listener. This may include where disclosure of abuse is likely to have a profound effect, such as the potential break up of a family. Addressing this issue, the consultant clinical psychologist explained that it,

*'is also related to the fact that childhood abuse in particular is perpetrated by family members or people close to them, such as neighbours, who abuse the child's trust. They are also often threatened with further abuse to themselves and others, should they disclose to anyone. Fundamentally, this is about the degree of emotional and psychological control elicited in the child in order to facilitate the abuse continuing.'*

Many complainants of childhood sexual abuse go on to experience further abuse as an adult.

204. Complainants themselves are not immune to the stereotypes that surround rape and which may lead them to self-blame. Even in the moments after the rape, many question how their own behaviour might

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<sup>86</sup> Oyster card, a Transport for London pre-paid travel card providing access to underground, buses and some trains.

look to an outsider. This was illustrated by a young victim of an opportunistic stranger rape who told the review how relieved she felt at being 'conservatively dressed' at the time of the assault. It made her feel more confident of being believed. Those responsible for providing psychological therapy at the Havens explained that some complainants have difficulty acknowledging what happened to them as rape, sometimes because they cannot admit to the magnitude of the event. They may need time to process their thoughts to understand what has happened. Alternatively, they may block out a traumatic memory by resorting to alcohol and/or drug abuse.

205. Cross-examination in court by some defence advocates can mirror the very questions which complainants ask themselves. Why did they not fight back? What prevented them from shouting out to attract help or even ask for help from others in the very same room? While such inactivity may appear counter-intuitive, for many the 'flop' or 'freeze' response is the brain's autonomic reaction to trauma and a way of protecting the victim from further physical harm which might be precipitated by a 'fight' response<sup>87</sup>. Other apparently counter-intuitive behaviour by complainants includes returning to the suspect after the event (especially in cases of domestic abuse) and/or sending apparently friendly text messages to the suspect to create a sense of normality. All of these features make it difficult to demonstrate beyond reasonable doubt that the complainant is credible and reliable unless the issues are explored expertly with the complainant, and the jury is afforded an opportunity of understanding the psychological responses to sexual trauma which are outwith their own experience of life. Police officers and prosecutors, as well as jurors, need to be alert to the wide range of human responses to trauma of this nature and why so many responses defy common understanding of what may be anticipated as normal and honest.
206. There are a number of ways in which greater awareness can be achieved, starting with gathering, as part of the evidence, descriptions of how complainants felt and why they think they acted, as some may consider, counter-intuitively. This requires the police to ask complainants early in the investigation to explain their feelings and actions. Where their evidence is visually recorded, this will be in their Achieving Best Evidence interview. Where such clarification is omitted, thereby leaving the way open for the defence to exploit stereotypical attitudes and misunderstandings about rape, complainants should be re-interviewed in order to capture this information.
207. Prosecutors can also help juries make sense of complex psychological issues by following the advice of Dr Nina Burrowes in her Guide for Prosecutors.<sup>88</sup> Based on a combination of existing rape research and her experience as a psychologist in the criminal justice sector, she suggests,

*'turning the tables on some rape myths – illustrating how the same material can be used to argue for prosecution rather than defence'.*

Instead of emphasising,

*'that the complainant was willing to go back to the defendant's home; that the complainant was drinking; that the complainant did not physically resist the alleged attack; that the defendant did not use force; and that the complainant failed to report the incident to the police immediately',*

Dr Burrowes proposes emphasising the defendant's motives and behaviour and presenting an 'offender who did not want to get caught' narrative. This involves explaining how,

*'the offender will choose a victim and a context which enhances their chances of committing the offence and avoiding punishment'.*

The Director of Public Prosecutions has drawn upon Dr Burrowes' research to develop toolkits<sup>89</sup> that provide practical advice to ensure prosecutors and trial advocates apply a consistent approach.

87 For a more detailed explanation see, for example, Psychological Trauma, Article (2010) Zoe Lodrick. <http://www.zoelodrick.co.uk/training/article-1>

88 Responding to the challenge of rape myths in court. A guide for prosecutors. Dr Nina Burrowes (2013).

89 What is consent? Above fn 4.

208. Designed to guide judges when crafting directions for juries, the Judicial Studies Board's 2010 Crown Court Bench Book<sup>90</sup> includes a chapter on sexual offences and provides examples of directions Judges may employ in specific circumstances. The Bench Book explains how,

*Judges have, as a result of their experience, in recent years adopted the course of cautioning juries against applying stereotypical images of how an alleged victim or an alleged perpetrator of a sexual offence ought to have behaved at the time, or ought to appear while giving evidence, and to judge the evidence on its intrinsic merits'.*

Issues addressed include, 'avoiding judgments based on stereotypes'; and 'provocative dress - hard drinking - flirtation - previous sexual relationship'. Legal practitioners who attended the focus groups told the review they regarded the suggested directions as a positive development in assisting juries.

209. One example of the Bench Book's challenge to myths and stereotypes is the direction on late complaints, recommended by the Court of Appeal in the case of D<sup>91</sup>,

*'Experience shows that people react differently to the trauma of a serious sexual assault. There is no one classic response. The defence say the reason that the complainant did not report this until her boyfriend returned from Dubai ten days after the incident is because she has made up a false story. That is a matter for you. You may think that some people may complain immediately to the first person they see, whilst others may feel shame and shock and not complain for some time. A late complaint does not necessarily mean it is a false complaint. That is a matter for you'.*

210. Focus groups of Judges and barristers considered the Bench Book's directions useful for tackling incorrect assumptions and stereotypes. Some believed they would be more effectively delivered at the start of the trial rather than waiting until the Judge's summing up. A barrister who spoke to the review, herself a rape victim, felt strongly that when these directions are given at the end of a trial it is too late to influence jurors' ingrained attitudes. The review discussed this with a senior Judge who has used the directions at the start of trials and was in favour of this innovative approach, particularly to explain to juries that complainants do not display any 'classic' response to rape. The review endorses this approach, which it understands, has not been challenged before the Court of Appeal. Given the way in which evidence may emerge unexpectedly in the course of a trial, the review acknowledges that other directions, delivered at the end of the trial may still be appropriate in some cases.

211. A senior member of the Bar, with considerable experience of prosecuting rape, suggested that barristers should include the issue of stereotypes in their opening speech. She acknowledged that this requires a certain amount of confidence that may only come with maturity and experience. Training and education on these issues is critical to that confidence. Despite there being a number of ways in which juries can be assisted to understand the complexity of human behaviour in response to sexual violation, the review was left asking whether more could be done. It was noted that the array of training aimed at Judges, advocates, Crown prosecutors and police officers on this subject, cannot be replicated for juries. This review therefore addresses elsewhere in this report (See Part 5: Trials and the Court Process - Psychological Evidence) whether expert evidence should now be made available in court to explain how the human brain responds to threats, fear and trauma and about the significant psychological dynamics which prevent many complainants behaving post-rape in a manner compatible with the normal expectations of many in the wider community.

212. The critical importance of the nature of the response of the first individual to whom the complainant reports the allegation of rape has profound implications for training of police and Haven staff. Ensuring that all those involved in dealing with such responses on a professional basis are capable of demonstrating support, compassion and utter professionalism at that first instance is a major and challenging aspect of training but one that is of immense significance to the prospects of continued engagement.

<sup>90</sup> Crown Court Bench Book, 2010, chapter 17.

<sup>91</sup> [2008] EWCA Crim 2557.

213. The decision made by many complainants not to report rape to the police represents the first attrition point in the criminal justice process and is when many offenders escape becoming suspects and defendants. However this is simply the first of many stages at which attrition occurs. Even where the initial report has been met with great professionalism, complainants may find maintaining support for the prosecution challenging. As the victim of a stranger rapist who was ultimately convicted of her rape explained in a letter to the review, 'Many times during the process it would have been easier to walk away and try to move on.' The review heard too that even the decision not to report can leave complainants burdened by guilt, caused in some cases by awareness that their failure to report may increase the risk to others.
214. These barriers to reporting are by no means exclusive to women complainants. In fact the review heard from a representative of a specialist support service for male complainants that for men these issues are, if anything, compounded.

*'All of the PTSD (post-traumatic stress disorder), shame, guilt, excess of complexity that are going on, multiply that by a hundred... You know if you're a man, society has told you from infancy that you have to be certain things. One of them is able to protect yourself, because if you can't protect yourself, you can't protect anyone around you, and your role is protector. So you're not telling people. You make the call, a male police officer turns up. You've just been 'de-maled', that's what your experience is. Everything about your masculinity has been shattered, and a representative of the most alpha masculine part of the world turns up, dressed in a most alpha masculine way, and you're expected to explain to them how you've been made less of a man'.*

215. The review heard too that male complainants feel 'utterly isolated', not helped by the emphasis in sexual violence terminology on 'violence against women'. While the review acknowledges that this terminology accords with the approach by the Government and United Nations, it questions whether an unintended consequence is the further alienation of male victims who cannot relate to the justice system and feel their needs are not accommodated. The way men report rape, the review heard, differs from the reporting behaviour of women. According to Haven practitioners, male complainants usually go to a hospital Accident & Emergency department or sexual health clinic to be reassured about a health problem. A third sector representative explained that only a small percentage of male complainants go to the police and this is usually at least 5 years after the incident.
216. Gay men, the review heard, face even greater obstacles to reporting than their heterosexual counterparts. A specialist Lesbian Gay Bi-Sexual Transgender anti-violence & abuse charity based in London suggested to the review there is an urgent need for a wider recognition and debate across society of the issues facing male and transgender complainants, to address and challenge myths and build greater understanding of the barriers they face. An organisation supporting sex workers also suggested that the Havens need to develop a greater awareness of specific issues relating to male complainants and sex workers, including ensuring that they ask the type of questions which will enable them to best address clients' specific issues.
217. The review heard too of current trends such as 'chem sex' parties at which participants, after taking disinhibiting drugs, engage in sexual activities with multiple partners. In this type of situation issues of consent and reasonable belief in consent are especially difficult to untangle. Because of the nature of the activity few complainants can summon the courage to report.
218. Complainants of rape are uniquely sensitive to the response of those to whom they report and the review was told this is generally the 'make or break' moment for engagement. The woman victim of a stranger rapist quoted earlier in this section described her own experience,

*'I remember watching that officer's eyes to see if there was any sign of disbelief or disgust, but I saw only compassion. Just a raised eyebrow or a flippant remark and I would have been as far away from*

*there as possible and would never have reported to the police again. I can never stress enough just how important that first response and belief was’.*

219. Nor is this sensitivity restricted to reports immediately following a rape. A complainant who has taken years to reach the stage of being able to report does not want to be met by a thoughtless comment. One such complainant felt crushed when told, ‘That doesn’t sound historical. Sounds pre-historical’. Another who, having plucked up the courage to report to the police months after the event, was asked, ‘Did you actually say no?’ She told the review she felt flattened. She explained,

*‘I was so shocked because I thought, ‘Do you really think I would have steeled myself to walk in here, face a lot of fears and be pushed out of my comfort zone if I hadn’t actually said no?’ I felt so insulted by the question and... this to me, shows a lot of people’s attitude’.*

## Believing Complainants

220. As mentioned above complainants of rape are uniquely sensitive to the response of those to whom they report and any sign of disbelief can have a negative impact on their willingness to engage with the criminal justice process. It was, however surprising to hear the suggestion made in several focus groups, that it is police policy for officers always to ‘believe the victim’. It was clear too that this understanding caused resentment amongst some officers, especially when it led to a perception that they must continue to investigate cases regardless of whether or not the allegation was true, while being required to suspend disbelief. The review was told however that the genesis of this policy stemmed from a police Special Notice from 2002 (11/02) which set out the principles of rape investigation and stated that, ‘It is the policy of the MPS to accept allegations made by the victim in the first instance as being truthful’. In a further development, the 2005 research *A Gap or a Chasm?*<sup>92</sup> identified one of the reasons for not reporting rape as ‘fear of disbelief’ and concluded that, ‘a culture of belief, support and respect’ would improve the response to reported rape.
221. In 2014 a report on police crime recording<sup>93</sup> by Her Majesty’s Inspectorate of Constabulary recommended that, ‘The presumption that the victim should always be believed should be institutionalised’. Although that report addressed the recording of all types of crime, it paid particularly close attention to allegations of rape and other sexual offences and how they are recorded. This recommendation was made in the context of the report’s findings that a significant amount of crime that should have been recorded, including some 26% of rape and sexual offences, had not been. The report is silent on how far ‘institutionalised belief’ should be maintained, and specifically whether beyond the reporting/recording stage. This will serve to support the current perception amongst many officers that the policy of belief applies throughout the life of the investigation.
222. While complainants clearly want to be believed and may be deterred if they feel this does not happen, it is questionable whether a policy of ‘institutionalised belief’ is appropriate. While demonstrating even the merest disbelief, cynicism or incredulity at a victim’s account is entirely inappropriate, the review questions whether requiring a police officer to believe is an instruction capable of being achieved. Rather than labelling this approach as belief, it is suggested that it is more appropriate for criminal justice practitioners to remain utterly professional at all times and to demonstrate respect, impartiality, empathy and to maintain an open mind. The review suggests, in the first instance, officers should proceed on the basis that the allegation is truthful as proposed in the Special Notice of 2002. The alternative approach of ‘always believing’ the complainant may prejudice the impartiality of the officer’s role and lead to their failing to recognise or give weight to other evidence inconsistent with the complainant’s account.

<sup>92</sup> *A Gap or a Chasm?* Above fn 1.

<sup>93</sup> *Crime-Recording, Making the Victim Count* (November 2014) Her Majesty’s Inspectorate of Constabulary.

# First Response

## The Role of the First Responder

223. The uniformed police officer who responds to initial calls from the public - be they emergency 999 calls or more routine requirements - is known as a 'first responder'. Their day to day role is extremely varied and they are expected to deal immediately with almost any incident or crime allegation in the first instance. In the context of rape investigation, a rape complainant will almost always be seen by a first responder before they are introduced to a sexual offences investigative techniques (SOIT) trained officer from the Sapphire investigation teams. The role of the first responder is to establish the initial facts such as: what happened, where, when and who was responsible; take immediate steps to safeguard the complainant and secure any evidence; and locate and arrest the suspect, if possible. When evaluating an allegation of crime if, on the balance of probabilities, a crime has been committed then that crime should be recorded by the first responder - unless there is credible evidence to the contrary.<sup>94</sup>
224. The response to rape can differ according to the circumstances. For example, a rape by a stranger will require extensive efforts to identify an attacker whereas the attacker will be known when he is a partner. Additionally, depending on the timescales of when the rape took place and when it was reported, there may be different forensic opportunities. All of these circumstances affect the considerations the police face when managing the first response to a rape.
225. If a rape or other penetrative offences have taken place within seven days of reporting, the police and the Faculty of Forensic and Legal Medicine guidelines<sup>95</sup> state there is a possibility of recovering forensic evidence from the complainant. This seven day period is known as the 'forensic window'. There are also likely to be other time critical evidential opportunities available such as CCTV, as well as at the scene of the crime, and from the suspect. If a report is made 'inside the forensic window' the first responder should use the appropriate forensic kits which include the standard swab kit, the hand and nail swabbing kit, the rear car seat cover kit and the Early Evidence Kit. Every police vehicle should carry these kits which enable the officer to secure, as soon as possible, initial forensic samples of urine, mouth wash and swabs, and non intimate swabs from the complainant which are essential to maximise evidential opportunities. The rear car seat cover will ensure no evidence is lost and prevent cross-contamination in the police vehicle used to transport the complainant. If the report is outside the seven day forensic window, consideration should be given to taking a single urine sample for toxicology. If forensic advice is needed, officers are advised to contact the Forensic Command Unit in the first instance.
226. The officer's actions should be supervised by the response team Inspector and the Criminal Investigation Department from the first responder's own police station. Consultation with Sapphire will then take place and a SOIT officer should be deployed to the complainant within the hour. At this point Sapphire will take ownership of the investigation and if the complainant consents the SOIT officer will take the complainant to the National Health Service's Haven. Alternatively, the first responder may, depending on the circumstances, take the complainant straight to the Haven where they will be met by the SOIT officer.
227. If the report is made 'outside of the forensic window' then the process is exactly the same - a first responder will establish the facts, contact Sapphire and a SOIT officer will be deployed. An Early Evidence Kit will not be used in these investigations and the complainant will not be offered a forensic examination at the Haven as it is deemed unlikely that any forensic evidence will be found. The complainant may be offered the opportunity to attend the Haven to examine and document bodily injury. Follow-up counselling and medical services should also be offered.

<sup>94</sup> Section A. Home Office Counting Rules for Recorded Crime. [www.gov.uk](http://www.gov.uk).

<sup>95</sup> Faculty of Forensic and Legal Medicine - Recommendations for the collection of forensic specimens from complainants and suspects. <http://fflm.ac.uk/upload/documents/1422637185.pdf>

228. Within the Crime Recording Information System there is a compulsory reporting heading of whether the allegation is believed to be a 'false allegation'. This is applied to all crimes and therefore first responders are required to assess whether a rape report is potentially 'false'. The review found this wholly inappropriate for rape reporting as the behaviours displayed by a complainant are complex and should not be stereotyped and judged at such an early stage. The review found that there was a significant lack of understanding by first responders about how rape complainants may react and behave when they report which may impact on how first responders perceive those complainants. First responders receive very limited training on sexual offences although a new online training package has now been released which is more comprehensive.

**Recommendation 4.** To avoid premature or inappropriate assumptions about the validity of a rape complaint by non specialist first response officers and to ensure that the investigation is approached with an open mind, the 'false allegation' section in the Crime Recording Information System template for recording rape allegations should be removed. This issue should only be dealt with by specialist Sapphire officers during the investigation.

## The Complainant's Perspective on First Response

229. During the focus groups a significant amount of evidence was heard from a variety of officers, complainants and third sector organisations about the vital importance of the first responder's role. It was absolutely clear from complainants, SOIT officers, investigators, National Health Service staff, third sector representatives and academics how crucial the performance of the first responder was to winning the confidence of the complainant and to the subsequent progress of the investigation. The context varies but the interaction is nevertheless always critical. Some complainants may report within minutes of an attack, some may take days, months or years to report. Some may suffer from vulnerabilities, language and cultural barriers, shock, embarrassment or be under the influence of alcohol or drugs. The first responder may have only had a short period of time to prepare him or herself for the interaction and may have already dealt with a range of incidents that day. It may also be the first time the officer had responded to a rape. The interaction between the two is, therefore, potentially full of complexity.

230. As identified elsewhere in this review, complainants of rape are uniquely sensitive to the response of those to whom they report and identify this as the 'make or break' moment for engagement. The first response officer's approach is therefore critical. Extensive research supports the assertion that trust in the police, and willingness to support an investigation, is quickly lost when officers show a lack of belief or respect<sup>96</sup>. Considering that many allegations are withdrawn soon after report, and the aforementioned research shows that 47.5% of attrition is due to victim withdrawal, the importance of first response cannot be over-estimated in its role to increase reporting, reduce attrition and maximise evidential opportunities.

231. This need for sensitivity is not restricted to those reports following immediately after a rape. A complainant who has taken years to reach the stage of being able to report does not want to be met by a thoughtless comment. Even if officers consider themselves to be sensitive, the nature of the questions can have a huge impact on the complainant. As referred to above, the review heard from a complainant who had taken many months to build up the courage to report her rape. Speaking to an officer in a police station she was undecided as to whether she wanted to substantiate the allegation. The complainant told the review she just wanted the police to know who her attacker was as he was part of a close friendship group. When she did not feel believed or supported by the officer she lost confidence and left the police station without progressing her complaint. She was not referred to a SOIT officer. (This complainant subsequently reported to a SOIT officer after the focus group).

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96 Complaints of Rape and the Criminal Justice System. Above fn 27.

232. When responding to domestic abuse cases the complainant is asked directly by the first responder, 'Do they say or do things of a sexual nature that make you feel bad or that physically hurts you or someone else?' The response to this question, which is mandated on form I24D as part of the report, sometimes leads to an allegation of rape, one that the victim often may not have anticipated and may not wish to report or support, but a positive answer to which must be recorded as a crime under Home Office Rules. Once an allegation of rape is mentioned and recorded Sapphire are informed and deploy a SOIT officer.
233. The Form I24D question was regularly raised in officer focus groups as one which created a great deal of work and rarely provided what they considered the victim wanted. Sometimes it led to the suspect being arrested for a rape which the complainant had not intended. The I24D question has been designed to give complainants an opportunity to report and so reduce the risk to them. Given the nature of under-reporting, the very fact that the crime has been recorded could be seen as beneficial. However, officers told the review that complainants were not necessarily seeking to make such a report nor wishing the ensuing investigation to take place. The resulting tension between what the police believe to be best practice and what the complainant actually feels ready to disclose, at least at that stage, was of concern to officers who considered that the complainant may feel propelled into the investigation. Reference is made elsewhere in this report to the vulnerable nature of many complainants and of the common feature of delayed or incremental disclosure. This leading, pro forma question may be designed to accelerate that disclosure but may also be a rather crude tool and counter productive when posed by a non specialist first responder.

**Recommendation 5.** The impact of the question concerning previous experience of sexual abuse in Form I24D (completed when complainants report domestic violence) be researched and reviewed to assess whether it is the most appropriate mechanism for encouraging disclosure of rape offences.

234. In evaluating the impact of first response on the investigation process the review found a great deal of positive feedback from complainants, but also a lack of consistency. It was clear from the evidence that many complainants received an excellent service but there were a variety of challenges which are critical factors in the ability to investigate successfully. There was significant inconsistency between how first responders managed the victim's needs and how the initial interaction with Sapphire took place. A review of fifty randomly selected investigations<sup>97</sup> showed inconsistency in the approach by first responders. While some first responders engaged with Sapphire directly and swiftly, thereby allowing early SOIT officer engagement, others undertook early investigative leads prior to informing Sapphire which led to a delay. In four of the cases (8% of the sample) the first responder informed neither Sapphire nor their Criminal Investigation Department and the crime was only picked up by Sapphire through a daily crime audit check.
235. In other examples, first responders spent far too long undertaking initial investigations before informing Sapphire. The role of the local Criminal Investigative Department also led to either delays or confusion as the Toolkit guidance sets out that the local Criminal Investigation Department should be informed by the first responder yet the responsibility to investigate the offence sits with Sapphire. First response officers advised the review about their frustration at having to communicate with their own Criminal Investigation Department rather than directly with Sapphire.
236. The review considered that the involvement of the local Criminal Investigation Department at the outset slowed down the involvement of Sapphire and there needs to be much greater clarity about how first responders and Sapphire interact in the early stages. This situation is possibly linked to the fact that Sapphire does not hold the investigative remit for rape overnight - between 10pm and 7 am when local Criminal Investigation Departments are responsible for investigating rape. A skeleton team of five SOIT officers and two Detective Constables are on duty within Sapphire to support the local Criminal Investigation Departments. The investigations are handed over to Sapphire in the morning.

<sup>97</sup> Data held by the review.

The review found that in some cases Sapphire was not informed at all of rape allegations that had occurred overnight. This approach fundamentally undermines the whole objectives of the specialist Sapphire investigation teams. It is due to an inability to resource a night duty response that rape responses overnight, a time when many rapes are reported, are carried out by non specialists in the local Boroughs.

**Recommendation 6.** Given the preponderance of rape allegations during the late evening and overnight, there is a clear need for a full 24 hour service from Sapphire to provide a consistent level of service at all times.

237. The mindset of the first responder, the choices they make and the facilities they have at their disposal were shown to be critical factors for the investigation according to the officers in the focus groups. Evidence from focus groups, including external organisations, reported that first response was generally very good. However, it was clear that many first responders had concerns about their role. Some felt that rape was a very difficult call to deal with and referred to being uncomfortable dealing with intimate details, and the fact that it was such a lengthy process and one which often had to be dealt with by the officer alone. Some first responders thought that the number of false allegations was high, a theme echoed by other officer groups. They cited perceived examples of 'regret sex', namely complainants being drunk and not remembering what had happened to them or young people using an incident of rape as an excuse to get out of trouble for perhaps being somewhere or with someone when they should not have been. Specific examples were given.

238. As well as providing the first response to complainants, first responders are often the first to encounter rape suspects who may also require medical examination and recovery of forensic samples. However, there is little or no training for officers in the retrieval of forensic evidence from suspects. The suspects will be taken to a custody suite where clothing may be seized in a cell that has been used by other prisoners. A forensic examination to retrieve forensic evidence by a doctor or forensic nurse will be undertaken in the healthcare professional's room which is set aside for medical and forensic examination. However, this is an environment that is not always forensically cleaned after each examination, as is the case at the Haven sites.

**Recommendation 7.** The forensic integrity of the environment in which forensic examinations are undertaken should be of the same standard for suspects as it is for complainants.

239. It was clear to the review that the first response was a critical point in the investigative pathway with significant potential to impact on attrition. Despite this, clear evidence from first responders, Sapphire officers, Haven staff and forensic staff indicated a very low level of training for first responders and therefore a limited understanding of the complexities of a rape complainant's behaviours. Some officers reported a lack of supervision and support, as also found by Her Majesty's Inspectorate of Constabulary<sup>98</sup>. The Metropolitan Police Service policy is that all first response to rapes should be supervised by an Inspector.

**Recommendation 8.** First responders should receive adequate training to ensure understanding of the complexities of rape reporting and recording to ensure that all officers understand the rape myths and behaviours and respond to complainants in an objective and compassionate manner.

240. It was also clear that not all officers had access to Early Evidence Kits (which should be in all vehicles) and some officers lacked confidence or did not know how to use them properly. Considering the vital importance of the first response and the evidence heard by the review, it is clear that there is an inconsistent level of ability, training and therefore service from first responders ranging from excellent examples to officers who admitted to not really knowing what to do.

**Recommendation 9.** A new mandatory training regime relating to evidential and forensic retrieval should be created to ensure that all first responders can provide a consistent level of service to those who report rape offences. This should also apply to dealings with suspects. A mandatory system should be put in place to ensure all police vehicles carry Early Evidence Kits and seat covers. Their use should be audited.

98 Crime-Recording, Above fn 93.

241. Additionally, the ‘comfort suites’ at police stations where complainants are taken by the first responders to talk to officers were considered unsuitable in many cases. There is no central register for SOIT officers to book a comfort suite so locating and accessing them can be a frustrating experience. Comfort suites are without any form of refreshment or other facilities a complainant may require and some were described as simply not fit for purpose.

**Recommendation 10.** The Metropolitan Police Service comfort suite estate is reviewed and a consistent quality is achieved across the estate to ensure access, cleanliness and comfort.

## Recording Sexual Offences

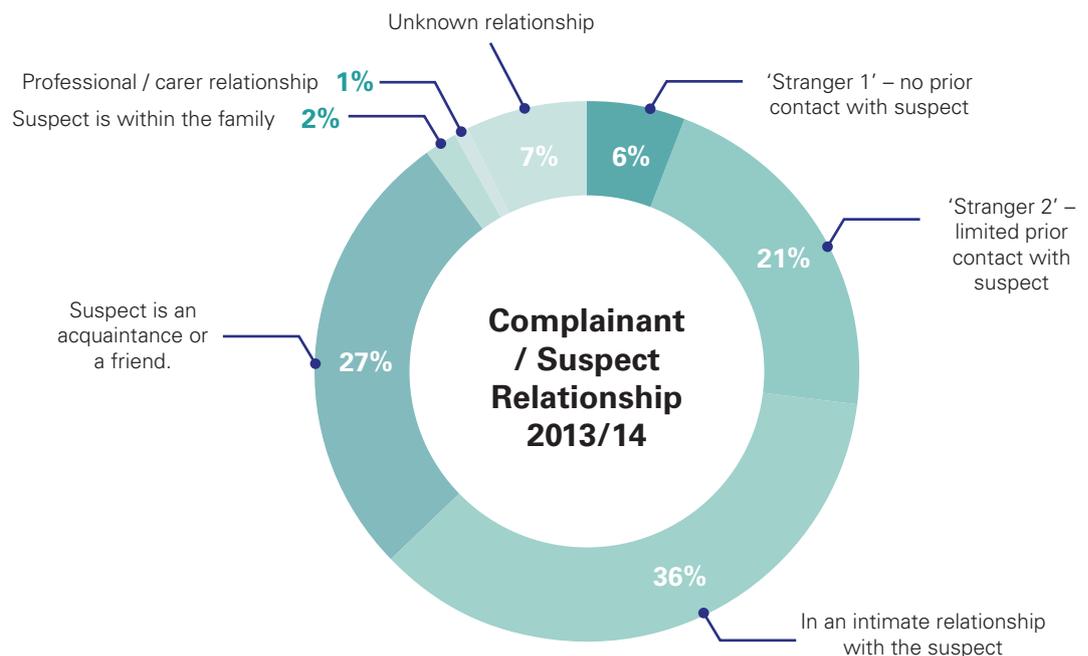
### Crime Data and What it Means

242. Once the first responder has dealt with a complainant they are required to formally record the crime. The recording of the crime report is critical. Her Majesty’s Inspectorate of Constabulary stated that,

*‘Rape is one of the most serious offences that a victim can experience and that the police investigate. Failure to record these crimes, or to no-crime them incorrectly, badly lets down these complainants and is of serious and material concern. In these cases, justice for both the complainants and the community is denied’<sup>99</sup>.*

243. Since 2005 there has been an exponential increase in the numbers of rape and penetrative offences recorded by the Metropolitan Police Service. As set out in Appendix A, in Financial Year 2005/2006 there were 2,042 ‘total allegations’ of rape and penetration offences recorded by the Metropolitan Police Service that increased to 5,577 in 2013/2014, an increase of 173%. Appendix B shows that the ‘total allegations’ investigated specifically by Sapphire rose from 2,435 in 2009/2010 to 4,263 in 2013/14<sup>100</sup>. This is an increase of 75%.

244. Within the number of offences, the relationship between the suspect and the complainant can be broken down into seven categories. Table 7 identifies the nature of the relationship in 2013/14 according to Metropolitan Police Service crime data.



**Table 7**

<sup>99</sup> Ibid.

<sup>100</sup> Performance Information Bureau. Metropolitan Police Service.

245. The increase in recorded sexual violence should be seen as a success as more complainants come forward and can be provided with support, as well as having their allegations investigated. An inspection by Her Majesty's Inspectorate of Constabulary shows however that levels of recorded sexual violence in London should be higher still. In the most comprehensive study into crime recording ever undertaken, Her Majesty's Inspectorate of Constabulary stated that nationally, some 800,000 crimes of all types have gone unrecorded by police forces with sexual offences under-recorded by police by 26%. In a study of 106 sexual offences initially reported to the Metropolitan Police Service that should have been recorded as crimes, only 65 were so recorded (61%)<sup>101</sup>. This rate is much higher than the overall under-recording rate by the Metropolitan Police Service. Of 1,169 crimes that should have been recorded, 948 (81%) were actually recorded by the Metropolitan Police Service<sup>102</sup>.
246. The reason for this under-recording has also been identified by Her Majesty's Inspectorate of Constabulary. Complainants cannot, ordinarily, report their crime to Sapphire directly. It is the role of first responders to take an account from a complainant, to record the allegation and to immediately refer that allegation to Sapphire who will send a SOIT officer to meet the complainant. Nationally, Her Majesty's Inspectorate of Constabulary found three factors impacted on the number of crimes not being recorded: inadequate supervision; insufficient knowledge; and disengagement by the officer or victim. Disengagement was found to be higher in sexual offences where the officer did not believe the complainant.
247. The manner in which a first responder interacts with a complainant is absolutely critical, as set out in a paper published in the European Journal of Criminology,
- 'The tentative trust required to report the rape is quickly lost when police officers communicate disbelief and disrespect or when the victim loses faith in the police to investigate the case, leading to complainants to withdraw from the process or retract the allegation altogether'*<sup>103</sup>
248. Considering that complainant withdrawals have been shown by this study to account for 47.5% of attrition, the quality of the first response by the police will have an inextricable link to recording rates.
249. The analysis by Her Majesty's Inspectorate of Constabulary found that a lack of training, knowledge of legislation and workload pressures led to under-recording. A key factor, nationally, was a lack of supervision of the crime recording process. This was examined in London. Most notably in sexual offences, out of 164 sexual offences reviewed by Her Majesty's Inspectorate of Constabulary, only 88 (54%) showed 'evidence of supervisory oversight'. This contravenes existing Metropolitan Police Service standard operating procedures which state that the Duty Officer of Inspecting rank must 'be responsible for the supervision and management of a rape or serious sexual offence' until it is handed over to a detective<sup>104</sup>. Burglary offences however were supervised in 212 of 215 reports (99%).
250. In particular, in London Her Majesty's Inspectorate of Constabulary found concerns with the initial recording of sexual offences due to 'misunderstanding of legislation, the Home Office Counting Rules (particularly relating to those who suffer from mental illness) and poor primary investigation for crime related incidents'<sup>105</sup>.

## Recording of 'no crime' – 'No criming'

251. According to Home Office Counting Rules a 'no crime' designation of a case is a classification which means that the allegation was not in fact a crime, either because it had been incorrectly recorded or because 'additional verifiable evidence' shows that the crime did not take place. By classifying an allegation as 'no crime' the allegation is no longer recorded as a rape or penetration offence. The

<sup>101</sup> Crime Recording: A matter of fact - Interim Report. Inspection of the Metropolitan Police Service. Her Majesty's Inspectorate of Constabulary 2014.

<sup>102</sup> Crime Recording. Above fn 93.

<sup>103</sup> Complaints of rape and the criminal justice system. Above fn 27.

<sup>104</sup> Rape and Serious Sexual Assault Standard Operating Procedure, MPS.

<sup>105</sup> Crime Recording: A matter of fact. Above fn 101.

ethics of the deployment of the designation 'no crime' have been subject to scrutiny in a variety of reports, including the Independent Police Complaints Commission investigation into the conduct of Southwark Borough<sup>106</sup>. Evidence has shown that officers have improperly used the 'no crime' classification to reduce the number of recorded rape allegations. This has since been subject to separate scrutiny by the Crime Management Unit. Her Majesty's Inspectorate of Constabulary, however, dip sampled 30 cases of rape classified as 'no crime' in 2014 and established that 26 had been correctly classified<sup>107</sup>.

252. The Metropolitan Police Service has changed the 'no crime' classification policy to address previous misuse. The policy now states that from April 2014,

*'No Crimes will no longer be an acceptable outcome for allegations of rape' and rape reports 'must end up as one of the other three possible outcomes; crime, CRI (crime related incident), other accepted (non-crime reports)'*<sup>108</sup>.

253. Between 2004/2005 and 2012/2013 the number of those 'total allegations' for rape and penetration offences which were then classified as 'no crime' reduced from 468 to 336, a reduction of 28% (see Appendix A). Between 2009/2010 and 2013/2014 the Sapphire remit cases designated as 'no crimes' increased from 166 to 297, an increase of 79%. However, in the first nine months of 2014/2015 following introduction of the new policy, there were only 99 Sapphire cases categorised as 'no crime' (see Appendix B).

## Confirmed Allegations and Offences.

254. The number of all confirmed allegations of rape and penetration offences across the Metropolitan Police Service rose from 1,317 in 2005/2006 to 4,580 in 2013/2014, an increase of 247% (see Appendix A). Confirmed allegations of rape and penetrative offences within the Sapphire investigation team remit rose from 1,952 in 2009/2010 to 3,660 in 2013/2014 (see Appendix B), a rise of 87% over five years.

255. Within an allegation of crime there may be more than one offence. For example, a complainant may report an allegation of rape against her partner and set out three separate offences within that same report. Under Home Office Counting Rules this will be one report, but three offences, as they were reported at the same time. The number of individual rape and penetration offences recorded by the Metropolitan Police Service, within the confirmed allegations has risen from 3,079 in 2005/2006 to 5,179 in 2013/2014, a rise of 68% (see Appendix A). For the Sapphire investigation team remit of rape and penetration offences, recorded offences within the total allegations rose from 2,192 in 2009/2010 to 4,083 in 2013/2014 (see Appendix B), a rise of 86%.

256. During this period the number of rape and penetration offences within the whole of the Metropolitan Police Service which have been charged (known under the Home Office Counting Rules as sanction detections) has risen from 836 in 2005/2006 to 982 in 2013/2014 (see Appendix A). This is an increase of 17% compared with an increase in confirmed allegations of 247% and an increase in recorded offences of 68%. Within Sapphire investigation teams, the number of offences which have been charged has risen from 273 in 2009/2010 to 621 in 2013/2014 (see Appendix B). This is an increase of 127% compared with an increase in Sapphire investigation remit confirmed allegations of 87% and an increase in Sapphire investigation remit offences of 86%.

257. It is of concern that the proportion of cases that are not charged are being categorised 'for no further action', a decision made by a Detective Inspector, without legal advice from the Crown Prosecution Service in the vast majority of such cases. The number of cases categorised in this manner are not counted or measured by the Metropolitan Police Service. This needs to change.

**Recommendation 11.** It is recommended that the number of cases categorised for 'no further action' is measured in order that there is greater transparency about the number of cases that are disposed of through this decision by the Detective Inspector or Detective Chief Inspector.

<sup>106</sup> IPCC Southwark Sapphire Unit. Above fn 77.

<sup>107</sup> Crime data integrity. Inspection of the Metropolitan Police Service. Her Majesty's Inspectorate of Constabulary 2014.

<sup>108</sup> SOECA Business Case. Above fn 80.

## The Impact of Increased Reporting

258. The number of reported and recorded offences has risen dramatically in recent years. It is clear that such an increase is placing an overwhelming burden on staff. The ability of all those in the public and voluntary sector to manage this increasing demand is finite and it is highly likely that as reporting increases the services will not be able to meet expectations of the public and complainants unless resources of the required quality are introduced to support that demand.

259. Two key questions for the future are: what is the total amount of serious sexual violence in London; and how much of that will be reported by complainants? If the analysis by Her Majesty's Inspectorate of Constabulary is consistent across sexual offence recording then it is possible that the current figure of 5,577 recorded crimes in 2013/2014 only represents some 61% of reported sexual offences in London last year. As mentioned above (see Part 3: Reporting - Why and how people report sexual offences) the British Crime Survey, now the Crime Survey England and Wales, stated in 2013 that amongst female complainants of the most serious sexual offences,

*'Around a quarter (28 per cent) ... had not told anyone about the incident. One in seven had told the police ... (15 per cent), a figure that remains fairly constant, and all of these respondents had also told somebody else. Fifty-seven per cent of females told someone about the incident, but did not tell the police. For those who did tell someone about their experience, the main group that complainants confided in were friends, relatives or neighbours (65 per cent)'<sup>109</sup>.*

260. Understanding the true picture of sexual offending in London involves considering the under-reporting rate, and the under-recording rate. If the 5,577 total allegations are a result of under-recording then it is possible that the total number of Sapphire related crimes which should have been recorded by the Metropolitan Police Service was 9,070. If this 9,070 represents a small percentage of total offending, then it could be inferred that there was a significantly higher number of rape and penetration offences in London during the last financial year.

261. What proportion of total offending will be reported in the future is, of course, unknown but it is clear that there remains a significant unmet demand in terms of those who suffer rape and penetration offences. This under reporting, and under recording, prevents those who suffer harm from seeking physical and psychological support, leaves offenders unpunished and arguably hinders public and policy debate about the nature of sexual offending and discrimination. The emerging findings of the Savile investigation demonstrate how under-reporting and under-recording can lead to these negative outcomes.

262. It could, and should, be argued that public policy needs to address the under-reporting of rape as well as the under recording of sexual offences as set out robustly by Her Majesty's Inspectorate of Constabulary. The section on Reporting outlines findings in relation to why complainants do not report to the police or indeed anyone else. This review's recommendations will outline how the police and broader public sector can improve the access for complainants. The ability to empower complainants to report to the police is an important part of public policy. However, if this policy is to be effective it needs to be matched with resources that allow the system to manage effectively the corresponding rise in investigations and prosecutions. This has not happened.

263. Table 8 demonstrates the broad trend in crime data for rape and penetration offences in London. See Appendix A and Appendix B for full data: <sup>110</sup>

<sup>109</sup> Crime Survey. Above fn 73.

<sup>110</sup> MPS PIB. Above fn 100.

Crime Data	MPS Increase FY05/06 - FY13/14)	MPS Projected Increase* FY05/06 - FY14/15	Sapphire Increase FY09/10 - FY13/14	Sapphire Projected Increase* FY05/06 - FY14/15
Total Allegations	+173%	+213%	+75%	+102%
No Crimes	-28%	-59%	+79%	-20%
Allegations (confirmed)	+247%	+317%	+87%	+126%
Offences	+68%	+99%	+86%	+123%
Detections	+17%	-5%	+127%	+96%
*Projected data based on extrapolating first 9 months of FY14/15				

Table 8

## Sexual Offences Investigative Techniques Trained Officers (SOIT officers)

264. Several focus groups were held with officers trained in sexual offences investigative techniques (SOIT officers) who also provided written feedback. Their role was also discussed in almost all other focus groups, which allowed for a breadth of evidence to be gathered from a variety of perspectives.

### The role of the SOIT officer

265. Evaluation of the SOIT officer role is critical to the terms of reference of identifying how 'victim confidence, reporting and attrition can be improved'. The SOIT officer is the single point of contact between the complainant and the investigation team and no other role in rape investigation has so much direct interaction with rape complainants. This makes the role central to the investigative process and maintaining the complainant's confidence.

266. The SOIT officer role requires the ability to communicate with, and support, the broadest spectrum of complainants in arguably the most complex area of crime. These complainants include some of the most vulnerable members of our communities, from children and the elderly to those with addiction, mental health needs and learning disabilities. Sex workers, refugees, immigrants and the homeless feature in many cases as do young teenagers and adults who have been the subject of sexual abuse in their childhood. A significant number of the complainants are in a relationship with the suspect where the relationship is characterised by long-term domestic abuse.

267. Complainants may also face language and cultural barriers and may be suffering a range of complex emotions. In many respects, these needs could be seen to require a sophisticated skill set. Additionally, the SOIT officer has to assist the criminal investigation by introducing the formal forensic process and interviewing the complainant, then maintaining communication with the complainant and supporting their level of confidence in the system throughout the investigation and prosecution process. Conduct of the video recorded investigative interview with the complainant by the SOIT officer forms a critical part of the evidence for the trial. It will form the direct evidence of the complainant that is put before the jury for consideration. How skilfully that interview is conducted is of great significance for the prospects of a conviction. The role also calls for excellent interpersonal skills to work with critical partner agencies and to guide the complainant through the judicial system.

268. Most importantly, the nature of the crime, the challenges of securing sufficient evidence, the complex sophistry of the law affecting the crime and the psychological dynamics in play demand a high level of intellect, investigative ability and empathy. To fulfil the role the SOIT officer has to be selected for Sapphire through an interview process and completion of a four-week sexual offences investigative

techniques course after which they will join an investigative Sapphire Team. Once in Sapphire, SOIT officers attend the one-week familiarisation course and occasional internal 'update days'.

269. The ability of SOIT officers to manage complainants with complex needs or who give confused or inconsistent accounts is also vital to ensuring allegations are investigated effectively. One complainant described herself after she was raped aged 15, and the sort of complexities a SOIT officer may have to deal with,

*'When I was 15 I went off the rails. I was drinking. I was smoking weed. I got pregnant at 17. I wasn't treating my body well. I was just doing whatever out there. Then I had anxiety and I didn't realise I was an alcoholic, why I couldn't go outside with the anxiety mixed with that, all the way until 22 where I then started rebuilding when I met my partner'.*

270. When a complainant reports a rape in London a uniformed first response officer will meet the complainant in the first instance and establish the early facts. They should also take a brief first account, secure any forensic opportunities and follow any immediate investigative leads. It is the role of the first responder to then liaise with their own local Criminal Investigation Department and then their Sapphire hub in order that a SOIT officer can be deployed to meet the complainant within an hour. Ideally one SOIT officer should support the complainant throughout the investigation. The Sapphire SOIT officer 'Toolkit' document (which defines how officers should work) sets out the role as follows:

271. The SOIT officer's objectives are to,

- *Provide care, support and information in a sensitive and compassionate manner to complainants of rape and serious sexual offences;*
- *Secure the confidence and trust of the victim thereby enhancing their contribution to the investigation;*
- *Gather evidence and information from the victim in a manner which contributes to the investigation and preserves its integrity;*
- *Ensure that complainants are given information about support agencies and that referrals are made to The London Havens, Victim Support Service (VSS) and other agencies in accordance with the victim's wishes.*
- *The trauma associated with being raped may place immense personal pressures on the victim at a time when the needs of the investigation will make heavy demands for detailed information. The initial priority must be to establish communication between the SOIT officer and the victim as soon as practicable in order to furnish the victim with any information they require, identify their needs and offer support.*

272. The Toolkit further states;

*Immediate response - It is vital that the victim of a rape or serious sexual assault sees a SOIT officer as a matter of urgency and in every case within an hour of a report being made. This is irrespective of the length of time between the offence being committed and report being made.*

273. The SOIT officers are also required to support the Investigation Standard Operating Procedure, which is set out in the Investigation section of this report. The review was told that the objective of response to complainants within the hour will be removed from the next revision of the Toolkit as it is now considered an unachievable objective by the Metropolitan Police Service.

274. If a complainant is within the forensic window of seven days (see above, the section on First Response) then the SOIT officer will advise the first responder by telephone on which Early Evidence Kit forensic samples to consider as well as recovery of any other evidence, such as clothes. During this process the SOIT officer will ideally speak to both the first responder and the complainant. Depending on the circumstances - and if the complainant is willing - the complainant will either be taken by the first responder straight to the Haven (within the forensic window) where the SOIT officer will meet them, or the SOIT officer will go to wherever the complainant is.

275. The SOIT officer will attend the Haven (which should provide an appointment within 90 minutes of the request) with the complainant, liaise with the medical team and after the forensic examination and medical aftercare are complete, take the complainant to a safe place. At the most appropriate time the SOIT officer will, as mentioned above, also take a statement from the complainant or undertake a video recorded interview (known as the Achieving Best Evidence interview). In some cases such processes may be undertaken with some urgency, but where the offence is not recent, the timescales may be less critical. Timing of the interview may also be influenced by the victim's emotional state and ability to recall events.

276. If the complainant is outside the forensic window of within seven days of the event then the same process will apply but the complainant will not go to the Haven and the SOIT officer should travel to meet the victim. During this interaction the SOIT officer will seek to build a rapport with the complainant, undertake a risk assessment and provide early help or guidance. The SOIT officer will still take an evidential account from the complainant. The Haven will also take non-urgent referrals from complainants up to a year from the rape for follow-up services.

277. In both instances, the SOIT officer will liaise with the Sapphire detective leading the investigation who will ensure all lines of investigation, evidential recovery and arrest enquiries are made. The Sapphire Detective Sergeant will supervise the investigation. The SOIT officer will support the complainant throughout the investigation and subsequent process, as well as maintaining communication between the complainant and the investigative team.

278. The review assessed the SOIT officer response to the following Toolkit headings:

- Provide care, support and information in a sensitive and compassionate manner to complainants of rape and serious sexual offences.
- Secure the confidence and trust of the victim thereby enhancing their contribution to the investigation.

279. The importance of the SOIT officer role for supporting complainants cannot be over-estimated as it underpins the whole foundation of the rape investigation and any subsequent prosecution. Evidence from complainants was absolutely clear - their engagement with the first response officer and the SOIT officer was often critical to their decision to take the allegation forward. It was clear from the focus group discussions held with the police, complainants and the National Health Service Havens that their view of the quality of SOIT officer support for complainants was generally positive and SOIT officers were often meeting the Toolkit objectives, except for response times within the hour.

280. The review heard from complainants in the focus groups of the relationships they built with their SOIT officer and how that had helped them through the justice process, and with their lives in general. One victim recounted,

*'When the SOIT officer got involved it was completely different. Can't talk more highly of the SOIT officer. Gave me back control'.*

281. Another complainant recounted some difficulty in reporting her offence at a police station. She recounted,

*'And then somebody, a more senior officer in the police station, called for a Sapphire officer to come, a SOIT officer to come and deal with me. From the moment she walked in everything changed, she was with me from the day of my assault right through two years to trial, and she was my main contact with the police and she supported me completely and I couldn't have done it without her'.*

282. One foreign national sex worker complainant stated,

*'...and then they send support to us, is it okay, maybe like two hours before they get to us, after then everything is going really cool. As far as I say thank you for the police call, all that happens for all the*

*work, for all the supports we have, we really happy for in this situation. It's like, because, the police they found the guys... in the prison for 22 years... we are so, I am so glad for that way. Yes all the case, they all the time give us support and they was calling every week to see how we are, and what's going on. I didn't go to Police Station, they come to my hospital'.*

283. Another complainant explained her support when no further action was taken in her case,

*'...and actually the thing that I thought to myself the officer did really well, was when the officer decided the case was closed she sat down and she went through every bit with me and just said are you happy with this, do you feel safe, are you sure that you've got the right support in place from different agencies?'*

284. It was clear from the focus groups that although there were many instances of first responders providing an excellent service this was not always the case, leading to additional challenges for the SOIT officer. For example, SOIT officers reported that first responders' cars were not always equipped with Early Evidence Kits which prevented them from obtaining essential immediate forensic samples, including two urine samples for toxicology testing. SOIT officers also reported that first responders were not adequately trained and sometimes provided inaccurate information to complainants which SOIT officers then had to manage when they met the complainants, which caused some confusion.

285. One complainant stated that the first response officer had told her that the investigation 'probably wouldn't go anywhere' because the suspect was an ex-partner. Referred to a SOIT officer, the complainant stated that she, 'couldn't speak more highly of the SOIT officer' who took the investigation forward. (The Toolkit clearly states that it is not the role of the first responder or SOIT officer to make evaluations of the case prior to the investigation.) Another SOIT officer recounted meeting a victim with a first responder only to find that the officer had already taken a full written statement, which is not their role and can undermine the evidential process. Conversely, another response officer was reluctant to ask a complainant any questions, telling a SOIT officer, 'I'm a male officer, I can't ask those sorts of questions' when advised about what to ask the complainant. As well as potentially affecting the quality of the investigation, this lack of consistency can also impact negatively on complainant confidence which also impacts on the SOIT officer's ability to manage the complainant's expectations.

286. Once they had engaged with the complainant SOIT officers regularly worked with Independent Sexual Violence Advisors (ISVAs) and other third sector providers to support the complainant's needs throughout the investigation. Both SOIT officers and ISVAs reported a generally positive working relationship which had significant benefits for complainants, though some third sector agencies described inconsistencies in the SOIT response. One ISVA stated that she believed the SOIT officer response had continued to improve over the years. Another ISVA who accompanied a complainant to a focus group stated,

*'I don't have any complaints about SOITs. You know, I am quite fortunate really I think with some of the police officers and SOIT officers there... whenever I have gone there the initial response has always been really positive and always been really good'.*

287. At a focus group a representative of the Third Sector in London reported 'inconsistencies' in the SOIT officer response and communication with complainants. Some complainants stated that they had little in the way of updates from SOIT officers, though many said contact was excellent. One complainant expressed how important the SOIT officer support is when she stated,

*'But eventually it just came to an end but I did find I was phoning a lot to find out what is happening, what is happening. I was given a card with a lady's name who was dealing with my case but I found I was leaving her a message 'cos it would go to voicemail and so on and it was de-motivating for me... ..I remember there was a time I want to end my life, I just want to die because nobody is supporting me, nobody is giving me positive things, so I am the one is always calling, calling, calling'.*

288. Some third sector groups also described a disparity in the way individual SOIT officers managed complainants, including sometimes in a manner that lacked empathy. This was corroborated by a Detective Inspector who stated that a small minority of SOIT officers appeared not to believe genuine complainants due in his opinion to 'compassion fatigue'. Some ISVAs confirmed this, telling the review of instances where they had supported complainants who had apparently not been believed by the police.

289. How communication was handled at the end of an investigations was also raised in the focus groups. Evidence was given by an ISVA of cases in which complainants were informed of decisions to take 'no further action' over the phone, leaving complainants 'devastated'. However, the new Sapphire protocol which is now in place clearly states that no further action letters should be hand delivered to the complainant by the SOIT officer.

290. It was clear to the review that much of what the SOIT officers had to manage in terms of support to the complainant, or in managing their confidence throughout the process, was not within their control. One complainant explained how despite the service she had, which resulted in the suspect being charged, the SOIT officer had to maintain prolonged support awaiting the trial,

*'...and my biggest problem was that after my attacker was arrested and charged, we had to wait for 6 months until the plea was entered. That was six months of being in limbo and absolute hell and you know there is always a chance they are going to plead guilty but you are pretty sure they are not going to and it's a long time to wait to think about going to court, what's happening, who's looking through all my papers, who's looking through my personal things. That was far too long to have to wait.'*

291. While the feedback on the SOIT officer role was generally positive, the review heard evidence both of the significant, long-term strain that officers were put under and areas where the SOIT officer response could be improved. The review considered that both of these factors could have a significant impact on the ability of Sapphire investigation teams to maximise support to complainants. When asked how SOIT officers regarded their role, one stated that she found the job 'wonderful and awful at the same time'. Several SOIT officers told the review they were overworked, fatigued and in some cases suffering from stress, as well as often feeling unsupported and demoralised. Examples were given of SOIT officers who had suffered significant ill health which resulted in a diagnosis of stress.

292. Most SOIT officers stated that they had very few meetings with supervisors and rarely had a one-to-one with them, which appeared to be a symptom of the workloads of supervisors. The review heard that each team had a 'SOIT co-ordinator' who was a Detective Sergeant and whose role it was to focus on SOIT performance and development. However, as this role is in addition to Detective Sergeants' main functions it appeared that the extent to which the supervisory role is performed is varied. This aspect of the role required much greater investment of time.

**Recommendation 12.** It is recommended that the SOIT co-ordinator role is reviewed to ensure that those Detective Sergeants responsible for this role are better able to provide SOITs with enough support and guidance.

293. The review heard from SOIT officers that they generally had to work alone due to resource constraints, even on night duty. This involves SOIT officers both meeting with complainants, who may be in a range of emotional states, and transporting them around London. This resource situation puts SOIT officers in contravention of the Toolkit which states that a SOIT officer should always be driven in a car when with a complainant. The review found that despite the impact resourcing had on SOIT officers, some were upbeat and enjoyed their role. Overall, however, the review found that SOIT officers presented as a demoralised yet resilient workforce who were committed and wanted to do their very best.

294. One SOIT officer explained the difference in her role now,

*'I know I used to be a much better SOIT when we were borough based than what we are now, because I don't have the time to do those little extra bits that I used to be able to do because we are just short staffed and because the morale is, excuse me, so low. That has got to the complainants; you can't help but [let] that leak in some way out to your complainants. And I don't think that is probably the best impression that a victim can get or should be getting from us.'*

295. When asked about her workload and how she coped another SOIT officer recounted,

*'We do talk about it quite a lot. I don't know what everyone else has got but I have taken fifteen (cases) on in the last two months and I have still got, like, 35 or 37 that I am dealing with. I don't know about other people, I've tried to get some figures on that, but it's so hard because nobody has got any time to sit and write a list of the things that we are doing.'*

296. Other SOIT officers described having a manageable workload but there was a clear perception of excessive workloads amongst most SOITs and a sense that work was not reviewed or distributed equitably within teams. One SOIT officer described how within one shift she could be deployed to two separate complainants,

*'Do you know it's [an] appealing job and I think it's a really good job to do if you have the staff. But I think the morale is so low because you will be getting sort of two deployments on the shift. You will come back from dealing with one victim, and you're so full of that and trying to get it all down and get the best evidence there, and then you're sent out to deal with another one. And you've still not finished with the first and that's just not a service at all.'*

297. A key part of the SOIT officer role is the interaction with the staff of the Havens, who saw the SOIT officer role as vital and the relationship as generally very strong. However SOIT officers regularly expressed frustration at being unable to access appointments quickly enough and the length of time it took for the examination and other processes there - which was about three to four hours in duration. Numerous examples were given of having to drive past one Haven to go to another which was further away because the nearest Haven was unable to take the complainant. Similarly, examples of differing advice and responses from on-call doctors was perceived as a problem on occasion. Haven staff reported that in addition to the mainstream SOIT officer referral route, SOIT officers also attended the Havens' self referral clinics where complainants who wish to remain anonymous have the opportunity to discuss their situation with a SOIT officer. Haven staff reported that SOIT officer self-referral clinics were very effective and regularly led to the complainant making a crime report.

298. Staff from the Havens expressed concern about the working conditions of SOIT officers. One clinician stated,

*'There is a shocking lack of support for SOITs.'*

299. The same clinician also described Sapphire as a 'toxic environment' where vicarious trauma is highly likely, and which may manifest itself at home and desensitise officers leading to fatigue and a reduced ability to empathise. Some National Health Service staff observed there to be a 'variance in SOIT officer maturity, experience and burn out'.

300. Many first response officers also thought that SOIT officers were often overworked and took a long time to meet them. One first responder recounted that when dealing with a rape complainant,

*'The SOIT officer was so exhausted that she had to keep apologising.'*

301. Whereas everyone reacts differently and this by no means applies to all SOIT officers, there was clear evidence from SOIT officers themselves in the focus groups and from written feedback that some had been exhausted by the role. One SOIT officer stated that,

*'I've dealt with a lot of vulnerable women... It has zapped the life out of me... Feel like a shrivelled up balloon'.*

302. Another recounted a court case where a vulnerable complainant ran out of court during a trial. The SOIT officer described the impact this had, saying,

*'...she ran you know, she was gone, and I had to chase her and it took everything and it literally drained me, and my partner at home, he was just like 'Oh my god, this job it's just too much for you'. You know, it was just sucking the life out of you. But we did it, we got there, nine counts but he was only found guilty of two.'*

303. One SOIT officer described the lack of support she felt her colleagues received, and how she dealt with the stresses of her role,

*'I think you know instinctively in this job if you want help you have to ask for it, but a lot of people are scared to ask for it, so you rely on your friends and your colleagues who you can talk to'.*

304. In summary, though it was clear that the majority of SOIT officers provided a good service in line with the Toolkit, it was also apparent that they were under unacceptable pressure which many sources considered led to compassion fatigue and "burnout". The sense of isolation in coping with a burgeoning caseload was clear during the review. Unlike homicide investigations where team based investigations characterise the work, except in large scale cases, rape cases were described as much more of a solitary endeavour for the SOIT officers and the Detective Constables in charge of the case. Similarly, unlike homicide cases, many rape cases, skilfully and thoroughly investigated, will result in a decision of no further action by the Detective Inspector or the Crown Prosecution Service. Furthermore, those cases that proceed to prosecution are much more likely to result in a trial than in any other area of criminality, resulting in additional work and longer term demands for support in the period leading up to and during the trial than in most other categories of offence.

305. As a result, each SOIT officer may have a very large caseload at any one time with cases at varying stages of investigation or prosecution. Given that the conviction rate in rape cases is lower than in other areas of crime, it is not difficult to ascertain why so many of those seen during the review had low morale and seemed exhausted.

306. There is no doubt that the concept of the SOIT officer role is sound and an example of good practice. The SOIT officer 'Toolkit', which sets out how the role should be fulfilled, is clear and at no stage did the review feel that the SOIT officer was other than essential for maintaining complainant confidence, investigating their allegations and supporting them through the court process. The review was satisfied that SOIT officer selection and training was of a high standard but that subsequent ongoing training within Sapphire, and with other National Health Service Haven staff and ISVAs, was very limited. However, the ability of SOIT officers to deliver consistently what is asked of them - and meet the expectations of complainants and the organisation - has been questioned throughout the review.

**Recommendation 13.** It is recommended that the National Health Service undertakes an independent occupational health assessment of the SOIT officer role using their experience of managing staff within the Havens. This should identify how the role is structured to ensure conditions such as 'burnout' are prevented and staff welfare is maintained. This will enable officers to provide the appropriate support to complainants in this challenging environment.

307. Although the SOIT officers perform a challenging and complex specialist role that is vital to the whole investigative process, many SOIT officers clearly felt undervalued. They regularly reported that they felt a post in Sapphire did not enhance their career prospects and that they were regarded as 'below Detective Constables' in terms of status. When reflecting on Sapphire generally, the command was described as a vital service and incredibly demanding yet the 'least appealing' place to work in Specialist Crime and Operations Directorate. This was due to perceptions of high workload, complexity and the risk of becoming the subject of a complaint. It was made clear to the review that the SOIT officer role is not one to which other officers routinely aspire. Many first responders in the focus groups

perceived that the SOIT officer role was one of 'long hours' and 'would affect your family life' and only some 25% of the first responders admitted they would consider applying for the role. However, in a recent recruitment campaign for Sapphire there were 37 applicants for SOIT officer places across the Metropolitan Police Service yet only 7 applicants for Detective Constable places<sup>111</sup>.

308. In September 2014 there was an establishment of 151 SOIT officers in Sapphire (not accounting for absences due to illness, maternity or other operational issues)<sup>112</sup>. From April to December 2014 Sapphire received 3,689 total rape and penetration allegations which would have required a SOIT officer response (see Appendix B). The review identified in September 2014 that SOIT officers had a live workload ranging between 12 to 31 complainants each (see Table 13). Some complainants require a significant investment in time from SOITs, others less so due to individual needs and circumstances. However, it was clear that as with other roles within Sapphire, the workloads were too burdensome.

**Recommendation 14.** The SOIT officer workforce should be urgently reviewed and increased to reflect the current and anticipated increase in demand and in line with the Occupational Health assessment as to how the role should be performed. This should be implemented forthwith.

309. Many SOIT officers also assist other officers' investigations or carry a small caseload of non-rape sexual offence investigations, thereby increasing their workloads further. Some are also trainee Detective Constables and fulfil a dual role. The concept of a dual role was widely considered to be unpopular as it was felt that these were not roles that were compatible. Additionally, SOIT officers assist complainants at court, and with an increase in reports and charges, they are spending more time at court (sometimes weeks) preventing them from assisting their other complainants, or supporting new investigations. One officer provided evidence that she had been the only operational SOIT officer available on her team for two weeks (due to others' abstractions caused by court, sickness, vacancies and maternity leave). She was also responsible for 31 complainants.
310. There appears to be ample scope for ISVAs to provide further support at court and to release the SOIT officer from constant attendance during the trial. The current number of ISVAs in London would not permit this to happen.
311. During the review it was found that although SOIT officers were supervised, their supervisors were themselves too overwhelmed with work to be able to manage effectively. A SOIT officer said of her Detective Sergeant,

*'But to be fair to them, they (managers) are busy themselves. I mean I, well, I can't remember the last time we sat down and she said to me 'How many jobs have you got and where you up to on that?' But to be fair to her, I know she has got a quite big team, with loads of investigations and she has even taken on investigations herself, so she is inundated with work so she hasn't got the time to manage us properly. Because she has got all hers to do, she is Acting Detective Inspector too, and she's got probably 8 investigations herself. Because it's so busy, so she can't do everything to be fair to her.'*

312. As noted above, feedback from complainants about their experience of SOIT officers was generally positive with many complainants describing superb support from their SOIT officer. There was, however, clear evidence that some SOIT officers suffered from 'burn out' and a lack of empathy that may well have impacted on their ability to perform the role effectively. Many staff were in need of a break from SOIT officer duties but considered they were unable to leave the command due to a block on all postings and a general lack of officers wanting to join Sapphire. This led to overworked staff who felt they were prevented from leaving, and whose frustration and reduced effectiveness was not in the complainants' best interests.
313. The review found that there had been several internal reviews of staffing and requests by the Sapphire senior management team for SOIT officer moves but they were not implemented. There was no plan within the Metropolitan Police Service for rotating staff who wanted to leave Sapphire, on the contrary, there had been a conscious decision not to release staff from Sapphire because of insufficient incoming staff at the time. The review heard evidence from senior managers that these issues had been discussed

<sup>111</sup> Information held within Sapphire - recruitment data.

<sup>112</sup> Data held by the Sapphire investigation teams.

for years but solutions to the workload and staff stagnation had never been adequately addressed.

314. As discussed above, SOIT officers only receive one hour per year with Occupational Health and one group freely admitted having to 'self-manage' their own welfare. One officer stated that she had never had a one-to-one with her supervisor and she felt generally unsupported. The Metropolitan Police Service does however have a confidential self-referral counselling service which officers can access either urgently, or through appointment and which has a waiting list of a month or more. One Detective Constable told the review that taking sick leave was, 'seen as a weakness if you are seen not to be able to cope' and that 'senior officers did not understand what the day to day demands are of a SOIT officer and a DC'.

315. The review suggests that the Sapphire officers' occupational health and welfare merits more regular mandatory emotional supervision than an annual check up. This is addressed elsewhere in the report (see recommendation 13).

316. The Officer Toolkit directs the following as part of the officer's role,

- *Immediate response - It is vital that the victim of a rape or serious sexual assault sees a SOIT officer as a matter of urgency and in every case within an hour of a report being made.*
- *Ensure that complainants are given information about support agencies and that referrals are made to The London Havens, Victim Support Service (VSS) and other agencies in accordance with the victim's wishes.*

317. There are two options for the SOIT officer when meeting a complainant. The first is to meet the complainant and the first responder at wherever the complainant has reported the allegation. Throughout the review SOIT officers reported frustrations about a lack of resources that impacted on their ability to provide this initial response to complainants. Having moved to regional Hubs from locally based stations in the London boroughs, SOIT officers expressed concern at having to travel significant distances across London creating long delays and preventing them from meeting complainants within the hour. An analysis of fifty randomly selected crimes showed that SOIT officers did not meet the victim within an hour in any of the cases. This was mainly due to extensive travelling distances. Many staff recounted that it was easier, and quicker, to respond to complainants when they were based in local police stations and knew both the area and the officers working there. A SOIT officer explained the previous structure when SOIT officers were based at local police stations,

*'We used to cover just one borough, so you used to work for 6 months doing the SOIT officer role and then go back to team in uniform and do it vice versa, but then you only covered one borough so if an offence happened, you would be with that victim a lot quicker than you would be now. We now cover five boroughs and have actually got the smallest geographical area.'*

318. One SOIT officer recounted how travelling from the Sapphire Hubs now created significant delays,

*'There can still be a quite considerable time between the time that first officer turns up and you get an appointment. I had a job last week. It was in Uxbridge so I had to go from here (West Brompton) to Uxbridge to pick her up. I couldn't get an appointment at the Haven at Paddington. I had to take her to Camberwell. That time the Hammersmith flyover was shut. You can imagine how long it took and it's, sometimes it's a nightmare.'*

319. Another SOIT officer described being sent to meet a complainant on public transport and then having to wait for many hours for an officer to come and collect him and the complainant by car to take the complainant to the Haven. This is an issue likely to be exacerbated by the requirement for Sapphire to reduce its car fleet by some two dozen vehicles from January 2015.

**Recommendation 15.** Subject to Recommendation 22 and as an interim measure, the Toolkit objective of a SOIT officer responding to a complainant within one hour of a rape allegation being received by Sapphire should be reviewed to allow for the geography of London so long as staff are situated within geographical Hubs.

320. The second method for a SOIT officer to meet a complainant is through the 'SOIT officer pathway'

process. Under this method first response officers take the complainant direct to the Haven and the SOIT officer meets them there with the medical team.

321. Following a long trial the 'SOIT officer pathway' process has now been introduced across London. Once a first responder has confirmed with Sapphire that a rape or penetration offence has taken place and all the initial actions carried out, the complainant is taken directly to the Haven where the SOIT officer will meet the complainant. The review heard that this process is not always used, despite being policy, but was considered by many first responders, Haven staff and SOIT officers to be beneficial and an improvement. It did, however, remove the ability of the SOIT officer to personally evaluate the incident prior to calling the Haven. A long-term trial demonstrated that the whole victim pathway was, on average, three hours shorter using the SOIT officer pathway than through the usual response.
322. One essential requirement when SOIT officers meet with complainants other than at a Haven is to have available a confidential and appropriate environment in which to speak to the complainant. One option is to use 'comfort suites' which are discreet and private rooms at police stations where complainants are taken to meet officers, progress the investigation and use as a safe place. Both SOIT officers and first responders described significant problems with the comfort suites, as generally 'not fit for purpose', and often 'unclean and unappealing venues'. One SOIT officer explained how she often met complainants on a street corner or a cafe as it was hard to locate comfort suites and not possible to book them in advance, a point with which other SOIT officers agreed. Some were also located in buildings that were in the process of being sold off. One SOIT officer felt this 'portrayed an unprofessional image' as well as undermining the early response and support to the victim who may well be feeling unclean and disorientated.
323. The Toolkit also states that SOIT officers should refer complainants to the Havens and other support services, which is vital both as part of the investigative process and to ensure the medical wellbeing of the complainant and to enhance their confidence in the judicial process. If the complainant is within the forensic window of seven days from the event and gives consent then the complainant should be taken to the Haven as soon as possible.
324. Table 9 shows the total number of allegations made, the number who are taken to the Haven by SOIT officers, as well as those who self-refer. A client who self refers themselves to the Haven may do so for a variety of reasons. They may not have had any prior engagement with the police, and do not want such contact. They may have reported to the police and either be outside of the forensic window of 7 days and are referring themselves on advice from the police (primarily a Sapphire SOIT officer), or may be self referring themselves because they have reported but declined to attend the Haven and later changed their mind. Whatever the circumstances, the Haven will always offer to facilitate engagement with a Sapphire SOIT officer. In a study of over 1,000 allegations in 2013/2014, 43% were found to be within the 'forensic window' of 7 days which gives an indication of how many complainants could have potentially attended a Haven.
325. Table 9 uses Metropolitan Police Service total allegations data for rape and penetration offences. Sapphire investigations teams account for the vast majority of all cases attending the Haven. The Child Abuse Investigation Teams and some other units may also use the Havens. The data shows that despite the rising trend in reporting rates, the percentage rate of forensic window cases taken to the Havens by police, as a proportion of all 'total allegations', is declining. The actual numbers attending are broadly static, except for 2012/13, when a dip occurred. The numbers of self referrals however are declining annually. Getting complainants to the Havens is a critical point in the pathway for complainants - both for their health and wellbeing as well as for the investigation and prevention of attrition.

Haven Referral Rates - Forensic Examinations						
Year	09/10	10/11	11/12	12/13	13/14	14/15*
Rape and penetration – total allegations	4543	5065	5232	5090	5577	4807*
Likely number inside forensic window (@43%)	-	-	-	-	2398	-
Number of police referrals	1469	1367	1279	1073	1292	922*
% Referral rate of total allegations	-	-	-	-	23%	-
% Referral rate within forensic window	75%	63%	57%	49%	54%	43%*
Self referrals	209	176	212	155	155	106*

\*First nine months to Dec 2014

Table 9

326. The review has not been able to identify specific reasons for the significant annual decline in both percentages and absolute numbers of Haven referrals over five years when crime recording has risen. During this period three Havens have remained in London, though access to them is sometimes described as frustrating by SOIT officers and it is not possible to assess how consistent availability has been. One key factor to note in assessing the referral rates is that in September 2009 Sapphire changed from a local Sapphire police response to a centralised Sapphire response under the then Specialist Crime Directorate and one management team. The change however initially left teams locally based though SOIT officers became a full time dedicated role rather than a role that was often rotated locally (practices varied among police stations).
327. Sapphire teams moved to regional Hubs incrementally from 2013 which allowed resources to be consolidated, improved accommodation and increased team supervision. However, this removed the ability for officers to be based locally at Borough police stations. As the evidence shows, the role of the SOIT officer changed from being a local role within individual borough police stations (a role which was regularly rotated) to a permanent centralised role which SOIT officers now find extremely difficult to leave. As workloads have increased dramatically and staffing has stayed broadly consistent, it is highly likely that working centrally has had a significant impact on staff morale and ability of the individuals to manage the workload effectively.
328. Another significant issue that emerged during the review was the perception by SOIT officers and other officers that many complainants were not telling the truth, or that what they were alleging was not rape. This perception may further impact on referral rates as these complainants may be less likely to be referred to the Haven. In common with a significant proportion of first responders there was a perception amongst many SOIT officers that the number of 'false' reports was high. One SOIT officer stated that they didn't have enough resources to do everything and had to 'filter out the proper jobs' which supports the possible inference that workloads and belief systems do impact on the response to complainants by some staff.
329. Assessing the complainant's account, and what should happen as a result, is a vital and sensitive part of the SOIT officer's initial investigation. Rather than adopting the first responder's assessment of the offence and beginning the investigative process, it would appear from evidence given by SOIT officers and others that some SOIT officers are carrying out an additional early assessment (a 'filter') of the validity of the allegation and determining, for example, that a forensic medical examination is not required and that any investigation of the complainant's allegation is unlikely to progress.
330. Many staff also held the view that while complainants regularly needed support and some form of care, the police were not necessarily the appropriate agency to provide it. It was clear in the focus groups, and from the literature, that many complainants may give confused accounts for a whole host of reasons including trauma, embarrassment, incremental disclosures, memory loss and a 'cry for help'. The greatest risk is that a genuine complainant may not be believed because they cannot give what the officer deems to be a realistic and coherent account. Ultimately, as SOIT officers generally work alone, they will be the deciding factor on whether a complainant attends the Haven, depending on the complications with which the complainant presents.

331. However, other factors do impact on the ability to have complainants attend the Haven. The Havens will only examine a complainant who has the ability to consent, consequently those with mental health needs or who are under the influence of alcohol may not be seen immediately. The Havens do not have the facilities to manage those who are too ill to be seen for an examination so SOIT officers may often find themselves having to manage an intoxicated victim in another medical setting or safe place, before taking them to the Haven when sober or accompanied by an appropriate adult.
332. SOIT officers also expressed some frustration when trying to get an appointment as not all Havens were open all the time, and they only work on a call out basis overnight. Though appointments will always be offered, there may be a delay before the appointment can be held during which time the complainant may disengage. Another factor is that the complainant may also be too tired to attend the Haven or may not wish to go through the process. How the Haven process is explained to the complainant may well be a key factor in whether the complainant chooses to go - and this is where the SOIT officer's engagement is critical.
333. The review had significant concerns about the declining Haven referral percentage rates, and broadly static real numbers of referrals to the Haven services despite increasing reporting rates. As complainant engagement is critical to confidence and hence reporting and attrition, the review felt that referral to the Haven was an area requiring immediate attention. This issue underpins the whole of the review - the need to engage with complainants and provide adequate support to their needs in order to maximise opportunities to prosecute offenders.
334. As discussed above, it was not possible to identify a specific or single cause for this downturn. Sapphire had clearly made significant efforts in evaluating options and introducing the 'SOIT pathway' but it is likely that there is only a finite amount of work SOIT officers can do in the current climate and that the current workforce found the demand difficult to sustain. While the Sapphire investigation teams have attempted to find some solutions, there has not been a fundamental evaluation of resourcing in response to the rise in rape reports. In fact, the 'Met Change' programme which is leading the downsizing of the Metropolitan Police Service has sought to cut posts within Sapphire at the time of the review. However, it was clear that the rising workloads, reduction in police vehicles, increased travelling distances, inability to replace those staff wanting to leave, poor morale and signs of stress in some staff all contribute to an inability to perform beyond existing levels. It is a very real concern that even current levels of performance are not sustainable.
335. Evidence of significant concern about unacceptable workloads and how the impact of vicarious trauma may affect the response of SOIT officers to complainants was heard from members of a number of external agencies during focus groups and in written submissions. These concerns included the readiness of the SOIT officers to refer complainants to the Haven. National Health Service staff expressed real concern about officer workloads and the fact they were exposed relentlessly to rape complainants on a daily basis. The National Health Service Haven does not generally allow its staff to work continually with rape complainants within the working week and they considered that the SOIT officer role required self-awareness training, clinical supervision and support in the management of their workloads.
336. Some Sapphire supervisors gave clear examples of how the role had affected staff and their ability to perform objectively which had resulted in the SOIT officers being removed from duties. Some officers confidentially reported significant personal challenges at home and an over reliance on alcohol was suggested by some. Many SOIT officers felt demand was too high and some wanted to leave but were not able to because of a block on movement as few officers were being posted into Sapphire. This led to a feeling by staff of being 'trapped'. Just over half of those asked would recommend the job to others.
337. SOIT officers reported that their role in the past five years has changed dramatically in terms of workload and pressure. Havens staff have also expressed concern about SOIT officer workloads, stress

levels and, as mentioned above, the impact this may have on the ability to empathise. Supervisors gave similar evidence and some SOIT officers admitted to feeling significant stress levels. A clinician stated of SOIT officers,

*‘There’s no opportunity to step back, have supervision, reflect, as there is in a clinical environment’.*

338. Some Haven staff stated that issues of ‘normalisation’ of rape (leading to a lack of empathy) were apparent in some SOIT officers. All of these factors are likely to impact on the ability of Sapphire to maximise its support to complainants and referral rates to the Havens.

## The Havens

339. In London forensic medical examination and additional medical and therapeutic support for complainants is provided through Sexual Assault Referral Centres. As mentioned above, in London, the Sexual Assault Referral Centres are called ‘Havens’. The Havens also provide a location for complainants to self-refer and to report an allegation of rape without reference to the police. The role of the Havens is so integral to the response by the Police and Crown Prosecution Service in London that the review visited all of the Havens to evaluate whether the police and Crown Prosecution Service were maximising the support available through these facilities. Several focus groups were held with Haven staff and other National Health Service professionals. This also gave an opportunity to identify any aspects of the investigation in which the contribution of the Havens could be enhanced to improve the effectiveness of the police and Crown Prosecution Service, in particular, with reference to the key theme of the remit - ‘to identify how victim confidence, reporting and attrition of rape can be improved’.

## Role of the Havens

340. Sexual Assault Referral Centres are ‘one stop locations where complainants receive medical care and counselling from expert practitioners, and have the opportunity to assist the police investigation, including undergoing a forensic examination’<sup>113</sup>. Founded in 2000, The National Health Service provides three Havens which are situated on hospital grounds in Camberwell, Paddington and Whitechapel and, since 2013, are all provided by Kings College Foundation Trust. They are jointly commissioned and funded by the National Health Service London (England) and the Mayor’s Office for Policing and Crime (MOPAC) with a total budget of £4.3 million. MOPAC delegate their operational commissioning of the Havens to Sapphire.
341. The functions and objectives of the Havens are set out in a National Health Service service specification that is agreed in a contract between the commissioners and the National Health Service’s Kings College Foundation Trust. The service specification states in detail how and what should be provided. It states that the overall delivery aim of the Haven is to provide clients with:
- acute healthcare and support in age-appropriate settings;
  - comprehensive forensic medical examination;
  - follow up services which address the client’s medical, psychosocial and on-going needs; and
  - direct access or referral to an Independent Sexual Assault Advisor.
342. To achieve these objectives the three Havens each provide medical and follow-up services between 9am and 5pm on weekdays and, out of hours, provide forensic medical examination services on a call-out basis.
343. The benefits for complainants are set out in the service specification,

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<sup>113</sup> Cross Government Action Plan on Sexual Violence and Abuse April 2007.

*'The dual benefits of a dedicated service/s for the health and well being of the client and delivery of justice are considerable. The Sexual Assault Referral Centres will provide clients with the opportunity for high quality health care, independent sexual violence advice and the opportunity for forensic medical examination and sampling. This, where the clients request it, provides both the Police and the client with the best possible opportunity to recover evidence for use within an investigation. Without such an approach, support to clients within the Criminal Justice System would be significantly reduced'.*

## Operation of the Havens

344. Police are responsible for 90% of Haven referrals. In 2013/2014 the Havens saw a total of 1,900 clients across all of their services, including forensic services mentioned in Table 9. Of these, 1,447 were police or self-referrals and received forensic services<sup>114</sup>. As of January 2015, it is predicted that the Havens will see 1,962 clients in 2014/2015 of which 1,384 will receive forensic services. Tables 10 and 11 show how those forensic clients present in terms of whether they have vulnerabilities (as assessed by clinical staff) and demonstrate an overview of the range of needs managed by SOITs and the Havens.



Table 10

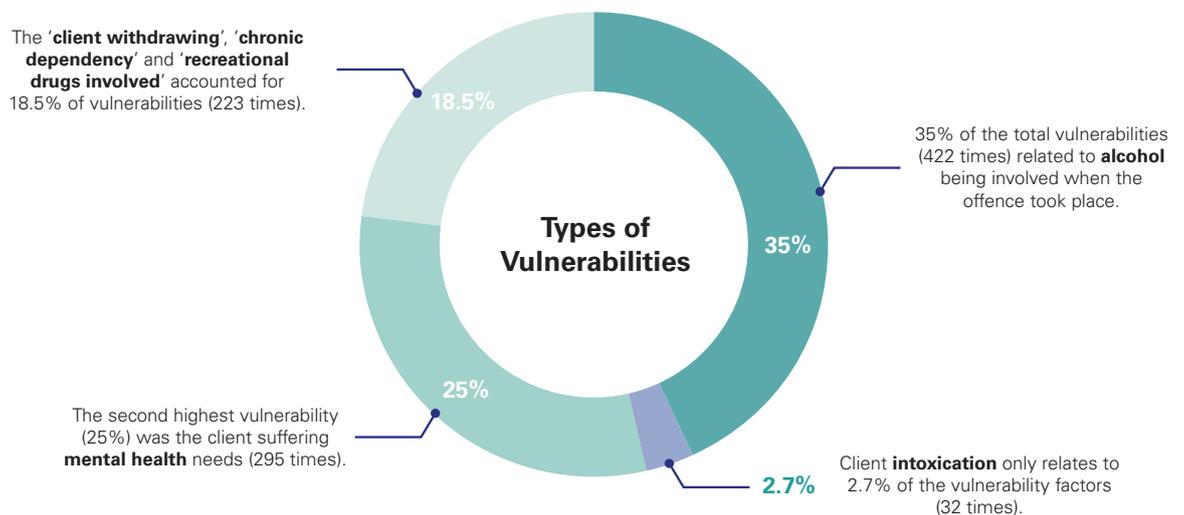
345. The review evaluated whether Sapphire and the Crown Prosecution Service were able to maximise their ability to support victim confidence, reporting and reduce attrition through the use of the Havens. This was done with reference to the four core objectives of the Havens.

## Acute Healthcare and Support in Age-Appropriate Settings

346. The review did not evaluate medical practice but it was clear from the clinicians' focus groups that the Havens provided a comprehensive medical service in line with the service specification. In addition to forensic services (see below), the Havens provided a total of 3,554 medical appointments in 2013/2014 and anticipate providing 3,602 appointments in 2014/2015. These include clinics for medical follow-up, counselling, psychology and Independent Sexual Violence Advisor (ISVA) support. Of these, 6% of clients are male and 23% of all clients are under 18 years old.

347. All Haven clients are assessed for vulnerabilities (such as alcohol, drug use, learning difficulties, mental health needs, disability or requiring an interpreter). In 2013/2014 803 forensic clients (56% of all forensic clients) presented with a total of 1,201 vulnerabilities. 35% of the total vulnerabilities (422) related to alcohol being involved when the offence took place. Client intoxication only relates to 2.7% of the vulnerability factors (32). The second highest vulnerability (25%) was the client suffering mental health needs (295). The 'client withdrawing', 'chronic dependency' and 'recreational drugs involved' accounted for 18.5% of vulnerabilities (223).

<sup>114</sup> Data held by Kings College Foundation Trust.



**Table 11**

348. In terms of clients' needs therefore, over half of all forensic clients at the Haven present with one or more vulnerabilities. Of those that do, alcohol and drug use features in 56% of all vulnerabilities. These data demonstrate the complexities that officers trained in sexual offences investigative techniques (SOIT officers) and clinicians will face in terms of managing this cohort of complainants. The service by the Havens has the ability to provide extensive support to complainants, the outcome of which Stanko et al have shown to halve the rate of attrition<sup>115</sup>. Following participation in all of the focus groups it was clear that maximising the use of this service cannot only support prosecution outcomes but also health and wellbeing outcomes for complainants.

349. Following visits to the Havens, it was apparent that the Haven estate was not age appropriate for children nor was it entirely fit for purpose for all complainants and staff. Each Haven had different facilities which were generally too small and lacked appropriate office space, clinical rooms, meeting rooms and rest facilities for staff. This was a view also held by Haven staff who agreed that the facilities needed review. There were no specific facilities for children or young people. At one Haven, ISVA appointments are held in a separate Portacabin due to the lack of space. One clinician explained how this restricted development of staff and the service because there was little space in which to undertake much more beyond core functions.

350. Police officers spend considerable amounts of time at the Haven and require space to make phone calls, use the installed police computers, complete paperwork and rest. Only Haven Camberwell has a small office space and the other Havens provided small 'cubbyholes' in the corridors due to the confines of the buildings. This makes police work at the Havens both uninviting and impracticable and does not engender a sense of belonging or the ability for SOIT officers to spend long periods of time at the Havens.

351. One senior clinician summed up the situation at one Haven,

*'..but I really do feel very strongly that after 14 years we ought to be starting at the drawing board, the things have moved on so much... I think the other side of that is having a better system of managing the forensic aspect in the sense of adequate cleaning, decontamination and being fit for purpose... all those things that support the forensic integrity and facilitate cleaning.'*

352. Overall, the review felt that an evaluation of the estate was vital to developing the service overall despite the clear high satisfaction rate reported by clients (see Tables 23 and 24).

<sup>115</sup> Complaints of Rape and the Criminal Justice System. Above fn 27.

## Comprehensive Forensic Medical Examination

353. As of January 2015, it is predicted that the Havens will see 1,962 clients in 2014/2015 of which 1,384 will receive forensic services. Clients reported a 97% satisfaction rate with doctors or forensic nurses and 88% with SOIT officers following the forensic process. Though there was clearly a very high satisfaction rate from clients, from an evidential perspective, both Sapphire and Havens staff raised areas for improvement.
354. As set out in the SOIT officer section, the level of police referrals remains broadly static in real terms over the past three years, but is declining in percentage rate terms. In 2009/2010 there were 1,469 police referrals compared with 1,292 in 2013/2014 (see Table 9). A dip sample of 50 random cases in January 2015 showed that 21 were in the forensic window, of which 15 went to the Haven. Referral rates are of significant concern to the review as forensic recovery, medical support and the wellbeing of complainants are key factors within rape investigation and central to health outcomes and maintaining the confidence of the complainant throughout the judicial process.
355. Police officers and Haven staff acknowledged that not all complainants want to undergo a forensic examination. However, the review did hear a substantial body of evidence that led to the conclusion that how the first responder and SOIT officer communicated with the complainant was key to their subsequent desire to attend the Haven.
356. SOIT officers explained that the Havens only see complainants who are fit to consent and therefore those who are under the influence of drink, drugs or who have other significant vulnerabilities cannot be seen until they are able to do so. This therefore provides a risk of disengagement as complainants cannot access the Haven while unfit. This leads, in turn, to the situation where a complainant who has made an allegation of rape and who needs medical support has to be managed either by a SOIT officer in another medical setting such as an Accident and Emergency Department or taken to a comfort suite or the complainant's home until they are fit to be seen at the Haven. SOIT officers raised this issue and asked whether it was possible for Havens to accommodate all complainants of rape with acute vulnerabilities which would assist those who are most vulnerable. A cursory examination of all of the Haven facilities would make this an unlikely prospect.

**Recommendation 16.** Commissioning of Havens is re-evaluated to ensure that adequate services for complainants who are not fit to consent to an examination through complications such as intoxication or mental health needs are managed so far as possible within the Haven. This would thereby support the SOIT role and needs of the complainant within one medical setting (See also Recommendation 22).

357. An additional factor in referral rates, and being able to convince a complainant to attend the Haven, was the prospect of the length of the examination. Many SOIT officers reported that often complainants were unwilling to go through a lengthy examination and remain at the Haven for a number of hours. Police officers also complained about the profound impact the length of time spent at the Haven had on their own capacity and working practices. Attendance at the Haven could mean the loss of many hours work in the context of very heavy workloads for the officers. The discrete co-location of a number of SOIT officers in their own accommodation at the Haven would allow these officers to work while waiting and the addition of recording rooms would allow Achieving Best Evidence interviews to be carried out, where appropriate. While the long waiting periods at the Haven may be a deterrent to the attendance of complainants it does not explain the decrease in attendance rates (rather than being static) in percentage terms along with the rise in reporting.
358. The Haven focus groups also cited a number of examples where they considered complainants had lied about allegations. Despite these views, the staff saw their role as dealing with the complainant from an objective clinical stand point and not to judge the complainant's account. However, in some cases of repeated allegations by self-referrals especially, some clinicians thought there should be greater mental health support available.

359. One clinician recounted,

*‘.she said she was walking home, and she had been dragged down an alley and raped by two men.. and the girl had a full forensic, full examination the whole lot. The SOIT officer came to pick up some samples off me a couple of weeks later and I said, ‘How is that girl?’ She went, ‘Oh yeah, she admitted that it was consensual sex with her boyfriend in (the supermarket) and she was scared of getting pregnant and that’s why she made it, she was late home’.*

360. Another explained how complex it can be dealing with accounts from various complainants,

*‘I know of a case where the girl knew that her boyfriend was cheating, discovered some pictures on his phone and therefore made up this allegation of rape. It came up later on, it wasn’t obvious at that time, but it did come up later on’.*

361. A significant development to attempt to improve referral rates and reduce the overall pathway time for complainants has been the introduction of the ‘SOIT pathway’, in which first response officers take a complainant directly to the Haven after consultation with Sapphire. The SOIT officer will meet the complainant at the Haven with the medical team. In a long-term trial this was shown to reduce the overall victim pathway from an average of over ten hours to seven hours (from initial report to leaving the Haven) and should be seen as best practice in appropriate cases. A further innovation is the location of a SOIT officer based at the Haven to deal with self-referrals and other liaison.

**Recommendation 17.** The role of the SOIT officer should be extended to include working within the Haven to support self-referrals, Haven enquiries and forensic process in the context of a new, extended, central Haven facility (see Recommendation 22).

362. The Havens are required to provide a Sexual Offences Examiner within 90 minutes of a request by Sapphire. Police officers expressed concern about intermittent access to the Havens and inconsistent decision making by examiners about whether or when the appointment with a complainant who was under the influence of drink or drugs should take place. SOIT officers also commented that journey distances to the Haven, and the potential length of the examination, were sometimes disincentives to complainants when deciding whether or not to undergo a forensic examination. The review considers that the advantages of attending a central Haven are overwhelming and, if the benefits are properly presented to the complainant, the police should be capable of encouraging complainants to attend there.

363. While the Haven staff acknowledged challenges in maintaining staff rotas due to staff shortages, National Health Service data showed this rarely impacted on the ability to provide an appointment within the timescale. In 2013/2014 this was achieved 95% of the time and is currently 94%. On average, there are 3.5 forensic referrals per day which is well within Haven capacity if two forensic teams are available. The Havens experience some difficulty in recruiting staff (especially doctors) into the service and on to the out-of-hours rota as it is not a recognised specialism in terms of career path. Additionally, it is a unique service requiring specialist skills that can only be learned within the Haven (or another Sexual Assault Referral Centre) setting. It also requires mentoring and supervision before qualification. It is unlikely that many applicants will already have these skills.

364. As with Sapphire, the Havens are almost uniquely staffed by a female workforce leading to challenges regarding maternity absences. All these factors lead to - as described by managers - a continual challenge to fully staff the service and maintain rotas. However, the Havens have now created a new post and recruited the first consultant level Clinical Director to oversee all three Havens as a full time role. This is a very welcome development.

365. There are other complications with starting the examinations within 90 minutes, even if the medical team is available. A study was made of all appointments<sup>116</sup> over six months where examinations were recorded as not undertaken within 90 minutes due to ‘SOIT officer unavailability’. The results showed that the time taken (especially during rush hour) by the SOIT officer to collect the victim and drive

to the Haven was a predominant factor. SOIT officers also face other challenges such as having to manage interpreters, the personal needs of the complainants (such as childcare or other practical issues) as well as investigative needs, all of which may delay arrival at the Haven appointment. It is clear that there is a range of challenges affecting SOIT officers and the arrival of SOIT officers at the Haven on time.

366. The SOIT officer focus group expressed concern about the length of the examination which, on average, lasted between three and four hours in 2013/2014. This includes from time of arrival, meeting the crisis worker, consultation with the forensic examiner, medical photography where appropriate, other medical needs, such as immunisations and contraception, the exhibits process and discharge from the Haven. Officers expressed a lack of understanding as to why the process should take so long and explained that it was a significant disincentive to many complainants - especially those with child care issues or who have work or other obligations which they cannot afford to forego. The Havens maintain the examination is of an appropriate length as it does not simply involve the forensic examination (a relatively short process) but also consent issues and the complainant's history, including medical and safeguarding components. The review acknowledged that the Havens have an extremely high client satisfaction rate (see Tables 23 and 24) and were not convinced that complainants found the experience too long.
367. The issue of the duration of the examination may also be a reflection of the time demands placed upon Sapphire, rather than what is best for the complainant. It is also a reflection of the focus on forensic outcomes, rather than holistic outcomes for the complainant. One Haven staff member recounted a supervisor phoning a SOIT officer during an examination process at the Haven asking why it was taking so long and when the SOIT officer could get back to the office. Time pressures were often expressed throughout the focus groups. The review was left with the distinct impression that the Haven was often seen by the police as a major time pressure on staff and perhaps not seen as a process that may be best for the complainant. Embedding the SOIT officers in the Haven would avoid the pressure that they feel from time spent there. The interview with the crisis worker at the Haven may prolong the process but is likely to be of real benefit in supporting complainants with the many barriers to proceeding with the allegation.
368. One clinician clearly made the point that timeliness needed to be seen in terms of quality,

*'What I would like to know is with the clients that have gone down the SOIT officer pathway what has the feedback been on that, because it really shouldn't be about how fast can we transit people through something but are we making a process more accessible to clients and more efficient for them as well? It is important to look at the timings of things and time frames, but to always use time as a measure of quality is a really bad idea'.*

369. SOIT officers also told the review that they considered some medical practitioners went beyond their role in questioning the complainant. For example, one SOIT officer recounted how the doctor was asking whether there were any CCTV opportunities at the scene which the officer felt was not germane to the examination. Many SOIT officers also felt that the Crisis Worker often duplicated aspects of what the SOIT officer had already undertaken.
370. The Haven staff told the review that they do not receive feedback on their forensic sampling which would improve understanding of how effective their sampling is and how they might improve. There is no current process for an evaluation of working practices between Haven forensic practitioners and the Metropolitan Police Service forensic staff. This appeared to be a significant lost opportunity to evaluate the effectiveness of their practices and expertise.

**Recommendation 18.** In order to provide clinicians in the Havens with feedback on the quality of their sampling techniques, a research project should be carried out from time to time to compare forensic techniques with the outcome of the scientific analysis.

371. The Havens are required to provide statements within 15 days of request though they only meet this requirement in about 60% of cases<sup>117</sup>. The use of part-time and rota staff and absence of electronic records causes administrative challenges in meeting this target. However, new systems are being designed to address this. Conversely, Haven staff complained of late requests for statements from officers or the Crown Prosecution Service. Haven staff saw this as contributing to late service of statements and creating unnecessary time pressures. The clinical staff do not receive feedback on the evidence they have provided. One clinician explained,

*'I suppose it's that kind of feedback from our statements and from court that will be helpful for us to know because when we are documenting things in the forensics notes, we take those forensics notes with us to court. It would be helpful to know if there are particular things that are useful in presenting information to a jury that we are not including in that, that we are not capturing in our information. We should be fed back about that.'*

372. The Haven staff also described how, although warned for court, they could often end up not being called and thereby wasting time away from the Haven. Clinicians explained that they rarely had any engagement with barristers before the trial. One stated, 'I just spoke to her on the morning. I went to the court for 10 minutes.' Another explained of the barristers, 'They come in, introduce themselves, shake hands and say we'll be seeing you in there'.

373. The Haven doctors expressed considerable frustration with the absence of feedback on case progress and outcomes. There is no current process for updating Haven staff about the progress of the investigation and, unless they are called as witnesses, there is unlikely to be any further requirements from them. However, it is clear that Haven staff should be given more notice in preparation for writing statements and their time at court used efficiently. More generally, it is important that they receive feedback about the quality of the reports prepared and any observations made about the oral presentation of their evidence.

**Recommendation 19.** Improved engagement between Investigating Officers, the Crown Prosecution Service, and the Havens is recommended to ensure that Havens staff are updated, where necessary, on investigations and prosecutions and that enough warning is provided for statement requests. As far as possible trial advocates should ensure a fixed time for Haven staff to give evidence at court and consideration should be given to allowing the witness to give evidence from a new central Haven facility via live link.

**Recommendation 20.** Clinical Haven staff who give evidence in court should, as part of their development, actively seek and be provided with feedback from the trial advocate in cases where they have given evidence.

374. When considering the interaction between Sapphire and the Havens the review concluded that their respective objectives were not necessarily complementary in terms of complainants' best interests. For example, Sapphire's primary performance objective is to charge suspects with rape and improve upon last year's detection rate. There is no performance objective to ensure complainants receive medical care - though SOIT officers regularly refer complainants to appropriate services where available. The objective of the Havens is to provide forensic examinations as well as medical and aftercare irrespective of whether a client supports a police investigation or a suspect is charged. The complainant however will have a variety of needs and may, or may not, want to support an investigation and prosecution. For those that do not attend the Haven then not only may forensic opportunities be lost, but complainants also forego the specialist medical benefits and support that the Havens provide.

375. As set out in the Alternative Outcomes section, the review considered it important for Sapphire to consider the overall care a complainant receives as an objective, as well as achieving evidential value. In other words, a holistic approach to the needs of the complainant should be taken where such an approach supports their wellbeing. Sapphire's role in achieving that objective should be measured. Achievement of this objective may also assist a complainant in deciding whether to support an allegation at a later stage, if they do not feel willing or ready to support an allegation at the time. The Haven staff considered this an appropriate strategy. One member of Haven staff expressed their view as follows,

*'...my personal view is we should have the victim in the centre and people should operate around them. Because what we tend to do is put them through A, B, C, D, E, F of a sausage machine and I think we tend to say, 'Here's our process as police, Haven and others, and we put you through them', instead of saying, 'We will surround ourselves around you'. So that's my sort of strategic view, of what I sometimes see as processes that are actually saying 'the victim is no more than a widget going through a machine' and I think we should be a lot more creative about saying, 'complainants at the centre and we all just coalesce around her'... the (issues) come down to interpretation of bureaucracy, rather than 'let's have the right outcome'. It is a set of outcomes we need, and we may do it slightly differently in every case because every victim is very, very different.'*

## Follow-Up Services which Address the Client's Medical, Psychosocial and On-Going Needs

376. The data indicate a significant missed opportunity for those complainants who seek support independently of the police, known as self-referrals. In 2013/2014 only 155 people, or 11% of the clients attending the Haven, were self-referrals. The review felt that this number was extremely low considering the 5,577 total allegations that year and the levels of under reporting in London (see Appendix A). Though there are a variety of third sector providers for counselling and support, the National Health Service Havens do have significant expertise in this area which appears to be under used by complainants. Why this is so low requires further analysis, but the public profile of the Havens may be one causal factor. The review felt that when searching for guidance on rape services on the internet the Haven was not easily found, especially if the complainant didn't know the name of the service.

**Recommendation 21.** It is recommended that, as an interim measure, Kings College Foundation Trust along with the other relevant agencies raise the public profile of the Havens in London with a view to increasing the number of self-referrals.

377. The review found that complainants in several focus groups were broadly unaware of the Havens - even those who were in therapy with other organisations. When the option of an anonymous referral clinic with a SOIT officer was offered to those who had not reported, many complainants expressed support for this option. Some complainants asked to speak to SOIT officers after the focus groups.

Given that such anonymous referral clinics are successful in encouraging reporting, it is considered that increasing self referrals to the Havens would have a positive impact on reporting rates and reduced attrition.

378. Having a SOIT officer based at the Havens during the SOIT pathway trial provided benefits to the Havens, as one clinician described,

*'... and they were also available when we had self referrals, or clinic patients who wanted to have a quick word with somebody and that was quite nice. And out of it I think we've had much more success in calling them up when we have a self referral and said, 'Listen, would you mind just having a quick word with them over the phone and explain to them the police process?' and they are very accommodating with that now, which is really very helpful. It used to be that we just had them coming for a clinic visit and met with the SOIT officer anonymously to decide if they want to report. It's actually better if they are going to report on the day when the SOIT officers are there and then they can get on to the crime scene quite quickly.'*

379. Another gave an example about how inconsistency and a failure to have joint working between the Haven and the SOIT officer can damage the prospect of a successful outcome for complainants,

*'It was a self-referral client who had taken me so long to actually get to a point of speaking to a SOIT officer. Initially they'd spoken to 2 very good SOITs, been given all the information, just needed a bit more time to think about it. The client went away and came back was really happy to report, really psyched herself up to come and report, came back and it was an individual SOIT officer that came to see her. She gave her full account which was really difficult for her, it (the rape) was very violent and the response that she got from the SOIT was, "Nowhere in this account does it tell me that you've been raped, do you know the definition of rape?" And that was, that was horrific for the client, but at that point I was called in, she was going into complete melt down, but according to this SOIT officer there was no allegation.'*

380. Officers also raised the issue of self referral forensic examinations during the focus groups. These self referral discussions allow complainants who haven't reported to the police to undergo a forensic examination and have their samples tested anonymously. Once they have been tested, and if a suspect has been identified through DNA, the Haven staff can update the client and establish whether the client wishes to report the allegation to the police.

381. The Havens have a young persons' Independent Sexual Violence Advisor (ISVA) at each Haven as well as an Asian Development Worker at Haven Whitechapel and a Mental Health ISVA at Haven Paddington. Compared with the demand, the availability is very limited. These ISVAs tend to see clients in more acute need than other ISVAs. It was clear to the review that these ISVAs, as with others, perform a vital role and that more are needed in London to ensure that the wide range of vulnerable complainants receive appropriate support and counselling.

382. One Haven manager set out the need for a strategic approach for a coherent ISVA strategy,

*'I think what we've lacked is a kind of strategic mapping or a strategic approach to where that incredibly important part of resource can be. And from a Haven perspective we have ISVAs who we work with really closely outside of our service and others we don't even probably know about. So I think there is something really lacking there and, as with any fundings stream, we still don't know what's happening after March next year.'*

383. The review found the relationship between the Havens and Sapphire to be very supportive and constructive which engendered an open dialogue. It was clear to the review that despite the good working relationships, some challenging issues such as police referral rates were not adequately

addressed. This indicated fundamental underlying issues that were beyond the ability of a strong working relationship and required broader solutions.

384. The formal interaction between Sapphire and the Havens is primarily undertaken by the Sapphire Partnership Team and the Haven managers. A Sapphire senior manager attends the Contract Monitoring Meetings and Partnership Team staff attend the Haven's Operational Group where joint issues are discussed. A quality of service report system is also used well by both organisations to formally raise issues of concern, evaluate the issues and put in place measures to address them.
385. A constructive relationship at senior leadership level has led to a variety of developments over the past five years such as: an annual joint police and Havens conference; police training initiatives by Haven staff; the design and trial of the 'SOIT pathway' and Haven medical photography. All of these initiatives have been designed to improve the service provided to complainants.
386. The Havens remain an essential part of the process of enhancing complainant confidence, reporting and reducing attrition. The service is, however, under-used. The review formed the opinion that the Havens need to raise their public profile and should review and streamline operational and evidential processes with Sapphire to ensure they are as good as they can be. With less than half of those complainants attending the Haven within the 7 day forensic window, and the low self-referral rate, it is considered that there is an urgent need to further integrate the Sapphire and Haven services to both increase referrals and make the evidential processes more efficient.

**Recommendation 22.** Given the potential for significantly lowering the attrition rate and securing early and effective support for complainants, it is recommended that a fundamental review of the scope and nature of service provision at the Havens, along with the nature and location of the estate, is conducted. This would remove the exclusion of cases presenting outwith one year of the offence.

Co-location of SOIT officers and Independent Sexual Violence Advisors (ISVAs), in their own discrete accommodation at the Haven, would ensure that the Haven became the default gateway for all complainants rather than police stations. Current facilities and resources could not deliver such a service. As part of such a review, the potential benefits of a central and unified resource should be considered and evidence obtained as to whether such a centralised resource would enable greater resilience and peer review and support for the practitioners serving in a much more substantial centre with more ready access to multi-disciplinary investigative and support services.

## Independent Sexual Violence Advisors

387. This review strongly endorses Baroness Stern's finding in relation to Independent Sexual Violence Advisors (ISVAs)<sup>118</sup>, 'We have heard nothing but support for the work of ISVAs'. At our focus groups ISVAs were variously described as 'brilliant', 'great assets' and 'amazing' by police officers of all ranks who deal with sexual violence. A woman rape victim succinctly summed up the support she had received from her ISVA, 'If it wasn't for this lady I would have cracked up.'
388. The review had the opportunity at one focus group, to observe at first hand the patience, empathy and professionalism exhibited by ISVAs towards their clients, some of whom displayed complex vulnerabilities and great distress. This experience left us in no doubt about the value they bring to their role.
389. So what is the ISVA's role? According to the Home Office website in January 2015,

*'The support provided by an ISVA will vary from case to case, depending on the needs of the victim and their particular circumstances. However, the main role of an ISVA includes making sure that complainants of sexual abuse have the best advice on,*

- *counselling and other services are available to them*

- *the process involved in reporting a crime to the police*
- *taking their case through the criminal justice process, should they choose to do so.*<sup>119</sup>

390. Beyond this outline, there is little official guidance on the ISVA role but, in practice, ISVAs support complainants of rape and other sexual offences regardless of whether they have reported to the police. (In some instances an ISVA's support may help the client reach a decision to report the crime.) Their support can last many months, especially where there is a criminal prosecution resulting in a trial, and may continue once the trial has been concluded.
391. Organisations that employ ISVAs use their own job descriptions and clients agree a contract with the ISVA including not to discuss their evidence. This is to protect the client from allegations of being coached.
392. The review heard from ISVAs that providing advice about the criminal justice system and information about case progression comprises just one aspect of their role which can include practical advice on a range of issues such as housing and childcare as well as accompanying the client to court if and when they give evidence at a trial.
393. The review heard that in addition to supporting their clients, ISVAs also assist the police, reducing the pressure on Sexual Offence Investigative Trained (SOIT) officer resources by answering complainants' questions and acting as a conduit between complainants and the police. As well as 'managing complainants' expectations', described at a police focus group as a vital task, ISVAs can update the police and Crown Prosecution Service about their client's well being or state of mind. They can also accompany their clients to any meetings with the police or prosecutors, for example, about special measures or following the discontinuation of their case.
394. The ISVA role has its origin in the 'Support Worker' role introduced by St Mary's Sexual Assault Referral Centre, Manchester, which was recognised by a Home Office evaluation of Sexual Assault Referral Centres published in 2004<sup>120</sup>. The research study reported,

*'Where a legal case was proceeding, a lower proportion of those contacted twice or more by the Support Worker withdrew from the criminal justice system. These findings suggest that flexible support and advocacy are the most vital support functions Sexual Assault Referral Centres should embrace.'*

Discussions in the focus groups confirmed the positive impact of ISVAs on attrition.

395. By 2007 a national pilot of ISVAs was underway. A Cross Government Action Plan<sup>121</sup> indicated,
- 'In 2007-08 we will be providing continuation funding for the 38 ISVA projects, and conducting an independent evaluation of the project.'*
396. Seven years on, funding for ISVAs remains uncertain and concern was expressed about arrangements for 2015. Government funding provided by the Home Office must be matched by the recipient organisation. According to its website the Home Office has part funded 87 ISVAs from 2011/2012 to 2014/2015 'to work with complainants of recent and historic serious sexual crimes to get the help they need'. Those attending the focus groups regarded this as too few and were also concerned that having to apply annually for funding means ISVAs only have short term contracts leading to uncertainty for service providers, ISVAs themselves and their clients.
397. So highly regarded is the ISVA role that organisations which are not in receipt of government finance have also recruited ISVAs, leading to a confusing mix of (part) government funded and privately funded ISVAs employed in a range of different environments. These include sexual assault referral centres (the Havens have 2 ISVAs), Rape Crisis centres and some local authorities. Some ISVAs (especially those working for services aimed at especially vulnerable groups) provide specially tailored support for sex workers, LGBT complainants, children, young persons and Asian complainants. Staff from the Havens

<sup>119</sup> <https://www.gov.uk/government/policies/ending-violence-against-women-and-girls-in-the-uk/supporting-pages/sexual-violence>.

<sup>120</sup> Lovett, J, Regan, L. and Kelly, L. Sexual Assault Referral Centres, developing good practice and maximising potentials. (2004) HO Research Study 285.

<sup>121</sup> Cross Government Action Plan. Above fn 113.

regarded the use of a mental health ISVA as invaluable, for example, in reducing client referrals to emergency services.

398. An organisation specialising in supporting sex workers attributed improvements in handling sex workers' cases to its dedicated ISVA role and the strong relationship it had forged with SOIT officers within Sapphire. This type of relationship enables ISVAs to take clients who wish to report a crime straight to a SOIT officer, thus bypassing uniformed first response police officers.
399. The review heard that there are approximately 20 ISVAs across London, too few according to the focus groups and resulting in 'patchy' service delivery. ISVAs spoke of heavy caseloads, 'hundreds of clients' and one described, 'Constantly having to balance how to spread myself'. Complainants were clear that all who report rape should be immediately referred to an ISVA to help them through the process. 'We need more' was the repeated message and one that this review wholeheartedly endorses.

**Recommendation 23.** It is recommended, expanding on the findings of the Stern Review, that the Government should recognise the unique and invaluable role of the Independent Sexual Violence Advisor (ISVA) and address the need for greater numbers and longer term funding in order to meet levels of demand and increase resilience.

## The Investigation

### The Standard Operating Procedure

400. The standards to which Sapphire should investigate allegations of rape are set out in the Metropolitan Police Service Standard Operating Procedure for Investigating Rape. It sets out two 'aims' and three 'principles' as follows;

#### **Primary Aim**

*To investigate, identify and assist in the prosecution of perpetrators to the satisfaction of the victim and community.*

#### **Secondary Aim**

*To identify and pursue alternative courses of action (where appropriate with or by partner agencies) to ensure that complainants receive a high standard of support and aftercare while utilising all appropriate means to gain intelligence concerning the perpetrator. In this way we are seeking to disrupt a perpetrator, through bringing them to justice by other means, recognising that they may commit other types of offences.*

#### **Principle 1**

*The Metropolitan Police Service will accept reports made by any victim in the first instance as being truthful. An offence will only be considered as unsubstantiated after a full and thorough investigation.*

#### **Principle 2**

*A SOIT officer should be with a victim of a rape or serious sexual assault within an hour of the victim's first contact with police. This is irrespective of the amount of time that has elapsed between the incident and the report to police.*

#### **Principle 3**

*The victim's wishes on whether a case should proceed to trial may only be overridden where a prosecution is in the public interest (for example as is sometimes the case with a linked rape series or there is a continuing danger to the victim or the community).*

401. The review considered the objectives within the Metropolitan Police Service Standard Operating Procedure for investigating rape, and its contents, to be sound in principle and potentially compatible with improving victim confidence, reporting and attrition. However, the ability of Sapphire to deliver

the objectives and standards set within the Standard Operating Procedure was restricted by workload, resources and a poor relationship with the Crown Prosecution Service. The findings of the review are set out against the Aims and Principles of the Standard Operating Procedure.

## Primary Aim

To investigate, identify and assist in the prosecution of perpetrators to the satisfaction of the victim and community.

402. To evaluate the ability to investigate allegations effectively - and thereby support complainant confidence and reduce attrition - the review assessed three key areas. These were Sapphire's performance objectives, workloads and supervision. The review observed that performance objectives in Sapphire drove behaviour. Workloads affected how well objectives could be delivered and the quality of supervision impacted on the standards of delivery.

## The Performance Objectives

403. The crime and detection data for the past decade is set out in Appendix A and B and shows that the trend for detections is broadly rising annually. However, the predicted data (based on the first nine months of 2014/15) show that Sapphire is unlikely to meet its performance objective of an increased number of charges for rape compared with the previous year (Appendix B).

404. In addition to the Aims and Principles, Sapphire has only one organisational performance objective, which is to increase the number of charges for rape compared with the previous year. No specific increase has been set. Of central interest to the review was that this single, outward facing performance objective was not necessarily aligned with the primary aim of the Sapphire Standard Operating Procedure which is to prosecute to 'the satisfaction of the victim and community'. In other words, the central performance objective relates solely to whether or not the suspect is charged irrespective of how satisfied the complainant was with the level of service provided.

405. Several examples demonstrate how the central performance objective can be met but not in a way which necessarily supports the primary aim of Sapphire. For example, if the suspect is charged, but the complainant later withdraws from the investigation (due to the service they receive by the police or Crown Prosecution Service) and the case is dropped, then the performance goal has still been met because the suspect has still been charged. In this case complainant satisfaction has not been measured as a performance goal.

406. Additionally, a complainant could have the confidence to report, receive an excellent service and the SOIT officer refer the complainant to support services who then provide considerable help to the complainant. The suspect may not be charged, or the complainant may not wish to support a prosecution, yet have received all the psychological or medical support that he or she needs as a result of police intervention. This, however, would be seen as an unsuccessful outcome in performance terms as the offence was not 'detected'. The complainant may be entirely happy with the service but not willing to support a prosecution, but the investigation has been investigated to the satisfaction of the victim.

407. The review found that the sole command performance objective of increasing the charges achieved by Sapphire, compared with the previous year, was not fully aligned to the Standard Operating Procedure and engendered a performance culture of focusing solely on charging offences. Sapphire does, however, have a variety of internal performance measures and scrutiny meetings to evaluate such areas as; offender management processes, Haven referral rates, adherence to standards and how teams are performing towards the overall charging objective. Whether the primary aim of investigating 'to the satisfaction of the victim and community' is an appropriate objective could be questioned given that the obligation on the part of the police is to investigate in the public interest which will very often, but not always, coincide with the expectations of a complainant. For example, where a complainant is

unwilling to support an allegation against a partner who poses a significant risk to the complainant, her children and the wider community.

408. Whereas identifying and charging offenders is the core investigative function of the police service, in the crime of rape there are many other factors that need to be considered. In over 70% of cases the complainant knows the suspect (see Table 7), so identification will not be an issue for the police, though proving the absence of consent, and of a reasonable belief in consent, most certainly will. The review heard evidence from many complainants who felt they could never report, or support an allegation against a suspect, for many personal reasons. However, the service and support from the police - especially SOIT officers - is vital to complainants so that they may receive the medical, safeguarding and wellbeing support they need. Such outcomes can be measured by Sapphire as part of crime data audits.
409. As the police are often the first line of support to the vulnerable, alternative outcomes should be seen by the police as important performance objectives (see Part 6: Alternative Outcomes). Where this is achieved successfully and the complainant has benefitted as a result, this should be seen as a success in the absence of an ability to charge. This would also create a greater value to the SOIT officer role and recognise the excellent work so often delivered by SOIT officers that is ignored in the current crude performance measures.

**Recommendation 24.** It is recommended that the performance regime for Sapphire should be re-evaluated in order that charging crimes of rape is not measured in isolation. What happens to a case post-charge (attrition) and the benefits to a complainant's health and wellbeing of alternative outcomes are all valid areas of performance in which the police play a vital role. Performance measures should be designed to reflect these wider objectives. This is central to both reducing attrition and increasing confidence in complainants.

## Workloads

410. Assessing the workload of Sapphire officers was an important element of the review. This was done in order to assess the impact of workload on the ability to investigate rape allegations effectively and maintain complainant confidence. The review has been able to assess this workload based on both crime data as well as through feedback from the participants in the focus groups.
411. Workloads are based on the average number of crime reports per Detective Constable as they are, usually, the only officers allocated rape investigations (some Detective Sergeants also carry out their own crime investigations and some SOIT officers investigate some non-rape offences).
412. The Metropolitan Police Service's internal assessment of workloads in 2014<sup>122</sup> stated that,
- 'At current Detective Constable levels (and without accounting for abstractions) each Detective Constable will have 28.8 cases in 2014/15. This is predicted to rise. In March 2014 13% of Detective Constables were shown as abstracted from duty' (abstractions relate to absences from the workplace due to sickness, maternity, training courses and attachments to other units).*
413. This numerical data does not allow, necessarily, for an analysis of the weight of the work involved in individual cases and whether this workload is optimal in terms of the use of resources and performance outcomes. Clearly, one rape investigation can vary considerably in scope and complexity from another or may include multiple complainants or suspects. Likewise, issues of, for example, mental health or multiple language needs may increase the demands on the officer in charge of the case. To assess how workload impacted on Sapphire's ability to meet its objectives, the review conducted its own analysis from the focus groups.
414. In the first nine months of the financial year to December 2014, as Appendix B shows, Sapphire dealt

<sup>122</sup> SOECA. Above fn 80.

with 3,689 'total allegations' and 3,669 confirmed 'offences'. The review examined live investigation workloads in each Hub on one day in September 2014. This snap shot showed that 181 Detective Constables on the command held 2,681 live rape and penetration investigations. The lowest number per Detective Constable was 1 and the highest 43. The mean average was 15 live investigations on that date (not how many they investigated in that year).

415. During this period SOIT officers were also surveyed to assess how many complainants they were actively engaged with in support of live investigations. The range was between 12 and 31 supported complainants per SOIT officer (see Table 13).

416. One Detective Constable explained his situation in a focus group,

*'Yeah, I've currently got 26 or 27 and only a few of those are closing reports. Some of them awaiting trial, some of them are awaiting Crown Prosecution Service advice, but on the whole most of them are live investigations and it's far too many. It is dangerous.'*

417. In assessing workload and the impact it has on officers' ability to investigate effectively, it was very difficult to assess the demands per crime, and hence how many crimes would be an optimal number to investigate at any one time. For example, as noted above, some alleged crimes require less investigative input than others that involve considerably more work. Each crime is different - as is each court case. It is therefore difficult to assess the workload demands within the given workload averages as one crime may be much more labour intensive than perhaps three others combined. The following case studies indicate the different levels of workload that investigations may involve.

418. **Case study 1:** Rape of a woman by her husband reported 3 months after the incident. He denies the allegation. The investigation is likely to include the following.

- A detailed written or recorded account from the complainant;
- A review of intelligence, crime allegations and criminal record relating to any previous physical or domestic abuse by the suspect;
- Statements from anyone (friend, family, GP) to whom the complainant has already disclosed;
- Telecommunications and social media analysis;
- Enquiries of neighbours who may have witnessed relevant behaviour; and
- Interview of the suspect.

419. **Case study 2.** Rape of a woman who woke to find her friend's boyfriend having sexual intercourse with her. She had drunk a considerable amount of alcohol, and slept on a sofa at her friend's home after a night out. She reported six hours later. The suspect claimed she had consented.

- A detailed written or recorded account from the complainant of what she remembers and the events leading up to the alleged offence;
- A forensic medical examination to identify any genital or other injuries and whether there is DNA evidence to help explain what occurred;
- Toxicology analysis and a back calculation of any alcohol in the complainant's system to indicate whether she was so affected by alcohol that she would have lost the capacity to consent;
- Scenes of crime and forensic examination;
- Any evidence of her condition before or after the alleged incident including; CCTV, accounts from friends, bar staff, taxi drivers, other independent witnesses;
- Telecommunications and social media analysis;
- Interview of the suspect; and
- Intelligence analysis.

420. **Case study 3.** Rape of a woman by a stranger who grabbed her as she walked her dog in a park. The investigation is likely to include:

- A detailed written or recorded account from the complainant with emphasis on her description of the suspect;

- A forensic medical examination of the complainant to identify any genital or other injuries and whether there is DNA evidence to help identify the suspect and support and supplement the complainant's account of what happened;
- Urgent and 'out of hours' forensic submissions;
- Scientific examination of the crime scene and of the complainant's clothes and belongings for any evidence that might identify the suspect or link him to the complainant;
- Specialist search of the locality;
- Witness appeal for people in the area at the time to come forward;
- CCTV of surrounding area, to identify the suspect, victim and witnesses and their movements;
- A review of intelligence to establish if there have been previous reports that might be linked to this offence;
- Telecommunications and social media analysis; and
- Proactive 'manhunt' tactics to locate the offender.

421. These three examples show the extent and complexity of each investigation and an indication of the workload involved, which will ultimately be owned by one Detective Constable. However, the workload should also be considered in the context of the impact each crime has on the complainant, and the fact that rape is one of the most serious and complex crimes to investigate. Third party material (care and school records), forensic submissions, Achieving Best Evidence interviews, CCTV, telephone, computer and texts records and social media data are often recovered in this crime type and their retrieval and examination are extremely time consuming. Their existence also creates significant disclosure issues.

422. The amount of work per investigation therefore varies entirely with each set of circumstances. An analysis of the main areas of investigative support gave an indication of the complexity and scale of Sapphire investigative workloads in 2013/2014:

- 3,433 submissions to the Communications Intelligence Unit;
- 1,105 submissions for analysis of phone handsets, computers and video/audio;
- 1,252 forensic submissions; and
- 2,417 interpreter requirements in 60 different languages (either in person or by telephone).

423. The number of forensic submissions, which are a central part of Sapphire investigations, are a clear indicator of complexity and workload in comparison with other sectors of the Metropolitan Police Service. In 2013/2014 4,559 forensic submissions were made by the Metropolitan Police Service as a whole, of which Sapphire submitted 27% of the total. Of all specialist crime departments combined (2,537 submissions), Sapphire accounts for 49% of all submissions and is the biggest customer of forensic services. The second biggest customer for forensic submissions is the Homicide and Major Crime Command which made 642 submissions (25%).

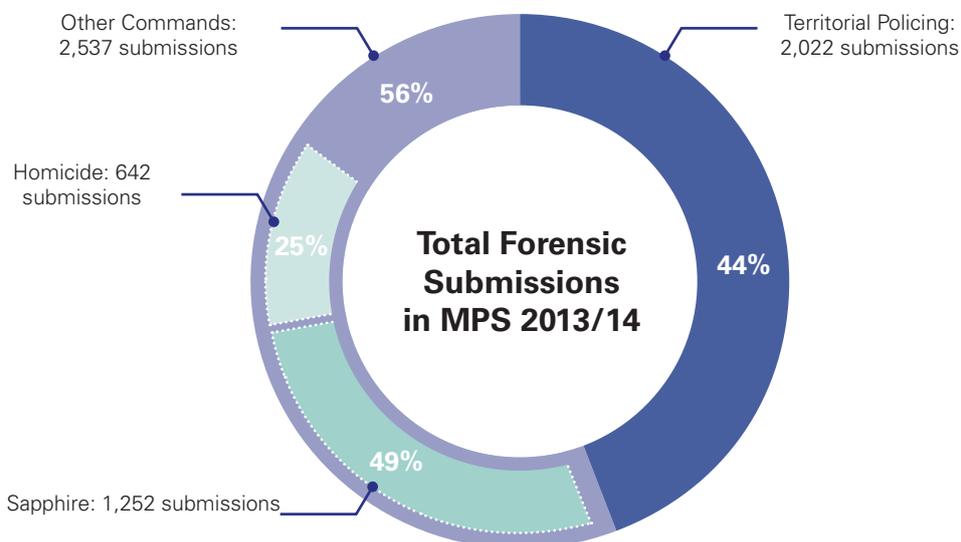


Table 12

424. Forensic science is a central investigative requirement for Sapphire and yet despite the demand, Sapphire does not have any dedicated forensic resources and is required to use Borough Forensic Hub Managers who also manage the demand within police boroughs under Territorial Policing. Homicide and Major Crime Command has, (as of December 2014) 20 dedicated in house Crime Scene Managers to manage their forensic submissions, but who will also advise Sapphire in major and linked series investigations. Specialist evidential recovery is also available to Sapphire for major crime scenes<sup>123</sup>. Additionally, the Metropolitan Police Service dedicates full time forensic practitioners to various other areas of serious crime such as kidnap, armed robbery and gun crime, but not Sapphire. The review understands that due to budget reductions the role of Crime Scene Managers will now provide a service to a variety of departments rather than supporting individual commands. Any further reduction in forensic capacity at a time when reported rapes are increasing is a matter of concern and is likely to lead to forensic opportunities not being maximised and increased delay.

**Recommendation 25.** The review was also particularly struck by the volume of forensic demands and lack of dedicated support compared with its nearest comparator, the Homicide and Major Crime Command. Forensic science is a core component in the investigation of this crime type and therefore it is recommended that an evaluation is undertaken to determine the appropriate level of dedicated forensic support that should be provided to Sapphire.

425. The Forensic Hub Manager is responsible for the effective management of the input of forensic science for the investigation of rape and serious sexual offences in their area. This will include all aspects of the forensic strategy. Forensic Hub Managers and other forensically trained staff take a proactive role to ensure that there is the highest forensic intervention for each reported rape and serious sexual offence. The Directorate of Forensic Services will also support the investigation through submission of forensic exhibits to the Forensic Service Providers. Officers explained that except in cases of urgency, forensic tests, which may well identify the suspect, take some twelve weeks for a result.

426. Despite the critical importance of forensic science to the successful investigation of many rape cases, the support provided to Sapphire has been reduced following budget reductions within the Metropolitan Police Service and this has impacted in a variety of ways. For example, forensic Sexual Offences Liaison Officers were until recently the focal point for investigators/SOIT officers. This has now changed so that all forensic practitioners on Borough are deemed omni-competent. All reported sexual offences will receive an immediate deployment from Forensic Services but rape investigations do not get dedicated staff who will then manage the forensic aspects of the case throughout the investigation. Staff expressed great frustration at not having dedicated support compared with some crime types, despite being the biggest single 'customer' of the Metropolitan Police Service forensic services. It was felt that dedicated specialist forensic support within the Sapphire Hubs would significantly enhance the use of forensic science within investigations.

427. To assess whether Sapphire staff had an appropriate workload the review heard from both focus groups and assessed workload averages. The focus group participants, without exception, gave a clear indication that Sapphire Detective Constables were managing excessive workloads and this had a significant impact not only on their welfare but also often on the ability to deliver work to the required standards (see also Part 4: File Review Section). Analysis of their workloads identified that each Detective Constable had an average of 15 live cases at any one time. The review was not able to collate data on how time spent at court, assisting other investigations, training courses and other abstractions also impacted on their workloads. In order to assess what an appropriate workload should be for Sapphire officers an assessment, including a qualitative analysis of any weighting factors for complexity or scale of investigation or the needs of the complainant, should be undertaken and reflected in the future allocation of work.

**Recommendation 26.** It is recommended that weighting factors to reflect the scale and complexity of rape investigations are introduced for any measurement of the workloads of Sapphire officers are reflected in the allocation of cases.

428. One officer explained how heavier workloads impacted on him, despite the fact he may have what appears to be a manageable workload,

<sup>123</sup> Data held by Metropolitan Police Service SC&O4.

*'I've got 11 crimes at the moment. And you know, you come in for an average shift, you're guaranteed one (investigation) a shift, I got two yesterday. We had a week's (worth) in a few weekends ago and we had fifteen rapes in three days, and for one team. And we had seven prisoners, all those crime scenes, and some people did treble shifts.'*

429. Another explained,

*'You know, one job I've got 53 actions of which 40 are mine - that's one crime. I've got 13 live crimes, I've got 10 charged cases going through the courts.'*

430. The review considered that the vast majority of officers worked extremely hard, wanted the right outcomes for complainants and often pushed themselves to the extreme. This burden also adversely affected supervisors who were generally unable to undertake supervision and reviews to the standard set out in the SOP.

431. The senior management team were asked for their perspective on workloads and resources. One said;

*'This command is particularly poorly resourced. I mean, I have worked a couple of other commands at this sort of rank and they were nowhere near as poorly resourced as this. I mean, I came here and I just cannot believe what the teams are dealing with on a daily basis with the resources. And talking to other people they say it's been like this for years, nothing has changed, it's been like this for years.'*

432. It was clear that various efforts had been made to raise the issue of resourcing by the Sapphire senior management team over the years. This had resulted in a recent temporary move of staff from the Homicide and Major Crime Command and other areas of the Metropolitan Police Service to support Sapphire.

433. One Homicide detective reflected on their time on attachment to Sapphire during a focus group,

*'It is a very different perspective from working where I work. The volume of crime is virtually nonsensical. You guys would know far better than I do, but the mental health aspect of what you guys deal with on a daily basis is ridiculous.'*

434. However, though many detectives seconded to the investigation teams were of the necessary calibre the review questioned the validity of the approach the Metropolitan Police Service took to improving resourcing which was both unfair on the officers, Sapphire and complainants. One manager stated that when additional staffing had been sent to Sapphire on attachment to assist with the workload, some of the officers were not from investigative units and did not have any of the required skills to undertake the role. As a result, some officers were not accepted on attachment. There was absolutely no criticism of those officers who had been sent to Sapphire, but as one of the most demanding and complex investigative environments, staff found it wholly inappropriate that staff who are not detectives should be assisting Sapphire with rape investigations.

435. As with SOIT officers, the issue of geography and travelling from Hubs creates a logistical challenge for investigators. The reduction in cars exacerbates this issues. One Detective Chief Inspector remarked,

*'Well one of the problems I've got is that we have 'hubbed', but at the same time as 'hubbing' they have taken police cars away from us. So, we've got to get, we've got to travel further with fewer vehicles, and the vehicles we've got are on their last legs as well. Nine cars for 120 staff.'*

436. Officers of all ranks expressed great support for the objectives, concept and nature of the work of Sapphire - some said that, putting the workload issues aside, they 'loved their job' and others 'thoroughly enjoyed it'. One Detective Inspector summarised what the review considered to be a typical view,

*'I have been doing this for about 8 years now and I thoroughly enjoy it. However, and that's a big 'however', I don't think that staff generally get supported. I don't think we have the resources in place'*

*to do the amount of work that we are asked to do. I don't think we have the resilience to cope with the work that we have to do. There are far too many cases now of SOIT officers being overworked doing too many hours and as a consequence are having to go sick with stress, fatigue. And that's not the SOIT officers aside, you're talking about the DC's as well.'*

437. The impact of prolonged, inappropriate workload levels and stress can have a direct impact on how staff perform and their attitude to the work. One Detective Inspector stated,

*'I've had one DC with Sapphire work for 7 years to the point where the officer didn't believe the last victim of a stranger attack. And it was a genuine stranger attack - grabbed off the street in the middle of the night and the officer couldn't believe her, because the officer has had so many lies to deal with, and so many broken people to deal with, that the officer can't see now the genuine cases. And that is incredibly dangerous.'*

438. Another Detective Constable openly admitted,

*'This is my second stint in Sapphire...and like quite a few people I can't wait to leave. I am emotionally, physically, mentally drained as has been said a lot. I mean, I've got 19 active investigations and I think 2 of them are genuine.'*

439. The review was concerned about the level of stress and anxiety expressed by many staff in the focus groups and the extent to which their perception of complainants appeared distorted by fatigue or had become jaundiced through the unforgiving work pressures and the knowledge of the greater challenge of rape cases proceeding to conviction. The implications of a growing cynicism in those charged with investigating such anxious cases is a matter of grave concern when considered along with the general preponderance of stereotypes and myths that still affect practitioners, jurors and complainants themselves. The absence of any regular debriefing or occupational health support for officers can only worsen this disposition.

440. Investigators described their role and workloads in a variety of ways. There was a clear sense that many officers considered the role a 'vital one', as a 'pinnacle of crime investigation' and 'extremely worthwhile'. However, it was also extremely clear to the review that despite these sentiments many officers were obviously stressed, overworked and were in open acknowledgement of a need to move. Under these circumstances it was clear that the workload was too heavy and it was not in complainants' best interests for Detective Constables who felt this way to be investigating rape. The Detective Constables explained that there was a general ban on moving out of the investigation teams as there were so few staff coming in. At the time of writing, February 2015, a decision has been made to allow Police Constable investigators (not trained Detective Constables) to join Sapphire to assist Detective Constables as there are insufficient Detective Constables to be found.

441. Moving from local teams in boroughs into the regional Hubs prompted a mixed response from staff as the new arrangement generally increased travelling distances when investigating, but improved the resources available that could be brought together for larger investigations. One Detective Constable remarked of Hubs,

*'I think it depends on the individual teams, I think that my team get on very well together. We have only known each other for two months but we seem to work quite well. And when there is a job we have a team meeting and jobs will be allocated out. And you may have things to do, but if there is a job in it's 'all hands on deck' and you know if it's your job tomorrow then there will be people to help.'*

442. Generally, however, Detective Constables are individually responsible for their own investigations and so although others may assist when they take on a complex crime, those Detective Constables need to return to their own work as soon as they can. When asked the same question about support during investigations another Detective Constable stated,

*'Nobody sometimes. I have dealt with a "stranger one" job all on my own for a week and a half - I did everything myself.'*

443. Another colleague reflected,

*'You did get stressed I mean, I've worked 22 1/2 hours, myself, to get a guy charged. Got him charged and then got a mouthful because I wasn't at court the following morning, because I fell asleep in the office'.*

444. The nature and level of training received by officers working in this area was considered. While the Child Abuse Investigation Teams have specialist training, there is no equivalent course for Sapphire officers. There is a week's general induction course for Sapphire officers. The review heard from officers that although they are all trained detectives, this is a specialist area with unique challenges. They felt that training should be provided on the law, decision making, advanced exhibits and forensic science, managing child complainants, myths and stereotypes and interview techniques. Judges and lawyers participating in the focus groups also expressed concern about the understanding of some officers of disclosure obligations and advocated more training in this area.

445. The national College of Policing has developed a Serious Sexual Assault Investigator's Development Programme which is in use by other forces. The Metropolitan Police Service has not adopted this programme.

**Recommendation 27.** It is recommended that a specialist rape investigators' training course and qualification should be introduced to ensure investigators are properly trained and equipped to fulfil the role.

446. It was clear when considering all the factors - staff welfare, increasing crime reporting, the complexity of many investigations, the quality of case files and the challenges of a higher ratio of trials in those cases which proceed to prosecution - that workloads per officer in Sapphire investigation teams are far too high. The current burden does not allow for a balanced workload, a motivated workforce and effective investigation. There was no doubt that these circumstances wholly undermine the ability to maximise complainant confidence and negatively impact on attrition.

**Recommendation 28.** The investigating workforce should be urgently reviewed and the resources increased to reflect the current and anticipated increase in demand.

## Supervision

447. One of the key areas of concern in the focus groups was the accountability officers have for both undertaking investigations and supervising them. This is a critical area for Sapphire as there have been at least four high profile failures of investigation and supervision in the last decade. In addition to the highly publicised failures in the cases of serial attackers Kirk Reid and John Worboys, Detective Constable Coleman-Farrow was jailed in 2012 for misconduct in a public office following a series of falsehoods in rape investigations<sup>124</sup>.

448. The Standard Operating Procedure states the following with regard to reviews:

- A formal first review of the investigation must be conducted between 10 hours and 18 hours of the receipt of the report. This should be conducted by a supervisory officer of at least the rank of Detective Sergeant and must be shown recorded on the 'Review' screen of the CRIS;
- A formal second review must be conducted seven days after the report being made or at the conclusion of the case if sooner. This is to be conducted by a Detective Inspector and must be recorded on the 'Review' screen of the CRIS report;
- A formal third review by the designated Detective Chief Inspector for the investigating OCU will be conducted at an interval of 28 days from the report being made in all cases;
- Subsequent reviews will be completed by the SIO in consultation with the designated Detective Chief Inspector for the investigating OCU every 28 days thereafter until the case is solved or a decision is made to file the case at Record Management Branch.

<sup>124</sup> <http://www.bbc.co.uk/news/uk-england-london-19906619>.

449. The following data in Table 13 were taken from a survey of staff workloads carried out in September 2014. They show the number of crime 'reviews' the officers have to complete per week in order to comply with the standard operating procedure and to ensure the effective direction of investigation. The Detective Sergeants have a slightly different role of providing a review within the first 10 - 18 hours, but also a requirement to undertake an automated '7 day supervision' of each crime report. This is an automated requirement for all crimes within the Crime Recording Information System but not mandated within the Standard Operating Procedure or the Toolkit.

Dip Sample Of Live Supervision Workloads In September 2014		
Rank	Range of live crimes	Range of reviews per week
Detective Chief Inspector	542 – 769	15 – 20
Detective Inspector	128 – 209	25 – 50
		<b>Range of weekly crime supervision from sample</b>
Detective Sergeant	87 – 120	87 – 120
Sexual Offence Investigative Techniques Officer	12 – 31	–

Table 13

450. It should be noted that if an officer is absent from work or takes annual leave the reviews or supervision are usually not completed until the same officer returns.

451. Given that officers are contracted to work a 40 hour week, the data indicate that the time available to supervisors to undertake crime supervision and reviews is very limited. Supervisors also have a broad range of other onerous duties beyond crime reviews.

452. The first supervision exercise is carried out by a Detective Sergeant, who is required to allocate and supervise the Detective Constables' workloads and investigations. The review found that many Sergeants, as well as carrying out supervision, were investigating their own caseload. In addition, they fulfil all of the management functions associated with first line supervision. The data indicate that they would have to supervise two to three crime reports every hour of each week to undertake effective seven day supervision.

453. This was tested with staff in the focus groups. A Detective Inspector provided an example of one situation demonstrating how limited supervision can become.

*'I can give one example of a trial that I had last summer. In that I had that three week process where I was at trial - managing 3 trials. I then went sick myself. I was off for a while - no one during that period was managing my cases at all, and that includes cases that were at the court process or cases that were being investigated.'*

454. Detective Inspectors are the next line of supervision and are required to review rape investigations every 7 days, in addition to the Detective Sergeants undertaking 7 day supervision. They are therefore responsible for all the rape investigations on their team, which will consist of three or four teams each run by a Detective Sergeant. As the data show, average spans of supervision are excessive, especially considering the complexity of many of the investigations and the scrutiny under which staff operate if mistakes are made (see Part 6: Police Misconduct and Public Complaints). Additionally, if staff are absent then it is highly likely that the work will not be progressed by another member of staff. One Detective Inspector explained how she felt about managing her reviews.

*'I've come back from two weeks annual leave to 66 reviews. It's absolutely impossible and it's fire fighting and that's all it is.'*

455. Another Detective Inspector remarked,

*'Here as a Detective Inspector you really do feel like it's 'backs to the wall' stuff and you are playing an enormous role in both trying to identify and address risk; ensure that investigations are done effectively; but also trying to manage what feels like perpetual crisis points in terms of personnel. I did two-and-a-half years before going away and then I've been back for a few months now, during that entire time the team always feels on the cusp of falling apart. You've always got people in tears; you've always got a number of people off sick; you've always got another person going off on maternity or some other long term abstraction'.*

456. Five Detective Chief Inspectors are responsible for running the whole Hub and for all the crime investigations, which equates to over one thousand rape and serious sexual offence allegations a year each. Additionally, they are also responsible for reviewing all the stranger rape offences every 28 days which would average about 15 - 20 reviews a week. Two of the Detective Chief Inspectors recounted their experiences,

*'I've got 27 crimes to review this week, and I am off Wednesday, Thursday and Friday, so it's just impossible. I am down to come in this weekend to try and get those 27 done and I think then, 'If you've got 27 reviews to do in a very limited time frame, what quality are those reviews?' Those reviews are actually dictated by the time which you have to do them'.*

457. Another Detective Chief Inspector articulated the prevailing sense of perpetual risk,

*'My reviews are always late, predominately always late, so if I was, you know, if something went wrong I would be an easy target for the Independent Police Complaints Commission. But it's because I have so much to do, but I just can't do it on time. And sometimes actually I am quite happy to do the 28 day reviews, because I know how busy my Detective Inspectors are, so it's almost like a second set of eyes and I can quality assure it and make sure that I keep everyone kind of in check, and that we don't miss anything'.*

458. Once an investigation has been completed it will either be submitted for a consideration as 'no crime', or the Detective Inspector will decide to take 'no further action', or it will be submitted to the Crown Prosecution Service for a charging decision.

459. The 'no crime' process requires a presentation to be made to the Commander and then to a panel of academics. One Detective Inspector explained that there was now little incentive to undertake a 'no crime' decision. The data in Appendix A and Appendix B set out the trends in 'no crimes' which have reduced dramatically since 2005.

*'There is a massive pressure not to 'no crime', but that's of no concern of mine - how a crime sits on a crime report, whether it shows a crime or not. Personally, I think the position of 'no criming' is as perverse as it was some years ago - in the opposite way. Because now keeping as crimes allegations that are clearly not, simply because there is so much work to getting a 'no crime' done, no one in their right mind is going to bother, because they are too busy investigating real cases'.*

460. However, the decisions to proceed with an investigation and submit case papers to the Crown Prosecution Service, or take 'no further action' sit with the Detective Inspector, or Detective Chief Inspector in the case of a stranger rape. Though set out in the File Reviews section, it is worth reiterating here that the decision by a Detective Inspector to take 'no further action' is one the Detective Inspector makes based on experience alone. Detective Inspectors are not required to have any special legal training, nor do they have to consult the Crown Prosecution Service to validate a decision to take 'no further action'.

461. The Director's Guidance states that the police may take no further action where they believe that the full code test will not be met unless the decision requires the assessment of complex evidence or legal issues. The situation has therefore arisen that 'no crimes' attract senior scrutiny and case files must be reviewed by a panel of independent academics, but 'no further action' decisions, of which

there are many more, are not subjected to any scrutiny. This is considered to be a real vulnerability by staff, especially by the Detective Inspectors taking the decisions, for which they may be criticised in the future and become subject to a misconduct process (see Part 6: Police Misconduct and Public Complaints). A Detective Inspector explained the current process,

*‘So, basically, if the evidential threshold isn’t met the Detective Inspector has the responsibility to ‘no further action’ the case. My Detective Inspector is saying he doesn’t want the responsibility anymore, so he is now referring cases which, as an evidential review officer, I don’t think meet the evidential case. He is saying, ‘No, I want it referred to the Crown Prosecution Service’ which then puts the burden on to the Crown Prosecution Service, which increases waiting times, because the Detective Inspectors now don’t want to make that decision.’*

462. The supervision and review process relates to all aspects of the investigation and effective reviews are essential to ensure that all available lines of enquiry are followed and that the Detective Constable is given support and direction where necessary. The review found overwhelmingly that supervisors could not spend enough time undertaking adequate crime reviews and felt under persistent risk of being held accountable for failings which they may never notice. This is perhaps borne out in the File Review section of this report which found that about half of all case files submitted to the Crown Prosecution Service are rejected as not adequately supervised, leading to errors or omissions. This directly impacts on attrition and general functioning of the Command.

463. The review strongly recommends a significant uplift in the number of supervisors in order to ensure staff are managed effectively, crime reviews are undertaken to the correct standard and that case file submissions to the Crown Prosecution Service are properly quality assured. Considering the seriousness of this crime type, it is hard to justify reducing supervision and review standards, especially in light of recent highly publicised enquiries (Reid, Worboys and Coleman-Farrow) and rising reporting rates.

**Recommendation 29.** It is recommended that there is an immediate and fundamental review of the resourcing of the Sapphire investigation teams to ensure that appropriate, additional and skilled resources are introduced to the investigation teams as soon as possible. Any increase in staffing should also take into account the need for pro-active development, mentoring and supervision by senior officers who should also have a reasonable span of management and individual workload.

464. A fundamental difficulty reported during the review was the absence of joint case building and even direct contact between Sapphire and the Crown Prosecution Service. The Crown Prosecution Service Director’s Guidance on Charging advocates joint case building and early advice to ensure prosecutors are helping to determine the evidence that will be required to support a prosecution. Absence of joint case building means that supervisors are submitting case files without any prior Crown Prosecution Service guidance. This can lead to a cycle of cases being rejected, sent back and time wasted. Due to the fear of allegations of misconduct, Detective Inspectors and Detective Chief Inspectors taking ‘no further action’ decisions often submit cases to the Crown Prosecution Service to ratify, and therefore take responsibility for ‘no further action’ decisions.

## Secondary Aim

*To identify and pursue alternative courses of action (where appropriate with or by partner agencies) to ensure that complainants receive a high standard of support and aftercare while utilising all appropriate means to gain intelligence concerning the perpetrator. In this way we are seeking to disrupt a perpetrator, through bringing them to justice by other means, recognising that they may commit other types of offences.*

465. The Secondary Aim has two separate objectives - support and aftercare and managing intelligence relating to aftercare. The review accepts that the aftercare provided by SOIT officers, Independent Sexual Violence Advisors (ISVAs), the wider third sector and the Havens is essential to the health and well being of the complainant, and to the investigations which they are willing to support.

466. The second aspect relates to how Sapphire manages the risk posed by suspected rapists. These may be suspects against whom complainants will not support a prosecution, or those who have been found not guilty at court - especially if on more than one occasion. In each of these circumstances Sapphire is left with the challenge of managing the potential risk to the public of further offending. Where the suspect is in an ongoing relationship with the complainant then Sapphire officers will undertake a risk assessment with that complainant and advise accordingly. However, in cases of stranger rape, the risk is much broader.

467. The Metropolitan Police Service manages this risk through its intelligence service. Shortly after the creation of the Specialist Crime Directorate Sapphire Command in 2009, a dedicated Sapphire Intelligence Unit was set up, consisting of twenty staff. Following the previous failures of the Metropolitan Police Service to identify the serial attackers Reid and Worboys, the new Sapphire Intelligence Unit undertook data inputting and other analyses to identify linked crimes. This unit implemented new processes which dramatically increased the numbers of linked series identified.

468. Under Metropolitan Police Service restructuring in 2013 the Sapphire Intelligence Unit was disbanded and analysis of sexual offences was moved to the separate Metropolitan Police Intelligence Bureau structure. Sapphire now receives intelligence support through a central system of area hubs and from all Local Intelligence Teams, with additional daily briefing support from what is called a 'Grip and Pace Team' which provides twice daily crime briefings. All requests for intelligence support are now submitted through an area hub under the 'Sharepoint system', which provides intelligence analysis, research and development. The level of support and turnaround time will depend on the urgency for, and the risk attached to, the request. Linked series analysis is undertaken by Met Intelligence and, where identified, passed to the 'Grip and Pace Team'. There were mixed views about the intelligence service structure with some staff stating that it now took longer for their requests to be undertaken and that sometimes the results were inaccurate.

469. When the Sapphire Intelligence Unit was disbanded, 'Met Intelligence' took on responsibility for creating the Sexual Offences pages. However, in February 2015 responsibility for this task will pass back to the investigating officer. Sexual Offences pages are used to identify emerging trends and are critical to understanding the nature of sexual offending in London, identifying patterns and linked series. Met Intelligence will monitor the compliance of Sexual Offences pages. Staff expressed significant concern that the approach to this inputting may now be inconsistent and may frustrate the ability to identify linked series. At the time of writing the review has learned that compliance with completion of the Sexual Offences pages is very low, posing a significant risk to the ability of the police to accurately evaluate linked series offending.

**Recommendation 30.** A dedicated team of officers should be reassigned for the creation of Sexual Offences pages within the Crime Reporting Information System to ensure consistency and compliance service-wide. Additionally, an analysis should be undertaken of the current intelligence processes relating to Sapphire remit crimes to evaluate the level of intelligence support now provided in pursuit of these objectives and to ensure serial offending is effectively analysed.

470. The National Serious Crime Analysis Section is another intelligence tool to identify linked series offending. Crime analysts and specialist police staff analyse all crimes referred to them under a specific criteria – i.e. rape, serious sexual assaults and motiveless or sexually motivated murder cases. A dedicated officer from the Crime Management Unit is responsible for creating Serious Crime Analysis Section flags on all relevant Sapphire crime reports and ensuring compliance in this area.

471. The monitoring and disruption of offenders through intelligence led policing is particularly important where offenders pose a continued risk to public safety and complainants are unwilling to substantiate an allegation of crime. If a suspect is not fully identified then the Senior Investigating Officer may consider, where appropriate, the submission of forensic samples for analysis in an attempt to identify the offender on an intelligence basis only and assess their level of offending and the risk they pose. Alternative charges for other additional offences committed by offenders (e.g. possession of drugs, assault, possession of indecent images) will always be considered as a means of disruption if relevant

evidence obtained during an investigation is available and the offender cannot be pursued for the sexual offending.

472. The SOECA Proactive Task Force also has a system in place to assess the risk posed by dangerous offenders and deploys proactive means to monitor them and disrupt their future activity with the objective of safeguarding the public. However, compared with the scale of reported offending, the response of the Proactive Task Force is limited and focuses on the most dangerous offenders.
473. In cases where the complainant will not immediately engage, a longer term strategy is often required which involves the services of partner agencies to gain the confidence of the complainant and assist with lifestyle changes such as relocation. The extra support provided can help to secure complainants' future assistance with a prosecution.
474. In summary, Sapphire recognises the major benefits of good quality support for complainants. In terms of intelligence and pro-activity, it remains to be seen how the disbanding of the Sapphire Intelligence Unit and move to Met Intelligence model may change intelligence support to Sapphire. This was not analysed as part of this review. However, devolving Sexual Offences Page inputting to individual officers appears to present a risk of inconsistency, especially as this was trialled within Sapphire and was found to create inconsistencies. This risk would undermine the ability to identify linked series, the very purpose for which Sapphire Command was founded as a specialist crime unit in 2009.

## Crown Prosecution Service Structure and Response to Rape

475. The Crown Prosecution Service (CPS) is the principal prosecution service for England and Wales and is headed by the Director of Public Prosecutions. The Crown Prosecution Service is a national organisation, divided into 13 local Areas, each of which has a Chief Crown Prosecutor, responsible for their Area's prosecutions. The Area under review is known as CPS London.
476. Crown Prosecutors working for the Crown Prosecution Service are responsible for making sure that the right person is prosecuted for the right offence<sup>125</sup>. However not every decision to charge a suspect with an offence is taken by a Crown Prosecutor and in less serious cases the police will make the decision. Rape is so serious that charging decisions must be taken by Rape Specialist Prosecutors.
477. The Crown Prosecution Service, like other government departments, has had to accommodate significant cuts to its budget. As a result of the 2010 comprehensive spending review it has had to make a 25% reduction by 2015. In his introduction to the 2010-11 Crown Prosecution Service Business Plan, the then Director of Public Prosecutions wrote,

*'The scale of the cuts required means that it is not just a question of doing more for less. We need a new mindset, a new approach to our work; we have to look at new ways of doing business and ensuring we get best value from every pound spent.'*

Since 2010 there has been considerable shrinkage of both the Crown Prosecution Service's workforce and its estate.

## Rape Prosecutions in London – a Brief History

478. Out of all the CPS Areas, CPS London is the largest in terms of population. It is also the Area with the highest number of reported rapes per capita. In addition to working mainly with the Metropolitan Police Service, CPS London receives a small amount of work from the City of London Police and British Transport Police. As previously highlighted (see Part 3: The London Landscape) the Area is extremely diverse having high transient, working, ethnic and student populations.

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<sup>125</sup> Code for Crown Prosecutors para 2.2. Above fn 46.

479. Specialist rape units are a relatively recent development for the Crown Prosecution Service. Traditionally rape cases were handled by an Area's more experienced Crown Prosecutors as part of a mixed caseload that might include murder, robbery and serious assault cases.
480. In 2007, following a recommendation in the report *Without Consent*<sup>126</sup>, the Crown Prosecution Service introduced specialist training for all rape prosecutors. This consists of a two-day face to face course on prosecuting Rape and Serious Sexual Offences. The course, which is regularly updated, remains the qualifying course for all specialist rape prosecutors.
481. In 2010 there were more than 200 trained rape specialist prosecutors in London. CPS London was divided into six Districts each aligned to Crown Courts and headed by a District Crown Prosecutor. Each District encompassed between three and eight Boroughs (there are 32 in total), each headed by a Borough Crown Prosecutor.
482. In April 2009 CPS London introduced a dedicated Violence against Women Co-ordinator (an experienced rape prosecutor and lawyer manager) to drive the Area's agenda to improve rape prosecutions, including monitoring cases for quality and compliance with Crown Prosecution Service policies.
483. On 1st March 2010 a centralised London Rape Charging Centre was opened, managed by the Area Violence against Women Co-ordinator. The Unit's remit was to handle rape cases, including providing early consultations with the police, and to make charging decisions. Once charged a case would transfer to the appropriate Borough to be dealt with by a specialist rape prosecutor until it was finalised. The Centre was to employ 6 full time lawyers. Cases about suspects who need to be charged out of hours continued to be handled by the non-specialist CPS Direct, the telephone out-of-hours service. By January 2011 resourcing for the Unit consisted of: the Unit Head (legal manager); 7.6 Senior Crown Prosecutors (full time equivalent); and an Administrative Manager.
484. The London Rape Charging Centre aimed to have cases effectively 'trial ready' by the time they were charged, following application of the Full Code Test<sup>127</sup>, thereby reducing the impact on the Borough specialists who took over the cases post-charge. However the separation of pre-charge and charging from post-charge work was not consistent with Crown Prosecution Service Policy<sup>128</sup>. This required, 'wherever possible that the same specialist prosecutors will be responsible for the case from beginning to end and will work closely with the police throughout'.
485. In approximately April 2012 the unit's remit was expanded to take responsibility for cases from start to finish and the London Rape Charging Centre was renamed the London Rape and Serious Sexual Offences Unit. This brought to an end the Boroughs' responsibility for prosecuting rape cases. By October 2012 resourcing for the Unit consisted of: the Unit Head; 8.85 Senior Crown Prosecutors (full time equivalent); a Paralegal Business Manager; 3.6 Paralegal Officers (full time equivalent); and a Case Progression Officer.

## The Rape and Serious Sexual Offences Unit at the Time of the Review

486. The Rape and Serious Sexual Offences Unit forms part of the Complex Casework Unit and sits alongside specialist teams dealing with Homicide and Special Casework. Resourcing as at August 2014 is set out in Table 14 below.

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<sup>126</sup> Without Consent. Above fn 9.

<sup>127</sup> The Full Code Test is applied by prosecutors when deciding whether or not to charge. It is set out in the Code for Crown Prosecutors.

<sup>128</sup> CPS Policy. Above fn 23.

Allocated Staff Posts Within the Rape and Serious Sexual Offences Unit		
Title	Role	No.
Legal and Stakeholder Manager	Reporting to one of two Deputy Chief Crown Prosecutors and is in overall charge of the unit and of the Homicide Unit. Responsible for stakeholder engagement, delivering change and improving performance.	1
Unit Head	The first (appointed October 2013) responsible for managing the prosecutors and the Paralegal Business Manager, completing monthly quality standards monitoring and adverse case outcome reports (required when cases are dropped or result in a not guilty verdict after trial). The second (appointed April 2014) in anticipation of the Unit's expansion and has led on discrete projects including the implementation of the new triage system and quarterly custody time limit audit.	2
Senior Crown Prosecutors	Specialists in rape, domestic violence and youth offending. Recruitment process involves submitting an 'expression of interest', and completing a legal test.	11.58 full time equivalent
Paralegal Business Manager	Managing the Paralegal Officers on the team.	1
Paralegal Officers	Running cases following the specialist prosecutors' decisions to charge.	7.6 full time equivalent
Case Progression Manager	Supervising Judges' Orders, ensuring papers are prepared and served in advance of Preliminary Hearings, monitoring trial readiness, booking Counsel, and dealing with witness queries.	1

Table 14

487. The remit of the Unit as at August 2014 was to deal exclusively with offences of rape and other non-penile penetration (of the vagina or anus). The only exception was Operation Yewtree<sup>129</sup>, which was dealt with by the Rape and Serious Sexual Offences Unit although not involving allegations of rape or penetration.

## The Rape and Serious Sexual Offences Unit After August 2014

488. This review coincided with an ambitious programme to restructure the Rape and Serious Sexual Offences Unit scheduled for September 2014. This involved extending the unit's remit not simply to meet the Crown Prosecution Service minimum standards but to include Crown Court domestic abuse prosecutions. Resourcing the additional work involved establishing a second team and dividing the work between the two.

489. Following the re-structure, accomplished in October 2014, resourcing for the two Units is set out in Table 15.

Rape and Serious Sexual Offences Unit Allocated Posts	
Role	Number
Unit Heads	2
Paralegal Business Manager	2
Senior Crown Prosecutors	24.27 full time equivalent
Paralegal Officers	16.1 full time equivalent
Case Progression Manager	2
Case Progression Officers	4.43

Table 15

<sup>129</sup> Operation Yewtree primarily deals with matters that relate, or are intrinsically linked, to, Jimmy Savile and allegations of a non-recent (before 29/10/11) sexual nature.

490. While not all the additional lawyers would be rape specialists they were to be experienced prosecutors and would receive the requisite training. Further administrative support would be provided by an increased number of support staff from the Complex Casework Unit.

## How the Rape and Serious Sexual Offences Unit Operates

491. The Rape and Serious Sexual Offences Unit operates from a single designated site. Its main responsibilities are as follows.

- To provide early investigative advice (sometimes referred to as early consultation) to the police;
- Review the evidence gathered by the police to determine whether the case reaches the required standard for charging;
- Ensure the complainant's wishes and needs are reflected in any application for special measures;
- Send letters to complainants explaining any decision to take no further action, charge a lesser offence or reduce the charge and offering a meeting;
- Select and brief the trial advocate;
- Prepare the papers for court together with any applications (for example for hearsay evidence and bad character to be allowed in evidence); and
- Comply with the prosecution's disclosure obligations by reviewing unused material, including third party material.

492. Daily briefings chaired by the Unit Head keep members of the team up to date with current issues including outstanding work such as Judges' Orders and cases due for service. The Unit Head also chairs monthly team meetings attended by the Legal and Stakeholder Manager.

## Early Investigative Advice

493. Early investigative advice is provided by specialist prosecutors at a preliminary stage in a police rape investigation. Its purpose is to ensure a coordinated approach to determining whether a case is capable of being built for prosecution, identifying potential charges and agreeing the evidence required to support them. The need for an early joint approach by the police and Crown Prosecution Service in rape cases was emphasised in Without Consent<sup>130</sup> which recommended,

*'that Police Forces and the Crown Prosecution Service ensure that rape cases receive full and early consultation between the investigating officer and the rape specialist prosecutor'.*

494. This recommendation was accepted and embedded in Crown Prosecution Service policy<sup>131</sup> as follows,

*'Early consultation will take place between the specialist prosecutor and the police to ensure that all possible avenues of evidence are explored and that the correct charge is identified'.*

This ensures a joint approach to building effective and robust cases for prosecution.

495. Charging Guidance<sup>132</sup> published by the Director of Public Prosecutions advises the police and prosecutors on arrangements for joint working including how and when early investigative advice should be accessed. According to this Guidance rape, together with other serious offences,

*'should always be referred to an Area prosecutor as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made'.*

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<sup>130</sup> Without Consent. Above fn 9.

<sup>131</sup> CPS Policy. Above fn 23.

<sup>132</sup> The Director's Guidance on Charging. Above fn 52.

496. Contrary to the Director's Guidance on Charging and national Rape Policy, the CPS London Rape and Serious Sexual Offences Unit does not routinely provide early investigative advice in rape cases. The Unit's Protocol<sup>133</sup> with the Metropolitan, City of London and British Transport Police sets out when early investigative advice is available. The Protocol states that,

*'There will be cases where the full code test is not met, however Police consider that guidance and advice from a prosecutor would be beneficial. Examples include particularly sensitive or complex cases, or cases which are likely to attract high media interest'.*

497. The justification for restricting early investigative advice to only a minority rather than all cases is that the team would be overwhelmed, because of the numbers of such cases, if they were to consult early in every rape investigation. In high profile or complex cases the Detective Inspector/Senior Investigating Officer must explain why early investigative advice 'would be of assistance'. In these instances advice is usually provided by one of the Rape and Serious Sexual Offences Unit managers. The managers agreed that early consultation adds value and would, if it could be resourced, potentially speed up the process of referral and review.

498. The absence of routine early investigative advice is not unique to the London Rape and Serious Sexual Offences Unit and was recently identified by the National Rape Scrutiny Panel<sup>134</sup> and by an internal Crown Prosecution Service review of Rape and Serious Sexual Offences Units as an issue that needs to be addressed. The internal review also identified a lack of clarity and consistency across police forces and Crown Prosecution Service Areas about obtaining early investigative advice. As a result, in October 2014, the Director of Public Prosecutions published further explanatory guidance<sup>135</sup> to supplement the Charging Guidance<sup>136</sup>.

499. The explanatory guidance, which assumes the involvement of a police supervisor in the referral process, requires him/her:

*'to assess the available evidence to ascertain whether:*

- There are any further lines of enquiry; and/or*
- The case can be strengthened in any way – e.g. by witness or forensic evidence, special measures, hearsay, bad character evidence or additional lines of enquiry, enquiries relating to the suspect, which will make it possible for the case to meet the appropriate test. (Note that in either the Full Code or Threshold Test – the Public Interest test will almost invariably be met); and/or*
- The case would benefit from Crown Prosecution Service advice on issues such as the legal aspects of the case, the course of the investigation or the gathering of further evidence. This may be a particular consideration in cases involving vulnerable complainants'.*

500. The review understands that a meeting of all Rape and Serious Sexual Offences Unit Heads was arranged for November 2014 to emphasise the need to provide early investigative advice. While it is not known whether further resources would be immediately provided to assist with delivery, the review has since been advised that a new Crown Prosecution Service national resource model is currently being developed to reflect the need for compliance with referral requirements.

## The Decision to Charge

501. According to the File Submission Protocol<sup>137</sup> before a pre-charge referral for a Full Code decision is made,

*'The Detective Inspector/Senior Investigating Officer must first be satisfied that the investigation is suitable, the full code test is met, and case papers are ready for a referral to the RASSO'.*

<sup>133</sup> Crown Prosecution Service London RASSO Unit, Metropolitan, City of London and British Transport Police File Submission Protocol (September 2013).

<sup>134</sup> National Rape Scrutiny Panel. Above fn 33.

<sup>135</sup> Rape Cases – Police referral to the Crown Prosecution Service for early investigative and other advice, October 2014.

<sup>136</sup> The Director's Guidance on Charging. Above fn 52.

<sup>137</sup> File Protocol. Above fn 133.

Most decisions to charge are taken by the prosecutor based on the written information provided by the police, and without meeting the investigator face to face. However, according to the protocol,

*'Face to face meetings between police and RASSO lawyers for pre charge advice are available in cases, for example, where a case is particularly complex or sensitive. In these cases the request for a face to face will be agreed in advance between the Police and the RASSO Unit Head. The process for this is for the DI/SIO to request a face to face meeting, providing the rationale for this in the MG3 of the initial submission. The RASSO DI will then discuss this with the Unit Head before accepting the case, and the officers concerned will be informed of the outcome once the case is accepted'.*

502. Prosecutors deciding whether or not to charge a person with an offence apply one of the two tests set out in the Code for Crown Prosecutors<sup>138</sup>. Where the police have completed their investigation prosecutors apply the Full Code Test<sup>139</sup>. This requires prosecutors to be satisfied:

- That there is a realistic prospect of conviction based on there being sufficient evidence; and (where this stage is passed)
- That a prosecution is in the public interest. (Due to the seriousness of rape, where there is sufficient evidence a prosecution will almost invariably be in the public interest.)

503. The other test that prosecutors apply is the Threshold Test<sup>140</sup>. This is used where the decision to charge is taken before all the anticipated evidence has been gathered and when a suspect's remand in custody (rather than release on bail) is considered appropriate. For a case to pass the Threshold Test the prosecutor must be satisfied that:

- There are reasonable grounds for believing that further evidence will become available within a reasonable period; and
- The seriousness or the circumstances of the case justifies the making of an immediate charging decision; and
- There are continuing substantial grounds to object to the suspect being granted bail.

504. As with early investigative advice the Charging Guidance in relation to police referrals of cases to the Crown Prosecution Service for charging has been applied inconsistently. The recent explanatory guidance<sup>141</sup> advises that,

*'the police supervisor must, prior to referral, assess the available evidence to ensure that the Full Code Test or the Threshold Test can be met, dependent on the circumstances of the case'.*

505. Before reaching the Rape and Serious Sexual Offences Unit cases go through a series of police reviews. After a Detective Constable has completed the investigation, the file is checked by an Evidential Review Officer of Detective Sergeant rank. It must then be confirmed as satisfactory by a supervising Detective Inspector or his/her nominated deputy. Once the Detective Inspector is satisfied with the file it is submitted electronically and its content checked against a Supervision Checklist by police officers stationed in the Rape and Serious Sexual Offences Unit. The Rape and Serious Sexual Offences Unit Liaison Detective Inspector checks the police form MG3, containing a summary of the available evidence, and the request to the Crown Prosecution Service for a charging decision. At this stage files may be rejected and returned to the police for a variety of reasons including missing evidence and unused material; or be accepted for submission to the Crown Prosecution Service.

506. A case that passes these checks is sent electronically to a Crown Prosecution Service mailbox and registered on the Crown Prosecution Service case management system. It is allocated to a specialist prosecutor who has 24 hours to carry out a Triage check. This is yet another check of the quality

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<sup>138</sup> Code for Crown Prosecutors. Above fn 46.

<sup>139</sup> *Ibid.* Section 4.

<sup>140</sup> *Ibid.* Section 5.

<sup>141</sup> Rape Cases – police referral. Above fn 135.

of the file, as opposed to a full review of the evidence. Cases rejected at this stage are returned to the police with an explanation why, but without further advice. The case is finalised on the case management system and the Crown Prosecution Service effectively ceases to have any involvement until such time as it is re-submitted. As with earlier checks, reasons for rejecting files include the absence of key evidence or of third party material such as school, medical and social services records. The case will be returned to the investigating Detective Constable and the checking process will recommence.

507. Once a file is accepted into the Rape and Serious Sexual Offences Unit a prosecutor has 14 days to determine one of three outcomes, with a diary system in place to check progress. Prosecutors may decide the case does not meet the charging standard and no further action should be taken; or authorise charge and agree any necessary post-charge action; or return the file with an action plan setting out the actions needed to reach the appropriate charging standard. Action plans are given target and follow up dates.
508. Files are not always allocated to an in-house prosecutor. Where there is a backlog some are sent to counsel from the self-employed Bar for advice. However, because section 37B of the Police and Criminal Evidence Act 1984 provides that a charging decision must be made by the Director of Public Prosecutions, files on which self-employed counsel have advised must be referred to Crown prosecutors to ratify or reject counsel's advice. Where a case is charged, counsel who provided the advice will generally be instructed to act as trial advocate.
509. Managers now review the numbers of advice files awaiting a decision on a weekly basis. Where there is a risk that there are insufficient Rape and Serious Sexual Offences Unit resources to manage the workload, the Deputy Chief Crown Prosecutor will decide whether to send cases to the Bar to avoid a backlog developing.
510. As part of the decision-making process prosecutors considering a rape charge must decide whether to hold a pre-trial witness interview. These interviews can be held at any time up to the trial and allow the prosecutor to assess the witness's reliability and to understand complex evidence. They also provide an opportunity to explain the criminal process and procedures to the witness. The London Rape and Serious Sexual Offences Unit includes only two or three prosecutors trained to conduct Pre-Trial Witness Interviews. The review heard that two interviews were held in the last year.
511. In the event of a dispute between the police and Crown Prosecution Service over a charging decision, appeals are managed through the police supervisor and Crown Prosecution Service Unit Head.

## Supporting Rape Complainants

512. Supporting complainants is a key priority of the Director of Public Prosecutions and in July 2014 CPS London hosted a joint event<sup>142</sup> with MOPAC<sup>143</sup> aimed at improving the experience of rape complainants. As well as contributions from HHJ Peter Rook QC and complainants, there were presentations from an Independent Sexual Violence Advisor (ISVA) and a Consultant Clinical Psychologist. The event was attended by police officers, prosecutors, counsel, ISVAs and specialist support service representatives.
513. Crown prosecutors are responsible for making Special Measures<sup>144</sup> applications to the court. The choice of any special measure should be informed by the views of the witness about what would help them to give their best evidence. As well as an early Special Measures discussion between the police and prosecutor, a subsequent Special Measures meeting with the witness should be available enabling the witness to meet the prosecutor and discuss how they will give their evidence at trial (see Part 5: Special Measures).

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<sup>142</sup> Good Practice in the Prosecution of Rape Cases, Improving Complainants' Experience of the Criminal Justice System (July 2014).

<sup>143</sup> The Mayor's Office for Policing and Crime.

<sup>144</sup> Special Measures were introduced by the Youth Justice and Criminal Evidence Act 1999 and are designed to enable witnesses to give their best evidence. They include relying on a pre-recorded interview as the witness's evidence in chief, screening the witness from the defendant and public, giving evidence over a live link, and use of a Registered Intermediary.

514. The Code of Practice for Victims of Crime<sup>145</sup> requires the Crown Prosecution Service to provide information and support to qualifying complainants. According to the Code, complainants of sexual offences qualify for an 'enhanced service' requiring a victim to be notified in writing within one day of the reasons for any decision not to prosecute and how to seek a review if they are dissatisfied with the decision. They are also entitled to be offered a meeting with the prosecutor.

515. Similarly, the Code requires the Crown Prosecution Service to notify the victim in writing where a prosecutor decides to,

- discontinue a charge and proceed on another;
- substantially alter a charge;
- discontinue all proceedings; or
- offer no evidence in all proceedings.

516. As at July 2014 the number of meetings held by Rape and Serious Sexual Offences Unit prosecutors with complainants had not been recorded, although there were plans to do so from September 2014. Meetings with complainants to explain decisions to drop or reduce charges take place where requested by a complainant and are attended by the prosecutor who made the decision and their Unit Head. An ISVA reported that in her experience the meetings were beneficial, although she was aware of delays arranging them which she felt was not helpful to her clients.

## Working Jointly with the Police

517. Joint working between the London Rape and Serious Sexual Offences Unit is mainly achieved through written communication and the movement of files, action plans and other information between the police and Crown Prosecution Service. Other than in exceptional circumstances, when early investigative advice is provided, the Rape and Serious Sexual Offences Unit has no involvement in the investigation until the police send a file to the Unit for a charging decision. At the time of the review, cases submitted to the team by the police were in paper format but testing had been undertaken and digital (electronic) submission was due to be introduced imminently.

518. The review heard that the referral of cases for a charging decision is the source of much friction between the police and prosecutors. While the Crown Prosecution Service consistently reject files due to the absence of key information such as CCTV footage, social media, and third party material including social services records, some officers question the need for so much information at the charging stage and the prosecutors' motives for returning files, suggesting they are avoiding making decisions and 'buying more time'.

519. The Rape and Serious Sexual Offences Unit prosecutors and their managers agreed that the referral of poor quality cases, some having no hope of reaching the standard to charge and others missing essential evidence and other material, hindered them in making the most effective use of available resources. Although prosecutors acknowledged that the triage system had reduced the number of cases accepted into the unit, their perception was this was only a temporary respite which would end when the rejected files were re-submitted, having been brought up to standard.

520. Concerns about the quality and timeliness of files received from Metropolitan Police Service have been escalated to the police senior command team on several occasions. In an effort to bring about permanent improvements, a Supervision Checklist used by supervisors to check a file before submission to the Rape and Serious Sexual Offences Unit was agreed. Furthermore, a liaison Detective Inspector from the police command has been based with the Crown Prosecution Service Rape and Serious Sexual Offences Unit for the last two years to quality assure the files submitted for advice.

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<sup>145</sup> Code of Practice for Victims Of Crime (2013) Ministry of Justice.

521. Each day a Crown Prosecution Service administrator is assigned to identify those cases where action plans have not been addressed by the police. The list of outstanding action plans is provided to managers who pass the information to the police to review at their daily 'Grip and Pace' meetings.
522. To further improve the quality of police file submission the Rape and Serious Sexual Offences Unit and the police have developed a standardised MG3 format with specific headings to ensure officers address all relevant issues. (Form MG3 is the national form used by the police to inform the Crown Prosecution Service about a case and request a charging decision.)
523. The Deputy Chief Crown Prosecutor, Legal and Stakeholder Manager and a Rape and Serious Sexual Offences Unit Head attend monthly performance meetings with the Metropolitan Police Service Commander responsible for Sapphire. The Legal and Stakeholder Manager and the Deputy Chief Crown Prosecutor also attend Metropolitan Police Service Gold Group meetings concerning major operations such as Operation Yewtree<sup>146</sup>.
524. It was obvious to the review that relations between the police and the Rape and Serious Sexual Offences Unit were under considerable pressure at an operational level. It was clear too that measures introduced to ensure file quality were not only time consuming and labour intensive but also ineffective. While the precise number of files rejected at each stage was not shared with the review (and it is unclear whether records are actually kept) there was anecdotal evidence to suggest the figure remained high, at around 50%. To avoid spending time on incomplete or substandard files prosecutors largely avoided communicating with the police except by email. This issue is further addressed elsewhere in the report (see Part 4: The Review of Case Files).

## Working With Other Agencies

525. The Crown Prosecution Service Legal and Stakeholder Manager attends quarterly meetings of London-based Independent Sexual Violence Advocates (ISVAs). She also attends the Rape Reference Group, organised by the Police and involving a wide range of specialist support agencies. The Deputy Chief Crown Prosecutor attends multi agency Violence Against Women and Girls meetings chaired by MOPAC.<sup>147</sup>

## Working With The Self-Employed Bar

526. The Rape and Serious Sexual Offences Unit is responsible for instructing advocates to conduct rape trials. Only advocates who are on the Crown Prosecution Service Advocate Panel Rape and Child Sexual Abuse List are instructed and the Legal and Stakeholder Manager's authorisation is required. To ensure that only the most experienced advocates are instructed the Rape and Serious Sexual Offences Unit has liaised with neighbouring Crown Prosecution Service Areas to seek recommendations for strong counsel in rape cases.
527. The review heard that 'returned briefs' are a major problem for the Rape and Serious Sexual Offences Unit. This is where the barrister instructed to conduct the trial sends the instructions back, sometimes the night before the trial, meaning another barrister must be instructed often at very short notice. The review was told this happens in up to 40% of rape cases. Explanations for returned briefs include a previous trial overrunning or the barrister finding her/himself double booked.
528. Returned briefs used to be rare but are now common partly, it was explained, as a result of the increasingly difficult financial climate in which barristers work. In the past, counsel with a rape case due to start on Monday would avoid a short trial at the end of the previous week for fear it might over-run. Now they may decide it is worth the risk. Some barristers blamed the Crown Prosecution Service for not instructing them sufficiently early which prevents them taking ownership of the case and developing a prosecution team ethos involving working closely with the prosecutor and investigating officer.

<sup>146</sup> Operation Yewtree. Above fn 129.

<sup>147</sup> Above fn 143.

529. There is no doubt too that rape trials are difficult to prosecute but, unlike murder trials, they do not attract a higher fee. There is no additional payment for meeting a rape complainant prior to trial. Barristers we met were in favour of meeting the complainant ahead of the trial and agreed it helped the complainant, if only by ensuring they recognised a 'friendly face' at court.
530. The focus group of barristers told the review they regretted the lack of case conferences with the prosecutor and investigating officer, but recognised that prosecutors simply had no time. They were in favour of being copied into communications between the police and the Crown Prosecution Service to ensure they were kept up to date with developments. They also missed the Crown Prosecution Service caseworkers who used to support them in court by note-taking and carrying out administrative tasks such as photocopying and amending jury bundles. Now counsel and the investigating officer 'muck in' instead.
531. The barristers confirmed the Crown Prosecution Service view that it is crucial to consider third party material early in the investigation. They emphasised that this is painstaking work and highlighted the need when disclosing material to the defence to ensure that the complainant's human rights are not infringed. In relation to medical notes it is easy to miss a reference to confidential information that is not relevant to the case. This might include medication that could tell the defence about a complainant's condition or the use of shorthand such as 'TOP' (termination of pregnancy).
532. In cases that result in an acquittal or are otherwise unsuccessful, trial counsel are required to provide an adverse case report to ensure that the reasons for the outcome are fully understood and lessons learned. A Unit Head is responsible for collating emerging themes and, where appropriate, suitable training is delivered to prosecutors which may be classroom based, e-learning or, for example, inviting chambers to deliver training. Learning points are also disseminated in monthly team meetings. Urgent matters may be shared in the daily team briefing or by email.

## The Third Party Protocol

533. A Protocol and Good Practice Model<sup>148</sup> published in 2013 has amongst its aims and objectives, providing a timely expeditious process for Local Authorities to respond to requests from the police for material which would assist a criminal investigation; and providing for timely consultation between the Crown Prosecution Service and the Local Authority where Local Authority material satisfies the test for disclosure to the defence.
534. Given the importance of third party material such as education and social services records in rape cases, it is crucial that swift and effective processes are in place to share relevant information.
535. Despite significant engagement by CPS London with the 32 London Boroughs across its Area only 16 London Boroughs had signed up to the Protocol as at January 2015. The Mayor's Office for Policing and Crime are supportive of the Protocol and are working with the remaining Boroughs to encourage their sign up.

## Rape and Serious Sexual Offences Unit Caseloads

536. Any discussion about caseloads should avoid comparing numbers in isolation and address their context. Not all Crown Prosecution Service staff work full time and a comparison of caseloads should take this into account. Furthermore some cases are more complex than others involving more evidence and/or unused material. Where there are multiple complainants the prosecutor will need to watch all of their, often lengthy, visually recorded interviews, a time-consuming but essential task. The stage reached in any proceedings will also impact on the level of attention demanded by a case.

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<sup>148</sup> Protocol and Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings (October 2013).

537. Caseload data provided by the Rape and Serious Sexual Offences Unit revealed that in July 2014 there were 574 live charged cases and that each of the 12 Rape and Serious Sexual Offences Unit prosecutors (11.6 full time equivalent) had between 19 and 57 of these cases allocated to them individually, with 7 having 50 or more. Paralegals (caseworkers) attached to the Unit had between 46 and 75 each, with 5 having 63 or more. An analysis of key stages post-charge revealed that 256 cases were awaiting trial and 45 were for sentence. Other cases were awaiting a Preliminary Hearing at the Crown Court (29), a Plea and Case Management Hearing (138) and a pre-trial review (50), as well as various 'mention' hearings.
538. Cases awaiting charging decisions add further to prosecutors' caseloads and in July 2014 there were 132 such cases (involving 139 suspects). Each of the prosecutors was allocated between 1 and 20 cases. Nine prosecutors had 10 or more pre-charge cases awaiting review.
539. An analysis of the number of suspects/defendants rather than the number of cases (cases may include more than one suspect/defendant) revealed that each prosecutor was responsible for between 1 and 98 suspects/defendants. Numbers handled by part time staff were factored up to allow for direct comparison with those working full time. According to this calculation 11 prosecutors had 70 or more suspects/defendants cases, or the part-time equivalent.
540. The Rape and Serious Sexual Offences Unit's resourcing was determined using a resourcing model based on work coming into the Unit over the previous 12 months. The model involved a breakdown of the Unit's tasks and time needed to accomplish them. The tasks included making a charging decision, undertaking a review of the full file, handling correspondence and complying with Judges' Orders.
541. Throughput measures were weighted to reflect the additional time taken in rape and penetrative cases when compared with less serious crimes, and a 20% staff absence factor built in to take account of all absences including leave entitlement, training and sickness. In relation to productivity the model assumed, for example, that a prosecutor making charging decisions would complete 1.5 such decisions in a day. The review considered this figure over ambitious, taking into account the volume of complex information that prosecutors demand from investigators which must be meticulously analysed in order to make an effective charging decision.
542. The review regarded as a major defect in the formula the inadequate acknowledgment of the work involved in giving early investigative advice in rape cases. As a result, the resourcing model was queried to find out if it took account of the greater proportion of trials and correspondingly smaller proportion of guilty pleas that occur in rape cases compared with other offences. The review also asked if the model included time in which to provide early investigative advice, reviewing Achieving Best Evidence recorded interviews, CCTV, social media and unused material. It was confirmed that it did and that the model had been revised during the course of this review in October 2014, with the figure 1 replacing 1.5 for the number of pre-charge decisions which could be made in a day. The review welcomed this development. As referred to elsewhere in this report the review has recently been informed of the current development of a new National Resource Model.
543. The subject of caseloads came up repeatedly in focus group discussions. The prosecutors were in no doubt that their caseloads were excessive, a view that was supported by focus group participants from outside the Crown Prosecution Service. At a focus group of judges one judge's view that the Rape and Serious Sexual Offences Unit was 'hopelessly understaffed' and that 70-80 cases are 'too many for any lawyer' was agreed by the rest of the group.
544. A member of the Bar who prosecutes rape commented that with a caseload of 70, 'you can't get a grip of these cases'. According to another barrister,

*'The lawyers I am working with are working at 11 pm, at weekends, I have their mobiles. It's unreasonable.'*

The police too were in no doubt about the impact of prosecutors' caseloads on their ability to work consistently and effectively. An investigating officer described the Unit as 'overworked' and 'broken'. Similar descriptions were common.

545. Conversely, some more senior Crown Prosecution Service managers expressed the view that Rape and Serious Sexual Offences Unit caseloads were appropriate. One suggested, however, that while some prosecutors managed their workloads effectively others spent time on administrative tasks such as photocopying and paginating documents, which should be done by other staff. The managers also considered that prosecutors should delegate more tasks to counsel, including drafting bad character applications and reviewing unused material. The prosecutors agreed they should not be doing administrative work but reported that lack of administrative support meant there was no alternative.
546. The perceived under-resourcing of the Rape and Serious Sexual Offences Unit profoundly influences how the Crown Prosecution Service is regarded externally. The judiciary, police and members of the self-employed Bar expressed frustration at the impact of what were regarded as unrealistic caseloads.
547. A Detective Chief Inspector summed up the police experience saying relationships with the Crown Prosecution Service were at an all-time low, a situation he attributed directly to their 'huge increase in caseload'. He was convinced that as a result, 'If they can bounce a job back because a box [is] not ticked, it will come back', to the police. Although the file review revealed that this was unfounded, the review identified that this was a commonly held misconception. Another officer suggested that inadequate resourcing meant everything is 'last minute'.
548. As rape is regarded by many as second in seriousness only to murder, the review was interested to know how caseloads in the London Homicide Unit compared with those in the Rape and Serious Sexual Offences Unit. As at 8 September 2014 ten prosecutors in the Homicide Unit were each responsible for a caseload that varied between 12 and 19 cases. Out of these cases a significant number involved 4 or more suspects/defendants. At the other end of the scale the review heard that Trials Unit prosecutors handling Crown Court cases including fraud, wounding and assaults against the person had caseloads of 160 cases.
549. A subsequent internal review of Rape and Serious Sexual Offences Units across the Crown Prosecution Service revealed that the issue of excessive caseloads is far from unique to London. The review reported that,

*'Most RASSO [Rape and Serious Sexual Offences units] report difficulties in managing their existing caseloads and in providing the high quality case preparation that this type of work demands with their current resources. However, it is difficult to establish with the data currently available, whether the Rape and Serious Sexual Offences units are universally under resourced due to Areas not taking into account the enhanced service Crown Prosecution Service has committed to provide in such cases, or if the difficulties reported are in fact a result of the perception of those working within the units, caused by inefficiencies within the current processes, the inherited backlogs, a lack of robust gatekeeping by the police, and the need for substantial re work at a pre charge stage.'*

550. Concern about caseloads reported across the Crown Prosecution Service is more likely to be a result of the dwindling resources experienced across the whole organisation than the result of staff perceptions or inefficiencies. As stated above, it was the unanimous view of those the review consulted from outside the Crown Prosecution Service that the London Rape and Serious Sexual Offences Unit was significantly under-resourced. While the review recognises the huge pressure on the Department to make cuts in expenditure and staff it is clear that such demands simply cannot be balanced with the anticipated increase in referrals for prosecution resulting from the dramatic rise in rape reporting currently being experienced, and which the Government is actively encouraging.
551. Recommendation 13 of the 2014 Review of Crown Prosecution Service Rape and Serious Sexual Offences Units called for,

*'An efficiency and productivity exercise ... in order to determine a bespoke set of resourcing assumptions taking into account the quality commitments of Rape and Serious Sexual Offences Unit casework'.*

The review is surprised that despite the repeated expressions of concern by members of the Rape and Serious Sexual Offences Unit about their caseloads, and in the context of planning for a Rape and Serious Sexual Offences Unit in every Crown Prosecution Service Area, there has been no formal assessment of the resources needed to undertake this work to the required standard. Irrespective of the comparative position with other Rape and Serious Sexual Offences units, this workload is not sustainable or in the interests of justice.

**Recommendation 31.** It is recommended that resourcing of the London Rape and Serious Sexual Offences Unit is urgently addressed with a view to ensuring that caseloads and the resourcing model are adjusted to ensure the quality commitments made by the Crown Prosecution Service are realistic and achievable.

## Crown Prosecution Service Performance Data

### Crown Prosecution Service Data Recording

552. The CPS data used in this report are for the last five complete financial years. To enable comparison, the data relate to national performance across all Crown Prosecution Service (CPS) Areas; to CPS London; and to the two most similar CPS Areas in terms of caseload, CPS North West and CPS West Midlands. CPS North West receives files from Cumbria, Lancashire and Greater Manchester Police; West Midlands from Staffordshire, Warwickshire, West Mercia and West Midlands.

553. In addition data on a rolling year to date basis for CPS London, CPS North West and CPS West Midlands were provided up to September 2014. The review acknowledges that this information was made available on an exceptional basis as the CPS usually restricts the publication of its data to the last complete financial year to ensure the quality and consistency of data released.

554. Crown Prosecution Service caseload data are available through its Case Management System and associated Management Information System and are collected for the purposes of effective management. Crown Prosecution Service data are different from the official crime statistics which are published by the Ministry of Justice<sup>149</sup> Data drawn from the Crown Prosecution Service's administrative IT system, as with any large scale recording system, are subject to possible errors with data entry and processing. Thus reported figures are provisional and subject to change.

555. The Crown Prosecution Service rape data identify the number of cases flagged on the Case Management System that involve offences of rape. The flag is applied to the case record and the outcome of proceedings is extracted and reported at finalisation through the related Management Information System. The data are accurate only to the extent that the flag has been correctly applied; there may be a small number of cases where it was omitted.

556. The rape flag is applied to the following offences:

- S1 Sexual Offences Act 1956 - rape of a woman or man
- S5 Sexual Offences Act 1956 - intercourse with a girl under 13
- S1 Sexual Offences Act 2003 - rape
- S5 Sexual Offences Act 2003 - rape of a child under 13
- S30(3) Sexual Offences Act 2003 - sexual activity with a person with a mental disorder

557. The flag is also applied to attempts to commit any of the above offences under the Criminal Attempts

<sup>149</sup> CPS data also differ from police data in a number of respects making direct comparison difficult. For example, CPS data are recorded by suspect/defendant and police data by offence. Data are collected by different organisations over different timescales which means that the cases in the different data sets may not be the same.

Act 1981 and to incitement or conspiracy to commit any of the above offences. A rape flag is applied at the start of any case referred by the police to the Crown Prosecution Service for a charge of rape; and remains in place even if the charge is not proceeded with, is amended or dropped. If a case is referred by the police for a charge other than rape but at a later date a charge of rape is preferred, the flag is applied at that point. Charges of rape may be considered at the time of the pre-charge decision but the charging decision may result in a suspect being charged with an offence other than rape. There may also be cases where a person was prosecuted for rape but convicted of a lesser offence.

558. The Crown Prosecution Service is responsible for authorising the police to charge a suspect with rape. As cases are referred by the police to the Crown Prosecution Service for a charging decision they are recorded on the Crown Prosecution Service Case Management System using the suspect's name. Where a charge is authorised the case is recorded as 'proceeded to prosecution'. If there is a decision to take no further action it is recorded as 'no prosecution'. In exceptional circumstances there may be an 'out of court disposal' such as a caution. Where the result of the charging decision is not known, and in some other situations, the case is 'administratively finalised'.
559. The review was told that the Crown Prosecution Service is continually striving to improve the quality of data used in both internal and external reports and in the last year has developed a revised method of reporting the outcomes of charging decisions. The revised method has been used in this report to provide a more accurate figure for the percentage of defendant cases which proceeded to prosecution. For this reason, the data will differ from that reported in previous years.

CPS London Charging Decisions					
	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Proceeded to Prosecution	549	569	497	492	574
% Proceeded to Prosecution	43.7%	38.4%	44.3%	58.3%	65.1%
No Prosecution	662	808	562	267	154
% No Prosecution	52.7%	54.6%	50.1%	31.6%	17.5%
Out of Court Disposal	3	7	2	2	4
% Out of Court Disposal	0.2%	0.5%	0.2%	0.2%	0.5%
Administratively Finalised	39	95	60	79	149
% Administratively Finalised	3.1%	6.4%	5.3%	9.4%	16.9%
Other	3	2	1	4	1
% Other	0.2%	0.1%	0.1%	0.5%	0.1%
<b>TOTAL</b>	<b>1,256</b>	<b>1,481</b>	<b>1,122</b>	<b>844</b>	<b>882</b>

Table 16

560. As Table 16 shows, in the last five financial years the number of rape cases referred by the police to CPS London has declined, despite the increase in rapes reported to the police. (Changes to the Director's Guidance on Charging in 2011 may have had an impact.) The highest number of cases referred by the police to CPS London was 1481 in 2010/2011. The lowest was 844 in 2012/2013. Out of those cases, the percentage in which the Crown Prosecution Service authorised charge (proceeded to prosecution) has risen from a low of 38.4% in 2010/2011 to a high of 65.1% in 2013/2014. In the year ending September 2014 CPS London recorded 809 rape flagged cases referred by the police for a charging decision, of which 65.3% proceeded to prosecution.
561. The national picture is similar, the trend showing a reducing number of cases referred by the police to the Crown Prosecution Service for a charging decision. This trend led to joint work by the police and Crown Prosecution Service at a national level to identify the reasons for the decline and to tackle them. Across the Crown Prosecution Service nationally the highest number of referrals was 8130 in 2010/2011 reducing to a low of 5404 in 2012/2013 and subsequent rise to 5850 in 2013/2014. The percentage of these cases authorised for charge (proceeded to prosecution) by the CPS nationally rose from 41.7% in 2010/2011 to 61.9% in 2013/2014. This means that in 2013/2014 CPS London charged a greater proportion of cases (65.1%) referred to them by the police than the Crown

Prosecution Service as a whole (61.9%). Comparing CPS London's charging rate with the most similar Crown Prosecution Service Areas, CPS North West charged 60.4% of cases referred by the police and CPS West Midlands 66.4%.

562. Crown Prosecution Service prosecution outcomes are recorded by defendant. In some cases, a number of defendants may be prosecuted together. All defendants may be convicted; all may be acquitted; or some may be convicted and others acquitted. Convictions for rape include guilty pleas together with convictions after trial. Unsuccessful outcomes represent any outcomes other than a conviction. As well as jury acquittals they include cases that are discontinued, withdrawn, discharged and dismissed, as well as administrative finalisations.
563. As part of its Violence against Women and Girls assurance regime, the CPS monitors a broad range of measures and publishes details of its performance in an annual crime report. However of all the measures, the conviction rate is the most prominent and the most scrutinised. The Crown Prosecution Service acknowledges, however, that a risk averse approach to prosecuting (such as charging only cases regarded as 'safe bets') is one way to increase the conviction rate. This approach is actively discouraged by the use of the 'merits-based' approach which directs prosecutors to avoid a book maker's approach to risk. A rising conviction rate in the context of an increased number of prosecutions is therefore regarded as a success.
564. As Table 17 shows there was a steady increase in CPS London's rape conviction rate from 45.5% in 2009/2010 to 55.4% in 2011/2012. As the conviction rate rose the number of prosecutions fell from 894 to 668 over the same period. In 2013/2014 the conviction rate was lower at 52.2% while prosecutions had increased to 730. The national data revealed a similar pattern with the lowest conviction rate, 58.6% in 2010/2011, coinciding with the highest number of prosecutions, 4208, and the highest conviction rate, 63.2% in 2012/2013, with the lowest number of prosecutions, 3692. In the year ending September 2014 CPS London recorded 745 finalised rape flagged prosecutions of which 50.1% resulted in a conviction.
565. CPS North West achieved its highest conviction rate, 66% in 2009/2010, with its lowest number of prosecutions, 412. It recorded its lowest conviction rate, 60.4% in 2013/2014 with 454 prosecutions. In the year of its highest number of prosecutions, 478 in 2010/2011, CPS North West achieved a 62.3% conviction rate. The conviction rate in CPS West Midlands rose from 62% in 2009/2010 to 65.3% in 2013/2014, interrupted by a steep rise to 67.2% in 2012/2013. The number of prosecutions steadily declined from 405 in 2009/2010 to 323 in 2011/2012 before increasing slightly to 346 in 2013/2014.
566. The review considered whether there might be a link between a reduced number of prosecutions and an increased conviction rate. As referred to above, this could be the result of more risk averse charging decisions meaning that more challenging cases did not proceed to prosecution. Alternatively, prosecutors dealing with fewer cases might devote more time to preparing individual cases, leading to better presented cases at court.

CPS London Prosecution Outcomes					
	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Convictions	407	448	370	367	381
% Convictions	45.5%	52.0%	55.4%	55.0%	52.2%
Unsuccessful	487	413	298	300	349
% Unsuccessful	54.5%	48.0%	44.6%	45.0%	47.8%
<b>TOTAL</b>	<b>894</b>	<b>861</b>	<b>668</b>	<b>667</b>	<b>730</b>

Table 17

567. 'Prosecutions dropped' refers to cases that are ended by the Crown Prosecution Service following the suspect being charged. The most common route is when the case is discontinued because there is no longer sufficient evidence to provide a realistic prospect of conviction, or a prosecution is no longer in the public interest. This is likely to be the result of fresh undermining evidence or information affecting the decision to charge. The Crown Prosecution Service aims to reduce the incidence of discontinuance.

568. The data in Table 18 show that CPS London is achieving a reduction in the percentage of prosecutions that are discontinued. In 2009/2010 27.3% of prosecutions were dropped, falling to 16.4% in 2013/2014. Nationally, prosecutions dropped fell from 19.4% to 13.1% over the same period. CPS North West's rate of prosecutions dropped was similar to CPS London's in 2013/2014 at 16.1%, higher than the national average. CPS West Midlands' rate was lower than the national average at 12.4%.

CPS London Prosecutions dropped					
	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Prosecution Dropped	244	198	125	136	120
% Prosecution Dropped	27.3%	23.0%	18.7%	20.4%	16.4%

Table 18

569. As Table 19 shows, the number of trials prosecuted by the CPS London has increased over the last five financial years, albeit with peaks and troughs at different stages of the cycle. Rape trials in London accounted for 21.4% of all rape trials across England and Wales in 2013/2014. There were 457 compared with 2132 nationally. CPS North West prosecuted 206 trials and CPS West Midlands 172.

CPS London Trials					
	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Trials inc mixed pleas	442	458	381	381	457
% Trial Rate	49.4%	53.2%	57.0%	57.1%	62.6%

Table 19

570. As demonstrated in Table 20, over the same five years the percentage of trials resulting in a conviction recorded by CPS London reached a low of 47.7% in 2009/2010 and a high of 57% in 2012/2013. The lowest national conviction rate was 50.5% in 2010/2011 and the highest was 55.6% in 2011/2012.

CPS London Trial Outcomes					
	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Convictions after Trial	211	250	211	217	238
% Convictions after Trial	47.7%	54.6%	55.4%	57.0%	52.1%
Acquittals after Trial	231	208	170	164	219
% Acquittals after Trial	52.3%	45.4%	44.6%	43.0%	47.9%

Table 20

571. The Crown Prosecution Service records the following as 'victim issues' influencing an acquittal at trial in Table 21:

CPS London Victim Issues as a % of Unsuccessful Outcomes					
	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Victim Issues	116	73	51	65	80
% Victim Issues	23.8%	17.7%	17.1%	21.7%	22.9%
Unsuccessful Outcomes	487	413	298	300	349

Table 21

- The complainant's evidence does not support the case. The 'reason title' was amended in April 2014 to: 'The evidence of the victim does not come up to proof, but there is no retraction'.
- Victim non-attendance: when although called as a witness in a trial, the complainant fails to attend court.
- Victim retraction: where the complainant's evidence supports the prosecution case, but she/he refuses to give evidence at court, or retracts, or withdraws her/his complaint.

572. The Crown Prosecution Service records the number and percentage of unsuccessful outcomes in which victims' issues were considered a key factor. In 2013/2014 this figure was 18% nationally compared with 22.9% in London. In comparison CPS North West data revealed a figure of 17.2% and CPS West Midlands, 20.8%. As many rape cases rely almost exclusively on the evidence of the complainant, it is not surprising that they can have a very significant impact on the trial.

573. The review considers there is significant value in analysing reasons for attrition at court. However given that there is generally no Crown Prosecution Service representative present for the trial, it is assumed the data will rely on external information, such as counsel's adverse case report, and ultimately a subjective assessment by the person who decides to record this particular reason in the CPS data.

## Morale and Support

574. Some of the Rape and Serious Sexual Offences Unit prosecutors had spent many years reviewing and managing rape cases, and had experienced CPS London's restructuring at first hand including the move from being borough prosecutors into the London Rape Charging Unit and its more recent metamorphosis into the Rape and Serious Sexual Offences Unit. Overall, they found their work 'challenging' and 'rewarding'. They also felt that they worked well together and formed 'a cohesive team'.

575. However, the focus group consisting of prosecutors and paralegals from the London Rape and Serious Sexual Offences Unit, of all those taking part in this review, was the most reluctant to openly share their concerns. Only after receiving assurances about anonymity, were they prepared to talk about their experiences.

576. Caseloads were clearly a major source of concern. One prosecutor described the trajectory, from approximately 40 cases a year ago, to 85 in the previous month as impossible to manage. However the review was told the management response was that there were no more resources and they must get on with it. One described sending charging decisions to the self-employed Bar for advice as 'a bit of a shock'. Although some counsel did an excellent job, this was not always so.

577. Although barristers from the self-employed Bar are responsible for advocacy in rape cases, Rape and Serious Sexual Offences Unit prosecutors remain responsible for reviewing and managing the case throughout its life. As a result they were not prepared to accept decisions from counsel with which they disagreed. Ratifying advice from counsel, in effect re-reviewing counsel's decision, could however be time consuming and the prosecutors felt it defeated the object of the exercise which was to tackle backlogs. Because some chambers held on to files, only returning them in batches, prosecutors sometimes ratified decisions without having access to the complainant's visually recorded interview. One prosecutor described this situation as 'perilous'.

578. Although the Rape and Serious Sexual Offences Unit staff told the review they wanted to do a good job, and make a difference, this was becoming increasingly more challenging due to the number of cases they were dealing with and the resultant pressures. The review's impression was that they were struggling to do the essentials and had only occasional opportunities to add value. They were clearly worried about compromising their professionalism by not doing a 'proper job' and aware of the risks of cutting corners, especially in high risk cases involving vulnerable complainants and transient defendants. If a case went wrong, they believed they would be blamed.

579. Prosecutors were frustrated that their role was almost entirely office-bound and that, unlike in the past, they no longer went to court to watch trials, meet complainants and assist and monitor counsel, actions which would increase their job satisfaction as well as their expertise and insight. This situation also prevented a prosecution team approach, with prosecutors having no direct contact with either the police or trial counsel in all but exceptional cases.
580. When complainants were asked for their experiences of the Crown Prosecution Service it became evident that in most cases contact was extremely limited and often non-existent. One victim described the Crown Prosecution Service as 'a faceless name', a description which was not contradicted by others. As mentioned above the victim of a stranger rape that was listed for trial but ultimately resulted in a guilty plea told the review, 'I wasn't aware of the CPS'. Assistance at court came from the Witness Service and she did not meet the instructed advocate.
581. The review considered that working in an isolated environment on distressing cases could have a negative impact on individuals and suggested to managers that there might be a 'shelf life' for this type of work. They agreed and explained that prosecutors had been offered a move to other departments and there had been some movement out of the Unit. There was, however, a cadre of prosecutors who were committed to staying. The managers explained that in part the planned expansion to two units and the inclusion of domestic abuse cases was designed to provide the staff with a change of environment and a more varied diet of cases.
582. To date there has been no routine emotional supervision or occupational health intervention for Rape and Serious Sexual Offences Unit staff, or others who manage distressing cases. However the issue was raised in 2014 at a national meeting of Rape and Serious Sexual Offences Unit Heads and it is understood that the development of targeted support is a work in progress. This is welcomed by the review.

**Recommendation 32.** It is recommended that appropriate regular occupational health supervision for Crown Prosecution Service staff in the Rape and Serious Sexual Offences Unit who are dealing with distressing casework is introduced to ensure their emotional resilience is preserved and that any support needs arising from their work can be identified and addressed.

## Sickness Levels

583. The review was given the following information about absence of staff due to sickness. In the 12 month period to 30 June 2014 a yearly average of 9 days per staff member was lost across the Crown Prosecution Service nationally. In CPS London the yearly average was 11 days, and in the London Rape and Serious Sexual Offences team the average was lower at 5 days per staff member.

## 2015 Update on The London Rape and Serious Sexual Offences Unit

584. In view of the radical changes to the Rape and Serious Sexual Offences (RASSO) Unit planned for October 2014 the review requested an update on progress from the newly appointed Deputy Chief Crown Prosecutor in January 2015. The review also planned to offer team members an opportunity to provide any recent thoughts but the Deputy Chief Crown Prosecutor was unable to accommodate this. Instead the following update was provided,

*'CPS London has now moved to two RASSO teams, covering North and South. Those teams now deal with all Crown Court domestic violence work as well as with rape and sexual offences. In effect they are really now Violence against Women and Girls teams but have not been renamed. This now means*

*that Crown Court domestic violence cases fall within the remit of the London Complex Casework Unit.*

*The cases covered are,*

- All rape cases (including any dealt with at the Youth Court)*
- All sexual offences (that is any case which would be flagged as a sexual offence) submitted to the Crown Prosecution Service Area at the pre-charge stage*
- All sexual offence cases dealt with at the Crown Court*
- All penetrative sexual offence cases dealt with in the Youth Court.*
- All domestic violence cases (that is any case which would be flagged as domestic violence, using the extended definition) submitted to the Crown Prosecution Service Area at the pre-charge stage*
- All domestic violence cases dealt with at the Crown Court*

*Extra lawyers and paralegal officers have been moved with the work and an additional Legal Manager is now in post. The case loads were estimated based on previous finalisations and we will keep under review whether we have the balance right in terms of the predicted spread of cases as DV and RASSO Unit work continues to increase as a proportion of the overall caseload.*

*The recorded caseload for each individual member of the team has risen, but there is now a wider range of work within that caseload. We have tightened the processes for instructing advocates in rape cases to ensure that we are consistently selecting the best people.*

*We are making sure we get acquittal reports in rape cases so that we can constantly learn lessons.*

*There is undoubtedly more to do in a number of areas, including better application of the merits based approach, this will be a continuing effort to ensure, in particular, that we do not start cases prematurely.*

*About half [16 of 33] local authorities have signed up to the third party protocol. Work is ongoing with the police, HMCTS [Her Majesty's Courts and Tribunals Service], MOPAC [The Mayor's Office for police and Crime] and the authorities themselves to resolve those that are still outstanding. This links in to the question of charging.*

*A number of high profile cases have been conducted by the RASSO Unit team as a result of Op Yewtree. There have been very useful case management panels including Director's panels, not only have we seen successful cases but the oversight through the CMPs [case management panels] will have helped to develop everyone's skills in dealing with such cases. In addition a CPS London report with recommended good practice to be shared across the CPS has also been approved by the Director of Public Prosecutions so we are both learning and leading'.*

585. According to further clarification received by the review the Units deal not simply with domestic violence cases sent to the Crown Court but with cases where referral to an Area lawyer is required by paragraph 29 of the Director's Guidance on Charging. This includes, 'cases with substantial or complex video or audio key evidence'. Due to the wide definition of domestic abuse applied by the Crown Prosecution Service, this potentially includes offences such as arson, theft and harassment committed within the context of a relationship as well as non-sexual assaults against the person. It means that the Rape and Serious Sexual Offences Units are operating outside the national Crown Prosecution Service minimum standards for Rape and Serious Sexual Offences Units. Furthermore the Units are no longer mainly aligned to the Sapphire investigation teams but now receive cases from Police Borough Command Units. Given the problems affecting joint police and Crown Prosecution Service working identified throughout this report, these developments are considered regressive and may further exacerbate the substantial challenges affecting these very serious cases.

586. The review is also concerned at the suggestion that the Rape and Serious Sexual Offences Units are now unofficial specialist Violence against Women and Girls Units. As discussed elsewhere in this report, the barriers to reporting are immense in relation to rape and particularly for male and transgender complainants (see Part 3: Reporting - Why and How People Report Sexual Offences). The review expresses serious concerns at the repositioning of the Units and whether it is a helpful response to the need to improve rape prosecutions in the capital.
587. Lastly, in light of the disclosure by senior management that caseloads have increased and that morale is low (and presumably lower than it was last summer) this review questions whether individual workloads in the Rape and Serious Sexual Offences Units are healthy and/or reasonable and whether staff welfare is sufficiently high on the management agenda.

# Part 4 – The Review of Case Files

## Police Case Files

### Composition of Files

588. Information gathered and held by the officers of Sapphire investigation teams is maintained in two separate files. The vast majority of detailed information and record of the progress of the investigation is held on computer in what is known as the Crime Recording Information System (CRIS). Each crime allegation is given a unique CRIS reference number and the file contains all the information relating to the investigation and its supervision. All the evidence gathered during the investigation is put in a 'case file' which is submitted to the Crown Prosecution Service. When an investigation is closed - either because no further action is taken or legal proceedings have finished - another file, known as the closing docket, is also created. This contains the original witness statements, correspondence, the Haven log book, the SOIT officer logbook, a brief summary of any CCTV evidence, police officers' notebooks in the case, photographs, audio, video or disc information, transcripts of text messages, Facebook conversations, maps and other similar plans.
589. Other important evidential documents such as Form 124D for domestic abuse cases, search records and continuity statements for unsolved DNA/fingerprint evidence are also held in the closing docket. Similarly, the closing docket may include records of communication with property stores regarding the destruction or retention of potential exhibits and the results of tasked intelligence.
590. Where the rape allegation concerns a 'stranger 1 or stranger 2' suspect a full printout of the Crime Recording Information System report should feature in the closing docket and in other cases relevant sections of the Crime Recording Information System report should be reproduced at the discretion of the Senior Investigating Officer, for example, the decision and review pages. In those cases that have been the subject of referral to the Crown Prosecution Service, the MG3 report of the case from the officer in charge to the Rape and Serious Sexual Offences Unit of the Crown Prosecution Service should always feature in this hard copy file. In essence, the closing docket should contain all information that may be of assistance in any future investigation or bad character application.
591. As all of the information required for the closing docket should already be recorded on the Crime Recording Information System, it is considered by the Metropolitan Police Service that, as a general rule, a further print of the Crime Recording Information System report, to be included within the closing report, is an unnecessary duplication.
592. As a result of the existence of these two highly significant files containing different aspects of information about any one case, it was necessary to look at each of the two files to ascertain the quality of the investigation and decision-making. Senior investigating officers are instructed that the brief circumstances of the case should be summarised in a concise entry on a minute sheet within the closing docket file. As an exception, complex cases or cases that may in the future be subject to a cold case review should have a full report included in the closing docket. This entry should also include reference to the corresponding Crime Recording Information System entry. A pro forma closing report form should be included in the closing docket.

593. The files examined were all in good order but the content varied from case to case, according to the complexity of the investigation and the method of recording the closing report. Many of the pro forma closing reports were only partially completed. In a number of the files the incomplete pro forma report was supplemented by a more detailed narrative report from the Detective Inspector but not in all.

## Sufficiency of Evidence

594. The law of evidence in England and Wales does not require the corroboration of essential facts of a case before a prosecution may proceed for rape<sup>150</sup>. The Director of Public Prosecutions has, however, directed that before a prosecution can proceed there must be sufficient evidence to provide a realistic prospect of conviction. Once that assessment has been made the decision maker must determine if prosecution is in the public interest.

595. In all of those cases reviewed where the decision taken by the police officer was for 'no further action', the use of the additional words 'insufficient evidence' as the reason for the decision related to the application of the higher test from the Director of Public Prosecutions's guidance rather than to the law of evidence. In those cases examined under this category of reasons the phrase 'insufficient evidence' related to the realistic prospect of conviction and not to the existence of a bare sufficiency of evidence in law.

596. During the course of the review a random sample of some 60 closing docket files were examined as well as the relevant Crime Recording Information System reports relating to those closing dockets with only brief or summary evidence. All of these files related to reports from 2013 and 2014 in which the decision made by the senior officer in charge was for no further action or designated as 'no crime'.

597. Of the 60 reports reviewed, 5 cases had been designated 'no crime'. All of these 'no crime' cases were investigated during 2013. Of the 5 'no crime' reports, one related to a clear attempt to pervert the course of justice. The decision was appropriate and supported by an excellent and thorough investigation. This included retrieved CCTV evidence demonstrating the allegation of rape as false and fabricated by the complainant to ensure the complainant avoided prosecution for drink driving and dangerous driving.

598. The second was a case where an allegation of rape was withdrawn by the complainant who later gave a full explanation of why she had fabricated the allegation. The officer in charge had taken active steps to ensure the complainant was making such a withdrawal free from any coercion or intimidation by the suspect.

599. In a further three cases, where the investigation did not support the allegation by the complainant, the decision to categorise the case as 'no crime' seemed to be based on the officer's subjective view of the credibility of the complainant. In the absence of other extraneous evidence to assist an assessment of the allegation, there was little apparent consistency to be derived from the decisions to designate the case 'no crime' or 'no further action – put away'. An inference could however be drawn that in those cases categorised by the former label the officer considered the original allegation to be false. In the latter category it seemed the credibility and reliability of the available evidence and the reason proffered for the withdrawal were not clear or convincing to the officer in charge.

600. Following an expression of concern by the then Commander, within whose remit Sapphire sat, about the increase in, and possible inappropriate use of, the designation of cases under the heading 'no crime', a direction was issued in 2014 by the Commander that all 'no crimes' would be reviewed by a panel chaired by the Commander. Any 'no crimes' which were approved would then be subject to a review by an academic panel.

601. The Commander's instruction has led to a dramatic reduction of 'no crime' cases (see Appendix B). Decisions under this heading did not therefore appear in the sample of those cases reviewed from

<sup>150</sup> Any requirement for the jury to be given a corroboration warning about convicting a person of a sexual offence was abrogated by section 32 of the Criminal Justice and Public Order Act 1994.

2014 and cases similar in fact to those previously designated as 'no crime' were now found to be designated as 'no further action' in the 2014 sample. Decisions to categorise a crime as a 'Crime Related Incident' or for Detective Inspectors to take 'no further action' are not subject to any form of senior review.

602. The remaining cases were discontinued for a number of reasons, most of which were covered by the designation of 'no further action', although a number of cases were simply designated 'insufficient evidence-put away' in the closing docket.
603. The distinction between a decision to take no further action because there is insufficient evidence in law and the decision to do so because the available evidence does not provide a reasonable prospect of conviction (in terms of the Director of Public Prosecutions's direction) is important. There were very few cases where the reasons for the decision were set out clearly in such a manner as to be able to distinguish which of these specific reasons was the justification for the decision, other than by inference to be drawn from the factual narrative.

**Recommendation 33.** Given the significance of such serious cases as rape, it is recommended that the basis for the decision to discontinue should always be articulated in exact terms. The decision should specify whether the reason relates exclusively to the sufficiency of the evidence or to additional issues of credibility and reliability of the evidence in a case with an otherwise prima facie sufficiency of evidence in law.

604. Often there would be a detailed and helpful narrative in the Crime Recording Information System report or closing docket but in many cases the factual narrative was set out without close written analysis conveying what, in particular, rendered the case one of insufficiency of evidence or devoid of a reasonable prospect of conviction.
605. The complexity and seriousness of a rape case needs adequate time for investigation and an appropriate level of supervision. With some 50% of those cases submitted to the Rape and Serious Sexual Offences Unit returned to the police by the Rape and Serious Sexual Offences Detective Inspector, it would indicate that quality is sub-optimal. There should be an adequate number of supervisors with realistic workloads so that files can be properly supervised and completed effectively. The numbers of tiers of supervision could be reduced if there were sufficiently well trained and experienced officers with a reasonable case load.

## Police Obligations in Preparing Reports of Rape Cases

606. The fifth edition of the Director's Guidance on charging was issued on 5 May 2013. The Guidance sets out the obligations of the police for joint working with prosecutors during the investigation and prosecution of criminal cases. Importantly, the guidance makes specific provision at paragraph 7 for early investigative advice to be sought from the prosecutor in rape or other serious sexual offences.
607. Of the 60 cases reviewed, there was only one case where there was a record of such early advice being sought from the Rape and Serious Sexual Offences Unit. It was made clear to the review during the focus group discussions with the various ranks of officers from Sapphire investigation teams that the Crown Prosecution Service could not provide this service in London due to the overwhelming case load and backlog of cases within the Rape and Serious Sexual Offences Unit. The ability of the Crown Prosecution Service to guide and steer the investigation of such critical cases at the early stage of the preparation of the case was therefore lost.
608. Partly as a consequence of the absence of this early consultation and advice, the proportion of cases sent to the Rape and Serious Sexual Offences Unit that did not meet the expectations of the prosecutor was high. Following the introduction of an ad hoc triage system to deal with backlogs of work at the Rape and Serious Sexual Offences Unit many cases were simply rejected and returned to the police for further work without any substantive consideration of the facts of the case. Others were

returned following examination by the Rape and Serious Sexual Offences Unit lawyer. The enormous implications for inefficiency, delay and withdrawal from the process by complainants arising from such working practices is profound and is discussed above.

**Recommendation 34.** Detective Inspectors carry a grave responsibility in making decisions to take no further action. In Scotland these decisions are only made by the most senior prosecutors where there is a prima facie sufficiency of evidence in law. While the preference would be for this function to be transferred to a legally qualified prosecutor, it is recognised that a wholesale transfer of these functions to the Crown Prosecution Service would not be feasible with the paucity of current resources in the Crown Prosecution Service. It is however recommended that Detective Inspectors have recourse to early advice and guidance from prosecutors on decisions of such magnitude.

In addition there is a need to embed Rape and Serious Sexual Offences Unit prosecutors in the Sapphire Hubs to allow early legal guidance and advice in difficult cases to be provided to senior officers and to ensure that the evidence gathered is focused on the presentation of a robust case in court.

609. From the review of these files the following issues were observed:

## Withdrawn Allegations

610. Many cases were discontinued by the Detective Inspector, without any recorded input from the prosecutor. These cases included a significant number of files where the complainant had withdrawn the allegation of rape. While the case files disclosed that the police had tried to find out whether the withdrawal was the result of fear or coercion and the complainant had confirmed in writing that this was not the case, the information contained in these files was often very brief and the decision to discontinue taken rapidly after the allegation had been withdrawn.
611. In a number of these cases the complainant had been advised to attend a counselling or support service for domestic abuse but in other case files there was no reference to such a referral. In most of these withdrawn cases the complainant had not visited the Haven. More generally, the attrition rate of these rape cases is much more prevalent in non Haven cases.<sup>151</sup> As with a very significant number of the files reviewed, many of the complainants were from minority communities or were recent immigrants with poor English. These complainants seemed very vulnerable and isolated.
612. The desire to withdraw an allegation can be motivated by fear of the consequences of reporting the matter to the police and many complainants of domestic sexual violence will retract an allegation soon after the alleged incident. In light of the high attrition rate in those cases where there is no involvement with the Haven, Recommendation 22 suggests that a new configuration of the Haven should be established that will make the Haven, rather than the police station, the default route of all reporting. A consolidated, central facility with co-located officers trained in sexual offences investigative techniques (SOIT officers), Independent Sexual Violence Advisors (ISVAs), crisis workers and vastly improved facilities should replace the current, fragmented provision for London and become a national centre for excellence in responding to the complex needs of rape complainants in the capital city. The Haven should also provide facilities for Achieving Best Evidence interviews and follow up care for complainants.

## Pre-Charge Reports to the Prosecutor

613. In a number of cases examined during the review the files contained a narrative form of report to the prosecutor seeking advice or a charging decision. These reports, known as 'MG3 reports' were also present in the Crown Prosecution Service files examined for the review. The standard of these reports was variable.

<sup>151</sup> Complaints of rape and the criminal justice system. Above fn 27.

614. The Director's guidance on charging provides that where a case is being referred to the prosecutor for investigative advice or guidance, the police will provide the material and evidence then available and relevant to the aspect of the case on which the guidance is sought. The guidance also specifies that the MG3 report will contain any confidential information, the views of the investigating officer and the assessment by the police decision maker. The report will identify any issues on which the decision of the prosecutor is sought. This should include the key evidence in the case, any relevant exhibits, CCTV footage, and forensic reports.
615. If relevant, the domestic abuse checklist and DASH form in other domestic abuse related cases must be included. The Police National Computer printout of suspect and key prosecution witnesses' previous convictions and out of court disposals must also be included along with any material that has been identified at that stage which may undermine the prosecution case or assist the defence. The MG3 reports must also include the specific admissions made by the suspect where the suspect has made a full admission during interview and a report of such key evidence as is required to set out the circumstances of the commission of the alleged offence.
616. Despite this apparently clear guidance, the discrepancy in understanding between what is provided by the case officer to the Rape and Serious Sexual Offences Unit and what is expected by the prosecutor in the Rape and Serious Sexual Offences Unit was a common feature of a significant number of the files examined. This conflict occurred despite the provision of checklists and supervision by a Detective Sergeant and a Detective Inspector.
617. Although there were examples of thorough and detailed reports to the unit, containing detailed analysis of admissions, CCTV footage, text communications and the like, a significant number of the reports failed to provide sufficient specification and analysis of precisely what evidence was available from these sources, requiring the prosecutor to return to the police for detailed explanation of the evidence. A failure to identify discrepancies between the accounts of critical witnesses in one case file was the subject of complaint by prosecuting counsel who had been asked to assist in the provision of pre charging advice to the police.
618. There was a palpable tension evident during the relevant focus groups about the conflicting pressures for police officers whose performance is measured by a successful charging decision by the Crown Prosecution Service and the equally important consideration for prosecutors that cases should not be accepted by them unless properly prepared. The time limits for the preparation of the case for trial places intolerable pressure on the prosecution if instructions have to be issued after charge to ensure that important evidence is properly reported and marshalled for any forthcoming trial. It was apparent that the current system of performance measures sets the police and prosecution service up against each other in the achievement of their respective efficiency measures. This is a matter of considerable concern and one that militates against an effective and professional relationship between the two public services to the detriment of the public interest.

## Offender Centred Investigations

619. Over the last decade there has been tremendous improvement in the effectiveness of police investigations of allegations of rape. The availability of DNA evidence, CCTV footage, E-mail and text communications along with other social media provides a major improvement of opportunity to secure sufficient credible and reliable evidence in the prosecution of rape allegations. The emergence of this available evidence also places great strain on the resources of the police and those who retrieve such evidence, with the corresponding need to present such evidence in a manner that is readily understood by a jury.
620. There was a great deal of evidence to demonstrate that appropriate detection of such evidence was taking place and being used to inform decisions in rape cases. Problems were however apparent in the different expectations of the prosecutor and police officer in charge of the case about the level of detail required for the prosecutor to take decisions in such important and serious cases and how

such evidence should be presented. It was plain that there were immense pressures on all in retrieving, presenting and analysing such evidence.

621. Despite these advances there was still a very acute focus of attention on the credibility and reliability of the complainant in all cases, to the detriment of any meaningful concentration on the behaviour and previous conduct of the suspect. In one such case the complainant, a vulnerable woman appealing deportation had withdrawn an allegation of rape by her partner. The shocking antecedents of the suspect for, inter alia, scalding a previous partner with boiling water and a further assault on a stranger, were not the subject of any observations by the reporting officer or the Crown Prosecution Service lawyer. The acceptance of the withdrawal of the accusation of rape by the complainant without consideration of a further follow up with her some weeks later was concerning.
622. Likewise, in another case where the complainant had withdrawn the allegation of rape, the presence of a clear course of intimidating harassment of the complainant by posting posters of indecent images with obscene insults about the complainant on walls around and close to her home and by text messages to her was not considered for prosecution separately from the rape charge, despite the suspect's record of violence towards other women.
623. Finding ways to prosecute without the evidence of the complainant was not considered in either case.
624. Discussion about the potential for establishing evidence of longer term predatory patterns of behaviour by suspects was also absent from the cases, despite a number of cases where vulnerable complainants with learning difficulties appeared to have been sought out by suspects. Instead, the focus was on the naïve and weak nature of the complainant's trusting approach to complete strangers. There was almost no discussion or analysis in this and many other cases of what evidence there was to demonstrate that the suspect had a reasonable belief in the consent of the complainant or of the predatory nature of the suspect's behaviour leading up to the alleged rape.
625. It is noted that this aspect of investigations has been the subject of discussion by the Director of Public Prosecutions at a National Conference on Rape in January 2015 and is now the subject of further, welcome guidance. The provision of additional guidance on stereotypes and myths in the approach to such cases is also to be welcomed.
626. Any potential for criticism of either police or prosecutors for any deficiencies in the preparation of the investigative or prosecution files is difficult to justify at any level of seniority given the context of wholly unacceptable workloads in an anxious and complex area of criminality. Despite the observations made above, there was also ample evidence at all levels and in each of the two organisations of tremendous dedication and commitment, in the context of the unforgiving and relentless pressure arising from involvement in these most difficult and challenging types of cases.

## Crown Prosecution Service Case Files

627. During the course of the review a random sample of recent Crown Prosecution Service rape case files was examined. These files also contained numerous documents provided by police and therefore allowed further consideration of the quality of information provided to the Crown Prosecution Service by the Metropolitan Police Service as well as a review of the work carried out by the Crown Prosecution Service and independent counsel instructed by the Crown Prosecution Service.
628. Overall, the analysis and resultant decision making by Crown Prosecution Service Rape and Serious Sexual Offences Unit prosecutors ranged from adequate to good. On the whole, the work carried out by the Rape and Serious Sexual Offences Unit prosecutors in each case demonstrated a focus on missing or incomplete information provided by the police. There was no evidence of any frivolous or unnecessary requests to the police. Discussions of the law and evidence were sound and demonstrated a mature insight into the range of complex legal concepts in operation for the crime of rape. Similarly, analyses of the appropriate prosecutorial tests were generally characterised by sound and expert reasoning.

629. Apart from this scrutiny of the completeness of the information by the Rape and Serious Sexual Offences Unit prosecutor there was however little indication of a more creative or proactive approach by the prosecutors to enhancing the strength of the case or the presentation of the case for prosecution. There was also occasional evidence of inappropriate influence in decision-making because of the nature of certain evidence which it was felt by the lawyer weakened the prosecution case. Such evidence included delay by the complainant in reporting the allegation, the absence of florid distress after the event or the resumption of apparent consensual sexual relations in a marriage following the alleged rape or rapes in the context of prolonged domestic abuse.
630. The response to such evidence by the prosecutor and prosecuting Counsel on occasion demonstrated a susceptibility to the stereotypical expectations of how rape complainants may be expected to behave following rape. Similarly, the likelihood of how a jury would respond to these features of the evidence was premised on a jury unaware of the frailty of these misleading stereotypes and members of which would be subject to ingrained beliefs as to how a victim of rape would behave following the rape.
631. At no time was any discussion of these stereotypes and myths acknowledged in any case examined, nor were any strategies for dealing with the apparent weaknesses addressed. It was therefore a matter of concern that in assessing whether there was a reasonable prospect of conviction such prospects of conviction were viewed through a defective lens and based on a jury decision that could also be influenced by such beliefs and unchallenged by expert testimony.
632. Considerable delay in decision making by the Crown Prosecution Service lawyer in those pre-charge files examined during the review often arose as a result of incomplete information from the police and the consequent wait for the additional information to be provided. In consequence, case files remained inactive at the Rape and Serious Sexual Offences Unit while the prosecutor waited for the action plan addressing the missing information or deficiency in the case to be responded to by the police. When the additional information was received by the prosecutor there was often a further delay of several weeks before the decision was intimated to the police.
633. In large part, advice by the prosecutors to the Metropolitan Police Service addressed the fundamental evidential requirements for the case and any further actions required by the police to meet the relevant tests. In those cases that proceeded to prosecution there was, again, little evidence of proactive work by the Rape and Serious Sexual Offences Unit prosecutors to consider how potential weaknesses in the case may be addressed for the presentation of the case at trial.
634. The following themes emerged from examination of the Crown Prosecution Service files:

## Effectiveness of the Relationship Between the Rape and Serious Sexual Offences Unit and Sapphire Officers

635. It was clear from the nature and tone of correspondence between the lawyers and the police officers that considerable tension was created by the mismatch of expectations about what information was necessary for the Rape and Serious Sexual Offences Unit lawyers to provide advice to the officer in charge of the case. It was clear in all but one case reviewed that there had been no early advice meetings between the Crown Prosecution Service and the police.
636. While protocols and checklists exist for the police as to what should be provided in referrals to the Rape and Serious Sexual Offences Unit for advice or for a charging decision, it was clear that on many occasions something would be missing from the file. Some 50% of case files submitted to the Rape and Serious Sexual Offences Unit from Sapphire investigation teams were returned to the supervising Detective Inspector as unfit for submission by the embedded liaison Detective Inspector at the Rape and Serious Sexual Offences Unit. This is in addition to those case files rejected by prosecutors performing a triage function who also reject numerous case files for further action or information.

637. Detective Constables who attended the focus groups expressed considerable frustration that, in their view, many rejections of case files or requests from the Rape and Serious Sexual Offences Unit were not justified and that often the information sought was already with the file or misplaced within the Rape and Serious Sexual Offences Unit. They spoke of seeing a number of files gathered on the floor of the Rape and Serious Sexual Offences Unit and tucked under desks because of the very substantial backlogs of cases there. Other officers considered that rejection of these pre charge files was simply a crude device to control the work load of the Rape and Serious Sexual Offences Unit, an accusation denied by the members of the Rape and Serious Sexual Offences Unit focus group.
638. Where, for example, Rape and Serious Sexual Offences Unit prosecutors requested the Achieving Best Evidence disc to view this would, on occasion, be met with concern that the disc was already with the Crown Prosecution Service and a reminder that the officer was seeking advice rather than a charging decision. Officers provided a variety of examples of case papers being lost and Crown Prosecution Service lawyers recounted how inadequate storage and administrative support led to case papers being mislaid. In one case file a police officer challenged the prosecutor's request for additional information and the stalemate required the intervention of a more senior officer.
639. On a number of occasions the level of detail about significant evidence in the case files was underestimated in the officer's written report, known as Form MG3. Text conversations, Facebook entries, descriptions of CCTV evidence, photographs or inconsistencies were given general summary descriptions when the Rape and Serious Sexual Offences Unit lawyer or Counsel were seeking much greater detail to enable advice to be given or a charging decision to be made.
640. In one case examined for the review, the request for a charging decision was outsourced to external counsel who expressed frustration that the MG3 did not address discrepancies between the complainant and her friend in the description of what had taken place nor was any evidence of text communications between the complainant and the defendant submitted with the request. No analysis of the evidential difficulties was presented in the MG3. The MG3 was described by counsel as, 'containing an over generous interpretation of the complainant's evidence'. It was pointed out that the report contained no reference to taking the suspect's DNA and the birth certificate for the 14 year old complainant had not been obtained.
641. In a number of the transcripts of the Achieving Best Evidence interviews the statement of the complainant was a simple factual narrative with little, if any, elaboration of ambiguous accounts or clarification of how the complainant felt, reacted or could help the court's understanding of what had taken place. Many such transcripts left a need for significant additional questions to be answered that might not be put to the complainant unless a further Achieving Best Evidence interview was established or until cross-examination at the trial.
642. Another file disclosed that Counsel did not have a full transcript of the Achieving Best Evidence interview or the Defendant's interview. Counsel observed that there was no information in the file about whether the complainant had ever made any previous complaints of domestic abuse against her. A photograph of the complainant showing finger mark bruises on the inner aspects of both thighs was with the file but was not referred to in the MG3 report or in counsel's deliberations and there was no indication of any supporting medical evidence to explain its considerable, potential significance.
643. The quality of the police MG3 reports varied considerably from case to case. It was clear from the examination of the Crown Prosecution Service files that some excellent and thorough investigations were poorly presented to the Crown Prosecution Service by the police. cursory MG3 reports did not do justice to the immense amount of skilled investigation and resulting evidence obtained by the author of the MG3. In contrast, some MG3 reports were extremely detailed and contained thorough analyses of the evidence, the strengths and weaknesses of the case and identified further issues to be explored. Other reports provided more general summaries without detailed reference to significant aspects of the evidence and, as mentioned above, on occasion omitted reference to issues of importance to the prosecutor.

644. Where the MG3 report was insufficiently detailed or provided only a general summary of information about the available evidence, such reports would inevitably prompt further requests for clarification or additional information from the officer in charge. Given the caseload of each of the officers in the Sapphire unit such requests, often received many weeks or months later when the officer has moved on to other cases, disrupt the investigation of the subsequent cases and require the officer to go back over the previous case to refresh the officer's memory of what is required.
645. This pattern of correspondence over a number of weeks and months between the officer in charge of the investigation and the prosecutor introduced unnecessary delay and tension between the police and prosecution unit. Other than in one case, there was no evidence from the files of any meetings or telephone discussions between the police officer and the prosecutor to accelerate the process and achieve a mutual understanding of what was required.
646. Any delay in the decision making in rape cases can have an adverse effect on the ability and willingness of the complainant to continue with the process and adds to the tension and anxiety experienced by the complainant. Given that so many of the delays could have been readily avoided by more stringent supervision by the police and earlier advice and guidance by Rape and Serious Sexual Offences Unit prosecutors, it is deeply regrettable that this situation persists. The overwhelming nature of the workload of each of the police service and prosecutors undoubtedly exacerbates this characteristic of the interaction between the two agencies. The sheer volume of reports to be supervised by police Sergeants and Inspectors leaves little opportunity to carry out adequate checks before submission to the Crown Prosecution Service.
647. In the recent service-wide review of Rape and Serious Sexual Offences Units in England and Wales, the author of the report recognises the need for earlier intervention by prosecutors to provide early advice to the police and she notes the absence of such advice, in general, across the country. While CPS Direct provide a basic emergency service for police seeking a decision to charge rape out of hours at the very beginning of the investigation, the general absence of any specialist prosecutorial input during the police investigation may result in unnecessary work or avoidable delays in the re-working of the case at the later stages of its life.
648. By front loading the provision of such advice, cases should be better prepared at an earlier stage. Important decisions should be made without the delays brought about by the late intervention of the prosecutor at a time when the officer has moved onto the next of many other cases allocated to him or her. The embedded Rape and Serious Sexual Offences Unit prosecutors in the hubs should also result in significantly reduced inefficiency in the system.

**Recommendation 35.** While it is not the job of the prosecution to supervise officers in the execution of their duties or to act as substitutes for competent supervisory police officers, a considerable number of the difficulties experienced at the time of reporting to the Rape and Serious Sexual Offences Unit could be completely avoided by early and intensive discussions between the prosecutors and the relevant officers. Additionally, such early intervention allows the prosecutor to ensure that the case is prepared with a clear strategy developed for the presentation of the evidence in court.

Embedding both a senior gatekeeper police officer and a Rape and Serious Sexual Offences prosecutor in each police Hub would ensure that decisions could be taken as early as possible and that such decisions were based on sound legal principles. Such arrangements should also lead to a better understanding by both agencies of the constraints and pressures faced by the other. Access to the embedded Rape and Serious Sexual Offences Unit prosecutor should be restricted by the gatekeeper police officer or through supervising senior officers to ensure the prosecutor's role does not become confused with that of an additional supervisor and that the necessary independence of the prosecution is not eroded through co-location.

## Quality of Witness Statements

649. It was apparent from many of the case files and from observations made by prosecuting counsel and judges in the focus groups that the quality of witness statements was sub-optimal. Given the significance of the Achieving Best Evidence interview of the complainant as the core evidence in chief for the prosecution case, any deficiency in the quality of the statements can have a profound effect on the prospects of conviction.
650. As mentioned above, many of the written statements presented in the files were also a very basic factual narrative of the events in question. Few of these statements demonstrated any obvious effort to elicit clarification, description of motivation or explanation for actions taken, nor were descriptions of feelings and thoughts at the time of the event made explicit in the statement. These aspects of evidence may be critical in securing a proper understanding of the case.
651. As such, many of the statements reviewed leave the reader posing questions about why the participants acted in the way described and of how the complainant felt at the time of the event. Similarly, descriptions of why the complainant did or did not do something during the event or how and why she or he reacted in a particular way after the event (which may appear counterintuitive to many) are not explored in the statement.
652. Investigators need to put themselves in the position of a juror who will want to know much more than a basic factual narrative of what took place. The juror would expect the trial lawyers to drill down into the evidence to elicit how and whether the witness can explain contradictory, odd or unexplained matters that appear in the interview or elsewhere in the evidence. Even if the witness may not be able to explain or rationalise his or her own conduct during or after the event, a description of how he or she felt may assist expert testimony given by a psychologist or psychiatrist at the trial about how people respond to severe trauma.
653. Likewise, if inconsistencies in the statement or features of the statement, as described above, are not explored with the complainant by the interviewing police officer during the Achieving Best Evidence interview, the complainant is likely to be confronted and feel ambushed with such questions in the adversarial context of cross examination at the trial.
654. The basic nature of many of the statements in the Police and Crown Prosecution Service files may suggest that officers are apprehensive about closer questioning of the witness in case such questioning is misconstrued as disbelief or cynicism. The consequences of any resultant inhibition on the part of the officers are some bland and basic statements that provide rich pickings for subsequent cross-examination at a trial. An empathetic, professional and compassionate approach to the complainant is critical at all times and such an approach can be used by the SOIT officer to explain to the complainant the need to obtain some very detailed evidence to ensure that the complainant's evidence is as full and useful as it can possibly be for any subsequent trial.

## The Influence of Stereotypes and Myths

655. A number of the case files demonstrated concerns expressed by prosecuting counsel and prosecutors about 'weaknesses in the evidence.' These concerns included references to conduct by the complainant that deviated from the common understanding of how complainants should behave following a rape or rapes and of how a jury would perceive such evidence. Despite the joint inspection report by Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary in 2002<sup>152</sup>, suggesting that some factors interpreted by prosecutors as indicators of untruth or unreliability betrayed an inadequate understanding of the impact of rape and the diverse reactions of complainants in its aftermath, this problem clearly persists.

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<sup>152</sup> 2002 Inspection. Above fn 15.

656. Many of the normal human responses to trauma run counter to the ingrained societal views as to how a victim of sexual assault should respond. A number of observations in several case files suggest that not all prosecutors are alive to these issues nor did they therefore seek to construct a case which addressed beliefs that are also likely to be shared by members of the jury. In one such case Counsel expressed concern about weaknesses in the case including that, 'She did not call the police. She complained to her friends and said that she would tell her Mum'. And in the same case, 'She was unable to adequately explain why she was unable to cry out for help.' In another case file involving a context of domestic abuse the prosecutor observed, 'The complainant did not report for three months during which time further incidents are alleged to have taken place.'

657. Similarly, familiarity with cultural pressures and norms in certain minority communities was not apparent in commentary regarding some cases of domestic abuse within marriage. In one such case the following observations were made by the prosecuting barrister,

*'In the light of the resumption of consensual sex with him after the rape, however, a jury might find it hard to convince of this count.'*

658. A failure to report the occurrence of the allegation, or delay in doing so also featured in many case files as a matter of concern for the strength of the case,

*'Once the suspect left she did not report anything to the police or anyone else even though she was getting calls from both her friends and her mother'.*

659. If these common features and behaviours of so many complainants in rape cases are to be explained and understood by juries they must first be understood by police, prosecutors and judges and steps must be taken to address those same issues through the use of expert evidence from psychologists and psychiatrists as well as experts in cultural or religious norms and the effects of prolonged domestic abuse.

660. A direction by the Judge to the jury regarding delay in reporting the allegation of rape may assist the jury but cannot, on its own, go far enough in rebutting ingrained and common perceptions of how complainants are expected to react and behave following major trauma. The prosecution needs to address these issues head on in the construction of the prosecution case if stronger cases are to be presented to the court.

661. There was no case file examined in the review involving such issues in which any police officer or prosecutor suggested or discussed the possibility of leading such expert testimony to rebut the inference that such behaviour is indicative of a lack of credibility or reliability. Neither was there any file in which there was explicit or implicit recognition of the stereotypes and myths that affect the perception of complainant behaviour.

662. The psychologists who participated in the focus groups and who are based in the Havens made clear to the review that they would be very willing to provide expert evidence to explain the physiological and psychological responses to trauma that affect how individuals conduct themselves during and after trauma. They expressed frustration that such evidence, which relates to aspects of general human behaviour not commonly understood by members of the general public, was not permitted to be put before juries to address such misunderstanding.

**Recommendation 36.** It is recommended that urgent steps are taken to reinforce training of police and prosecutors about the recurrent myths and stereotypes surrounding complainant behaviour during and following an alleged rape. Policy should be developed about the use of expert witnesses to address the current common lack of understanding that may lead juries to acquit.

**Recommendation 37.** A legislative provision similar to that contained in Section 275 C of the Criminal Procedure (Scotland) Act 1995, as amended, should be considered and drawn to the attention of the Attorney General. Such a provision would codify and strengthen existing common law powers to lead expert evidence to rebut any inference adverse to the complainant's credibility or reliability that may be drawn from subsequent behaviour or statements of the complainant.

Section 275 C excludes from this provision expert testimony regarding a statement or behaviour during the alleged event. It is submitted that consideration of any new legislative provision should also allow such evidence to be admitted to provide expert evidence of the range of physiological and psychological responses to trauma that may be anticipated in circumstances of acute fear or alarm. These include the autonomic freeze, flop and disassociation responses or behaviour of the complainant designed to avoid further harm.

## Capacity to Consent

663. A number of case files involved complainants who had voluntarily consumed excessive amounts of alcohol and/or drugs and had no recollection of the event or had been sleeping or unconscious at the time of the alleged rape. The importance of CCTV and toxicology evidence was clearly appreciated in such cases and a number of Crown Prosecution Service and police files demonstrated a determined effort to secure such evidence. It is therefore of great concern to learn that significantly fewer complainants are now being referred to the Havens by Metropolitan Police Service despite the significant increase in reports received.

664. As set out in Recommendation 1 it is recommended, following the Scottish experience, that consideration is given to amending the Sexual Offences Act 2003 to include the principles set out in the case of Bree so that the impact of alcohol and other substances on capacity to consent is embedded in legislation. Such a provision would send out a powerful social statement against the exploitation of women rendered incapable of providing free agreement in conditions of severe intoxication.

## Communication with Complainants

665. There was very little evidence of any communication between the prosecution staff of the Rape and Serious Sexual Offences Units and complainants within the files. This was not unexpected given the critical role of the SOIT officer in liaison with complainants. However, those complainants who attended the focus groups indicated that they had no contact from the Crown Prosecution Service lawyers at all and were largely unaware of the work carried out by the prosecutors in considering the case and/or preparing the case for trial. The impression gained from the focus groups was of little understanding of the role of the Rape and Serious Sexual Offences Unit prosecutors and the value they add to the process.

666. This perception of the isolation of the Rape and Serious Sexual Offences Unit was also evident from the frustrations expressed by the many police officers of various rank who attended a number of focus groups. The overwhelming desire of all of these officers, without exception, was for greater and more effective communication and liaison with the prosecutors. These officers found the prosecutors unable to attend meetings or to take telephone calls and expressed real concern about the volume of unanswered emails sent to the Rape and Serious Sexual Offences Unit. A number of officers expressed consternation that a case reported for advice may not receive a response for many weeks or months.

667. The only written communication with the complainant in many of the case files was the letter explaining the prosecution's decision to take no further action. Without exception, these letters were extremely well written and provided detailed and straightforward explanation of the basis for the decision. The letters invited the complainant to a meeting if the complainant would find that helpful. These letters should be delivered personally to the complainant by the SOIT officer who is able to assist with any further explanation needed by the complainant about the contents of the letter.

668. In those cases which proceed to trial very few prosecutors from the Rape and Serious Sexual Offences Unit will be able to attend the court during the trial of the case they have prepared. Again, it is the police officers from Sapphire investigation teams who attend court and provide assistance to the prosecuting counsel. Members of the Rape and Serious Sexual Offences Unit therefore rely on feedback from prosecuting counsel or the police about the quality of the preparation of the case and any lessons to be learned from the trial.
669. With the exception of three cases where there were adverse case reports following an acquittal, there did not appear to be any substantive written feedback from prosecuting counsel in the trial files examined. There were no records of any meetings or other consultation with counsel following an acquittal in any of the files.
670. In general, the files displayed accurate awareness of Crown Prosecution Service policy, the relevant law and evidential requirements. It was clear that the prosecutors were, in general, experienced and highly knowledgeable about this area of criminality although there was little explicit evidence of any recognition of the stereotypes and myths that prevail in many of the cases. Indeed, some of these evidential features were met with a degree of weariness and resignation about the challenges these would present for a successful prosecution.
671. There was, nonetheless, no evidence in any case file examined of creativity in building cases to address these and other significant challenges that are seen frequently in rape trials. A feeling of pessimism regarding the prospects of some cases was evident in a number of comments from counsel, despite their own conclusion that the case should proceed to trial.
672. The current arrangements remove much of the job satisfaction and motivation for prosecutors who expressed an inability to feel meaningful ownership of cases in which their role was so restricted and who felt they had to work under immense and constant pressure with so many cases at once.

**Recommendation 38.** It is unsurprising that the enormous workload of these units, in a category of cases that do not achieve as high a level of conviction as other crimes, has affected the outlook of the Rape and Serious Sexual Offences Unit prosecutors. The relative isolation of the lawyers and conveyor belt style of working make the role much less satisfying and effective.

It is recommended that much greater involvement with the other critical agencies, consultation in the preparation of the case at the earlier stages of the investigation, more exposure to the witnesses of fact and expert witnesses and provision of support to Counsel at the trial would make this role much more rewarding and effective. It may also allow the public to gain more insight into the huge contribution made by the Crown Prosecution Service in preparing and prosecuting these very anxious cases.

# Part 5 – Trials and the Court Process

673. The London Rape and Serious Sexual Offences Unit serves 13 Crown Court centres, a significant number, and further evidence of London's unique scale and complexity when compared with other forces. Cases charged by Greater Manchester Police feed into just four court centres and those charged by West Midlands Police feed into eight.
674. Judges and others confirmed that sex offences result in a greater proportion of trials than other offences, with defendants less likely to enter guilty pleas. Furthermore, rape cases comprise a significant percentage of Crown Court caseload and in the year April 2013 to March 2014 rape cases made up 9.3% of CPS London's Crown Court caseload compared with 11.1% across the Crown Prosecution Service nationally. This is challenging not just for the police and the Crown Prosecution Service but also for the advocates who prosecute this type of case. An experienced barrister told us that cross-examining defendants in sex cases day after day 'takes its toll'.
675. Although CPS London previously used in-house Crown Advocates to conduct rape trials it currently instructs only members of the self-employed Bar who have been appointed to the Crown Prosecution Service Advocate Panel Rape and Child Sexual Abuse List. To join the List, advocates have to complete a written application<sup>153</sup> and provide evidence of their experience and suitability. They must undertake Crown Prosecution Service-accredited sexual offences training at least every four years.
676. Feedback on the quality of advocacy in rape trials varied. Investigating officers were generally complimentary about trial counsel, appreciating their willingness to resolve outstanding problems at court. A focus group of judges had mixed views, expressing concern at the lack of effective 'quality control' in relation to advocates on the CPS Rape and Child Sexual Abuse List.
677. The review heard that rather than being tried in the Crown Court defendants under the age of 18 are increasingly facing trial for rape in the Youth Court. District Judges deplored the tendency to regard the Youth Court as somewhere for inexperienced barristers to practise their trial skills, especially in such sensitive cases as rape, involving young and vulnerable defendants and complainants. They were critical too of the absence of instructed trial advocates from pre-trial hearings, 'unless you insist' and considered it unsatisfactory that advocates prosecuting the general case list frequently deal with key issues pre-trial.
678. Commenting on the standard of advocacy a judge told the review,
- 'One of the key qualities is can they cross examine the defendant? That is a litmus test that many fail and some succeed in passing'.*
679. The judges' comments were not restricted to prosecution advocates and one described defence advocates, 'who do not know what they are doing and they make the process unmanageable. The skill deficit is manifest in prosecutors as well as defenders', the review heard.
680. The tendency to instruct counsel too late in the proceedings was another issue raised by the judges' focus group, although as one judge explained, 'A really good prosecutor, experienced prosecutor, will cope magnificently. Your average mediocre prosecutor will be hopeless'. To achieve the best results the group concluded that the Crown Prosecution Service needs to brief experienced counsel at the start of the proceedings with an early case conference on all evidential matters.

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<sup>153</sup> Link to the Crown Prosecution Service Advocate Panels Application Scheme. [http://www.cps.gov.uk/advocate\\_panels/](http://www.cps.gov.uk/advocate_panels/)

681. Judges hearing sex cases have to be ‘ticketed’ and the large number of rape trials places pressure on them too. Some are hearing a relentless succession of cases often involving harrowing evidence and traumatised complainants. A Judge told us of being ‘overwhelmed’ by such cases.

682. Judges and counsel acknowledged a lack of equality of arms between the prosecution and defence at court. They explained that while the defence invariably have at least one representative sitting behind counsel, taking notes and running errands, the prosecution no longer does. Even Queen’s Counsel<sup>154</sup> are no longer routinely assisted by junior counsel. Instead investigating officers fill the gap by doing what they can. One described how, ‘we run around papering over the cracks.’

683. The judges compared conducting trials of rape and murder. One judge explained,

*‘Most of us around this table conduct murder trials as I do, sitting occasionally at the Old Bailey. You get Treasury counsel, you get juniors, I did a murder there for four weeks, and it was seamless. I’m doing a rape at the moment. There is nobody there, two advocates and no support’.*

He described the tension between the advocates’ interventions and the jury’s needs, with the advocates constantly needing time to resolve disclosure issues, edit the Achieving Best Evidence disc, and the suspect’s interview tapes. Meanwhile, there were jurors with holidays booked. It was, he said, ‘pressure, pressure, pressure!’

684. There are cases where everything is done well and a Judge described a recent high profile case that resulted in a conviction.

*‘It was like a Rolls-Royce operation. The officer pulled out all the stops. He was investigating mobile phones overnight, getting things done which normally take weeks we are told. We had the juniors outside doing all the documentation, getting everything sorted. It went like clockwork and it was actually quite relaxing from my point of view. You just had to worry about the law and make sure everything was alright, and from the jury’s point of view it was a seamless presentation. It was done professionally and they got to consider the issues’.*

It was down, the judge observed, ‘to people in charge who knew what they were doing. It was like the old days’.

685. A common feature in many rape trials is the use of interpreters. Standards of interpretation were a matter of concern for the judges. One told the review that 132 languages have been spoken in his court. The review heard about a trial involving two Polish interpreters, one for the defendant and the other for the complainant.

*‘There had been a 999 call where the police had brought in a Polish interpreter because they couldn’t understand what the caller was saying. When the tape was played in court both of the interpreters went ‘Oh God’ as they realised that the interpreter who had been brought in had completely misunderstood what everybody was saying and had mistranslated it on the transcript’.*

Once the two court interpreters had agreed a translation the case became much clearer and swiftly resulted in the defendant being convicted.

686. Overall opinions on the standard of interpreters varied. Some were considered ‘very good’ while concerns were raised about others. A Detective Sergeant commented that he had seen interpreters who rather than translating the evidence appeared to ‘tell the victim off and interfere’.

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<sup>154</sup> The most senior barristers, entitled to the letters QC after their name.

687. Translating the evidence and explaining the proceedings can significantly lengthen the time spent in court and can reduce the impact of the evidence. Nonetheless interpreters were regarded as essential even where the witness has a reasonable grasp of English. Complainants told the review that people who are nervous need an interpreter even if they speak English well as a second language.

## Forensic Medical Evidence

688. The 2007 joint thematic review of rape<sup>155</sup> acknowledged the importance of the medical evidence provided by forensic physicians (also referred to as forensic medical examiners by the Havens) in rape cases and recommended,

689. *‘That where expert opinion is to be sought from an FP [forensic physician],*

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

690. This recommendation was a result of the review’s finding,

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

691. It was made clear to the review by Haven staff that this recommendation has not been implemented in London. The Havens’ medical examiners have little contact with the Crown Prosecution Service or with trial counsel. This is a lost opportunity and there is no reason why the forensic physicians could not, even if not actually present, take part on the telephone or using Skype in a consultation with counsel.

692. Haven medical examiners go to court only rarely, meaning that their evidence is not relied upon as part of the prosecution case; or is read to the court by counsel; or is reduced to ‘admissions’, a written statement drafted and agreed by prosecution and defence counsel. The latter outcome is precisely the mischief the 2007 recommendation sought to prevent, as it leaves the medical evidence open to misinterpretation and lacking any impact on the jury.

693. The danger of glossing over medical evidence where there is no genital injury is that it can be used to support the myth held by some members of society that a victim of ‘real rape’ will always have injuries. There is research to show that this is not the case<sup>156</sup>, and it is imperative that this is always properly explained to the jury.

694. Forensic medical examiners from the Havens told the review that they would welcome greater involvement in the criminal justice process. They would also value feedback on their evidence and court skills with a view to raising standards. They believed they could contribute to the understanding of how complainants present themselves after rape based on their experience of dealing with many clients and observing their demeanour and emotional state. An experienced medical examiner told the review,

*‘[I] come out of the [witness] box thinking I wish I’d been asked certain questions’, and of the additional evidence she ‘could have given’.*

<sup>155</sup> Without Consent. Recommendation 6. Above fn 9.

<sup>156</sup> Female genital injuries. Above fn 3.

695. Staff from the Havens also suggested there is a need to revisit their status as witnesses. This is a potential area of inequality between the defence and prosecution. While forensic physicians are frequently treated as 'professional', which means they are called to court simply to give factual evidence about their findings; any defence witness dealing with medical evidence will invariably be an 'expert' and provided with a full set of case papers, involved in discussions with defence counsel, and instructed to provide an opinion including on the consistency of the medical findings with the complainant's account of events. Sometimes, having been called to court as a professional witness, the Havens' forensic physicians will unexpectedly be asked to give opinion evidence or to comment on the expert's report, which they have not previously seen.
696. This state of affairs is unsatisfactory, unfair on the forensic medical examiner and a missed opportunity for the prosecution to put forward its best possible evidence. One reason for treating even the most experienced forensic physicians as 'professional' is to save the cost of instructing an expert. This is short-sighted and the review agrees with the Havens there is a need to clarify in each case how medical evidence is to be presented and whether expert evidence is required.

**Recommendation 39.** It is recommended that the police, prosecutors and forensic medical examiners work jointly to:

- ensure in all cases where there is no genital injury that the evidence is presented in such a way as to avoid endorsing societal myths linking rape with injuries; and
- to revisit the question of professional/expert status of forensic medical examiners to enable them to give their best evidence in all cases and ensure equality of arms with the defence.

## Psychological Evidence

697. The review heard from consultant clinical psychologists about the effects of rape on the mental health of complainants. They regularly diagnose and treat post-traumatic stress disorder amongst this group and in their opinion, 'complainants' main injury is psychological'. They considered that where a mental health condition was consistent with having experienced sexual assault, evidence of the diagnosis should be included as part of the prosecution case.
698. Two psychologists described their experience of giving expert evidence. They had both been instructed as an expert in fewer than five rape or other sexual offence cases and neither had actually been called to give evidence at trial. One of the consultants emailed the review to share her experience of expert psychological evidence on trauma in other legal contexts.

*'I was asked to attend a pre-trial hearing with the Judge who asked my opinion as to whether there would be any value in seeking another expert opinion and he accepted mine but requested an addendum report. This was a historic case with two sisters and the focus was more on fitness to give evidence by the complainants, but did include evidence about the impact of trauma on their current functioning'.*

She outlined her experience in jurisdictions outside the criminal justice system.

*'I have however also completed many expert reports for immigration courts, Family Court, on one occasion to determine treatment recommendations for a forensic case ..... I have given live evidence in a Family Court case on one occasion and am due to be called for another case in the next couple of months'.*

699. The admissibility of psychological evidence was considered by the Court of Appeal<sup>157</sup> in a case in which the prosecution sought to rely on a psychologist's report consisting of the complainant's history and mental state and a series of standardised assessments on which an overall assessment was based. The prosecution argued that this evidence was admissible because it provided independent evidence in support of the complainant's 'injurious consequences' and undermined the defence case that the

complainant was simply lying. It was argued by the appellant that it served ‘only as a form of oath helping’ and was inadmissible.

700. The Court of Appeal determined that the psychologist’s evidence was admissible and explained how evidence of this type could be,

*‘justified on the grounds that it provided evidence of psychological injury in exactly the same way as any doctor might give evidence of physical injury consistent with a particular allegation’.*

This decision of the Court of Appeal is significant and should be more widely relied upon as authority for leading psychological evidence.

701. The high incidence of psychological injury caused by the trauma of rape and the manifestation of such trauma is evidentially significant. Hearing evidence of the complainant’s diagnosis, whether for post-traumatic stress disorder or another condition, can significantly broaden jurors’ understanding of the case which they are hearing and provide additional evidence to assist them in reaching their decision.

702. Many of those attending the focus groups were in favour of the prosecution being permitted to lead evidence, not just about psychological injuries but to explain complainants’ apparently counter-intuitive conduct at the time, as well as after the incident. Expert evidence could explain how the human brain works in response to a perceived threat to life, and the autonomic freeze and flop responses. It might also explain the way memories are stored during, and accessed after, a traumatic incident and that many actions considered by some to be abnormal are in fact completely normal, including delayed, incremental or partial reporting.

703. To date this type of evidence has generally been excluded from criminal trials. This is because,

*‘a psychiatrist’s evidence is inadmissible where its purpose is, in effect, to tell a jury how an ordinary person, who is not suffering from mental illness, is likely to react to the strains and stresses of life’*<sup>158</sup>.

This type of evidence can also be interpreted as ‘oath helping’ (which is not permitted) which is where its purpose is to show that the witness’s account was believable and credible.

704. In the USA evidence has been admitted in court to explain that delays in reporting and inconsistent accounts are not abnormal responses to rape. Such evidence has been accepted as, ‘beyond the understanding of the average person’<sup>159</sup> and provided by those with significant experience of handling rape cases, including social workers and police. Professor Louise Ellison explains,

*‘expert witness testimony is used routinely to ‘educate’ jurors about the impact of rape and the complex reactions of complainants’. ‘In most cases’ it is ‘used specifically to counter defence attempts to portray ‘normal’ post-offence behaviours as ‘unusual’ or inconsistent with a rape complaint’*<sup>160</sup>.

705. In England and Wales the circumstances in which expert evidence is permitted include where the purpose is,

*‘to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If, on the proven facts, a judge or jury can form their own conclusions without help, the opinion of an expert is unnecessary’*<sup>161</sup>.

706. These criteria enable the use of expert testimony to explain complex scientific evidence such as DNA or to help a jury decide how a particular physical injury may have been caused. They do not however permit jurors to hear expert evidence on the way the human brain responds to trauma. It is submitted that this is not something about which jurors could readily ‘form their own conclusions’ as

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<sup>158</sup> Archbold Criminal Pleading Evidence and Practice 4-394 (2015).

<sup>159</sup> See discussion of State v Spigarola in Closing the credibility gap, The prosecutorial use of expert witness testimony in sexual assault cases, (2005) Louise Ellison, The International Journal of Evidence and Proof.

<sup>160</sup> *Ibid.*

<sup>161</sup> R v Turner (1974) 60 Cr.App. R. 80.

demonstrated by the prevalence of societal myths. The review suggests that the question of admitting expert testimony merits further debate and should be revisited. As Dr Nina Burrowes asserts,

*'It is an area that is rich in psychology and as such, it is an area that may benefit from a psychological lens'*<sup>162</sup>.

**Recommendation 40.** It is recommended that the police and prosecutors ensure that in all cases where there is psychological injury consideration is given to presenting evidence relating to that injury as part of the prosecution case.

## Special Measures

707. The Youth Justice and Criminal Evidence Act 1999 introduced a range of measures that can be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses. The measures are collectively known as 'Special Measures' and consist of provisions that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures apply to prosecution and defence witnesses, but not to the defendant. Whether a witness may take advantage of any special measures is at the discretion of the court.

708. For the purposes of Special Measures, eligible witnesses fall into two categories, Vulnerable or Intimidated. Vulnerable witnesses are defined by section 16 of the Youth Justice and Criminal Evidence Act 1999 as all child witnesses (under 18); and any witness whose quality of evidence is likely to be diminished because they:

- are suffering from a mental disorder (as defined by the Mental Health Act 1983);
- have a significant impairment of intelligence and social functioning; or
- have a physical disability or are suffering from a physical disorder.

709. Intimidated witnesses are defined by section 17 Youth Justice and Criminal Evidence Act 1999 as those suffering from fear or distress in relation to testifying. Section 17(4) provides that complainants in sexual offence cases are automatically included in this category unless they wish to opt out.

710. Special Measures comprise the following:

- Screens, to shield the witness from the defendant (available for vulnerable and intimidated witnesses);
- Live link to enable the witness to give evidence during the trial from outside the court through a televised link to the courtroom. The witness may do so either within the court building or from a location outside the court (available for vulnerable and intimidated witnesses);
- Evidence given in private enables members of the public and the press (except for one named person to represent the press) to be excluded from court in sex cases (available for some vulnerable and intimidated witnesses);
- Removal of wigs and gowns by judges and barristers (available for vulnerable and intimidated witnesses at the Crown Court);
- Video-recorded interviews conducted with a witness before the trial may be admitted as the witness's evidence-in-chief (available for vulnerable and intimidated witnesses). Section 101 of the Coroners and Justice Act 2009 inserted a new section 22A into the Youth Justice and Criminal Evidence Act 1999 providing automatic admissibility for adult complainants in sexual offence trials in the Crown Court unless this would not be in the interests of justice or would not maximise the quality of the complainant's evidence;
- Examination of the witness through an Intermediary appointed by the court to assist them to give their evidence at court. The Intermediary is allowed to explain questions or answers to enable them to be understood by the witness or the questioner but without changing the substance of the evidence (available for vulnerable witnesses). Intermediaries can also provide communication

assistance in the investigation stage;

- Aids to communication to enable a witness to give best evidence whether through a communicator or interpreter, or through a communication aid or technique, provided that the communication can be independently verified and understood by the court (available for vulnerable witnesses).

711. There is a further special measure - video-recorded cross examination (section 28 Youth Justice and Criminal Evidence Act 1999). This enables a witness to be cross examined far earlier than in the normal course of the trial. This provision is not yet in force. However, in 2014/15 video-recorded cross examination was the subject of a pilot scheme involving a limited group of witnesses in Crown Courts at Kingston-upon-Thames, Leeds and Liverpool. The judge supervising the pilot in Leeds, HHJ Sally Cahill QC, considers the early indications from the pilot to be very positive. The preparation and submission of written questions by counsel prior to the cross examination allows the judge to determine the relevance and competence of the questions. Those that do not meet these criteria or are otherwise unfair can be excluded by the judge in advance of the recorded cross examination. The absence of the jury at the time the evidence is elicited changes the atmosphere with less theatricality and a more moderate tone of cross examination. There would appear to be considerable potential for improving the experience of complainants through this provision and reducing the attrition of those complainants who are particularly vulnerable.

712. Being eligible for special measures does not mean the court will automatically grant them. The court must be satisfied that any special measure is likely to maximise the quality of the witness's evidence. An application is required even where the automatic admissibility provisions in section 22A of the Youth Justice and Criminal Evidence Act 1999 apply, and is subject to the time limits in Part 29 of the Criminal Procedure Rules and must be submitted on the specified form. With special measures now firmly embedded within the court system it is suggested that the time has arrived when special measures should be permitted as of right in rape cases.

713. The review did not hear of judges routinely rejecting applications but did hear that Special Measures applications are rarely opposed by the defence. Completing written applications is an additional administrative burden for the Crown Prosecution Service which, given their lack of resources, uses time that could be spent on other essential tasks. The review recognises that notice of the witness's preferred Special Measure(s) and details of any court supporter would need to be supplied in advance of the trial, but questions the need for a formal application where the complainant's special measure of choice is a screen or a live link. These special measures should be available of right to complainants of rape.

714. The review was also surprised to learn that the Special Measure that allows for evidence to be given in private is very rarely used. This is in contrast with the situation in Scotland where it is routine for a complainant in a sexual offence case to give evidence in the absence of members of the public other than journalists. An Independent Sexual Violence Advisor (ISVA) explained that the presence of the defendant's supporters is likely to have an inhibiting effect on the witness even if the witness is behind a screen and cannot see them. The review agrees and recognises too that intimidation does not have to be in the form of direct threats.

**Recommendation 41.** It is recommended in relation to special measures that:

- consideration be given to amending the legislative requirements to dispense with a written application for a screen or live link, which should be a matter of right for complainants in rape cases, and
- increased use be made of existing provisions permitting a witness to give evidence in private.

715. Opinions about Achieving Best Evidence interviews were expressed in the review's focus groups. Producing a good Achieving Best Evidence interview is not straightforward. Firstly, the interview is an investigatory tool, providing the police with what may be their only opportunity to gather from the complainant as much useful information as they can. Secondly, many months later, it may be played at court, a substitute for oral evidence in chief which would have been elicited live at trial from the complainant by prosecuting counsel. The two distinct objectives are not always compatible, leading to lengthy interviews which often require editing by agreement.

716. It is therefore not surprising that in the court environment Achieving Best Evidence interviews sometimes fall short of the required standard. A focus group of Judges reported real issues with the quality of Achieving Best Evidence interviews. The sound, problems with the technology, film quality, length (too long), excessive repetition and distractions such as background traffic noise were just some of the issues raised. A judge described a case involving,

*'a four year old child, with an officer who was quite superb interviewing the child but I've also had as many cases as I can think of where the officer has gone over and over the same ground which I am not sure helps the witness and is distracting for the jury'.*

717. Baroness Stern was concerned about Achieving Best Evidence interviews and recommended that the issue be re-visited to find, 'a solution that preserves the benefits for the victim but is more effective in the courtroom'. Following her report updated guidance, in its third edition, was published in 2011 and, 'describes good practice in interviewing complainants and witnesses, and in preparing them to give their best evidence in court'<sup>163</sup>. At over 200 pages the guidance is packed with practical advice on planning and conducting interviews with child and adult witnesses. It also covers special measures discussions between the police and prosecutors, discussions with witnesses, and preparing and supporting witnesses for court.

718. An inspection of the use of Achieving Best Evidence interviews in child abuse cases, during the course of this review, reported in 2014 that,

*'the Guidance is not achieving what it set out to do, which is achieving the best evidence. This is due in part to poor compliance by interviewers and the failure to properly record decisions and actions, with the rationale underpinning these'*<sup>164</sup>.

719. Although child sexual abuse cases were not part of this review's terms of reference, it was clear that many of the issues identified by this review mirrored those that were considered by the inspection. This review agrees with the inspection that,

*'Immediate improvements could be achieved through better planning at the outset, supplemented by improved supervision of interviewers and better quality assurance of the recording. In turn, the Crown Prosecution Service needs to improve feedback to the police about the quality of individual 'Achieving Best Evidence' interviews viewed for pre-charge advice, and subsequently about their use and effectiveness as evidence from the advocate to the case lawyer and police officer in charge'.*

720. Like the inspection, which heard of Crown Prosecution Service Areas having difficulty keeping track of the Achieving Best Evidence discs in their offices and making frequent requests to the police for further copies, this review heard similar reports about the London Rape and Serious Sexual Offences Unit. Although an audit of the London Unit had confirmed no Achieving Best Evidence interviews were missing, the operation took time and could have been avoided had better storage and tracking systems been in place. This review therefore endorses the inspection's finding that there is a need for the Crown Prosecution Service to,

*'ensure that there is proper labelling, tracking and storage of Achieving Best Evidence recorded interviews and that every copy of the Achieving Best Evidence interview (original and edited) is tracked and a record is maintained of all movements'.*

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<sup>163</sup> Achieving Best Evidence in Criminal Proceedings - Guidance on interviewing complainants and witnesses, and guidance on using special measures (March 2011) Ministry of Justice.

<sup>164</sup> ABE Inspection. Above fn 28.

## The impact on Juries of Special Measures

721. The focus groups' discussions included some speculation about whether live evidence has more impact on a jury than evidence delivered via an Achieving Best Evidence interview or remotely over a live link. Some considered live evidence was always preferable and should be encouraged as it allows the jury to better assess the complainant. It was also suggested that being taken through their evidence in chief by prosecuting counsel is better preparation for cross-examination by the defence, rather than having to answer defence questions 'cold'.

722. In the absence of research using real juries, there has been research using mock trials to find out whether special measures affect juries' decision-making. In one exercise actors and barristers acted out a 'mini rape trial'<sup>165</sup> in front of four different groups of 'jurors'. The trial scenario involved an alleged rape some months after the breakup of the parties' relationship. According to the defendant, intercourse was consensual. The complainant said she had made it clear she did not consent.

723. In each trial the complainant gave her evidence differently, as follows,

- via a live TV link, appearing in court on a 50 inch plasma screen;
- in the courtroom from behind a partition shielding her from the defendant but allowing her to be seen by the judge, legal representatives and the jury;
- a video recording of the complainant's Achieving Best Evidence interview with the police replaced her examination-in chief, with cross-examination conducted via a live TV link with the complainant appearing in court on a 50 inch plasma screen; and
- in court without any special measures (control condition).

724. In relation to each of the four methods of giving evidence, the case was heard by five juries. Of all the juries hearing the case only two of the control groups (no special measures) found the defendant guilty, in one trial unanimously and in the second on a majority verdict. As the authors explain,

*'On first sight, this might suggest that there is something significantly different about the control condition, such that jurors are more likely to find the complainant credible and/or attribute blame to the defendant where the complainant testifies without special measures in open court.'*

725. However on closer analysis the researchers concluded,

*'it seems that these verdict differences correlate far more strongly to the fact that individuals in the groups deliberating on the control trial (particularly in juries ...which returned guilty verdicts) were more inclined from the outset to accept that complainants of sexual violence do not always engage in physical resistance and to see the complainant's injuries as providing sufficient corroboration for the alleged assault'.*

The research suggests that jurors were less influenced by the way the evidence was delivered than by their 'prior expectations regarding 'appropriate' responses to rape and 'normal' socio-sexual behaviour', in other words whether or not they already subscribe to rape myths and stereotypes.

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<sup>165</sup> 'A 'Special' Delivery?', Exploring the Impact of Screens, Live Links and Video-Recorded Evidence on Mock Juror Deliberation in Rape Trials' Ellison, L. & Munro, V. (2 September 2013) Social and Legal Studies.

# Part 6 – The Complainant’s Experience

726. In addition to the focus groups and interviews with complainants the review evaluated overall complainant perception through three additional and independent variables of police misconduct (including public complaints), police complainant satisfaction surveys and the Haven complainant satisfaction surveys.

## Police Misconduct and Public Complaints

727. Professional standards within the police service are legislated for by the Police (Complaints and Misconduct) Regulations 2012. Police misconduct can either be alleged externally through a public complaint or from within the police service itself. Public complaints may relate to a broad range of grievances from the officer’s alleged conduct to complaints about a perceived failure to investigate properly or a decision not to proceed with the case. Each public complaint is managed through an audited system overseen by the Directorate of Professional Standards and investigated by a Detective Inspector within Sapphire. Ultimately, the Independent Police Complaints Commission can review the investigation and its outcome should the complainant seek to appeal against the findings of the investigation of their complaint. Allegations of misconduct, whether they originate through a public complaint or through an internal police process, are either investigated within Sapphire, by the Directorate of Professional Standards or by the Independent Police Complaints Commission depending on the circumstances.

728. Over the past three years the levels of public complaints have slightly increased though the total number of allegations against officers within those complaints has reduced. Over the past three years the data show that the number of complaints which have resulted in a ‘case to answer’ by the officers involved is extremely small. In 2013/2014 only 1.8% of allegations resulted in a public complaint.

Public Complaints And Outcomes 2011 - 2014			
Public complaints - Category	2011/12	2012/13	2013/14
Total Sapphire crime allegations by complainants	4,118	3,928	4,263
Total number of cases of public complaint	72	99	80
Number of officers in those alleged cases	91	127	106
Number of allegations against officers involved	184	212	159
Number of allegations with a ‘case to answer’	3	4	2

Table 22

729. Internally, the review found a significant level of anxiety amongst staff relating to misconduct allegations which had been raised internally and related to perceived failures to investigate or review crimes effectively. Staff were very vocal about what one Detective Inspector who was under investigation described as being a ‘hostage to fortune’. He stated that staff were expected to deal with excessive workloads and were not able to effectively review all crimes in accordance with the policies, yet when things went wrong, the officers were held accountable. The review noted extreme frustration amongst staff who felt these issues were raised with senior management, yet were never seemingly addressed.

730. Most staff had a fear of being subject to a gross misconduct investigation, the sanction for which can be dismissal from the police. The review found that in 2013/2014 21 Sapphire officers were subject to gross misconduct investigations by the Directorate of Professional Standards and the Independent Police Complaints Commission, having mainly been referred by the senior management team in charge of Sapphire. This is almost double the twelve gross misconduct allegations recorded in the previous two years. Most of these cases relate to perceived failures to investigate and, to date, only a few of those complaints have resulted in gross misconduct hearings. Staff gave evidence that the time it took to investigate such complaints was excessive and had a huge impact on the welfare of those involved.

731. A solicitor who represents the Police Federation explained his perception of how gross misconduct allegations impacted on staff,

*'I think part of the problem is that the people who do that assessment have no concept of how difficult it is to investigate rape, and how the workload affects you... (a client) was served with a Form 163 for gross misconduct and is absolutely broken... but there has been no duty of care.'*

732. The Directorate of Professional Standards who investigate cases of gross misconduct which are referred to them by Sapphire also gave evidence to the effect that staff can only be held to account for the policy that exists at the time. One investigating officer from that Command stated,

*'Well that's the problem but it's all well and good, to say well I couldn't follow it because of this, this and this reason, but we will always have to turn around and say, "That's the policy that exists, and that's what you didn't follow" and until that's altered or changed to show that perhaps there is an acceptance of the current position, it makes it very difficult for us to have any room to say "Well, actually, we understand where you are". We will always have to say, "Well, that's the policy and you didn't follow it" '.*

733. There have been several high profile failures by officers in Sapphire in the past four years which have no doubt created significant concern within senior management. However, the review was very concerned, having heard all the evidence, that staff were being held to account against policies that they could barely hope to comply with due to excessive workloads. Staff expressed great concern about this situation which skewed working practices leading, for example, to referring too many cases to the Crown Prosecution Service for fear of making the wrong decision. It was also clear that it impacted on recruitment, motivation and the health and wellbeing of staff.

**Recommendation 42.** It is recommended that the approach to misconduct allegations within Sapphire is reviewed. This should ensure any errors which amount to misconduct are considered in the context of sustained and overwhelming work pressures and the inability to meet the investigation and review standards expected within the Toolkits and Standard Operating Procedures in every case.

## Police Satisfaction Surveys

734. Since 2008 the Metropolitan Police Service have sought to capture feedback from complainants of sexual violence and their satisfaction with service provision through a paper-based satisfaction survey handed out by SOIT officers. Year to year there were consistently low returns and the exclusion of certain complainant types (under-16s and those with mental health issues). As a result, the sample equated to approximately 5% of all rape complainants, presenting the Metropolitan Police Service with an unrepresentative, highly limited picture of what complainants of rape are saying in terms of service provision and satisfaction.

735. Obtaining complainant feedback has always been notoriously difficult for Sapphire. Previously, questionnaires were given to the complainant at first contact and at subsequent stages of the investigation. They could then be returned anonymously. Between January and September 2013, 111 questionnaires were returned. Of those: 77 were 'very satisfied' (70%) with the officer that undertook the investigation; 2 were 'very dissatisfied' (1.8%); and the rest ranged between the two<sup>166</sup>.

<sup>166</sup> Data held by Metropolitan Police Service and review team.

736. This paper based survey will be replaced by the new Total Complainant Care cards and the on-line complainant survey on the Mayor's Office for Policing And Crime website.

## Haven Satisfaction Surveys

737. A broader picture of complainant satisfaction can be evaluated through examining Haven client data. In 2013/2014 373 respondents graded their satisfaction with Haven staff and SOIT officers which is a far higher return than the previous Sapphire process.

738. Satisfaction ratings were sought by staff group at the forensic medical examination as set out in Table 23. This broadly shows very high levels of satisfaction by complainants, but with a notable difference between the police and Haven staff.

Haven Satisfaction Ratings	
At Forensic Medical Examination	Satisfaction rating
Doctor or Forensic Nurse Examiner	97%
Crisis Worker	96%
Sexual Offence Investigative Trained Officer	88%

Table 23

739. The Havens also measure the number and type of comments received in their feedback, set out in Table 24. In 2013/2014 373 comments were received. These were primarily about the Havens (344) with a few about the police (29). The table below splits the comments into three categories – Positive, Constructive (suggestions for potential change/improvement) and Negative.

Client Feedback At The Havens 2013/14			
	No. of positive comments	No. of constructive comments	No. of negative comments
Haven	302	18	25
Police	12	1	16

Table 24

## Broader Issues Impacting on Complainant Satisfaction

740. The review was concerned to establish why so many complainants of rape fail to report their experience, and to learn more about the barriers to reporting. The review is firmly of the opinion that reporting should be made easier, with more publicity about where to find help and advice, and available in languages that will reach complainants from all backgrounds.

741. Both the Metropolitan Police Service and the Crown Prosecution Service aim for a 'victim focused' approach<sup>167</sup> with policies that put the complainant at the heart of the investigation/prosecution. There remains, however, a risk that in practice complainants feel excluded from important decisions or unable to contribute their informed views.

742. As well as being listened to and taken seriously, maintaining control of the situation was important to the complainants who took part in the focus groups. Too often they experience things being done

<sup>167</sup> Assistant Commissioner Martin Hewitt, for example, referred to the success of the victim focused approach in his speech to the National Rape Conference on 28 January 2015.

to them, without the opportunity to influence or make informed choices about what happens next. Professionals need to understand this is unhelpful. The decision to record the complainant's evidence by way of a visually recorded Achieving Best Evidence interview is a case in point.

743. For police investigators the Achieving Best Evidence interview has become the default position, as recognised in the recent Criminal Justice Joint Inspection of Achieving Best Evidence interviews in child sexual abuse cases<sup>168</sup>. However representatives from specialist support services told the review that not all complainants want to be filmed. Reasons for this include a lack of control over the recording and that it can be deeply upsetting and confusing to watch many months later. Where the offence itself was recorded, for example on the suspect's mobile phone, a visually recorded interview may be especially inappropriate.
744. The review was interested in the joint inspection's suggestion that, 'it may be appropriate to conduct an ABE recorded interview in all cases'. This was on the basis that a decision about giving evidence at court could be left open and dealt with at,

*'the special measures meeting with the prosecution team, particularly given the implementation at pilot sites of the provisions for pre-recorded cross-examination under section 28 of the Youth Justice and Criminal Evidence Act 1999'.*

The review suggests that in the interests of complainant autonomy, the decision to conduct an Achieving Best Evidence interview should not be automatic in relation to adult witnesses.

**Recommendation 43.** It is recommended that training for police officers and prosecutors includes ensuring that complainants make informed decisions about their case, particularly in relation to any forensic medical examination, how their initial evidence is recorded and how it is presented at court.

745. The prevalence of psychological injury amongst rape complainants, many of whom need therapeutic help and support to cope and recover, was obvious during the review. Pre-trial therapy for vulnerable and intimidated adult witnesses is covered by guidance published in 2001<sup>169</sup>. There is corresponding guidance for child witnesses<sup>170</sup>. Key messages from the guidance include:
- witnesses should not be denied the emotional support and counselling they may need both before and after the trial; and
  - the best interests of the witness are paramount when deciding whether, and in what form, therapeutic help is given.
746. Although the decision to have therapy is a matter for the witness and those responsible for her/his care, the guidance requires investigators and prosecutors to be kept informed to assess whether the treatment might affect the reliability of the witness's evidence at court. They must consider whether the therapy could be interpreted as 'coaching' or 'rehearsing', neither of which is allowed.
747. The guidance makes clear that many types of therapy will have no negative impact. On the contrary, addressing a complainant's low self-esteem and providing her/him with coping strategies should not present any difficulties and can, the review was informed by third sector representatives, provide useful preparation including increased self-confidence for court.
748. The review heard evidence from Haven staff that complainants were not receiving pre-trial therapy for post-traumatic stress disorder (PTSD) as it was perceived that this would undermine the trial. This was due to how Haven staff interpreted the guidelines and means complainants have to wait, sometimes for many months before receiving the therapy they need. Treatments developed since the guidance was published include Rapid Eye Movement Therapy, or Eye Movement Desensitisation and Reprocessing. This, the review heard, is the therapy of choice for PTSD, recommended by the National Institute for Health and Care Excellence (NICE). Therapists are postponing its use, however, on the basis that it is incompatible with the guidance. The review heard that delaying this therapy diminishes its effectiveness.

<sup>168</sup> ABE Inspection. Above fn 28.

<sup>169</sup> Provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial (2001) Home Office, Crown Prosecution Service and Department of Health.

<sup>170</sup> Provision of therapy for child witnesses prior to a criminal trial (2001) Home Office, Crown Prosecution Service and Department of Health.

749. The issue of pre-trial therapy is of great concern to the review and needs to be re-assessed as soon as possible. A decision needs to be made whether particular therapies are truly incompatible with giving evidence in court or whether there is an unnecessarily risk averse approach.

**Recommendation 44.** The review was concerned at the length of time some complainants wait before receiving psychological therapy and the perception that to do otherwise would prejudice a trial. It is therefore recommended that the Police, the Crown Prosecution Service and the Department of Health re-visit the issue of pre-trial therapy to agree updated guidance and to ensure that complainants' recovery is not delayed by an unnecessarily over cautious approach.

750. In some rape cases delays in accessing therapy are further increased by repeated adjournments of the trial. Independent Sexual Violence Advisors (ISVAs) and third sector representatives told the review of the negative impact this may have on clients. Sometimes a case is adjourned two or three times which can be traumatic for the complainant as they repeatedly psyche themselves up emotionally for court, only to feel let down when their case is postponed.

751. Meeting trial counsel in advance of the trial can be a positive experience for the complainant and is recognised as good practice. The review heard, however, that for many complainants their first opportunity to meet the advocate is on the morning of the trial. Depending on the pressure the advocate is under, the meeting may only last a few minutes.

752. The Victims' Code<sup>171</sup> sets out what witnesses at court can expect including:

- where circumstances permit, meet the Crown Prosecution Service prosecutor or representative and ask him or her questions about the court process. They will indicate where possible how long the witness may have to wait before giving evidence;
- wherever possible, receive an explanation from the Crown Prosecution Service prosecutor or representative if there is a delay in proceedings on the day and how long the wait is likely to be.

753. The Crown Prosecution Service recognises the importance for witnesses of speaking to the advocate and having questions answered. Draft guidance on speaking to witnesses is, at the time of the review, the subject of a Crown Prosecution Service public consultation<sup>172</sup>. It is to be hoped that any resulting policy will be matched with the allocation of appropriate resources to enable its delivery.

754. Unsurprisingly, many complainants are apprehensive about giving highly personal evidence at court. The review heard from Haven staff and others that clients commonly fear humiliation and feel as though they are 'on trial', and 'liars' until proved otherwise. Judges also recognised how difficult giving evidence can be. A judge described seeing complainants, 'who are traumatised. That's even allowing for everybody doing their jobs properly'.

755. The Victims' Code explains that;

*'Part of the court process involves the cross-examination of witnesses to test their evidence. It is up to the court to make sure the trial is conducted in a fair and just manner, taking into account representations from the defence barrister and the Crown Prosecution Service Prosecutor representing the Crown. The Crown Prosecution Service will treat complainants who are witnesses in court respectfully and, where appropriate, will seek the court's intervention where cross-examination is considered by the prosecutor to be inappropriate or too aggressive.'*

756. Although Special Measures are designed to assist witnesses to give their best evidence, the review heard that this does not always happen. Where the complainant's Achieving Best Evidence interview is played to the court, or they give evidence via the live link, some complainants are shocked to find that they appear in court on screens that are visible from the public gallery. In some courts the size and quality of the screens means that if the witness was unknown to the defendant's family and supporters before the trial, that will not be the position once the evidence is given. If this had been explained, the

<sup>171</sup> The Victims' Code. Above fn 145.

<sup>172</sup> The public consultation closed 16 March 2015.

review heard, many witnesses would have opted to give evidence in court from behind a screen and therefore shielded from the defendant and the public.

757. Where the prosecution relies on the complainant's Achieving Best Evidence interview as evidence in chief the complainant will need to view it to refresh their memory before they testify. Watching it can be a shocking experience for the witness, resulting in a variety of emotions and responses that may be difficult to cope with, especially where they are to be cross-examined immediately afterwards. An opportunity to view their visually recorded interview in advance of the trial should always be offered to the witness.
758. Many rape complainants benefit from having a supporter at court. However it is crucial that they are involved, where there is a choice, in selecting who is right for them. The review heard that ISVAs, police officers trained in sexual offences investigative techniques (SOIT officers) and Witness Service volunteers all support witnesses, which can in itself, be confusing for the complainant.
759. For some complainants the ISVA is their supporter of choice, the person with whom they have formed a relationship over many months. Although in some courts in London ISVAs are permitted to sit with their clients while they give evidence (whether in the witness box or in the live link room) this is not permitted everywhere. We heard of occasions where witnesses were told they must, instead, be accompanied by the Witness Service volunteer, whom they had not previously met.
760. The reason for some courts preferring the Witness Service volunteer to the ISVA was not entirely clear, although it may be because Witness Service volunteers are regarded as part of the court establishment while ISVAs are not. Whatever the cause, where such tension exists, it should be addressed. Complainants need to be prepared for their court appearance and to have certainty about the arrangements. To do otherwise risks inflicting further harm on individuals who may already be enduring psychological injury and social isolation.
761. Any discussion of the complainant's experience must address the impact of a case being dropped or resulting in an acquittal after trial. Amongst the complainants who took part in the focus groups those whose cases resulted in a conviction demonstrated a far greater level of satisfaction with the criminal justice process than those whose cases had either not been charged or, if they had, did not end in a conviction. The difference was especially marked between those who were the complainants of a stranger attack and those who were assaulted by a partner, ex-partner, friend or acquaintance. Writing to the review after a focus group the victim of a stranger rape summed up her feelings,

*'I was amazed to see how many women had come forward to talk about their experiences and I could identify with the overwhelming need for justice to feel believed permeating that room. I was, however, surprised about the disparity that seems to exist between experience and outcome of a victim of stranger rape rather than acquaintance rape. It was almost as if we were talking about two different offences'. Speaking of her own outcome she wrote, 'I know I was one of the 'lucky' ones, who survived the criminal justice system and achieved a conviction'.*

762. A judge described the impact of an acquittal,

*'If the jury ultimately acquits it doesn't matter how many times you say [to the complainant] as a prosecutor, "well it's a very high standard, it doesn't mean they haven't believed you". They walk out thinking, "this has been awful and they thought I lied". So it is very difficult. I don't know how you deal with that because I think we're unfair to witnesses sometimes, in terms of not preparing them for what's coming. But by the same token you don't want it suggested that people have been put off being witnesses'.*

763. In the next section on Alternative Outcomes the review suggests how complainants might be encouraged to recognise that a conviction is only one measure of success and that there are others that contribute directly to their health and well-being in the future.

## Alternative Outcomes

764. As referred to above (see Part I: Rape Reviews 2002 to 2015 – a Summary) Baroness Stern was critical of the conflicting targets pursued by the police and Crown Prosecution Service and called for them to be replaced<sup>173</sup>. Nevertheless this review found that the Metropolitan Police Service continues to regard an increase in the number of rape charges (sanction detections) as a measure of success while, out of a range of performance measures monitored by the Crown Prosecution Service, it is the conviction rate which is the most high profile and widely commented upon. This lack of connection inevitably results in friction between police investigating officers and Crown prosecutors.

765. While the police aim to charge a suspect at the earliest opportunity, the Crown Prosecution Service policy, except in cases where the defendant presents a serious bail risk, advocates the building of a robust case prior to charge. Furthermore these narrow performance measures do not adequately reflect alternative important outcomes that may significantly assist complainants and the wider community.

766. Baroness Stern focused on the importance of alternative outcomes in her report. She said,

*'We need to look at rape complainants as people who have been harmed, whom society has a positive responsibility to help and to protect, aside from the operations of criminal law. Whether the rape is reported or not, whether the case goes forward or not, whether there is a conviction or not, complainants still have a right to services that will help them to recover and rebuild their lives. Complainants and those who work with them told us that the criminal process is important, but getting support and being believed is as important. Processes should be in place that are about 'honouring the experience'. Complainants need to know that the police and prosecution did their best, and complainants need to be respected'.*

This review endorses Baroness Stern's approach and considered it important to explore with the focus groups what they thought other measures of success might look like.

767. An alternative outcome sought by some complainants was the ability to provide information to the police intelligence system. Although they did not want their perpetrator to be arrested or prosecuted they wanted the police to be aware of him in case of future incidents involving other women. A young woman, herself a trainee lawyer, described what happened when she tried to do this.

768. She had gone to a police station after waiting some 18 months. She wanted the police to be aware of the offender and his offence but not to pursue a prosecution. Her primary motivation was to manage risk from the suspect and prevent harm to others. At the police station she was told by the person managing the front desk, 'If you make a statement, it's going to be investigated. You know, black and white, either you do it or you don't'. The young woman was not introduced to a SOIT officer and no details were recorded. Nor were any follow-up services advised or recommended. Had this complainant received a different, more empathetic response and been given the opportunity to speak to a trained officer, and to access support, her experience could have been very different. She may even have come round to the idea of making a formal report. Instead she felt isolated and disillusioned and no nearer to recovering from the trauma of sexual abuse.

**Recommendation 45.** It is recommended that the Metropolitan Police Service formulates an official strategy for handling reports of intelligence in relation to sexual violence in those situations where the complainant does not wish to make a formal crime report. This should include signposting complainants to specialist support services.

769. 'Closure' was repeatedly suggested as a positive outcome. An Independent Sexual Violence Advisor (ISVA) told us,

*'A lot of reporting is about closure and should be dealt with in that way ... not necessarily about a detection'.*

It was felt that obtaining ‘proper support’, having somewhere to ‘record the experience’ and being given the opportunity to ‘speak out’ contributed to achieving ‘closure’.

770. The review heard from ISVAs that rather than pinning their hopes on a conviction alone, complainants should be helped to recognise that this is beyond their control and instead concentrate on the steps they have taken to achieve justice, including reducing the risk posed to themselves and others and giving their best evidence at court.

771. Haven staff agreed that a conviction is not the only important outcome. Complainants need to be encouraged to recognise a wider definition of success. Not being HIV positive, not pregnant, accessing third sector or ISVA support and being taken seriously and treated with compassion were considered positive outcomes. Feeling safe and being provided with practical support to avoid further victimisation, particularly in domestic cases was important to complainants who participated in the focus groups as was access to counselling. This holistic approach was approved by others who participated in the review, including experts from the academic community. It is an approach the review endorses.

772. After hearing many thoughtful contributions about alternative outcomes this review is convinced of the necessity for such outcomes to be formally recognised, recorded and measured. To enable potential complainants to appreciate the range of available support and the positive benefits that can be achieved as a result of reporting, the system should recognise and assess those benefits in the same way that it recognises and assesses the current narrow performance measures. This would mean that rather than simply recording a decision to take no further action, a record should be kept of other outcomes such as, referral of the complainant to the Haven for relevant Sexual Assault Referral Centre services, and specifically:

- access to a crisis worker;
- medical treatment;
- sexual health checks and treatment;
- counselling;
- treatment for mental health issues.

Other positive outcomes would include:

- provision of ISVA or other specialist support services; and
- police recording of intelligence about suspects.

773. In cases that result in a charge, but not in a conviction, a similar record of outcomes should be kept.

**Recommendation 46.** It is recommended that new additional performance measures are introduced with the aim of increasing complainants’ confidence and that of the wider community by recognising the benefit to rape complainants of the specialist assistance and support they receive. Such additional outcome measures should be designed to ensure that the needs of the complainant, as well as the wider public interest, are at the centre of the process.

## Holding the Police and Crown Prosecution Service Accountable

777. This review’s terms of reference included consideration of, ‘arrangements for external organisations to hold the police and Crown Prosecution Service accountable’. There are a number of existing lines of accountability that include, in relation to the Metropolitan Police Service, MOPAC and the Home Office and, in relation to the Crown Prosecution Service, Parliament via the superintendence of the Attorney General. In addition, the activities of both organisations are subject to regular scrutiny by Her Majesty’s Inspectorate of Constabulary and Her Majesty’s Crown Prosecution Service Inspectorate. Police and prosecutorial decisions are also subject to Judicial

Review, which allows the Administrative Court to determine where, for example, policies have not been complied with or properly applied.

778. While preserving the independence of police and prosecutorial decision-making is crucial, a co-ordinated multi agency approach is essential to the success of organisations working to support complainants and prosecute perpetrators. There is also significant inter-dependency between the police and Crown Prosecution Service as well as with other departments and with non statutory organisations. These include those employing Independent Sexual Violence Advisors or providing other specialist support services aimed at addressing the needs of sexual violence complainants. It was as a result of these interdependencies that it was considered necessary to explore issues and make recommendations that did not relate solely to the activities of the Metropolitan Police Service and CPS London, but which are more wide reaching.
779. While implementation of many of this review's recommendations will be solely a matter for the Commissioner and the Director of Public Prosecutions, this process may nonetheless benefit from having the support of an independent panel of experts to assist with tackling these issues in the follow-up to the review. The concept of the National Scrutiny Panel which has played a significant role in developing and delivering the national Rape Action Plan, is one that this review commends. The panel draws on a range of expertise, including that of academics and representatives of specialist support services.
780. The review understands that planning for a Rape Scrutiny Panel (or similar) for London is already underway. This would be a positive outcome, especially if it involves the police and prosecution service working together. The review considers that the national Rape Scrutiny Panel model could be successfully adopted as a template for London, in this unique area of police and prosecutorial activity.

# Part 7 – Summary of Recommendations

## Part 2 – Understanding Rape – Reality and Perceptions

**Recommendation 1.** It is recommended that the Director of Public Prosecutions requests the government to give consideration to an amendment to the Sexual Offences Act 2003. This amendment would incorporate in the Act the principles set out in the case of Bree so that the impact of alcohol and other substances on capacity to consent is embedded in legislation.

**Recommendation 2.** It is recommended that in order to tackle the long standing gap between policy and practice, the Police and Crown Prosecution Service develop a strategy to ensure that policy and guidance on investigating and prosecuting rape is published in a way that practitioners will best be able to access and absorb. Such policy should be reinforced by relevant and effective training.

## Part 3 – The Police and Crown Prosecution Service – Current Service Provision

**Recommendation 3.** The way in which the sickness policy is applied within Sapphire should be reviewed and a preventative strategy implemented. This strategy should include an equivalent of NHS ‘clinical supervision’ for all staff so that health and welfare problems may be pro-actively identified and supported in advance of a need for sick leave. Central to this should be an evaluation of culture to ensure staff feel that they can disclose the need for help within the workplace and receive adequate support in return.

**Recommendation 4.** To avoid premature or inappropriate assumptions about the validity of a rape complaint by non specialist first response officers and to ensure that the investigation is approached with an open mind, the ‘false allegation’ section in the Crime Recording Information System template for recording rape allegations should be removed. This issue should only be dealt with by specialist Sapphire officers during the investigation.

**Recommendation 5.** The impact of the question concerning previous experience of sexual abuse in Form 124D (completed when complainants report domestic violence) be researched and reviewed to assess whether it is the most appropriate mechanism for encouraging disclosure of rape offences.

**Recommendation 6.** Given the preponderance of rape allegations during the late evening and overnight, there is a clear need for a full 24 hour service from Sapphire to provide a consistent level of service at all times.

**Recommendation 7.** The forensic integrity of the environment in which forensic examinations are undertaken should be of the same standard for suspects as it is for complainants.

**Recommendation 8.** First responders should receive adequate training to ensure understanding of the complexities of rape reporting and recording to ensure that all officers understand the rape myths and behaviours and respond to complainants in an objective and compassionate manner.

**Recommendation 9.** A new mandatory training regime relating to evidential and forensic retrieval should be created to ensure that all first responders can provide a consistent level of service to those who report rape offences. This should also apply to dealings with suspects. A mandatory system should be put in place to ensure all police vehicles carry Early Evidence Kits and seat covers. Their use should be audited.

**Recommendation 10.** The Metropolitan Police Service comfort suite estate is reviewed and a consistent quality is achieved across the estate to ensure access, cleanliness and comfort.

**Recommendation 11.** It is recommended that the number of cases categorised for 'no further action' is measured in order that there is greater transparency about the number of cases that are disposed of through this decision by the Detective Inspector or Detective Chief Inspector.

**Recommendation 12.** It is recommended that the SOIT co-ordinator role is reviewed to ensure that those Detective Sergeants responsible for this role are better able to provide SOITs with enough support and guidance.

**Recommendation 13.** It is recommended that the National Health Service undertakes an independent occupational health assessment of the SOIT officer role using their experience of managing staff within the Havens. This should identify how the role is structured to ensure conditions such as 'burnout' are prevented and staff welfare is maintained. This will enable officers to provide the appropriate support to complainants in this challenging environment.

**Recommendation 14.** The SOIT officer workforce should be urgently reviewed and increased to reflect the current and anticipated increase in demand and in line with the Occupational Health assessment as to how the role should be performed. This should be implemented forthwith.

**Recommendation 15.** Subject to Recommendation 22 and as an interim measure, the Toolkit objective of a SOIT officer responding to a complainant within one hour of a rape allegation being received by Sapphire should be reviewed to allow for the geography of London so long as staff are situated within geographical Hubs.

**Recommendation 16.** Commissioning of Havens is re-evaluated to ensure that adequate services for complainants who are not fit to consent to an examination through complications such as intoxication or mental health needs are managed so far as possible within the Haven. This would thereby support the SOIT role and needs of the complainant within one medical setting (See also Recommendation 22).

**Recommendation 17.** The role of the SOIT officer should be extended to include working within the Haven to support self-referrals, Haven enquiries and forensic process in the context of a new, extended, central Haven facility (see Recommendation 22).

**Recommendation 18.** In order to provide clinicians in the Havens with feedback on the quality of their sampling techniques, a research project should be carried out from time to time to compare forensic techniques with the outcome of the scientific analysis.

**Recommendation 19.** Improved engagement between Investigating Officers, the Crown Prosecution Service, and the Havens is recommended to ensure that Havens staff are updated, where necessary, on investigations and prosecutions and that enough warning is provided for statement requests. As far as possible trial advocates should ensure a fixed time for Haven staff to give evidence at court and consideration should be given to allowing the witness to give evidence from a new central Haven facility via live link.

**Recommendation 20.** Clinical Haven staff who give evidence in court should, as part of their development, actively seek and be provided with feedback from the trial advocate in cases where they have given evidence.

**Recommendation 21.** It is recommended that, as an interim measure, Kings College Foundation Trust along with the other relevant agencies raise the public profile of the Havens in London with a view to increasing the number of self-referrals.

**Recommendation 22.** Given the potential for significantly lowering the attrition rate and securing early and effective support for complainants, it is recommended that a fundamental review of the scope and nature of service provision at the Havens, along with the nature and location of the estate, is conducted. This would remove the exclusion of cases presenting outwith one year of the offence.

Co-location of SOIT officers and Independent Sexual Violence Advisors (ISVAs), in their own discrete accommodation at the Haven, would ensure that the Haven became the default gateway for all complainants rather than police stations. Current facilities and resources could not deliver such a service. As part of such a review, the potential benefits of a central and unified resource should be considered and evidence obtained as to whether such a centralised resource would enable greater resilience and peer review and support for the practitioners serving in a much more substantial centre with more ready access to multi-disciplinary investigative and support services.

**Recommendation 23.** It is recommended, expanding on the findings of the Stern Review, that the Government should recognise the unique and invaluable role of the Independent Sexual Violence Advisor (ISVA) and address the need for greater numbers and longer term funding in order to meet levels of demand and increase resilience.

**Recommendation 24.** It is recommended that the performance regime for Sapphire should be re-evaluated in order that charging crimes of rape is not measured in isolation. What happens to a case post-charge (attrition) and the benefits to a complainant's health and wellbeing of alternative outcomes are all valid areas of performance in which the police play a vital role. Performance measures should be designed to reflect these wider objectives. This is central to both reducing attrition and increasing confidence in complainants.

**Recommendation 25.** The review was also particularly struck by the volume of forensic demands and lack of dedicated support compared with its nearest comparator, the Homicide and Major Crime Command. Forensic science is a central theme of this crime type and therefore it is recommended that an evaluation is undertaken to determine the appropriate level of dedicated forensic support that should be provided to Sapphire.

**Recommendation 26.** It is recommended that weighting factors to reflect the scale and complexity of rape investigations are introduced for any measurement of the workloads of Sapphire officers are reflected in the allocation of cases.

**Recommendation 27.** It is recommended that a specialist rape investigators' training course and qualification should be introduced to ensure investigators are properly trained and equipped to fulfil the role.

**Recommendation 28.** The investigating workforce should be urgently reviewed and the resources increased to reflect the current and anticipated increase in demand.

**Recommendation 29.** It is recommended that there is an immediate and fundamental review of the resourcing of the Sapphire investigation teams to ensure that appropriate, additional and skilled resources are introduced to the investigation teams as soon as possible. Any increase in staffing should also take into account the need for pro-active development, mentoring and supervision by senior officers who should also have a reasonable span of management and individual workload.

**Recommendation 30.** A dedicated team of officers should be reassigned for the creation of Sexual Offences pages within the Crime Reporting Information System to ensure consistency and compliance service-wide. Additionally, an analysis should be undertaken of the current intelligence processes relating to Sapphire remit crimes to evaluate the level of intelligence support now provided in pursuit of these objectives and to ensure serial offending is effectively analysed.

**Recommendation 31.** It is recommended that resourcing of the London Rape and Serious Sexual Offences Unit is urgently addressed with a view to ensuring that caseloads and the resourcing model are adjusted to ensure the quality commitments made by the Crown Prosecution Service are realistic and achievable.

**Recommendation 32.** It is recommended that appropriate regular occupational health supervision for Crown Prosecution Service staff in the Rape and Serious Sexual Offences Unit who are dealing with

distressing casework is introduced to ensure their emotional resilience is preserved and that any support needs arising from their work can be identified and addressed.

## Part 4. The Review of Case Files

**Recommendation 33.** Given the significance of such serious cases as rape, it is recommended that the basis for the decision to discontinue should always be articulated in exact terms. The decision should specify whether the reason relates exclusively to the sufficiency of the evidence or to additional issues of credibility and reliability of the evidence in a case with an otherwise prima facie sufficiency of evidence in law.

**Recommendation 34.** Detective Inspectors carry a grave responsibility in making decisions to take no further action. In Scotland these decisions are only made by the most senior prosecutors where there is a prima facie sufficiency of evidence in law. While the preference would be for this function to be transferred to a legally qualified prosecutor, it is recognised that a wholesale transfer of these functions to the Crown Prosecution Service would not be feasible with the paucity of current resources in the Crown Prosecution Service. It is however recommended that Detective Inspectors have recourse to early advice and guidance from prosecutors on decisions of such magnitude.

In addition there is a need to embed Rape and Serious Sexual Offences Unit prosecutors in the Sapphire Hubs to allow early legal guidance and advice in difficult cases to be provided to senior officers and to ensure that the evidence gathered is focused on the presentation of a robust case in court.

**Recommendation 35.** While it is not the job of the prosecution to supervise officers in the execution of their duties or to act as substitutes for competent supervisory police officers, a considerable number of the difficulties experienced at the time of reporting to the Rape and Serious Sexual Offences Unit could be completely avoided by early and intensive discussions between the prosecutors and the relevant officers. Additionally, such early intervention allows the prosecutor to ensure that the case is prepared with a clear strategy developed for the presentation of the evidence in court.

Embedding both a senior gatekeeper police officer and a Rape and Serious Sexual Offences prosecutor in each police Hub would ensure that decisions could be taken as early as possible and that such decisions were based on sound legal principles. Such arrangements should also lead to a better understanding by both agencies of the constraints and pressures faced by the other. Access to the embedded Rape and Serious Sexual Offences Unit prosecutor should be restricted by the gatekeeper police officer or through supervising senior officers to ensure the prosecutor's role does not become confused with that of an additional supervisor and that the necessary independence of the prosecution is not eroded through co-location.

**Recommendation 36.** It is recommended that urgent steps are taken to reinforce training of police and prosecutors about the recurrent myths and stereotypes surrounding complainant behaviour during and following an alleged rape. Policy should be developed about the use of expert witnesses to address the current common lack of understanding that may lead juries to acquit.

**Recommendation 37.** A legislative provision similar to that contained in Section 275 C of the Criminal Procedure (Scotland) Act 1995, as amended, should be considered and drawn to the attention of the Attorney General. Such a provision would codify and strengthen existing common law powers to lead expert evidence to rebut any inference adverse to the complainant's credibility or reliability that may be drawn from subsequent behaviour or statements of the complainant.

Section 275 C excludes from this provision expert testimony regarding a statement or behaviour during the alleged event. It is submitted that consideration of any new legislative provision should also allow such evidence to be admitted to provide expert evidence of the range of physiological and psychological responses to trauma that may be anticipated in circumstances of acute fear or alarm. These include the autonomic freeze, flop and disassociation responses or behaviour of the complainant designed to avoid further harm.

**Recommendation 38.** It is unsurprising that the enormous workload of these units, in a category of cases that do not achieve as high a level of conviction as other crimes, has affected the outlook of the Rape and Serious Sexual Offences Unit prosecutors. The relative isolation of the lawyers and conveyor belt style of working make the role much less satisfying and effective.

It is recommended that much greater involvement with the other critical agencies, consultation in the preparation of the case at the earlier stages of the investigation, more exposure to the witnesses of fact and expert witnesses and provision of support to Counsel at the trial would make this role much more rewarding and effective. It may also allow the public to gain more insight into the huge contribution made by the Crown Prosecution Service in preparing and prosecuting these very anxious cases.

## Part 5 - Trials and the Court Process

**Recommendation 39.** It is recommended that the police, prosecutors and forensic medical examiners work jointly to:

- ensure in all cases where there is no genital injury that the evidence is presented in such a way as to avoid endorsing societal myths linking rape with injuries; and
- to revisit the question of professional/expert status of forensic medical examiners to enable them to give their best evidence in all cases and ensure equality of arms with the defence.

**Recommendation 40.** It is recommended that the police and prosecutors ensure that in all cases where there is psychological injury consideration is given to presenting evidence relating to that injury as part of the prosecution case.

**Recommendation 41.** It is recommended in relation to special measures that:

- consideration be given to amending the legislative requirements to dispense with a written application for a screen or live link, which should be a matter of right for complainants in rape cases, and
- increased use be made of existing provisions permitting a witness to give evidence in private.

## Part 6 - The Complainant's Experience

**Recommendation 42.** It is recommended that the approach to misconduct allegations within Sapphire is reviewed. This should ensure any errors which amount to misconduct are considered in the context of sustained and overwhelming work pressures and the inability to meet the investigation and review standards expected within the Toolkits and Standard Operating Procedures in every case.

**Recommendation 43.** It is recommended that training for police officers and prosecutors includes ensuring that complainants make informed decisions about their case, particularly in relation to any forensic medical examination, how their initial evidence is recorded and how it is presented at court.

**Recommendation 44.** The review was concerned at the length of time some complainants wait before receiving psychological therapy and the perception that to do otherwise would prejudice a trial. It is therefore recommended that the Police, the Crown Prosecution Service and the Department of Health re-visit the issue of pre-trial therapy to agree updated guidance and to ensure that complainants' recovery is not delayed by an unnecessarily over cautious approach.

**Recommendation 45.** It is recommended that the Metropolitan Police Service formulates an official strategy for handling reports of intelligence in relation to sexual violence in those situations where the complainant does not wish to make a formal crime report. This should include signposting complainants to specialist support services.

**Recommendation 46.** It is recommended that new additional performance measures are introduced with the aim of increasing complainants' confidence and that of the wider community by recognising the benefit to rape complainants of the specialist assistance and support they receive. Such additional outcome measures should be designed to ensure that the needs of the complainant, as well as the wider public interest, are at the centre of the process.

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Crown Prosecution Service Legal Guidance <http://www.cps.gov.uk/legal/>

Crown Prosecution Service Violence against Women and Girls Crime Reports <http://www.cps.gov.uk/publications/equality/vaw/index.html>

Crime Survey for England and Wales <http://www.crimesurvey.co.uk>

# Appendix A - Sexual Offence Crime Data (MPS total)

Metropolitan Police Service total rape and penetration offence crime data 2005 - 2015

Offence Classification	FY 05/06 Total	FY 06/07 Total	FY 07/08 Total	FY 08/09 Total	FY 09/10 Total	FY 10/11 Total	FY 11/12 Total	FY 12/13 Total	FY 13/14 Total	FY 14/15 Total*	Grand Total to Dec 2014
<b>Total allegations (initial allegations before classification which includes NC/CRIs etc)</b>											
Rape Offences	1663	3164	2698	2916	3588	4120	4282	4166	4608	3975	35180
Sexual Offences Involving Penetration	379	749	816	840	955	945	950	924	969	832	8359
Grand Total	2042	3913	3514	3756	4543	5065	5232	5090	5577	4807	43539
Annual increase	-	+47%	-10%	+6%	+21%	+11%	+3%	-3%	+10%	-	-
<b>No Crimes</b>											
Rape Offences	416	456	456	568	416	373	363	381	284	81	3794
Sexual Offences Involving Penetration	52	54	65	75	66	66	63	67	52	63	623
Grand Total	468	510	521	643	482	439	426	448	336	144	4417
Annual increase	-	+9%	+2%	+23%	-25%	-9%	0%	+5%	-25%	-	-
As a % of total allegations	22%	13%	15%	17%	11%	9%	8%	9%	6%	3%	-
<b>Allegations (confirmed allegations which were investigated)</b>											
Rape Offences	1036	2153	1848	2050	2641	3061	3210	3003	3829	3422	26253
Sexual Offences Involving Penetration	281	551	571	584	670	666	655	677	751	698	6104
Grand Total	1317	2704	2419	2634	3311	3727	3865	3680	4580	4120	32357
Annual increase	-	+105%	-10%	+9%	+26%	+13%	+4%	-5%	+24%	-	-
<b>Offences (number of offences - may be more than one on each CRIS)</b>											
Rape Offences	2348	2291	1909	2184	2841	3297	3354	3176	4192	3705	29297
Sexual Offences Involving Penetration	731	751	757	753	831	856	887	930	987	894	8377
Grand Total	3079	3042	2666	2937	3672	4153	4241	4106	5179	4599	37674
Annual increase	-	-1%	-12%	+10%	+25%	+13%	+2%	-3%	+26%	-	-
<b>Detections</b>											
Rape Offences	702	756	635	731	682	617	556	642	779	456	6556
Sexual Offences Involving Penetration	134	171	134	166	139	141	165	185	203	139	1577
Grand Total	836	927	769	897	821	758	721	827	982	595	8133
Annual increase	-	+11%	-17%	+17%	-8%	-8%	-5%	+15%	+19%	-	-

\*9 months to  
Dec 2014

# Appendix B - Sexual Offence Crime Data (Sapphire remit total)

## Sapphire total rape and penetration offence crime data 2009 - 2015

Offence Classification	FY 09/10 Total	FY 10/11 Total	FY 11/12 Total	FY 12/13 Total	FY 13/14 Total	FY 14/15 Total*	Grand Total to Dec 2014
<b>Sapphire Only: Total allegations (initial allegations before classification which includes NC/CRIS etc)</b>							
Rape Offences	2089	3395	3585	3410	3790	3249	19,518
Sexual Offences Involving Penetration	346	494	533	518	473	440	2,804
Grand Total	2435	3889	4118	3928	4263	3689	22,322
Annual increase	-	59.7%	5.8%	-4.6%	8.5%	-	
<b>Sapphire Only: No Crimes</b>							
Rape Offences	147	286	334	315	268	87	1,437
Sexual Offences Involving Penetration	19	39	42	37	29	12	178
Grand Total	166	325	376	352	297	99	1,615
Annual increase	-	96%	16%	-6%	-16%	-	
As a % of total allegations							
<b>Sapphire Only: Allegations (confirmed allegations which were investigated)</b>							
Rape Offences	1676	2620	2753	2495	3238	2919	15,701
Sexual Offences Involving Penetration	276	394	424	421	422	404	2,341
Grand Total	1952	3014	3177	2916	3660	3323	18,042
Annual increase	-	54%	5%	-8%	25%	-	
<b>Sapphire Only: Offences (number of offences - may be more than one on each CRIS)</b>							
Rape Offences	1838	2835	2920	2629	3524	3169	16,915
Sexual Offences Involving Penetration	354	524	571	582	559	500	3,090
Grand Total	2192	3359	3491	3211	4083	3669	20,005
Annual increase	-	53%	4%	-8%	27%	-	
<b>Sapphire Only: Detections</b>							
Rape Offences	234	441	375	448	517	337	2,352
Sexual Offences Involving Penetration	39	79	88	108	104	65	483
Grand Total	273	520	463	556	621	402	2,835
Annual increase	-	90%	-11%	20%	12%	-	

\*9 months to  
Dec 2014