

## Operation Soteria: Improving CPS Responses to Rape Complaints and Complainants

### Interim Findings from Independent Academic Research, April 2023

Alice King, Vanessa E. Munro & Lotte Young Andrade, University of Warwick

This interim report represents a working document containing live findings of our independent research into CPS Operation Soteria measures. As such, please note that there may be a degree of fluidity as we continue to gather data, refine and extend our analyses, and compile the final project report. Though this interim report can be cited and quoted from with appropriate attribution, it should be read in conjunction with that forthcoming final report, within which there will also be a greater opportunity to contextualise our findings in the wider literature regarding contemporary mechanisms for RASSO investigation and prosecution.

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## 1. Background to the Research

The adequacy of criminal justice responses to rape complaints and complainants has been the subject of considerable scrutiny - nationally and internationally - over many decades. In England and Wales, recent years have been marked by a significant rise in the number of rapes being reported to police. The charge rate has not, however, kept pace with this increase: indeed, it has been in marked decline. Alongside concern over such attrition, the timeliness of investigations and charging decisions, and substantial delays experienced in cases coming to trial, have raised further difficult questions about justice for victims of sexual violence.

Across both phases of its *Joint Thematic Inspections of the Police and CPS's Response to Rape*, published in 2021 and 2022, the HMICFRS and HMCPSI were clear: they concluded that the criminal justice system's response to rape lacked focus, and that justice personnel were too often driven by a mindset in which rape cases are seen as "really difficult", creating and justifying a "more cautious...approach" than that adopted in relation to other types of offence (CJI, 2021: 2). The Sexual Offences Act 2003 had shifted the legislative landscape to establish a series of evidential presumptions of non-consent, and to require that any belief in consent maintained by the accused meet a reasonableness threshold, in light of consideration of any steps they had taken to ascertain consent. Nonetheless, the inspectorates concluded that an imbalance remained towards the greater scrutiny of complainants' conduct and credibility over that of suspects', which fed into a pattern of "some investigators and prosecutors focussing on fully exploring all the weaknesses in a case, rather than on building strong cases" (CJI, 2021: 2). As a result, they called for "an urgent, profound and fundamental shift in how cases are investigated and prosecuted" (CJI, 2021: 2). In furtherance of that, they highlighted the need for substantial improvement in partnership working between police and CPS, with use of specialist training to facilitate a victim-centred approach, and a commitment to building strong cases through rigorous and targeted investigative strategy, and consistent decision-making.

In a similar, though somewhat less critical vein, the 2019 *Thematic Review of Rape Cases*, undertaken by HMCPSI, likewise raised concerns about increased delays in charging, often precipitated by more extensive and protracted police investigations, and recommended as a priority the development of better procedures for communication, partnership working (including around early advice), and escalation between police and CPS in rape cases. This can be situated alongside a separate HMCPSI review, published in 2020, into the *Victim Communication and Liaison Scheme*, which raised concerns over the timeliness of letters sent by the CPS to victims, the sufficiency of explanation for decisions provided therein, the level of empathy exhibited in the tone and phrasing of such explanations, and the extent to which they were appropriately tailored to enable the recipient to understand their content. Though not specific to communication in RASSO cases, this review indicated that letters in rape and serious sexual offence cases were more likely to be rated as unclear than in other types of cases, with re-use of standard paragraphs or over-reliance on legal 'jargon', and that the levels of empathy were likely to be lower, notwithstanding this being a context where empathy is key.

A consistent theme across these reviews, then, has been the importance - but also absence - of a 'whole-system' and 'co-ordinated' approach to responding to rape complaints and complainants. In this context, the ambition reflected in the title of the Government's *End to End Rape Review* is clearly apposite. Published in 2021, but accompanied by subsequent annual updates, this Review was intended to gather existing evidence regarding the reporting, investigation, prosecution and conviction of adult rape offences in England and Wales, to identify primary causes of the ongoing and widening 'justice gap' in this context, and to develop a strategy to drive improvement with stakeholder accountability for securing change. The Report concluded that, while the reasons for the decline in the percentage of reported cases reaching court were complex and wide-ranging, they required to be acknowledged and tackled, and the trend reversed, with improved treatment of victims regardless of case outcome also being an operational priority. In concrete terms, the Review set out an ambition to return the volume of rape cases being referred by police, and subsequently charged by CPS, to levels corresponding to a 2016 baseline in the current Parliament. It echoed the need for a rebalancing in investigative strategy to ensure a more robust assessment of the behaviour of the suspect, and committed agencies to ensuring that recovery of victims' private data or digital material would be restricted to that which is relevant and proportionate in pursuit of reasonable lines of inquiry. Again, it was underscored that this would require more effective partnership working between police and the CPS, including better processes for and increased availability of early advice, as well as greater collaboration in respect of disclosure strategy, suspect-focussed lines of inquiry, and mechanisms to challenge myths or stereotypes in case-building. All of this was to be accompanied by a commitment to increased transparency and accountability, including through greater scrutiny of decision-making and the periodic publishing of 'rape scorecards'.

The acute need to improve victim and public confidence in this arena has thus been widely recognised. The scale of the challenge in this respect ought not to be understated, however. Indeed, alongside the various reviews of operational policy and practice in regard to rape complaints within criminal justice institutions, a substantial body of recent evidence has also documented alarmingly low levels of confidence amongst victim-survivors and the general public. This is by no means restricted to sexual offences – for example, a 2021 survey by the Victims' Commissioner, which asked for views across all offence types, reported that 88% of victim-survivors lacked confidence in the effectiveness of the criminal justice system and 85% in its fairness (VCO, 2021: 8). However, within this wider survey, many of the most striking free text responses articulating participants' reasons for this lack of confidence involved victim-survivors of domestic and / or sexual abuse. Moreover, data collected specifically from victim-survivors of sexual offences also bears this out. In an earlier study for the Victims' Commissioner, which focussed exclusively on this cohort, anxiety regarding the prospects of being believed by police had been listed as a very important (74%) or important (21%) factor in their decision not to report (Molina & Poppleton, 2020: 11). Meanwhile, 88% said it was either very important or important that they did not feel their case would be successful because of their gender, sexuality, or what the survey referred to as their 'lifestyle'; and 84% said it was either very important or important that they had heard negative things about sexual offence trials and were hesitant to put themselves through that process (Molina & Poppleton, 2020: 11). These results were supplemented with free-text responses, many of which demonstrated this conscious calculation of confidence in the process and its outcomes versus risks and re-traumatisation: as one respondent put it, for example, "my whole life and

identity would have been ripped apart and scrutinised and there would have been a 0% chance of him getting prosecuted” (Molina & Poppleton, 2020: 13). Though 92% of respondents in this survey were female, similar anxieties dominate surveys undertaken with male victim-survivors. Of the 505 gay and bisexual men who completed a survey distributed by Survivors UK, 263 indicated they had experienced sexual assault, but only 16% reported that they felt they could speak to the police about it, with a smaller percentage (14%) having made a formal complaint. Of those who had done so, while 24% said they felt the complaint was taken seriously and 36% felt supported in the process, 27% said they felt judged, 24% that their complaint was not taken seriously, and 20% that they were disbelieved (Thompson & Beresford, 2021: 24). Similar concerns were voiced powerfully in a series of 26 survivor interviews (23 females, 2 male and 1 non-binary) undertaken for, and documented in, the Joint HMICFRS and HMCPSI *Thematic Review*, as a consequence of which the authors concluded that much of survivors’ trepidation regarding initial and ongoing cooperation with the criminal justice system was influenced by scepticism about, and poor perceptions of, both the process and its personnel (CJJI, 2021: 20).

This, then, is the context against which Operation Soteria has been designed and implemented. Reflecting an ambitious programme of activity across police and CPS, it aims to develop sustainable and systemic improvements that will ensure better handling and outcomes in adult rape cases. In many respects, Soteria initiatives represent an extension of activities and commitments already underway in response to the recommendations of the reviews cited above (and indeed several of their comparably critical predecessors). For example, to the extent that these reviews have highlighted the need for more effective partnerships across police and CPS, clearer mechanisms to ensure oversight and scrutiny of case progression, and better communication with and empathy towards rape complainants throughout their justice journeys, the Joint National Action Plan (JNAP) between police and CPS in England and Wales had already begun to provide important foundational infrastructure in support of this. In 2021, this JNAP set out shared strategic ambitions for the next three years, with a commitment to evaluation and evolution as required throughout that period. Amongst other things, it committed to improving police and prosecutorial understanding of the impact of trauma, ensuring more timely and sensitive communication with victims, and working in more effective partnership with ISVAs to support complainants in giving their best evidence. It also undertook to embed better practice in relation to early investigative advice, subject charging decision-making to increased scrutiny, and improve processes for monitoring and escalating (lack of) progression in investigations. Specific commitments were also made around better guidance on balancing the needs of an investigation with the right to privacy in respect of digital or third-party material, and piloting a more suspect-focussed investigation model. Likewise, the CPS RASSO Strategy, produced in 2020 to guide priorities over the next 5 years, committed to improving the gathering and use of performance data, strengthening collaborative partnerships with police at local and national level, increasing engagement with specialist third sector organisations, ensuring the proportionality of Action Plans and monitoring the timeliness with which they are completed, and increasing confidence by ensuring greater transparency regarding how the CPS operates and the basis upon which it makes its charging decisions.

Thus, Soteria initiatives can be seen as a continuation of a process already underway to radically overhaul core components of how rape cases are responded to and evaluated by

criminal justice professionals, both individually and organisationally. At the same time, the galvanising impact of the *End to End Rape Review*, in dictating the increased pace, scope and scrutiny of that change under the banner of Operation Soteria has also clearly been substantial. Within policing, there has been an extended programme of activity, focussed initially within 4 pathfinder forces, but expanding now rapidly across England and Wales, that has been designed to improve victim liaison, drive suspect-focussed investigation techniques, increase effective partnership working with CPS, identify training and development needs, improve the collection and use of data to inform practice, and ensure targeted and effective digital strategies. Alongside this, a series of pilot activities have also been undertaken across five CPS pathfinder areas, focussed around six priority workstreams. These pathfinder areas are geographically diverse, with a mixed composition of more urban and more rural populations, and ranging levels of ethnic and cultural diversity across local communities. They vary in unit size and average volume of RASSO caseloads, in the number of police forces from whom they would typically expect to receive referrals as well as the extent to which those different forces have been integrated into Soteria pilots, and the scale, structure and adequacy of ISVA provision in their locality. The impact of these variables, in terms of the choice and success of CPS pathfinders' Soteria initiatives, will be discussed in due course – it is apparent, for example, that areas with lesser case volumes or more concentrated networks of stakeholders are likely to be better able to capitalise on pre-existing partnerships or invest in building new relationships. All pathfinder areas benefitted from an uplift in dedicated resource to support Soteria activities, although resourcing continues to be perceived as a substantial challenge.

The six workstreams identified by the CPS were designed to dovetail with policing foci, whilst reflecting its distinctive prosecutorial role, remit, and organisational structure. Though envisaged as a series of complementary initiatives that would facilitate holistic improvement, each workstream is also grounded in its own specific rationale. Firstly, in respect of Early Partnership working, the aim is to build stronger investigations and prosecutions with shared development of reasonable lines of inquiry and proportionate approaches to digital and third-party material, that in turn will support increased (and more timely) referrals by police, improved file quality and higher charge volumes by CPS. To address concerns about the consistency and quality of progression decision-making, the NFA Scrutiny workstream aims to improve confidence by bringing to light case decisions via review by external stakeholders, increasing transparency and accountability, and creating greater opportunity to identify and share learning to facilitate continuous improvement, for example in disapplying myths and stereotypes or maintaining a focus on the suspect's behaviour in assessing credibility and culpability. Meanwhile, the aim of the Action Plan Monitoring workstream is to improve the timeliness with which rape complaints are investigated and progressed, including by ensuring proportionate inquiries and effective mechanisms for task management and escalation where cases stagnate. Relatedly, activities under the Case Progression and Trial Readiness workstream are targeted towards timely and effective handling of cases to ensure fewer adjournments at pre-trial stage, as well as improving overall trial strategy and preparedness. In the context of the profound lack of victim confidence in the criminal justice process evidenced in the surveys and reviews mentioned above, the penultimate workstream of CPS Operation Soteria identifies the need to improve victim (and public) confidence, both by improving communication with complainants throughout the process and developing more effective partnerships with third sector specialist organisations and ISVAs, which it is also

anticipated will reduce the risk of victim withdrawal and support the giving of best evidence. Finally, the Our People workstream recognises the importance of ensuring RASSO units are appropriately resourced with what the CPS describe as “well-trained, motivated and resilient” staff, and commits to the review of training pathways, wellbeing offers and learning and development.

This report will outline key findings in relation to activities undertaken across these workstreams within CPS pathfinder areas, exploring the extent to which they have been - or are likely to be - successful in achieving change of the nature and scale roundly acknowledged to be required. It does so against a backdrop in which interviews with CPS personnel, of varying seniority, frequently underscored their acceptance of the need for this substantial change, and their ambition to not only meet, but exceed, targets set in the *End to End Rape Review*. More specifically, whilst several interviewees referred to the “halcyon days” (CPS 1) of the volume and charge levels reflected in the 2016 baseline as providing a context for the implementation of Operation Soteria, there was a wide recognition that simply returning to this would not be sufficient, and that more needed to be done to bring enduring change: as one put it, “the focus has been on how do we increase referrals from police to CPS and CPS charging cases because of that big drop from 2016, but it needs to be wider than that” (CPS 2). Though keen to underscore that there had been some important progress over time in the handling of rape complaints (with several pointing, in particular, to the evolution of special measures), interviewees were also under little illusion regarding the substantial decline in public confidence, often precipitated by high-profile cases. Indeed, several acknowledged that “we’ve got an awful long way to go” (CPS 6) and “a huge amount of work” still to do (CPS 1).

The impact of budget cuts, retraction of police specialism in relation to rape and serious sexual assault, rise in digital evidence and lack of effective oversight mechanisms to facilitate case management were all identified by CPS personnel as contributory factors in precipitating declining rates of case progression, increasing the length of investigations, jeopardising victim engagement, and agitating partnerships across criminal justice and third sector organisations. Indeed, as one interviewee put it, the relationship between police and prosecutors had become “completely fractured”, whilst levels of trust between the CPS and the third sector had been “lost” as a result of a lack of transparency around operational decision-making (CPS 2). In this context, participants articulated the aims of Operation Soteria variously in terms of “increasing volume” and “improving the quality and number of prosecutions” (CPS 1), “faster, better, more challenges, better outcomes” (CPS 13), making “the right decisions and making them as quickly as possible” (CPS 6), changing “how we talk about this crime and consequences for it” (CPS 13), “increasing public confidence” (CPS 3), or improving “the journey of victims through the criminal justice process” (CPS 6) and “the way we interact with the victim” (CPS 1). Several observed, moreover, that while the focus on referral and charge volumes was important, “public confidence comes in many guises and it’s not just about numbers” (CPS 14). As another put it, alongside a focus on conviction rates, “success could take a number of forms” (CPS 35): it involves “engagement with our victims” (CPS 9) and “how the victim feels as a result” (CPS 44). Significantly, moreover, some CPS participants identified a sense of opportunity, more palpable than they had felt in the organisation for some time, to drive sustainable change around sexual offences: one recounted how “for years, I was asked to [join] the RASSO team and I wouldn’t because I always said I didn’t think I could make



a difference. But under Operation Soteria, when I had the choice, I moved into RASSO...because actually I think we can make a difference now, if we're ever going to change, it's now" (CPS 6).

That ambition is certainly reflected in the rhetoric of the workstreams outlined above, but as we will demonstrate in this report, a clear-sighted evaluation of the extent to which they have been, or are capable of being, realised 'on the ground' is complicated by a range of factors. One such factor relates to timescales: systemic transformation that is embedded robustly in policy, practice and organisational culture takes time, and within that broader temporal landscape the activities undertaken to date under Operation Soteria are still embryonic. Their design, implementation and evaluation has, moreover, been truncated into timeframes shorter than the duration of many rape complainants' criminal justice journeys, meaning that even early indications of end-to-end effects cannot be reliably ascertained. As one interviewee put it, while "the government and the public are really keen for us to deliver in, you know, what in criminal justice terms are very short timescales...We are in a post-pandemic recovery period...(and) the life of a case now has extended significantly...it's going to take years for these cases to work through" (CPS 1). A further complicating factor is that CPS pathfinders were encouraged to trial different mechanisms and formats under Soteria (for example, in relation to provision of Early Advice), and to prioritise activities across the workstreams on the basis of their localised assessments of where change was most needed and most achievable. As one interviewee put it, Soteria is "about trialling and looking at things that may or may not work, giving it a go...the point is that different people are trying different things and let's see what we can get as best practice" (CPS 7); whilst another emphasised that "we've linked in nationally and tried to do things that were different to what other areas were testing, just to ensure we could test as wide a range of initiatives as possible" (CPS 11). The logic behind such regional variation was to expedite learning in relation to what works, and what does not work, within tight timescales. However, as we discuss, this can also make it difficult to establish clear baselines for comparison, and to confidently predict what will 'scale up' most effectively at national level in a context in which, as CPS 1 put it, "consistency is critical to national public confidence" but "it's really tough to deliver because of the environment being so different."

In addition, it is clear that, even where they are performing maximally, the initiatives identified to date under both the policing and CPS strands of Operation Soteria cannot of themselves generate the 'whole system' reform in the handling of rape cases that recent reviews and diminishing levels of victim and public confidence arguably indicate is required. Understandably perhaps, the primary focus of many Soteria initiatives has been on early-stage investigation, case building, partnership working and charge decision-making. The importance of those things cannot be understated, and their potential to shift the tone and content of subsequent trial experience is also significant. At the same time, as we reflect on throughout this report, there are factors beyond these parameters, including restricted court capacity, the appropriateness and adequacy of judicial and barrister training, and at its most fundamental the adversarial dynamics of the criminal trial, that may impinge on the potential for holistic and radical change. The challenges, often associated with being "stuck in the middle" of the justice process (CPS 3), were identified by a number of interviewees, who expressed concern that "the CPS are the jam in the middle of the sandwich...on your own, you can't change things" (CPS 6). Some also reflected that, to the extent that the end point of

the justice journey is envisaged to be the criminal trial, there must be confrontation with the inherent nature of “an adversarial system which means it’s never going to be...a good experience” for complainants (CPS 2).

Finally, before turning to the methods used in this research, it is important to observe that – as with any non-clinical context – initiatives under Operation Soteria have been designed and operationalised in a live environment, influenced in complicated ways by a range of factors. Amongst the most obvious of these in the current context is the advent of the Covid-19 pandemic which compelled changes to working practices within organisations (including greater use of video conferencing and remote communication) at an unprecedented rate, with tangible impacts on the reporting, investigation, and progression of RASSO cases (JICSAV, 2022). Though it is likely that lessons from that pandemic shift coalesced with initiatives under Soteria to increase early partnership working across police and CPS through use of online conference calls, etc., it is impossible to discern with any clarity which was the key driver. It is also important here to underscore that the learnings from Soteria must be understood to mark a stage in the evolution towards substantial and systemic change rather than any purported end point. There is inevitably more work to be done not only to embed and refine initiatives and gather more robust and reliable evidence upon which to ground continuous improvement, but also to expand the insights from Soteria to benefit a wider range of stakeholders. In particular, it is important to note the restricted focus currently on adult rape complainants, and the considerable need to engage with similar urgency to understand and improve the experiences of minors who make complaints of rape or serious sexual assault to criminal justice agencies.

## 2. Methods & Data

The CPS onboarded the research team to conduct this work independently of its own internal review and evaluation processes in July 2022. A large academic team had been involved in the development and evaluation of activities within the policing strand of Soteria for some time prior to this, and it was clear from the outset that the parameters and scale of the current research would be quite different. Specifically, this CPS research does not start from a pre-Soteria baseline in the same way and does not purport to provide an evaluation in any strict sense. It has been undertaken in tight timescales, with the period from July to September 2022 being focussed primarily around a literature review of academic and policy materials, external inspectorate and practice reviews, and internal operational materials and trackers, alongside a small series of scoping interviews with senior CPS colleagues. The purpose of these initial activities was to gain a clearer sense of the aims of, and challenges facing, Soteria from a CPS perspective and to better understand the nature of pilot activities underway across pathfinder areas. Data collection in relation to practice ‘on the ground’ commenced in October 2022, and this report represents our interim findings based on the dataset so far. Though we expect that the findings here will, in many respects, give a good indication of the broad texture of our ultimate conclusions, our final report is not scheduled for completion until autumn 2023, and there is – as we will discuss below – further analysis and data collection to be undertaken.

Reflecting the timescales and resources available, this research is also relatively targeted in its parameters and methods. More specifically, without undermining the potential importance of activities undertaken outside of the CPS’s pathfinder areas, our analysis is restricted to these five sites, and does not include the sixth pathfinder area that was onboarded at a later stage. It has also been designed from the outset to focus on gaining a textured, in-depth qualitative understanding of activities through detailed one-to-one interviews, fieldwork observations and analysis of case files. Though its findings should be read in conjunction with the quantitative measures that inform performance metrics, many of which have been considered within CPS internal evaluations, its primary focus is less on tracking increases in referral rates or positive charge decisions, for example, and more on understanding the factors that facilitate effective partnership working; the adequacy of decision-making in relation to lines of inquiry, disclosure and case progression; and the barriers to improvement at the individual and organisational level. It has also not been the researchers’ role to become directly involved in the development and design of products to be contained within the National Operating Model, though we have been involved in regularly communicating our findings to those tasked with that role and have worked collaboratively wherever possible with the policing academic team to support this.

We have benefitted throughout this research process by the involvement and input of an Advisory Group, with membership spanning policing, CPS, third sector, academic, barrister and judicial expertise. To date, this Advisory Group has met to discuss the initial scope and design of the research, to provide feedback on some earlier in progress findings, and to review key findings documented in this report. We will hold at least one further meeting with this Group before our final report is submitted in autumn 2023. We are immensely grateful to all who have participated on this Group for sharing their reflections on the research at key stages. We would also like to acknowledge here our thanks and indebtedness to all those who

have taken part in the research to date, and those who assisted us in recruitment or accessing of data.

In the remainder of this section, we will give a brief overview of the types of data that have been collected and analysed to date in this research. We will provide an account of recruitment and sampling, as well as some reflections on the strengths and limitations of those data sources, which we consider it important to bear in mind as we move on to discuss our interim findings.

### Operational Materials and Soteria ‘Trackers’

As intimated above, alongside a literature review spanning a substantial body of existing academic and policy material, and external inspectorate and practice reviews, the researchers were provided with access by CPS policy colleagues to a range of internal materials, including RASSO training manuals, Memorandums of Understanding in respect of Early Advice pilots, and entries provided by pathfinder areas into monthly Soteria trackers (dating back in some areas to August 2021). These trackers were particularly helpful in the early stages of the research in clarifying the range of activities - and parameters of their operation - within each pathfinder area, given that regional variability was a deliberate feature of CPS Soteria plans. When we commenced the work, it was not clear that a comprehensive overview of such activities existed, and piecing this together was an important, albeit laborious, first step. Across the remaining sections of this report, we have continued to rely at times on information contained in those trackers, but it is important to underscore that these tracker documents were not always easy to interpret or navigate, with apparent inconsistencies in pathfinder areas’ entries across time, and imprecise use of language and data. It is necessary to bear in mind too that they were completed for a particular monitoring purpose and that, in this context, some pathfinder areas provided substantially less detailed entries than others. We also benefitted in some cases from supplementary materials that reported on local-level evaluations of specific Soteria activities that were undertaken in some pathfinder areas, but again the availability of this information was patchy and typically more forthcoming from those pathfinders in relation to which we already had the clearest insight into their activities via fulsome tracker entries.

### Interviews

In order to gain greater insight into how the activities documented in trackers were being operationalised, and what impact they were having ‘on the ground’ in terms of changing practice, outcomes and experiences, we undertook a series of semi-structured interviews with key stakeholders. Interviews were conducted online via Teams and were audio (and typically, video) recorded for subsequent transcription by a professional service on a confidential basis. Interviews were conducted on a one-to-one basis, lasting on average 60 minutes, and using a schedule that was designed to take participants through key themes in the research, via a series of open questions that prompted reflections from participants in a sufficiently flexible manner to allow them to place emphasis where they considered most important or to draw upon wider insights or experiences. The schedule was modified slightly to accommodate different stakeholder cohorts but in all cases followed the same broad structure: asking participants first to describe their job role and key stages of their

involvement in rape cases, then to explore what they considered success to look like in terms of the handling of rape complaints, what changes they had experienced over time in the ways in which complaints were handled, and how they understood the aims and objectives of Soteria. Thereafter, participants were led through a series of topics that focussed on the particular objectives of Soteria workstreams, namely their experiences of partnership working; their use or perceptions regarding the value of Early Advice, in particular in terms of setting parameters for investigations; the criteria to be applied in making decisions regarding case progression and the quality and consistency of that decision-making; what they consider to be the markers of a well-prepared case for trial and their engagement with instructed counsel in rape cases; how they would describe their involvement with complainants and what they understand to be the appropriate roles of different professionals in supporting victims; what they consider to be the most rewarding and challenging aspects of performing their job role; and whether there are changes beyond Soteria as currently designed that they feel would be required in order to ensure meaningful change.

In total, we have conducted 124 interviews to date. Of these, 58 have been with individuals employed within the CPS across a range of roles and levels of seniority. The majority of these CPS participants have been RASSO lawyers, of varying experience, including legal managers. In addition, however, we have spoken across the pathfinder areas with a number of paralegal officers, case progression and operational business managers, and – where relevant - victim liaison officers, as well as conducting a small number of interviews with national level CPS personnel. Within pathfinder areas, a mixed approach to recruitment of CPS interviewees was undertaken. In some areas, an open call for participation was made with volunteers making themselves known to unit leads, who then passed on contact information to us for scheduling discussions. In other areas, following the open call, willing participants were asked to simply make contact with the research team directly and, to the best of our knowledge, unit leads were not aware in those instances who had put themselves forward. In most areas, though, this open approach was also combined with some more targeted recruitment whereby a smaller subset of individuals with specific roles or responsibilities were identified by unit leads and put forward to us for potential participation. To the extent that this means that CPS interviewees were not entirely self-selecting, it is important to bear in mind; equally, this was required to allow us to best capture a range of experiences and insights from across the respective RASSO teams.

Alongside CPS colleagues, we have also undertaken 33 interviews with counterparts in policing. Again, police interviews have spanned levels of seniority and while we have not had interview input from every individual force that feeds into the CPS pathfinder areas, we have ensured a mixed representation usually involving more than one force within each area and a cross-sample of established Soteria forces, recent expansion forces and yet-to-be expansion forces. Though the focus of our discussions with police was more tailored to their interactions with the CPS, our data from the police interviews should be read in conjunction with wider findings from the policing Soteria research team (Stanko, 2023). We have also undertaken 27 interviews to date with third sector professionals who either work as ISVAs or run ISVA services within the CPS pathfinder areas. As with CPS participants, recruitment for both police and ISVA cohorts in the research involved a mixed approach – in the first instance, we asked RASSO unit leads in each area to provide us with the contact details for their counterparts in policing in all relevant local forces, and for names of ISVA services (or individual ISVAs) that

they tended to work with most frequently. We then made direct approaches to policing contacts, requesting that they circulate the call for participation to the most appropriate colleagues, as a consequence of which we were then contacted by interested parties to schedule discussions. In relation to one force, we had to adopt a different route to making our initial contact at senior level, since we had not managed to secure contact details directly from the CPS unit lead. Likewise, in relation to ISVAs, some unit leads provided individual points of contact, but in most cases, they provided us with the names of services and we reached out from there to a cross-section (trying to ensure at least some representation from ‘by and for’ services, and those that provided specialist support to, for example, victim-survivors in LGBTQI+ communities). Though we faced a degree of challenge in recruiting these cohorts for interview, in some instances attributed by contacts (particularly in policing) to ‘Soteria research fatigue’, in the end we have achieved a strong representation of views from within these constituencies and secured a good cross-section of participation spanning each of the five CPS pathfinder areas.

To date, we have only conducted a smaller number of interviews (n=6) with RASSO barristers. Though it was never the intention of the research team to conduct interviews with this cohort on the same scale as other stakeholders, we believe that it is important that counsels’ insights into partnership working, trial strategy and victim support inform the findings of this research, as well as the development of CPS activity in and beyond Soteria more broadly. As such, in the next phase of the research, we will be re-doubling our efforts to recruit additional interviewees from this cohort and envisage the benefits from this being clear in the final report.

Interviews To Date	Completed
<p><b>CPS</b> Includes lawyers of varying seniority &amp; experience in RASSO, paralegal officers and case progression managers</p>	<p><b>Total = 58</b> National = 6 Area A = 9 Area B = 13 Area C = 9 Area D = 9 Area E = 10 Other Areas = 2</p>
<p><b>Police</b> Includes officers of varying rank &amp; experience, across a mix of Soteria and non-Soteria forces in each CPS area</p>	<p><b>Total = 33</b> Area A = 6 Area B = 7 Area C = 4 Area D = 7 Area E = 9</p>

<b>ISVAs</b> Includes frontline ISVAs and Service Managers, from a range of services across each CPS area	<b>Total = 27</b> Area A = 5 Area B = 8 Area C = 4 Area D = 5 Area E = 5
<b>Barristers</b>	<b>Total = 6</b> Area A = 4 Area B = 1 Area C = 0 Area D = 0 Area E = 1

### Observations

Though the interviews have provided extremely helpful insight into activities, successes, and challenges under Soteria, it was important in this research to seek to triangulate and test perspectives shared during interviews with observation of ‘on the ground’ CPS practice. In order to do so, the research team have – to date - observed a sample of 31 Advice Discussions, where a police officer and CPS lawyer consider investigative and prosecutorial strategy in a case at an early stage. The majority of these have fallen under the banner of ‘Early Advice’ pilots (n=28), although we have included in this cohort a small number (n=3) of Pre-Charge Decision discussions that have similarly been conducted in person by the lawyer and OIC. In addition, we have observed 11 Scrutiny Panels (spanning NFA Panels and RASSO-focused Local Scrutiny & Involvement or Multi-Agency Panels), sat in on forums designed more broadly to facilitate CPS / ISVA communication (n=5), and attended 4 RASSO training events.

While identification and attendance at the RASSO training events was facilitated centrally by policy colleagues within the CPS, observation of the other forums outlined above was dependent on pathfinder area unit leads (or occasionally individual lawyers within units) drawing the meetings to our attention and assisting us in organising attendance, including by seeking prior permission from the police in relation to Early Advice and PCD discussions. As with the identification of CPS colleagues for interview, some areas have been more proactive in facilitating such observations than others and differences in how RASSO units organise their EA provision, or the format and frequency with which they undertake scrutiny activities, means that there is still a degree of regional ‘patchiness’ to our observation sample that we hope to be able to further redress in the next phase of our data collection. It is also important to note from the outset that the level of information that we were provided with as a research team ahead of our observations varied significantly across areas – for example, in some areas, we received redacted case file data ahead of NFA panels and copies of the MG3 ahead of EA observations whilst in other areas we were not provided with paperwork in advance at all. Where the latter occurred, most lawyers took an opportunity at the start of the Advice observation or Scrutiny discussion to give a brief overview of the case and the issues at hand, but this was not universally the approach taken; and in some instances, the research team

had to make sense of the case in the moment, evaluating advice given or decision-making with only partial insight.

There was also significant variability in the time diarised for Advice discussions across areas, as well as in their actual duration, with some observations being completed within a matter of minutes, most being in the range of 30-40 minutes, and some extending to more than an hour. Though over the duration of the research, some in person Scrutiny panels had been scheduled, they were subsequently either cancelled (a pattern that we will reflect on further below) or moved to an online format. As a result, thus far, all Advice and Scrutiny observations have been via Teams, though ISVA forums / panels have involved a mix of online and in person.

In a context in which, as we discuss below, CPS initiatives under Soteria have included more routine offering of ‘familiarisation meetings’ with complainants after a charge has been authorised, we had hoped to observe a small number of such interactions to better understand the nature and quality of lawyers’ direct engagement with victims. To date, this has not been possible, due to a combination of what pathfinder areas have indicated has been a relatively low uptake on such meetings and a decision on the part of the research team, for ethical reasons, to restrict our observations to cases in which the complainant was in receipt of ISVA support. In the absence of these observations, we have explored ISVAs’ and lawyers’ perceptions of familiarisation meetings in the wider context of reflections around CPS/victim communication.

It would not have been appropriate for the researchers to record any of the observations that we have undertaken. As a result, we rely here on notes that were taken contemporaneously. Though these do not record verbatim for the entirety of proceedings, they do capture verbatim extracts, and overall provide a comprehensive account of the content of discussions, together with observations in field notes about the dynamics and tone of the meeting. Any identifying information was removed from those notes before they were saved securely in our dataset.

Observations To Date	Completed
<p><b>Advice</b> Includes Early Advice and Pre-Charge Decision Meetings held between CPS Lawyer and Police Officer</p>	<p><b>Total = 31</b> Area A = 7 Area B = 7 Area C = 8 Area D = 2 Area E = 7</p>



<p><b>Scrutiny</b> Includes NFA Scrutiny and RASSO-focussed Local Scrutiny &amp; Involvement or Multi-Agency Panels, at which decisions made in selected cases are reviewed</p>	<p><b>Total = 11</b> Area A = 1 Area B = 0 Area C = 6 Area D = 0 Area E = 4</p>
<p><b>Forum</b> Includes ISVA Forums and Panels held by CPS at which wider issues regarding management of RASSO (c.f. a focus on scrutiny of specific decisions) are discussed</p>	<p><b>Total = 5</b> Area A = 1 Area B = 0 Area C = 2 Area D = 1 Area E = 1</p>
<p><b>Training</b></p>	<p><b>Total = 4</b></p>

### Case Files

Alongside these observations, the researchers have also had access to a small number of CPS case files. It was never our intention to undertake case file analysis across a large or potentially representative sample: apart from anything else, the timescales within which the work required to be completed, as well as the primary focus on qualitative over quantitative analysis, entailed that this would not be appropriate. Furthermore, internal stakeholders within the CPS are better positioned to gather and analyse data on case performance and outcomes on this larger scale. That said, it had initially been envisaged that the research would benefit from close engagement with the content of a greater number of case files (n=50) than has ultimately been possible. Due to unanticipated delays and costs in the redaction of case files, we have only been able to review a total of 24 full case files, of which – to date – we have completed detailed analysis of half of these files. We will prioritise completion of the analysis of the remaining case files in the coming months, so that the full insights from that sample are included in the final report.

The case files within our sample were selected at random, following a request from central CPS colleagues on 23<sup>rd</sup> August 2022 to each pathfinder unit lead, whereby they were asked to provide a list of Case URNs pertaining to all cases with a section 1 SOA 2003 rape offence involving an adult complainant that had been received by the CPS in the past 12 months, with no further filtering in relation to charging decision, etc. A randomisation process using Excel was carried out on each of these lists with the first 5 files listed in the 100<sup>th</sup> randomised URN set being selected. The details of these 5 URNs were then returned to each unit lead who located the relevant paperwork and submitted it back to CPS central teams for redaction before the files were passed to the research team. During this redaction process, it became

clear that one of the files selected did not in fact involve an adult complainant and was therefore removed.

Though the ability to engage closely with individual case files has been valuable in this research, there are obviously limits to what can be extrapolated given the small sample size, which we return to below. In addition, compliance with data protection duties and the terms of data sharing agreements for undertaking this research entailed that a level of redaction was applied to the case files that, on some occasions, meant that it was not possible to confidently piece together the whole evidential account provided or fully understand and assess the logic underpinning disclosure strategies. Demographic information that might have assisted in contextualising evidential accounts and evaluating decision-making was also often redacted, moreover, so that factors such as the parties' age and ethnicity were not typically discernible.

### Data Analysis

Anonymised transcripts of interviews, together with observation notes, were uploaded for qualitative analysis using Nvivo. Case files were also uploaded to this platform for coding, but the size of files and the scale of redaction has meant that such close coding is likely to be of limited value, so the team have instead produced case file summaries that include extracts from case files alongside narrative explanation and researcher reflections. These summaries have then been situated alongside the Nvivo coding of transcripts and observations to supplement and contextualise themes arising from that data. In the next phase of the research, the team hope to be able to compile a spreadsheet to record and analyse available 'meta data' regarding observation types, duration and attendance, as well as – where available – information on key characteristics across the full range of cases with which we have interacted, whether via observations or case files. To date, this extends to a total of 99 RASSO cases across pathfinders, albeit the level of detail we have varies considerably depending on the nature of our interaction and as discussed above, the extent to which we had access to supporting documentation.

The team coded the interview and observation data collaboratively, first establishing a coding frame on a grounded basis, informed by the literature review and workstream priorities, and using a sub-sample of transcripts: when synergies had been identified, structures imposed, and points of inconsistency addressed, we continued to code using this coding frame, with flexibility to flag and add emergent themes as needed on an iterative basis. This generated a 'tree node' structure with overarching themes pertaining to (1) Early Advice, (2) Referral and Charge Decision-Making, (3) Investigation and Case Progression, (4) Trial Preparation, (5) Victim Communication, (6) Staff Wellbeing, (7) Partnership Working, (8) Aims and Challenges in Soteria, and (9) Challenges and Changes Beyond Soteria. Within each of these, sub-divisions were also created to enable greater refinement: for example, in relation to Early Advice, sub-nodes were added to capture data around (i) requirements and format for provision within pilot, (ii) rate, challenges and strategies in relation to uptake, (iii) reflections on and nature of the content of discussions; (iv) perceived or actual outcomes including in terms of scope and timeliness of investigations, quality of case files or relationship-building. Or in relation to Staff Wellbeing, sub-nodes were allocated to capture data around (i) recruitment and workloads,

(ii) emotional labour, and (iii) training and development needs. This created a final coding design extending to 44 nodes, with almost 6,000 coded extracts across the dataset.

Having coded the material in this way, we reviewed the data to identify themes, organising them into the key findings that provide the structure to the remainder of this report. We have generally mapped those themes onto the CPS's workstream priorities for Soteria, but in some respects have deliberately adopted a broader interpretation in order to capture reflections that emerged as important, and which are likely to impact on the prospects for success in operationalising the workstream objectives that had been identified. For example, while much of the pilot activity under the NFA Scrutiny workstream has focussed on the establishment of panels, we have also extended discussion in this section to a broader evaluation of decision-making across the range of cases that we have been exposed to over the duration of the research, in order to explore the quality and consistency of suspect-focussed analysis, disavowal of myths and stereotypes, and ability to assess victims' accounts in a suitably trauma-informed way. Meanwhile, though the Case Progression and Trial Readiness workstream has a stronger emphasis on timeliness of pre-trial submissions, we have applied a broader lens to explore issues in relation to collaboration with RASSO counsel over the development and implementation of trial strategy, and the mechanisms for learning from the trial process itself that are currently available to CPS lawyers when making evaluations on the Full Code Test.

### Limitations and Language

Before moving on to present our findings, it is necessary to make some further comments on the limits of our data and the linguistic choices reflected in this report. A number of these relate to points raised above regarding the wider context in which the research was commissioned. As noted, this research has been conducted in tight timescales with less resource and a more targeted remit than the programme of academic research undertaken in relation to the policing strand. It also commenced significantly later than that policing research, at a point in time when Soteria workstream priorities for the CPS had been settled upon and a range of activities had begun to be implemented, both across and beyond the designated pathfinder areas. This means that it is not possible to position this research as an evaluation of the effects of Soteria initiatives in any conventional sense, albeit that our findings shed substantial insight in relation to how those initiatives are being implemented, and their successes and challenges. For all these reasons, it is necessary to see this research as one contribution to the evaluation of CPS Soteria, to be situated alongside internal review processes, careful analysis of quantitative data in relation to performance trends and gathering of wider stakeholder and victim perspectives.

In addition, while this research has benefitted from a level of access to CPS personnel, operational materials, and case strategy / scrutiny meetings that goes well beyond that which has hitherto been accessible by the academic community in relation to sexual offences prosecution, the dataset continues to have inevitable limitations that impact upon its findings. In particular, as noted above, we have not yet been able to directly observe CPS lawyers' interaction with complainants, despite the greater opportunity for such interaction being a core component of Soteria initiatives in relation to victim communication and support. Further, though the case files we have had access to are substantial (averaging over

300 pages) and have yielded rich qualitative data, particularly when triangulated with other data, 24 is clearly a small sample. It is important to recall, however, that it was never the intention of this research to undertake quantitative analysis or make generalisable claims across the case files; and our forthcoming analysis, at a more 'overview' level, of all cases that we have interacted with across the research will, we hope, assist in providing further context to our case file sample.

In addition, it is necessary to bear in mind the inherent limitations of interview and observation methods of data collection, particularly where they involve professional stakeholders. In respect of the interviews, participants were aware that findings would be reported to the CPS (albeit in non-identifying formats), and in some cases RASSO unit leads would have been aware of which of their colleagues took part. In respect of the observations, CPS, police, and ISVA participants alike were aware that the discussions were being observed by a member of the research team and that notes were being taken that would reflect the content and tone of the meeting, without recording any identifying case information. In most Advice Discussion observations, the researcher introduced themselves briefly before switching off their camera to be less visibly intrusive on the conference call, but in observations of Scrutiny Panels and ISVA Forums, this was often less appropriate, and the researcher would more commonly remain on mute with their camera on for the duration. Whether in relation to interviews or observations, these dynamics of the researchers' presence and participants' awareness of it in the wider context of the research may have impacted on the capacity for full candour within the discussion. But while it is important to bear this in mind, it is also important to note that the researchers have prior experience of interviewing professional stakeholders and utilised a variety of probing techniques to maximise the likelihood of disclosure and honest reflection. It should be noted too that the research team were often struck by the extent to which – particularly as interviews and observations progressed – participants appeared to move beyond any preoccupation with the research context; and, as we will discuss in the remainder of the report, we encountered several instances in which comments made by participants did not indicate any significant efforts to self-censor or to provide what might have been anticipated to be more socially or organisationally 'desirable' responses in their approach to the issues.

In respect of language, we have used the terms 'victim' and 'complainant' somewhat interchangeably throughout the report, trying wherever possible to reflect the terminology used by individual participants. In the formal confines of the criminal justice process, it might be insisted that those who report an allegation of rape are best described exclusively as complainants pending a conviction against their assailant. Doing so can be interpreted, however, as conveying a suspension of belief regarding those allegations that is often problematic in a context in which there is little evidence of fabrication of claims and a 'justice gap' between experiences of sexual assault and their successful conviction so sizeable and persistent as to have precipitated the series of activities initiated under Operation Soteria. It is notable, therefore, that CPS and police stakeholders alike have framed workstreams around engagement, communication and support with 'victims' across all stages of the justice process.

## Research Ethics

This research was conducted with ethical approval from the University of Warwick's Humanities and Social Science Research Ethics Committee. The research team, individually and collectively, have prior experience of conducting research on sensitive topics in a trauma-informed way. At the same time, it is important to acknowledge – particularly in the context of reflections that we will make regarding emotional labour and vicarious trauma in the final section of this report – that this was, nonetheless, challenging research to undertake. Not only is the subject matter of sexual violence inherently distressing, but the way in which complaints were discussed by some participants was also difficult for the research team to witness. We had regular de-briefs during the fieldwork to assist with managing the demands of this emotional labour, but the intensity of the timescales for data collection and analysis also meant that ensuring the appropriate self-care of the research team has been a priority and a challenge.

### 3. Early Advice

Prior to Operation Soteria, the Director of Public Prosecution's Charging Decision Guidance had already made it clear that prosecutors can advise the police about possible reasonable lines of inquiry, potential charges, evidential requirements, pre-charge procedures, disclosure management, overall investigation strategy and legal elements of the offence. Though the specific timing of the request for advice on such matters was envisaged to be at the discretion of the investigating officer (usually following a police supervisory review), it was noted that Early Advice (EA) – that is, advice given prior to a charging decision - should always be considered in RASSO cases, once a suspect has been identified and it appears that continuing the investigation will provide evidence upon which a charging decision may later require to be made. The DPP Guidelines set out the minimum information to be provided by police in support of a request for EA, which was then to be formally submitted through the digital interface, after which prosecutors record and share their advice with police, supported where appropriate by an Action Plan to be agreed and completed by investigators. Notwithstanding this, it was recognised that there was often a reluctance on the part of police to seek such advice, which our participants attributed variously to resourcing pressures, unduly restrictive gatekeeping criteria, and a perception that the content of advice was predictable or unhelpful.

Against this context, a key ambition of Soteria, across pathfinder areas, was to encourage more routine use of Early Advice mechanisms in rape case. The hope was that this would not only improve working relationships between local police and CPS but ensure greater clarity and understanding as to what constitute reasonable lines of inquiry and proportionality in relation to disclosure requests, encourage more focussed and feasible Action Plans with increased 'buy-in' from police officers, and improve the timeliness of charge decisions. As CPS 1 put it, "where our prosecutors talk to police officers at an early stage, we see better outcomes, both in terms of volumes and numbers of charges and...ultimately conviction rates." At the same time, it was also acknowledged that encouraging uptake could be difficult, since it "varies across the country how much a police force wants to take up the Early Advice offer" (CPS 3). In the rest of this section, we explore the ways in which pathfinder areas have sought to encourage this use of Early Advice, evaluate the extent to which it has impacted positively on working relationships, investigative strategies or case progression, and highlight ongoing challenges.

#### Provision and Uptake of Early Advice

Across pathfinder areas, the specific format, timing, and scope of Early Advice provision has varied. In part, this reflected the unique nature of each pathfinder in terms of unit resourcing, typical volume of RASSO referrals, and number, structure and size of its local police forces. It also reflected the CPS's intention under Soteria to trial different interventions and the benefits that participants felt were tied particularly to localised flexibility in relation to EA. As CPS 51 put it, "this is why EA isn't one size fits all, you can't have it, and that's what our MOU [Memorandum of Understanding] allows for and takes into consideration and account. What's reasonable in one case is not going to be reasonable in another." Meanwhile, CPS 7 reflected that what "works in a smaller area" in respect of EA provision might not necessarily work somewhere else, specifically because in larger areas it can be "quite difficult" to "get

buy-in from everyone.” As we explore below, the benefits of flexibility – both in the design and implementation of EA pilots – were clear, particularly in areas where there was greater hesitancy amongst police; but it inevitably makes the task of assessing EA provision and uptake more complicated, given divergent criteria for what cases would qualify, what paperwork required to be submitted, and how rigidly discussion would be tied to pre-established questions.

In Area C, for example, the criteria for cases to qualify for EA was particularly broad: according to its local MOUs, it sufficed that a case was identified by police as likely to “benefit most from early and effective engagement with the CPS.” Though there was no mandate to seek EA, there was a requirement for supervisors in relation to rape offences to proactively consider the suitability of EA at the 28-day stage and either make a referral or note on file the reasons why it was not being requested or felt to be necessary. Together with the wide referral criteria, this has encouraged a strong uptake amongst officers. A total of 175 EA meetings are recorded on Area C’s trackers as having taken place between September 2022 and February 2023. During its pilot, Area E trialled going further, and mandating EA in all rape cases deemed capable of being built, but such an approach has not typically found favour. As CPS 5 put it, it risks “removing that thinking approach by officers.” Thus, an “opt-out” approach that puts a “positive responsibility” on supervisors to explain “why they aren’t going for [EA]” by a particular stage in the investigation has generally been better received by police and CPS alike. As with Area C, Area E has encouraged the use of EA by adopting a fairly flexible approach to the format and case criteria for referral, which has yielded a steady uptake by police officers.

By contrast, Area D has taken a more targeted approach, initially limiting activity under EA pilots to ‘stranger’ rape cases. The rationale was that these were likely to be “the least complex cases on the whole,” and so a focus on them would help to “set a direction of exactly what it [EA] should look like” (CPS 7), thereby assisting police to better formulate questions. Tracker entries for the area suggest significant variation in uptake: for example, in September 2022, despite a rejection rate of 35% of EA submissions, 17 EA meetings took place compared to only two EAs being submitted and accepted in November 2022. However, it has been broadly accepted that the uptake has been disappointing overall given the volume of reports handled by local police. Internal dip-sampling by the RASSO unit has suggested that a particular challenge has been the identification and submission of cases by police at a sufficiently early stage in their investigation to bring benefit. To date, our observation of EA meetings in this pathfinder has been limited, but it appears that the scope of EA has now widened from this initial focus on stranger cases, reflecting – perhaps - a recognition of the need for greater flexibility in order to facilitate uptake. That would certainly be in line with the trajectory that has taken place in Area B in respect of its EA provision. There, limiting case criteria were initially set around “all adult domestic abuse cases.” However, the domestic abuse requirement was removed in mid-2022 after only one referral had been made in the period between November 2021 and March 2022. In fact, Area B has made several revisions to MOUs with local forces in order to encourage EA uptake, including most recently expanding significantly the investigative age of a case that could be eligible – initially set at 42 days post-report, then extended to 56 days, and now extended again to 12 months. Progressively, these changes have increased EA referrals, with 10 in September 2022 rising to 17 in February 2023,

but it remains the case that numbers are far lower than had been anticipated given the size of local forces.

Whilst all pathfinder areas have been working throughout the pilot with a mix of Soteria and non-Soteria police forces, most have designed MOUs and operated arrangements for EA in broadly the same way irrespective of whether a local force has been on-boarded to Soteria (albeit that, in some cases, implementation of provision has been staged across forces). Perhaps as a consequence of this, there has not been a consistent pattern in terms of Soteria forces making a greater volume of referrals, as might otherwise have been anticipated. Area A is somewhat different in this respect, however, since it has trialled more expansive provision with one local force in particular. Though there is no mandated obligation for cases to go for EA in Area A, information provided on its trackers indicates a reasonably consistent flow of submissions overall, with 9 or 10 taking place per month on average between September 2022 to March 2023 across all its feeder forces. But alongside this general EA provision, there is also now an expectation in Area A that cases coming from one particular local police force will include a Pre-Charge Decision (PCD) meeting with the lawyer that has been reviewing the case. Though these meetings generally occur at a later stage than EA meetings, to the extent that they afford a parallel process for reviewing lines of inquiry, evaluating the strengths and weaknesses of a given case, and observing partnership working in practice, we have combined observations of those PCD meetings alongside EA meetings within our dataset. In addition, during Soteria, Area A has piloted an Enhanced Early Advice (EEA) offer made available to this particular force. A key driver for this was concern regarding Achieving Best Evidence (ABE) interviews: in particular, in terms of their audio-visual quality and extent to which their structure and content adequately fulfilled its evidential (as distinct from investigative) function. Under the scheme, cases within 14 days of report could be flagged by police for EEA and a case-by-case assessment of the material to be submitted to the CPS for review would then be made, with requests and advice tracked through a dedicated mailbox and supported by in-person discussion. The hope was that this would provide an opportunity for CPS lawyers to input prior to police undertaking the ABE, and thereby assist in focussing lines of inquiry, reducing unnecessary questioning, and ensuring that relevant points of proof were addressed. Uptake was very limited, however, with police intimating possible reasons for this being that concern for the victim's wellbeing often pushed officers towards conducting the ABE as soon as possible rather than pausing to seek CPS involvement, as well as a sense that the advice offered may be of limited value when "ABEs are so fluid, you can go in with a plan...and it will change when you're in the moment" (Police 22). As a result, its provision was suspended.

In addition to variation in the criteria for submission for EA (whether in terms of types of cases or the period of time elapsed since the point of reporting), there were also variations across pathfinders in their commitments on handling EA requests, particularly in relation to intended turnaround times and the mode of delivery. For example, in Area C, the intention is to discuss with the officer within 24 hours, so as to ensure, wherever possible, that delays are avoided. Though attractive from this perspective, a 24-hour turnaround inevitably imposes significant demands on resources which will be harder to sustain if referrals continue to increase. Indeed, while several interviewees in the area felt this level of efficiency was "really, really important" (CPS 6), they acknowledged it had substantial implications in terms of the unit's workflow. It is notable in this context that EA meetings in that pathfinder were often amongst the shortest



we observed, and while duration of the discussion should not be taken simplistically as a proxy for the depth, breadth or quality of its content, it might raise the question of whether a slightly extended timescale for review and consideration could be beneficial in some cases. In contrast, in Area E, the initially intended timescale was 7 days, but there has been consistent evidence in trackers of the Area struggling to meet that turnaround, with the average time being 21+ days. The negative impacts of this on staff morale and the risk of reputational damage were raised as concerns, with trackers noting EA referrals “flooding in” had imposed additional pressure on workloads. Meanwhile, in Area A the envisaged turnaround was always 21 days.

In respect of mode of delivery, for the most part, EA discussions under the pilot have been undertaken via online conferencing (in contrast to the typically paper-based process for EA submission and provision envisaged in the standard guidance). We will reflect more on their tone and content below, but the duration of the meetings we observed has also varied significantly, with Area C typically scheduling a maximum of 30 minutes and often requiring less time, for example, whilst Area E typically schedules an hour and some of our observations extended well beyond this. One area that initially trialled a different approach to delivery was Area B. Under its initial MOU with a local force, a lawyer was posted on set days to police headquarters to provide EA as required. It was hoped that this co-location would encourage referrals to be made and build partnerships across police and CPS; but review of the provision concluded that it was not achieving these goals sufficiently. In line with other areas, Area B now provides EA through online discussions (documented thereafter by a written record).

### Improving Partnership Working Through Early Advice Meetings

As noted above, one of the main aims of encouraging the use of Early Advice more routinely was to improve early partnership working between the CPS and the police in a context where relationships have previously been “fractured” (CPS 2). Certainly, in interviews, participants often shared how tensions between the CPS and police have, and in some cases continue to, impact significantly. As one officer put it, “I think there’s kind of still a bit of an ‘us and them’ in our force. I would like that to change” (Police 22). Similarly, another in a different locality spoke about how their “relationship with the CPS needs to change” (Police 32). From the CPS perspective, lawyers also explained that the “disconnect is still there” between the CPS and police, but there was some optimism that once they overcome that – including through EA provision – “the relationship will work much more effectively, the pushback on case files and the language that’s used will be much more effective, much more smoother” (CPS 9).

For many participants, a key source of these tensions lay in the fact that police and prosecutors have been unclear about, or suspicious of, their respective goals in relation to rape cases, which has been accompanied by an inability or lack of opportunity to communicate in a positive manner. As one interviewee explained, “historically, it’s always been felt by the police and probably the lawyers that we’re battling against each other. The police say we want to NFA everything, we think the police don’t want to do what we want them to do too, you know, there’s like a misunderstanding when really, we were just heading in the same direction” (CPS 28). Echoing the perspectives of other external partners that we will reflect on further in Section 7, police interviewees shared challenges in the approachability and visibility of the CPS, which they felt had functioned to further entrench

these historic tensions: “the biggest issues we have with [the CPS] is that they’re still relatively anonymous to us, that’s the problem” (Police 29).

Although some of this is deep-rooted and will take time and consistent commitment to improve, we found that Early Advice meetings can, and in some cases have, contributed, to a cultural shift in the ways in which the CPS and police work together. The value of this cannot go understated. As CPS 6 put it, “conversation often goes a long way in these cases,” whilst CPS 27 reflected that the relationship between police and CPS is “only going to get stronger as we increase communication and as we open up.” Linked specifically to EA initiatives, lawyers reflected on how it had assisted them to “have a better relationship” with the officer in charge: as one put it, “he knows me better and we have a better sense of each other in a way that’s probably going to be positive for any of the cases I have in the future where he is...involved” (CPS 37). Meanwhile, others indicated that it had “helped form that relationship where [we] can work together towards the common goal of getting a charge, if that’s the right thing to do” (CPS 40) and underscored that “it shouldn’t be a ‘them and us’...we are both trying to achieve the same goal really” (CPS 43). Likewise, several police participants spoke positively about the benefits of EA discussions in terms of improving relationships and building partnership approaches. As Police 16 put it, “generally, the RASSO dedicated lawyers and the police RASSO teams have a good working relationship because they do EA a lot with each other.”

Across our observations, we have also seen evidence of this in action, with some examples of good practice from prosecutors in acknowledging the time and care that officers had put into investigations or taking on board concerns raised by officers, for example, in relation to pursuing certain lines of inquiry with the victim. In ‘Advice 13’, for example, the lawyer asked the Officer in Charge (hereafter, the OIC) whether they had taken the victim to the location of the offence, as this was something that the victim had previously indicated he was willing to do. The OIC shared his concern that this would trigger the victim’s mental health, and that he was, therefore, hesitant. Here, the lawyer took into consideration the OIC’s better knowledge of the victim’s vulnerabilities and suggested they find a different way of identifying the location if required: “I don’t want to derail the whole thing for the sake of pictures of that location for now.” Meanwhile, in ‘Advice 31,’ despite it being the OIC’s first experience of an EA meeting, there was a good balance between the lawyer explaining their assessment of the case, checking in with the OIC to ensure that they were on the same page, and - most importantly - taking on board the contributions that the officer had to offer in the meeting.

At the same time, however, we also observed less promising practice, in particular where prosecutors engaged in EA discussions primarily as a monologue in which police were rarely asked for their input. To the extent that this replicates a dynamic in which prosecutors are positioned with greater authority, it is unlikely to be conducive to genuine partnership working; and the significant efforts that clearly have been made at senior levels to improve relationships across institutions risk being undermined in practice by poor quality discursive exchanges. This is complicated further, moreover, by the fact that there remains a lack of clarity across pathfinder areas regarding the precise boundaries of, and parties’ respective roles within, EA.

In this regard, some CPS lawyers expressed concern particularly about EA placing them in the position of acting as ‘supervisors’ for the police in their investigations. This was, in part, a concern around resourcing - “if all we're doing is taking on the police supervisory role, we're just not resourced to do that” (CPS 2). But it was also a concern about the need to develop that expertise, and take that responsibility for its development, within policing itself. Though sympathetic to the challenges created by personnel turnover and resource constraints within policing, CPS participants expressed concern, more heightened in some pathfinder areas than others, about the choices of cases that were being presented by police officers for EA as well as about the types and framing of questions around which those EA discussions were being requested. Such interviewees observed that “we’re moving a little way towards that system of instructing the police. I’m not completely in favour of it because I think the investigation is theirs, that is for them to do...[But] we want a quality product” (CPS 20). Other interviewees also appreciated these risks, but suggested EA on the scale being piloted under Soteria should best be understood as a temporary, transactional intervention, designed to “upskill” (CPS 2) officers until a shared understanding evolved. While this might assuage concerns about overreach of the prosecutorial role, there are substantial limitations to this “quid pro quo” (CPS 2) approach, particularly given the often case-specific nature of the advice sought and provided, the partial reach of mechanisms to feedback learning from EA discussions in any systematic way, and the likelihood that high staff turnover will continue to be an issue within policing.

At the same time that prosecutors were expressing concern about taking on this supervisory role, however, a number of police participants expressed frustration precisely because they felt that their expertise was not adequately acknowledged by the CPS within EA discussions. Some less experienced officers did indicate that they had found the meetings they had been involved in helpful. Police 12, for example, remarked that “I’ve never come out of an Early Advice feeling deflated or not listened to” and “as time has gone on...those conversations are better, they’re more constructive.” However, more experienced officers often construed it as something that was *only* helpful to those less experienced colleagues: “there are cases where they are very simple in terms of the actions and the outlines that need to be done...we know what it is they want us to do...the vast majority of us are experienced detectives” (Police 29). Similarly, another observed that they struggled to see the benefit: “I’ve done a few but because I’m quite experienced, I’m not really asking anything because I know what needs to be in there” (Police 27). Arguably, this speaks to a failure to construct the EA space as one in which equally valued expertise in relation to the given case can be aired and an agreed plan devised, but it also ignores the reality that legal and evidential requirements are not static (as the evolving approach to disclosure requirements, for example, aptly demonstrates) and, as such, regardless of prior experience, early dialogue on investigative strategy should often still be productive.

Clearer guidance is needed, then, on respective roles and expectations, with a balance required to be struck between consistent operational standards and localised flexibility to maximise their use and value. Future evaluation should continue to monitor uptake and speed of EA provision but should also seek to better capture information about broad case types and key issues that are being referred, which will assist both in identifying areas of greatest training need and in ensuring referrals are being made in cases where CPS input is likely to be most beneficial.

## Investigative Benefits of Early Advice

Alongside the more intangible benefits of improved relationships and partnership working, the extended provision of EA under Soteria was also intended to ensure better identification and pursuit of reasonable lines of inquiry, with a more targeted approach to disclosure requests and a realistic but expedited timeframe for case progression. Across pathfinder areas, we found evidence that Early Advice can indeed have a positive impact on the pace and scope of police investigations. Though, as we discussed above, navigating the discursive space to ensure open exchange was not always easy, particularly in the absence of clear boundaries and expectations about the process, the improved communication made possible by real-time dialogue rather than stagnated exchanges of paperwork and emails was often highlighted. CPS colleagues emphasised, for example, how the mandate to have conversations online or in-person as part of the EA process avoiding things “getting lost in translation” (CPS 43), whilst police confirmed that “face-to-face is so much more...effective than [when] you get a legal document outlining what you haven’t done, and lists and, you know, deadlines” (Police 18). It was noted, in particular, that where the lawyer who provided the EA stayed with the case thereafter, this early discussion opened up a channel of easier communication that could be relied upon throughout the investigation, often making the process more efficient. As Police 27 put it, “if you have the same lawyer and you can get that case ready within a few months, that’s where I think it’s good.” Across our EA observations, we routinely observed lawyers providing their direct contact details to officers and, without usurping the formal process required for further EA or submission for a Full Code Test decision, encouraging police to reach out if matters arose in the course of completing the Action Plan that it would be helpful to briefly discuss. This was confirmed by CPS 43, who observed: “I know a lot of [my colleagues], I’m pretty sure all of them, we often will say, you know, here’s my direct details, if there’s anything further that arises, you know, come back to me, give me a call, send in a further early advice file.” Though it will not always be possible for the same lawyer and OIC to remain associated to the case throughout, due to staff turnover, for example, wherever possible, this was clearly best practice in terms of ensuring more efficient and timely case progression, which is something we discuss further in the wider context of Action Plan Monitoring in Section 5 of this report.

In substantive terms, it was widely suggested by participants that the most common matters discussed in EA meetings centred around the parameters of disclosure requests, whether for digital or third-party material. As shared by CPS 9, “while [the police] do know what to do with a rape [case] and how to present it, I think what assists them is the disclosure side as to what reasonable lines of inquiry is, what we expect, and phone downloads to narrow down the terms, the parameters.” Similarly, CPS 36 noted that the focus was often around how to set parameters for third-party material: “all the disclosure changes that we’ve had over the years, I think the police just sometimes like a bit of a steer as to what they should be looking at and what they need to look at.” As CPS 36 alludes to here, this is perhaps unsurprising since, as we will also discuss further in Section 5, it has been an evolving area of law and police that requires careful, case-by-case assessment to determine what would be relevant, specific, and proportionate. Broadly, there was a sense amongst interviewees that EA had the potential to reduce ‘digital fishing’ and overly expansive excursions into victims’ third-party material. As CPS 43 put it, “there seems to be a real focus now of, are we trawling for information or is this actually a reasonable line of inquiry.” Meanwhile, CPS 10 identified how,

through EA, lawyers had been able to interject into and curtail a practice that they suggested had become common in the local police force whereby “you apply for third-party material, you send somebody’s phone off for download and examination, without any kind of focus on what the issues are in the case or what’s proportionate or what’s necessary.” At the same time, Police 19 underscored the benefits of “early join up” to “set those early parameters around your third-party, your digital extraction...which are the ones that tend to be the things that come up later down the line when there’s that difference of opinion.” This was noted to help streamline police investigations: “they [the CPS lawyers] can shrink it all and say, no, you don’t need to do that. And then we have the reassurance that, okay, we’ve got an audit trail, the lawyer has told us not to do it, that’s fine, we don’t have to worry about it, we’ll focus on elsewhere” (Police 16).

At the same time, notwithstanding the provision – or at least extended availability – of EA, other participants continued to raise concerns about approaches to disclosure, with those concerns often pulling in contradictory directions. So, on the one hand, some CPS colleagues complained that police were still routinely gathering disproportionate volumes of material before seeking advice from prosecutors. As CPS 7 put it, “at the moment, one of my barriers is, the police don’t know what they’re doing with third-party, and we just get unused by the shedloads of hundreds of pages...so they’ll send me 40,000 pages of phone download.” But on the other hand, there was a sense amongst some police officers that the CPS still have a tendency to set parameters too widely. As one officer, operating in the same pathfinder area as the prosecutor above who complained of police excess, said: “one of the things that I forgot to say about dealing with the CPS is their obsession with obtaining third-party material in cases that just...where it just isn't relevant...it’s a complete fishing exercise” (Police 29). Meanwhile, Police 2 referred to having “continual arguments with the CPS” where he felt that lawyers were not adopting a sufficiently tailored approach to disclosure, wanting “absolutely everything.”

What this demonstrates is that, while EA can assist in setting investigations on a robust but proportionate track in relation to disclosure strategy from an early stage, which in turn can reduce wasted time and effort and – crucially – minimise intrusion and distress to victims, it cannot in itself be the solution to this challenge. As we will discuss in Section 5, ongoing training, monitoring and review of investigative strategy and case progression, with a keen eye to disclosure, both within and beyond the EA space, is going to be required. In several respects, the same can also be said in relation to determination of reasonable lines of inquiry within EA discussions, and the extent to which they are informed, in particular, by evolving understandings of the importance of challenging myths and stereotypes, and a proportionate focus on the behaviour of the suspect. This is something we return to consider in the context of our wider reflections on charge decision-making and case trial strategy, in Sections 4 and 6.

For current purposes, however, it is important to specifically address here a related concern that has been raised in relation to the impact of Early Advice on encouraging or being relied upon to help endorse potentially premature ‘No Further Action’ (NFA) decisions by police in rape cases. Though it is absolutely not the function of EA to provide a prosecutorial ‘steer’ in relation to any predicted outcome at a subsequent Full Code Test, there is a concern that this opportunity for early consultation may be used, in some cases, to confirm an initial negative

assessment on the prospects for conviction rather than to explore in an open-minded manner the ways in which the complaint can be investigated and a prosecution built. As CPS 27 put it, “I’ve had some [OICs], they think they know that their case is not going anywhere, they think they know that their case is flawed but they don’t want to make the decision. So, they’re coming for Early Advice for us to kind of go, this is rubbish, you know, drop it. And I just...it feels...there’s a danger...that it replaces...proper police decision-making.” Meanwhile, CPS 8 observed that, even if such cases are not brought by police with that intention, the tenor of EA discussion can encourage them to terminate investigations even though prosecutors’ input is inevitably limited to the evidence available at an early stage and more proactive case-building could generate a very different assessment in due course: as they put it, “we have seen some cases, we haven’t made formal decisions, but we have had a conversation with the officer,...I’m not giving you a formal decision, [but] I’m saying to you, based on what you’ve just told me, the case is not going anywhere, so I think you’re well-placed to NFA that case. Well, if you’ve heard that from a prosecutor, then obviously that influences your decision to NFA the case.”

In some of our observations, it was clear that CPS lawyers were mindful of the need to navigate this risk. In ‘Advice 8’, for example, the questions provided by the OIC ahead of the discussion were targeted specifically around aspects of the complainant’s behaviour, mostly related to the fact that she and the suspect were under investigation for child neglect and that, despite prior police interaction due to domestic abuse against her, she had not disclosed any rape allegations until during proceedings in the family court. The OIC was seeking guidance specifically as to whether such factors would substantially undermine the victim’s credibility. During the discussion, the lawyer – rightly - drew the officer’s attention to the importance of establishing any evidence of coercive control within the relationship and to the fact that there may be several reasons for delayed disclosure. At the same time, his answers were often, in his own words, somewhat “woolly” and framed in terms of matters “not necessarily being fatal” to the case. That this was driven, in part at least, by concern not to steer the OIC towards a premature NFA decision was supported by the fact that, at the end of the meeting, he underscored that “the fact it has had early advice doesn’t change the fact that it is a police decision in the first instance.”

Meanwhile, in other observations, we saw evidence of lawyers more explicitly encouraging proactive case-building in order to avoid this risk of premature NFA decisions. This was recognised by some interviewees: “I do think there is that mindset change from the CPS. And officers are seeing that, which is, you know, obviously changing their mindset too. Because I’m in no doubt, historically officers would have said, finalise this case, it’s not going anywhere because they would have had their previous mindset set by the CPS and the previous challenges they’ve had on those cases. Where now they’re seeing that change” (Police 19). Similarly, CPS 40 noted they could identify cases within their area where “I think [police] were going to NFA a case, but now it’s been built towards a charge because of that discussion.” In ‘Advice 3’, for example, the OIC had watched CCTV footage in the intervening period since submitting the EA request, which she described as “disappointing” since it appeared to show the complainant to be relatively sober, with “no staggering about to suggest she is not steady on her feet,” in a case where the allegation was that the victim was too intoxicated to have capacity to consent. The OIC opened the meeting by intimating that the EA discussion may be less necessary in light of this emergent evidence, implying that she was minded to terminate

the investigation; but the lawyer carefully worked with the officer to establish the timeline on the CCTV, highlight the strengths of the case and identify a strategy for moving the investigation forward.

At the same time, other EA observations substantiated concerns about the process encouraging premature NFAs following the lawyer's advice. In 'Advice 20', for example, a lawyer who made contributions reflecting misunderstanding of trauma, use of force and the significance of inconsistencies in accounts of historical abuse, opened the EA with the comment (to an inexperienced police officer) that "this is one where I am going to invite you to NFA straight away." Without any further explanation, he simply opined that "the reasons for late disclosure are not very convincing". What is more, the lawyer did not engage with the officer's subsequent intimation that the police had recently received a potentially corroborative complaint from another source, and instead closed the review abruptly, noting "well that was good, it only took 5 mins, if only every case was as good as that." Similarly, in 'Advice 16', though the lawyer stopped short of positively encouraging a NFA decision, his focus throughout the discussion was primarily on the weaknesses that he felt the case suffered from. Early in the meeting, he observed that "all of this is going to be seriously problematic if we charge it, so it is very negative, and I am having trouble with the positives." He continued to describe the complainant's evidence as "very vague", for example, in relation to how she knew that the rape occurred when the basis of her complaint was that she was incapacitated at the time. He also raised concerns about the poor video quality on the ABE – "she is so out of focus, I would hardly be able to identify her" and "the jury needs to be able to see the face of the victim, so it is possible it would be inadmissible" – and surmised that "it's not looking very good from the beginning." Despite this, whilst suggesting to the OIC that "I am sure you would be pleased if I were to say that this is going nowhere," he intimated that, the officer having brought it to him, he had a responsibility to "give you some advice just to see if we can give it a bit more." But in the context of the wider discussion as well as the pressures of police workloads, it is optimistic to think that this officer would still be motivated to pursue the case any further.

The need to monitor this risk was underscored by CPS 6 who noted, "a lot of the cases that the police are NFA'ing without sending to us for a Full Code Test decision are cases that have had EA on them. Now whether they would have always been NFA'd by the police and never come to us anyway, I don't know. Or whether the discussion with a lawyer is pointing out the issues early and saying...if we can't address that issue, we're never going to be able to charge the matter...and that's then given them the confidence to say...we can't deal with that issue and we're NFA'ing it. So, we are dip sampling police NFAs just to check that they're not NFA'ing cases inappropriately." Though, for reasons we will explore further in the next Section, such scrutiny is clearly important, it is also crucial to link these concerns regarding premature NFAs to the need, highlighted above, for clear guidance on roles and responsibilities in the EA process, and for an open discursive exchange that does not presume participants' motivations.

## Final Reflections

In summary, then, it is clear that making a success of EA requires substantial and ongoing investment in relationship-building with police, as well as increased resourcing to address the impact on workloads - both of providing EA itself and of the anticipated flow-through of a higher volume of cases for charging decisions as a consequence of that early partnership working to build cases and improve file quality. Without this, the benefits of EA cannot be harnessed, and progression delays will be postponed but not eliminated. As Police 16 put it, "EA is definitely working: I think it's a good thing. The downside is that, as we've got better at doing it, it's causing problems with CPS with delays...so then you lose trust in the process." Moreover, while EA creates a valuable opportunity to develop a shared approach to setting reasonable lines of inquiry and a robust but proportionate approach to disclosure, which can facilitate timely and effective case progression, in and of itself it does not address concerns about the adequacy of trauma-informed and suspect-focussed approaches in that process, and our observations continue to highlight markedly variable practice in these respects. It is to those matters, in the wider context of No Further Action decision-making, that we will now turn.



#### 4. No Further Action Scrutiny

The aim of the No Further Action (NFA) Scrutiny workstream under Soteria is to increase transparency, accountability and confidence in relation to the consistency and quality of decision-making and create more routine opportunities to identify and share learning that will enable continuous improvement, including in relation to dispelling myths and stereotypes. In this section, we will first outline our findings regarding the implementation, operation and efficacy of the mechanisms put in place across pathfinder areas to facilitate this scrutiny, including in particular dedicated NFA Scrutiny Panels. Fully addressing the ambitions of transparency, accountability and confidence set out under this workstream requires, however, a more expansive approach that also considers decision-making beyond the confines of panel discussions and extends to the reasoning applied at all stages of case evaluation and progression. As such, later sections will explore these considerations more broadly, reflecting in particular on our findings regarding the tenacity of reliance on myths and stereotypes.

##### No Further Action Scrutiny Panels

Each pathfinder area has established its own mechanisms for internal and external scrutiny, including the creation of dedicated NFA Scrutiny panels to be convened at periodic intervals with the mandate to critically assess both police and CPS reasoning in relation to RASSO complaints that were not progressed. Broadly speaking, these panels were considered valuable by CPS staff, police and ISVAs alike. As one lawyer explained, “because, you know, the best way to learn is from your mistakes and from previous cases and ensure those don’t happen again” (CPS 51). Again, at least partially reflecting the ambition under Soteria to test and learn from different variations across pathfinder areas, the frequency of these panels, the make-up of panel members and the amounts and types of cases reviewed has varied considerably, however. In Areas C and E, for example, panels are scheduled to occur on a quarterly basis, and notwithstanding some postponement and rescheduling over the course of our period of observation, this panel process appears reasonably well-embedded in standard operative practice. Meanwhile, in Area B, whilst its Tracker entries advise that lawyers are undertaking a bi-monthly review of CPS NFA decisions alongside police, limited information has been provided regarding how many cases have been reviewed; and though Scrutiny Panels have been instituted, their frequency is unclear. Similarly, Area D has documented on its Tracker entries that it is piloting three different types of NFA scrutiny, including panels and quarterly reviews at a senior level. However, data as to the number of cases reviewed, or panels held, is not provided beyond December 2021 with difficulties in co-ordinating with Police cited as a reason. To date, we have not been able to attend a Scrutiny Panel in either Area B or D, and so have more limited insight regarding their scope and operation. In Area A, though NFA Panels were initially convened, they were paused in July 2022 due to concern that the cases being selected were too often ones from which learning outcomes were limited. Instead, to scrutinise police NFAs, lawyers have been attending police stations on a monthly basis to dip-sample whilst internal quality assurance checks are carried out to scrutinise CPS decisions. On a bi-annual basis, RASSO panels are also held where ISVAs, CPS lawyers and Police come together to review decisions that have been NFA’d by the CPS from forces within the Area.

There is also variation in terms of the composition and balance of panel membership. In Area C, for example, panels are often composed of several police officers with far fewer CPS lawyers in attendance. In one panel we attended, for example, there were 14 police colleagues in attendance but only one CPS lawyer. At times, this shifted the dynamic of the meetings, with discussion of police decisions taking up a disproportionate focus and facing the majority of scrutiny, while CPS decisions received minimal engagement. Increasing the efficacy of panels, from our observation, involves ensuring a more balanced mixture of CPS and police engagement, as well as a good level of representation from ISVAs. The benefit of this broader composition, particularly in relation to third sector specialists, was reflected upon by CPS 32: “it is really valuable to get external, and those with lived experience, insight into our casework. I think it’s a two-way process actually, particularly with the panel members we have and their roles within their various respective organisations.” Similarly, CPS 50 noted that “I’ve gone to rape scrutiny panels, interacted with ISVAs that come to that...it’s been really positive [to talk to them] about why things haven’t worked or perhaps just being quite honest about decisions we’ve made, and they’ve given us their feedback and their input [has] been really useful.”

At the same time, it is important to note that simply curating a diverse panel membership does not automatically ensure an open and egalitarian exchange of views. This also requires good chairing, and a conscious effort to ensure all panel members are given the opportunity to engage effectively with the discussion, as well as a foundation of mutual professional respect. This was particularly evident in ‘Scrutiny 4’, where the panel, which was chaired jointly by the police and CPS with a senior officer from each leading discussion in regard to ‘their’ decisions, was structured to allow each member in turn to share their thoughts. This created an atmosphere of inclusivity and allowed for effective participation by all, thereby enabling a more diverse range of perspectives to be presented and considered. Notwithstanding the challenges in relation to workload, it is also conducive to effective panel discussion, in our view, that they are attended by personnel in senior police and CPS leadership positions. This underscores the importance of the process at an organisational level and is apt to increase the likelihood that learning and feedback can be pushed to colleagues with the appropriate weight and impact.

In regard to this point about organisational importance and running panels with respect for all participants, it is also worth emphasising that, to ensure scrutiny becomes an embedded practice, it must be afforded priority, notwithstanding competing demands on stakeholders’ time. A reliable schedule for the frequency of panels across all areas would be beneficial in establishing a routine that would allow stakeholders, as well as the police and CPS, to appropriately plan. Although there may be circumstances that require panels to be cancelled or rescheduled at the last minute, this should be avoided wherever possible. We say this in a context in which, in all of the pathfinder areas that are currently running them as part of their Soteria activities, Scrutiny Panels that we were scheduled to observe as part of this research have been cancelled, often on short notice and sometimes with no alternative date provided. Given the amount of preparation that is required prior to the panel itself, frequent rescheduling is likely to frustrate stakeholders and may, in time, impact their willingness to engage and attend. On this point, moreover, the importance of ensuring that adequate time is afforded for preparation ahead of the panel should not be understated. This means sending out documents in a suitably concise format and good time, rather than 1-2 working days

before panels, as occurred in some of our observations, which, of course, reduces substantially the likelihood that panel members will have engaged and reflected meaningfully beforehand. Relatedly, agendas for each panel need to be realistic and flexible. Of the panels that we have observed to date, those that had extensive agendas with large numbers of cases to review often felt rushed, or as though adequate time had not been afforded to the scrutiny of each case. Although a balance must be struck between the coverage of cases and depth of review, having time for discussion and reflection is key to ensuring meaningful learning occurs as a result of the panels.

In terms of the selection of cases for review at panels, there is not a consistent process, with the number of cases discussed at each meeting varying both within and across pathfinder areas, although most have committed to the standard inclusion of both police and CPS NFA decisions. The disproportionate likelihood currently of a NFA occurring at the police rather than prosecutorial stage means an imbalance in the volume of cases available for selection, however; and, as alluded to above, if not carefully managed this risks panels becoming a space in which police feel more acutely exposed. Moreover, while there are benefits in enabling targeted selection of cases, for example to enable scrutiny of approach towards particular issues or types of cases, concerns were raised by a number of interviewees regarding the risk that, without a more random sampling, cases may be 'cherry-picked' to shore up confidence rather than encourage critical reflection. As mentioned above, this was suggested by some participants as a factor in the decision by Area A to rethink their NFA panel format: "The concern was that the police were perhaps cherry-picking some of the cases and sending them through. So a sense that you couldn't get a full picture of their decision-making because what you were being sent through were ones that were obviously NFAs" (CPS 36). On the one hand, this highlights the benefits of more specific and transparent guidance regarding how cases should be selected for review. But on the other, it also suggests a possible need for further investigation regarding the partnership dynamics underpinning this process, and whether these have themselves generated incentives for such selectivity or suspicions about it. Indeed, this sits at odds from the reflections of one officer regarding his recent attendance at a panel in Area E, who observed: "it was very reflective, there was no blame game, there was no finger pointing. It's about how do we unpick how this has happened, what's the rationale for these decisions that have been made? What we can learn from that and how do we do it different next time?" (Police 14).

The expectation to communicate learning and outcomes from all panels clearly and consistently also needs to be further embedded. Without this, as ISVA 23 put it, "there is a danger where they kind of, they feel like talking shops. Where they give the appearance that there is reflection happening but where's the oversight, where's the governance?...Where's the learning for the people that made that decision? They have the potential to be something, but they don't feel particularly joined up in the rest of the system." In the most effective panels that we observed, time was set aside at the outset for feedback on previous learning that arose at the last panel. In Area E, each case is scored numerically from 1 to 4 and the actions that need to be taken after the scrutiny panel are clearly set out, with cases scored at a 4 or even a 3 often prompting further investigation. For CPS cases, the DCP attending takes responsibility for speaking to the prosecutor who made the decision, irrespective of whether it secured a high or low scoring. In addition, themes arising from panels are published in a regional RASSO newsletter that is circulated to all police and CPS staff. In other pathfinder

areas, existing mechanisms for reporting on and learning from Scrutiny Panel discussion are less clearly established and they would benefit from an approach consistent with that which has been developed in Area E. In this context, it is also important to underscore, however, that Scrutiny Panels ought not to be the only forum in which the quality and consistency of decision-making is reviewed, and lessons about good and bad practice shared. Internal quality assurance, training and mentoring will continue to be crucial. In Area B, there have been recent initiatives to implement 'pre-charge masterclasses' where lawyers workshop practices to improve decision-making. One interviewee explained the benefit of this in helping to ensure that lawyers are not having "myths and stereotypes drift into their decision-making" whilst "trying to level out" inconsistencies in approach (CPS 10). In Section 8, we will explore in more detail some of these wider training and mentoring initiatives and their role in equipping CPS colleagues to perform their role well.

Finally, it is worth reiterating our opening point above that, while scrutiny of NFA outcomes is vital, focussing exclusively on this is likely to be of limited value. To improve decision-making and increase confidence, scrutiny as to the reasoning behind those outcomes is also imperative. Indeed, scrutiny should ideally extend to exploring the end-to-end handling of a case, including investigative strategy, appropriate use of EA, proportionality and effectiveness of Action Plans, reasoning behind and defensibility of charging decision, communication of that decision where NFA'd and trial preparation, strategy, execution and outcome where charged. It is only through this more holistic and rigorous process of review and reflection that genuine confidence in decision-making around, and handling of, rape cases can be restored, both within and between criminal justice agencies and amongst victims and the general public.

### CPS Decision-Making, Myths and Stereotypes

In this research, we have sought to better understand CPS decision-making as evidenced across and beyond dedicated NFA Panels and Scrutiny. This has involved considering the ways in which prosecutors spoke about cases at the Early Advice stage, exploring language and assertions made in Case Files and asking interviewees directly about decision-making and the potential impact and influence myths and stereotypes may have on a decision being made. In the remainder of this section, we highlight the existence of an ongoing disconnect between what lawyers understood, in theory, regarding trauma reactions and the danger of reliance on myths and stereotypes, and the way in which some cases were understood and evaluated in practice. In particular, we identify areas of most pronounced concern in relation to an ongoing preoccupation with interrogating complainants' credibility over suspects' behaviour, and a lack of nuance regarding the relevance of factors such as mental ill-health to that credibility; an inconsistent approach to documenting and recognising the impact of coercive control or grooming behaviours on the perpetration of, and victims' responses to, RASSO offences; a reliance on 'new' myths in relation to modern or non-conventional sexual practices; and a risk of trivialising some forms of adolescent sexual abuse and associated safeguarding concerns.

## Decision-Making in Theory

At the interview stage, the lawyers that we spoke to generally had a good awareness as to the importance of identifying and challenging myths and stereotypes, maintaining a suspect-focussed investigation and understanding the complexity and diversity of victims' trauma reactions. This was often discussed in relation to the training delivered to RASSO CPS lawyers. As CPS 53 put it, "there's loads of guidance and people have had lots of training on myths and stereotypes and how people react to trauma. And, you know, people don't necessarily always react in the same way and that's something you have to consider. And I think that has been drummed down to people now." In relation to victim trauma reactions in particular, lawyers were keen to emphasise that they understood the extent to which late or 'inconsistent' complainants should not be taken to indicate a lack of credibility. CPS 43 referenced, for example, that there is a "real focus now on 'late complaints don't mean that things haven't happened' or 'inconsistent complaints don't mean that they haven't happened', you know, just because it hasn't been reported previously, that's not a weakness." Translating that knowledge from training into how they suggested that they would approach specific cases, CPS 49 gave the following example: "if your complainant is inconsistent about the time of day...well you know whether it's 3am or 5am, it's still at night, it's still dark...it sort of makes sense."

Meanwhile, in relation to wider myths and stereotypes, several lawyers asserted with some confidence that these no longer informed their decision-making, again linking this specifically to the positive impacts of training. CPS 43, for example, maintained that "I think our team, in particular because of all the training we've had, the experience of the team in general, I think it's clear from our day-to-day conversations really that those don't influence our decisions." Echoing this sentiment, albeit by applying what might be viewed as a disappointingly low threshold, CPS 35 also underscored that, in their experience of reviewing colleagues' decisions, "there's nothing sort of said that's really outrageous" in terms of reliance on myths and stereotypes. In addition, a number of lawyers during interviews showed an awareness of the importance of adopting a more suspect-focussed approach, with CPS 51, for example, articulating it as involving a series of questions to consider: "what steps did this suspect take to ensure that the victim, the complainant was consenting? Did they target them, did they target their vulnerabilities? Let's focus on the suspect and what they did or didn't do?" Several participants also highlighted the benefits of adopting this approach as a mechanism to offset an historical imbalance whereby the primary focus had been on complainant credibility. Criticising that imbalance, CPS 20 observed that too often it was, "it's all about credibility, it's all about her credibility," while CPS 6 confirmed it felt at times like "you were convincing yourself that there was no case," despite the fact that, as CPS 7 noted, "every single person lies, if it was a criteria that you could never have lied in your life, we would have no cases."

Importantly, during interviews, there was also a sense, from some external partners, that there had been something of a "mindset shift" (Police 19) among prosecutors towards trying to build and charge more cases, which supported the assertions by lawyers of an impact on decision-making due to their training on trauma, myths and stereotypes, and maintaining a suspect focus. One barrister explained how: "there was a move away from worrying about it just being word against word, and actually there was a shift towards thinking that, you know, if it's just word against word it may well be sufficient." (Barrister 2). Meanwhile a police

officer, reflecting on their recent rape cases, noted that “we’ve had some borderline ones where I’ve felt it’s worth putting through to CPS but wasn’t quite sure if they would charge. And they have done, so it was worth sending” (Police 6). This perhaps demonstrates the benefits of lawyers having been involved with officers in case-building from an earlier stage as a consequence of Early Advice, discussed in Section 2; but prosecutors also indicated that it was reflective of a broader shift at senior level in how they were being advised that decisions are to be made within RASSO units. As CPS 49 explained: “there’s a heightened awareness that a marginal pass is still a pass, you know...we have leadership that says, you know, you won’t be criticised for a marginal pass.”

### Complainant Credibility

Despite this, a number of other interviewees continued to express concern about the extent to which CPS lawyers remained unduly preoccupied with victim credibility and continued to fixate on their behaviour, in the period immediately before, during and after the incident, as well as throughout their subsequent engagement with the justice process, without directing a similar level of scrutiny to the suspect. For example, one ISVA explained how, from their perspective, the CPS still appear to endorse the idea that “if you’ve got a victim, who isn’t crying, who isn’t broken into pieces, it’s obviously not happened” (ISVA 16). Another emphasised the peculiarity of the approach they felt was still taken to victim credibility in rape cases: “So if I was burgled today, I wouldn’t expect the police to come around and say, really were you, you know? I wouldn’t expect them to say, well, why did you leave your window open, did actually you really subconsciously want to be burgled?” (ISVA 26). Meanwhile, several police officers, when asked about CPS decision-making, maintained “there’s still an obsession about the victim’s credibility” (Police 27) and that “it’s still so much victim, victim, victim, what did they victim do? Why did the victim put herself in this position?” (Police 16).

This, at least partial, disconnect between a good theoretical understanding and its practical application was also acutely apparent in several of our observations. In regard to trauma reactions and their interaction with assessments of credibility, ‘Advice 20’ and ‘Advice 21’ provide apposite examples. When considering an historic allegation that involved individuals who remained in contact for some time following the incident, the lawyer in ‘Advice 20’ observed to the OIC: “What is she in contact with him for if she has been raped by him?” The same lawyer then repeated this approach in relation to ‘Advice 21’, which he combined to discuss in the same EA meeting. In this case, the complainant had exchanged text messages with the suspect after a series of reported incidents that occurred in the context of an abuse of power relationship. The lawyer observed: “why would you have friendly exchanges I ask myself if you are in fear of the suspect...I just don’t think this hangs together,” and in respect of their content opined “you wouldn’t say that if you had been abused, not in a million years.”

Meanwhile, other observations provided evidence of wider myths and stereotypes at play: In ‘Advice 16’, for example, where – as discussed in Section 2 – the lawyer was apparently preoccupied with the negatives of the case, when the OIC was recounting a chronology whereby the victim had been ejected from the marital home by her husband on account of her drug use, the lawyer interjected to observe “and she has got children as well doesn’t she.” Though there appeared to be no point to this interjection other than to underscore a negative

appraisal of the victim's character, it highlights a lack of empathy for complex vulnerabilities tied to addiction. The lawyer went on from there to ask questions about whether the husband was of good character, which he attributed to trying to establish if this was a "normal family" from which the victim had "sort of gone AWOL." When the OIC advised that there were suspicions that her husband was also involved in illegal behaviour and drug use, the lawyer responded that he had asked those questions because – implicitly connecting to the ethnicity of the parties – he wondered if there may be "shame issues" for the husband associated to the complaint. Meanwhile, 'Advice 3' illustrates, in a different way, a similar focus on respectability as a proxy for victim credibility. Here, the main focus of the EA was around whether there was enough evidence to support the victim's account that she was too drunk to consent to intercourse with the suspect, a stranger whom she had met a couple of hours prior in a nightclub. The lawyer and OIC discussed the relevant CCTV footage at length and explored the possibility of interviewing security at the club to gain further evidence. Notably, the discussion did not feature common myths and stereotypes in relation to intoxication and the potential for drunken, regretful sex, which was promising to see. However, at the same time, emphasis was placed on the fact the complainant's friends seemed "like sensible people" who, on discovering her, "did all the right things," including taking steps that ultimately assisted the police in identifying the suspect. Though obviously also evidentially significant in assessing the case, whether the complaint (and complainant) would have been viewed differently had her friends not reinforced her respectability by reacting in this way is unclear.

As noted above, we also identified increased scope for myths and misunderstandings related to the relevance and impact of victim mental ill-health to inform assessments of credibility. In 'Advice 16' discussed above, for example, though there was no mention of any diagnosis in relation to the victim, the lawyer remarked that there were "some references that make [them] think she possibly has mental health problems as well, on top of her multiple drug problems," and this was used to further support his assessment that establishing her credibility would be "difficult." Meanwhile, in 'Advice 23', the victim had been found by police officers in a distressed state, with forensic evidence uncovered at the scene that appeared to corroborate her account of forced intercourse. The victim was an in-patient at a mental health hospital, and this became the focal point for discussion, especially in relation to reasonable lines of inquiry and third-party material. Though the exact details of her diagnosis and how it impacted on her perception, behaviour and memory were still unknown at the time of the EA discussion, the lawyer underscored that a key question in respect of her credibility would be "what influence her mental health might have had on her." Depending on the details of her condition, it may well have been appropriate to address this issue, but what was striking was the extent to which the complainant's mental ill-health was presumed to be likely to undermine her credibility from the outset, and the priority then afforded to that in a context where there was additional evidence that supported her complaint and allowed for a far more suspect-focussed approach.

In Case File analysis, we also identified evidence of victim mental ill-health being discussed in potentially problematic ways. In 'Case File 6', for example, emphasis was placed in the lawyer's review on the fact that the victim had undergone "repeated and lengthy periods in hospital because of her mental health problems." Notwithstanding corroborative forensic evidence regarding her complaint of rape, the extent to which the victim might suffer from



“paranoid and grandiose delusions” that undermined her credibility was emphasised. Assessment was further complicated here by the fact that the complainant had made prior allegations of rape that were NFA’d. These were described, therefore, as “unfounded,” despite her having protested their veracity even to the extent of making a formal complaint regarding what she perceived to be poor handling of their investigation by police. In addition, the language used by police to describe interactions with the victim was also laden with disapproval, describing her as “problematic” and “argumentative”, “hesitant to put herself out” in co-operating with police and “giving the impression that she is trying to call the shots” when she refused to attend, at short notice, to give her VRI because of difficulties she advised it would present to managing her complex health problems. Meanwhile, in ‘Case File 19’, which we discuss further in Section 5, the lawyer’s request for expansive disclosure was driven by his assessment that the “issue in the case is *her* credibility and reliability.” Though there was corroborative witness and first disclosure evidence that supported the complaint of rape by a previously unknown suspect, a search of over a decade’s worth of medical records was requested, partly justified on the basis that the victim had a diagnosis for General Anxiety Disorder. There was also a note on the complainant’s counselling records which described her as “easily led” and hesitant to “upset people,” which correlated with her account of how the alleged assault took place, but rather than develop that as part of the case strategy, the lawyer’s advice chose to note in particular that she “did not report the matter for 10 days,” whilst actioning no real interrogation of the suspect’s allegedly persistent pursuit of the victim.

### Understandings of Coercive Control

Another area of concern in the context of CPS decision-making that we have identified so far relates to lawyers’ understanding of the relationship between coercive control and / or grooming behaviours and RASSO offences. The need for further training and understanding around this was underscored by CPS 2, who noted that, within RASSO units, “the interplay between domestic abuse and rape is still not fully explored or understood...I don’t think we understand the complex interplay between coercion and control in domestic settings and rape, so I think there’s more challenges for us in the future.” Similarly, an ISVA explained how, from their perspective, when cases involve domestic abuse, the sense from the CPS can too often be: “it’s going to be very unlikely we can charge this because it’s domestic rape, there’s not going to be any witnesses, it’s all going to be the ‘he said, she said’ situation” (ISVA 1). This was supported by the further suggestion that prior consensual sexual relations, even within the context of a coercive and controlling relationship, could indicate that the case was weak.

In ‘Advice 16’, for example, the lawyer, in relation to a complainant who had a prior relationship with the suspect arising from prolonged drug use together, observed that her account “‘is very, very vague and it is very difficult for us to put to the court” since “she admits consensual sex with him in the beginning and then plays that down, but then also says that she was very affectionate towards him, and says she was effectively pressurised into the sex but doesn’t say that it wasn’t consensual.” Similarly, in ‘Advice 21’, the lawyer, in relation to a complainant who had been abused by someone in a position of authority and continued to engage with the suspect after the abuse occurred, observed “if you were able to stop after a few months of abuse, why were you able to stop then and not before, you said you were



frightened of this chap.” Reflecting a lack of understanding regarding power and resistance in and beyond coercive control or grooming contexts, he also noted that the victim intimidated he put up some resistance against the suspect: but rather than see this as supportive of a lack of consent, he interpreted it as undermining any claim to lack of agency, since “he suggests he puts up some resistance so he was not completely dominated by the suspect to have had no willpower at all.”

Meanwhile, in ‘Advice 1’, the complainant and suspect had previously been in a relationship, which was established as being abusive. Though describing the victim as “chaotic” and as having struggled to place dates and times, the OIC advised that the victim and the suspect were separated at the time of the incident and that she had a new partner. Whilst following it up with a disclaimer that it was not intended to victim-blame, the lawyer’s opening contribution after the OIC had set out these facts was to ask: “what would the jury say to know she was [meeting in private] with another man?” In response, the OIC indicated that the complainant had advised that she met with the suspect in the belief that he wanted to make amends for his past behaviour. There was an implicit suggestion that the victim ought to have anticipated and avoided the risk posed on the basis of his history of prior abuse, and a concern raised by the OIC in particular that this would make jurors less sympathetic to the complaint: a truly suspect-focussed approach would, by contrast, have targeted that profile of abuse and documented the cycles of control associated with violence, apology and amend-making by perpetrators. And though the lawyer did ultimately steer the OIC towards further investigations regarding coercive control, it is notable that they did not use that context to challenge their own instinctive concern, which they returned to throughout the EA discussion, as to “why she was there in the first place.”

In Section 6, we will explore in further detail the extent to which this lack of nuance in understanding the dynamics and effects of coercive control impacted trial strategy as cases developed. But its impacts were also apparent at earlier stages within case file analysis. In ‘Case File 5’, for example, there was a long history of documented domestic abuse and coercive control, but the CPS declined to bring charges because the victim’s claim to have been raped on several occasions whilst she was pretending to be asleep was ultimately considered to be “one word against the other.” Meanwhile, her narrative of having submitted to sex against her will, because she was so ground down by abuse as to feel that she had no power to refuse, were summarised “as an account that after he pestered her, she reluctantly gave in and thus consented.” Similarly, in ‘Case File 3’, the victim withdrew her support leading to an NFA due to a lack of evidence. Although it was likely that no other decision was possible in this case after the victim’s withdrawal of co-operation, such cases inevitably raise questions about whether a more proactive approach to supporting the victim might have led to a different outcome. In this case, there was a long history of domestic violence and coercive controlling behaviour documented by extensive safeguarding reports, including incidents of non-fatal strangulation and kicking the victim in the stomach whilst she was pregnant. Despite this, the OIC noted when recording the victim’s withdrawal that “there is support around her should she require it...I am confident she has made this decision of her own free will as she is no longer in contact with the defendant or any of his friends.” As well-established elsewhere, this may underestimate the resourcefulness of perpetrators and the associated fear instilled in victims.

## Non-Conventional Sexual Practices, Dating Apps and 'New Rape Myths'

Though there was evidence of 'traction' against some long-standing myths and stereotypes, we also identified the emergence of 'new' myths tied to 'modern' and / or non-conventional sexual practices, described by Police 14 as "the new rape myths and stereotypes around 'Tinder' and dating apps." In 'Advice 7', for example, one of the issues of contention was whether the parties had met using a 'normal' dating platform or one specifically aimed at those wanting to engage in non-conventional sexual practices. Despite the lawyer underscoring that being on an app in order to engage in non-conventional sexual practices "wouldn't mean that she was any more or less likely to be raped," jokes were made between her and the OIC about how "you do learn a lot about things in this job" and there was a judgemental overtone to some of the discussion regarding the parties' lifestyle. Similarly, in 'Scrutiny 7', a case was reviewed in which the victim and suspect were both part of a BDSM community. Panel discussion noted a lack of professional curiosity to understand the dynamics of the particular BDSM community, encouraging a sense that the complainant's consensual involvement in such practices made establishing lack of consent to the incident more difficult. This apparent unease at such non-conventional sexual practices was also underscored within the panel itself where the lawyers in attendance made comments about the nature of the club and joked with the police about it. One officer remarked that he was in "stunned silence" at the facts of the case, while a lawyer commented on how much of an "eye-opener" it had been, whilst noting that "all jokes aside, it was well investigated." Meanwhile, in 'Scrutiny 3', one of the cases reviewed involved two individuals who had met in-person for the first time, having matched on a dating platform. Within the police decision to NFA, multiple references were made to the possibility that the complainant had "catfished" the suspect and then, when he rejected her, she falsely reported that he had raped and strangled her. There was little to no explanation afforded as to why this possibility had been given such credence, however. Later in the same report, references were made to the improbability of the suspect "pinning her down" as the complainant had claimed, on the spurious basis that she was notably larger than the suspect and therefore would have been able to challenge and resist him had he attempted to do this. Although, at the panel, the language and decision in this case were subject to significant criticism, this does not negate the fact the report was written in the first instance without challenge. In different ways, then, each of these examples highlight the risk that well-established tropes regarding the 'respectable' victim can resurface in the context of modern, and less conventional, sexual practices: and though greeted with a measure of joking bemusement by professionals, can encourage an 'othering' of those involved, a suspicion of victims and a holding of them to higher standards.

In this respect, it is also important to recognise that cases where the parties have 'met' and communicated using an online dating platform or app, can be challenging for other reasons: in particular, they can often create considerable additional work in relation to phone downloads and digital material. Though contextual information from that data may well be relevant, it also opens up scope for discovery of a range of other details about the parties' lives, including around sexual promiscuity and proclivities, that require robust evaluation for any relevance.

## Trivialisation of Adolescent Sexual Abuse

Though the focus of this research, and of Operation Soteria more broadly, is on adult rape complaints, and as such our data here is more limited, we close this section by raising a flag regarding a tendency that we observed across some interviews and panel observations alike for adolescent sexual abuse to be trivialised within decision-making. Perhaps most strikingly on this issue, when talking about there having been an increase in young girls coming forward to report non-penetrative offences in their area, CPS 48 remarked that “they are doing a disservice to the cases that really need to be investigated...because they’re getting attention.” This sense that adolescent sexual abuse is not always taken sufficiently seriously was also picked up by ISVAs who specialise in working with young people. Speaking about conversations that they had had with criminal justice personnel, ISVA 13, for example, suggested that “I’ve heard some of them say loads of them are just making it up, you know, its teenagers being teenagers.”

The implications of this were particularly marked in our observation of ‘Scrutiny 9’, where two relevant cases were discussed. In the first, which involved a 13-year-old victim and 16-year-old suspect, the officer presenting the case remarked that it had become clear early in the investigation that the parties were in a relationship and that the complainant had had sex with the suspect consensually on a number of prior occasions. Though she alleged she had not wanted to have sex on the last occasion (that was the subject of the complaint) and had acquiesced under pressure, the officer advised that police were “confident there was no rape there,” noting that “the 13-year-old victim had sex and appeared quite chuffed with herself for having sex” when she spoke to friends about it afterwards. The relevance of that prior consent to the incident in question, and the nature and impact of the pressure that the victim referenced, did not appear to have been robustly interrogated. This was the case, moreover, notwithstanding the fact the suspect had – as one panel member put it - previously “got into some hot water” after approaching another 13-year-old girl for sex, and this prior incident was “never really unpicked” at the point of report or subsequently. Importantly, at the panel, it was noted that the case had already been returned to the OIC to be “reinvigorated” to ensure that the suspect was not a serial perpetrator, with members observing that “we’re talking about a 16-year-old and a child, and we have ancillary aggravating factors in this case that we ignored.”

In the second case at this panel, a 14-year-old girl had made a complaint of sexual touching against a peer. Though she reported it to the school, she was hesitant to make a formal police complaint. It emerged, in the course of investigations, that the suspect had previously been accused of sexually assaulting another girl, about which the school were also aware, but the OIC “had the view that the victim did not want to engage and as a result there were limited inquiries.” At the panel discussion, it was again noted that this case would be returned, potentially to be re-opened, but if not for learning purposes since there was inadequate consideration given to safeguarding responsibilities. Reflecting across both cases, the Chair specifically noted that “this is the second one where we’ve been blinkered by the children’s ages.” Meanwhile, another panel member highlighted this as a wider, thematic issue by juxtaposing the tendency to trivialise as ‘banter’ amongst young people that which would be considered to be predatory behaviour amongst adults, and thereby underscoring the prevalence of specific myths and stereotypes regarding what sex offenders and offending look

like, as well as the need for suspect-focussed investigation, within this terrain of adolescent sexual abuse.

Again, there may be specific difficulties posed to effective case-building in adolescent cases, particularly where social media apps are used that do not automatically store posts to the user's profile in a way that would enable easy retrieval; and these are often mediums used heavily by young people. There may also be compelling public interest reasons against prosecution in some cases. But none of this justifies a trivialisation of such abuse, a disregard of safeguarding concerns, nor the adoption of a sceptical approach towards the veracity of complaints made.

### Work Still in Progress: Trauma, Myths and Stereotypes

As discussed above, a number of CPS colleagues spoke positively about the training they had received on developing a more suspect-focussed approach and disapplying myths and stereotypes. In Section 8, we will discuss that training in more detail but by way of concluding remarks here, it is important to underscore that, however much it may have increased knowledge in the abstract, the translation of that knowledge into concrete decision-making remains, for some lawyers and / or in relation to some issues, very much still work in progress. Our findings highlight the need in particular for training that is alert to the ways in which age-old stereotypes around victim credibility and respectability might resurface in new forms (for example, in relation to victim mental ill-health or 'non-conventional' sexual practices); and that is proactively driving a contextual understanding of consent and belief in consent that interrogates both the suspect's behaviour as well as the effects of power dynamics tied to coercive control, grooming and other victim vulnerabilities. In addition, as we will discuss in due course, our findings highlight the need for that training and monitoring of decision-making to persist across careers, in order to embed and ensure continuous professional development.

## 5. Action Plan Monitoring

As discussed in Section 1, amongst the most persistent and significant criticisms of the handling of rape complaints within the criminal justice system, particularly in recent years, has been the protracted nature of investigations, the slow pace of progression towards prosecution and the fact that complainants often experience substantial delays in their justice journeys that prolong their distress, prevent closure and in many cases risk withdrawal of their cooperation. As ISVA 23 put it, it's a "service-wide challenge...because the criminal justice process is so long" but "the feeling of frustration and stagnation with cases" is "a major issue." Other ISVAs, reflecting on their clients' experiences, likewise cautioned that "no one understands when they're about to report this horrific thing that's happened, that they're going to be in this for three or four years...it's too long for them" (ISVA 9) and "when you've gone through something so traumatic and you're waiting that long for an outcome, it is really distressing and really disastrous for them" (ISVA 10). Though some of the difficulties here are attributable to poor resourcing and infrastructure at the court stage, there are clearly mechanisms through which both police and CPS can increase the timeliness of their contributions, as well as improve their communication with victims in respect of anticipated timescales and unforeseen delays.

Much of the focus of the CPS workstream on Action Plan Monitoring under Operation Soteria has been developed with this in mind. More specifically, activity under that workstream sets out to improve the timeliness with which complaints are investigated and progressed by reducing the need for multiple Action Plans and ensuring that the content of Action Plans is proportionate and case-specific - in particular, in relation to the recovery and disclosure of digital and third-party material. This has been accompanied, moreover, by initiatives intended to ensure more effective mechanisms for scheduling and task-management between police and CPS, and processes for escalation where necessary to avoid stagnation in case progression. The foundational importance of making such improvements was acknowledged by several CPS interviewees. As one put it, for example, "improving the quality of investigations and the speed of investigations, the timeliness is the biggest thing that we need to address because I think the other things will almost fall into place" (CPS 6). Meanwhile, CPS 9 underscored that "if we can ensure that we make decisions more efficiently and more effectively, and that our Action Plans are proportionate, it would help deliver justice a lot quicker," which matters for criminal justice and third sector professionals, accused persons, victims and the general public alike.

### Initiatives to Reduce the Number of RASSO Action Plans

When an Action Plan is set by a prosecutor, it effectively returns primary responsibility for the case to the police with the onus on them to complete the tasks outlined before resubmission of the file. Action Plans can arise at various stages in the criminal justice process: where cases are submitted by the police for EA, for example, this will often generate a first Action Plan that details relevant lines of inquiry and investigative strategy, as well as providing a timetable for the completion and oversight thereof. Equally, Action Plans might also be generated later in the investigative process, for example, where information comes to light that opens up new lines of inquiry or where case files are submitted for a charging decision and considered to require more building. Further, just because a charging decision has been made does not

mean there will not be further Action Plans to facilitate the progression and prosecution of the case.

Particularly in the context of persistently heavy caseloads and resourcing shortages, the generation of multiple Action Plans can slow the progression of a case significantly. Across pathfinder areas, there has, therefore, been a concerted effort to monitor the volume of Action Plans and impose a tighter 'grip' in relation to their delivery. In some areas, this has also been accompanied by initiatives designed to proactively reduce the number of Action Plans issued.

These initiatives have dovetailed in complementary, but also complicated, ways alongside initiatives to increase uptake of Early Advice. As discussed in Section 3, Early Advice has, in part, been encouraged to improve the speed, appropriateness and scope of RASSO investigations. As such, where Early Advice is given, it can clearly play a useful role in developing more comprehensive and strategic, but also more proportionate and tailored, Action Plans. This, in turn, might reduce the likelihood of additional Action Plans being required. In some pathfinder areas, there has been evidence indicating that increased uptake of Early Advice is reducing the overall volume of Action Plans. In Area E, for example, it was noted in the March 2022 tracker that the average number of Action Plans per case had fallen from over 3 to 2.6-2.7, and this was attributed directly to Early Advice improving the focus of investigations and the quality of files submitted by police for a Full Code Test decision. The benefits of EA in facilitating this increased investigative efficiency were also identified by some police participants in this research. One observed, for example, that "we've recognised that we're getting too many Action Plans. So if we can replace the Action Plan with the EA pre-charge discussions and clarify those points with the lawyers...surely then that's an efficient way of getting it right first time" (Police 18). At the same time, however, the fact that the provision of Early Advice itself will generate an Action Plan means that, in other pathfinders, it has been suggested that "increased use of EA has led to an increase in the number of cases with 2+ Action Plans" (Area C, RASSO Report, July 2022). This underscores the fact that simply counting the number of Action Plans in a given case, or indeed the number of items listed on a given Action Plan, does not in itself provide a particularly reliable indicator of the scale, quality or value of partnership working involved, or indeed of the appropriate parameters of inquiry. As CPS 6 explained, "we monitor three-plus Action Plans and they haven't really reduced...But actually when you're looking at what we've got, I think the quality of the files we're getting are better than those that have not had EA and are addressing more of the points."

Thus, simply 'reading off' from the average number of Action Plans is unlikely to provide an index of increased efficiency *per se*. That said, since the issuing of repeat Action Plans can build additional, and potentially avoidable, delay into the investigation and prosecution process, it is right that pathfinders have been paying closer attention to mechanisms for streamlining. Alongside internal dip-sampling for quality assurance, each pathfinder area has mechanisms in place to trigger reviews (either internal or with police) in cases with multiple Action Plans (set at either 2+ or 3+, depending on the area). In addition, Area B has rolled out 'pre-charge masterclass' sessions designed to improve the quality of Action Plans, and - as referred to in Section 3 - Area A has undertaken a pilot with one of its police forces under which prosecutors hold conferences prior to making a charging decision, in the hope of

resolving lingering inquiries and avoiding the need to set additional Action Plans. As one interviewee succinctly explained the motivations behind this pre-charge discussion, “we don’t want files going backwards and forwards” (CPS 34); and feedback so far has been encouraging. Tracker entries suggest a reduction of over one-quarter in the number of Action Plans produced, with fewer items contained in Plans overall - from an average of 7.3 before the pilot to an average of 5.8 after 3 months of pilot activity. In addition, the proportion of cases that were able to be either charged or No Further Actioned at this consultation increased from 29% to 52%. In line with our findings regarding the benefits of in-person EA provision, moreover, many respondents underscored the value of these meetings, in particular, in encouraging a more constructive and effective dialogue between police and prosecutors. As CPS 40 put it: “often we’ve found that just by asking the question, the officer’s got that knowledge at their fingertips, but it’s perhaps not been put on a MG6 or it’s not in the file somewhere, but it is knowledge the officer has, so we can reduce the number of actions or Action Plans.” This potential for PCD meetings to minimise Action Plans was also borne out in observations. In ‘Advice 14’, for example, the OIC was able to share the contents of a file during the call that the lawyer did not have access to, circumventing the need for this to be formally requested via an Action Plan.

By contrast, in other pathfinder areas, it was noted that “there is still that disconnect when we’re bashing out Action Plans or they’ll send back emails; and in fact, picking up the phone and speaking to the officer or the inspector is much easier” (CPS 9). As a consequence, there was a concern that “we see much greater repeat Actions in that system where it’s a kind of faceless exchange of information and potentially things in an Action Plan are misunderstood or misconstrued” (CPS 10) rather than successfully “identifying everything that needs doing on the first review” (CPS 9). A clear example of this arose in ‘Case File 6’ where, following an initial Action Plan, issued on 22.8.21, a further six Action Plans were set over the ensuing six-week period. This was a case impacted by custody time limits which partially explains the pace of activity, particularly given that in several of the Action Plans repeat requests were accompanied by the threat of escalation. At the same time, Action Plans were issued by the CPS – sometimes on consecutive days – requesting different substantive information, which is likely to have made it difficult for the receiving officer to keep track of requests, generating an unproductive series of ‘ping-pong’ exchanges that only partially addressed the matters in hand. Moreover, in one of the MG6s, it emerged that a significant obstacle to progression could have been easily resolved: the officer wrote “I have attempted to call the senior prosecutor, however the number I have doesn’t work and the email address says it is not in use. I am available to speak on the phone whilst I am on rest days” and gave their phone number. It is not clear that this was picked up on by the reviewing lawyer, and it was not until the seventh Action Plan in this case that the first request was made regarding third-party material. Although there were potentially relevant victim mental health issues to address, it was also not evident that the lawyer’s directions on this had been informed or tailored in any meaningful way by engagement with the OIC; and what was requested in the Action Plan extended to very wide parameters, covering “any material from the complainant’s medical / mental health records about false allegations, exaggeration, behavioural problems, attention-seeking, self-harm, mental health problems, anxiety, depression, attention-seeking

behaviour,<sup>1</sup> hallucinations, delusional thoughts, alcohol and / or drug issues, suicide attempts, suicidal ideation, etc.”

The ways in which this “disconnect” could impact on stakeholders’ confidence in one another’s motivations for issuing and engaging with Action Plans was also apparent. In a context in which all stakeholders are being assessed for their timeliness, several police officers highlighted that there may be perverse incentives to ‘game-play’. While Police 22 emphasised that “as soon as they [the CPS] have sent that Action Plan, it means their review is concluded and it’s back over to the police,” Police 31 spoke more plainly: “the cases just keep getting knocked back...and you don’t know if it’s a delay tactic because everybody’s busy and it might be that they haven’t got the time, so if they send it back to for a particular action, they’ve got another 28 days to carry on with something else.” Meanwhile, Police 5 suggested that, within their unit, suspicion of CPS motives was common: “it’s very evident that [the CPS] are under their own pressures. So, we do get Action Plans back from them that can be really frustrating for officers, that drag it out even further...it’s nicknamed the Friday evening Action Plan, that they will send it back and the only real inquiry on it is ‘can we make sure that the complainant is still on board’. Well, we wouldn’t have sent it if they weren’t.” Though these suspicions may be unfounded, the very fact that they were raised by police across several areas is itself a concern, highlighting the precarity of partnership working and the importance of ensuring opportunities for dialogue, transparency and professional understanding wherever possible.

Alongside resourcing and workload pressures, and the challenges of written modes of communication where misunderstandings may be more frequent, additional obstacles to effective engagement between police and prosecutors in relation to Action Plans are also currently posed by incompatible IT systems. As Police 3 explained: “the CPS see a case, create an Action Plan and send it out to the officer. That stops the clock for the CPS then...the officer does the work two weeks later and sends it all back on our police system, but...it doesn’t generate something called a CM01 message and because it doesn’t generate that message the prosecution won’t accept it...So we’re ending up with cases going 30 days, 60 days, 70 days, where CPS are refusing to accept it and the officer’s going ‘but I’ve done it’...Beyond all that is a victim who’s waiting for an outcome on a case and it’s sat between us and the CPS because the two IT systems don’t talk to each other properly.” In order to circumvent such difficulties with IT compatibility, we saw evidence, in some circumstances, of case documents being shared through alternative - but potentially less secure - mediums; and even where there were less drastic challenges to system integration, it was clear that there were concerns regarding IT systems being fit for purpose. In addition, ensuring the timely progression of cases under Action Plans often relied significantly on the skills and capacity of Case Progression Managers, which is something that we will discuss further below in respect of tracking and escalation.

Of course, in all of this, it is crucial to underscore that the ambition to make charging decisions with greater efficiency – whether through provision of Early Advice or reduction of Action Plans – must never be at the cost of building cases wherever possible and robust decision-making. In Section 3, we highlighted some tensions that can arise in the EA context where discussions regarding the evidential parameters of a case could be interpreted or positioned

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<sup>1</sup> Mentioned twice in the original



in ways that support potentially premature NFA decisions. Similar tensions are also possible where there is an impetus towards making decisions without additional Action Plans: this might deter prosecutors from requesting further inquiries that, if pursued, might have strengthened the prospects for conviction. The importance of being alert to this was emphasised by CPS 5: “we’re not alone in feeling under pressure...and the impact of that is not on the quality...You might have too many cases and you might have too many tasks to do but what you do is you still do a really, really good job. You still make sure that you take time and make the right decision at the right time...If timeliness slips, that’s the thing that can slip. Our victims would not want to have a bad decision in quicker rush time.” For this reason, monitoring volume, length or timeliness of Action Plans – though potentially important mechanisms through which to ensure more efficiency – will only provide partial insight. What is also required is qualitative scrutiny of the content of those Plans and the bases for decisions made around them. In a context in which concerns have been expressed about proportionality, particularly in relation to third-party and digital recovery, this is all the more pertinent. As noted above, there have been various efforts under Soteria to make improvements on this, which we now consider.

#### Reviewing and Improving the Proportionality of Action Plans - Disclosure

Several of our interview participants indicated that, in their view, one of the most significant changes that they had observed as a result of Soteria initiatives was the development of a greater shared understanding between police and prosecutors regarding the appropriate parameters for third-party material and digital disclosure, and how this should feed into the development of more proportionate, reasonable lines of inquiry. As one put it, “setting proportionate Action Plans, I think, has been the biggest revelation for the police, that actually much of the investigation that they undertake, that takes a long, long time, might not have been necessary or proportionate, so it’s changing that culture” (CPS 10). This notion of effecting a change was also echoed by another interviewee who remarked “it is a huge cultural change as we try to be super-super proportionate and super-super targeted and justified” (CPS 5).

Though some CPS interviewees attributed the trend towards “poorer investigations” and “more onerous disclosure” (CPS 2), which had been identified in several pre-Soteria Inspectorate Reports, primarily to the retraction of police resourcing and specialism, others were more reflective around the extent to which that previous culture was not one solely of the police’s making. Indeed, several CPS interviewees spoke candidly about the “chilling effect” (CPS 1) of the *Liam Allan* case, that - in 2017 - attracted substantial publicity, where a trial involving multiple charges of rape and sexual assault collapsed when it emerged that text messages that would have been relevant to the defence case had failed to be identified and disclosed by the prosecution. It was suggested that a shift towards requiring more developed police investigations to be completed prior to consideration of any charging decision, together with a prosecutorial mindset that was cautious regarding the prospects of falling short on disclosure requirements, meant that a “checklist” mentality emerged (CPS 3) with “wide-ranging Action Plans with everything you can think might be faintly useful...just asking for the earth on things” (CPS 29). Though some interviewees were at pains to point out that this “wasn’t done with any intention other than trying to get the cases in front of the court in the best state possible,” they conceded that “it made it take longer in order to take the

decisions and it also meant that they were asking for things that perhaps weren't essential" (CPS 3). Some participants acknowledged that this had produced a stubborn legacy effect, whereby - notwithstanding the subsequent provision of more circumscribed legal guidelines - police still presumed extensive lists of what prosecutors would "always want to see" (CPS 8). In this context, the Attorney-General's Guidance on Disclosure has obviously been an important development, alongside clearer parameters in case authorities; and a bespoke podcast, designed to explain the application of this law to police and prosecutors, has been well-received. There is also now dedicated training on Disclosure Management provided to RASSO lawyers, through a one-day module that members of the research team observed during this project.

Despite this, the legal landscape in this arena is often complicated and case-specific, which can make it difficult to ensure a consistent and proportionate approach. As one interviewee put it, "it's really sort of subjective and you can think about, when what would be appropriate, and what one person might think is fine, another person might think isn't, so it's trying to get that balance" (CPS 50). Certainly, in this research, we were able to identify examples that indicated improved practice and reinforced the suggestion of a shift from blanket requests for extensive digital and third-party material driven by a 'just in case' attitude that disproportionately harmed complainants. In 'Advice 17', for example, the lawyer queried whether the OIC had any indication on file of the victim having had any prior involvement with social services. When the officer said they had no information around this but could make enquiries, the lawyer indicated that this wouldn't be necessary at this stage: "I am happy to say that we don't believe social services have been involved in any way...I can't rule out the defence coming back and saying well she has all these problems and you need to go and look at all these things, and if they do, they do" but "we are actively discouraged from looking into things which are not a reasonable line of inquiry so hopefully my EA will be the last you hear about third-party material." Meanwhile, in 'Advice 15', the lawyer was clear: "I cannot see in this case that it is a reasonable line of inquiry to delve into the victim's third-party material - these are two strangers who have just met and the issue [consent] is very narrow." When the OIC here went on to note there was information on file to indicate the victim had been referred for counselling, the prosecutor advised that "unless there is something giving rise to the suggestion that there is anything relevant in those records, there is nothing to make it a reasonable line of inquiry."

At the same time, we also saw evidence of concerning practice whereby expansive requests were still being made in Action Plans without a clear or apparently compelling basis. In 'Advice 23', for example, as discussed in Section 3, the complainant was found by police, in a distressed state at the scene of the alleged rape where corroborative forensic evidence was identified. The lawyer nonetheless requested that extensive third-party material be collected as part of the investigation, including her mental health and GP records, and phone downloads spanning the past 6 years. This was justified on the basis that the parties had previously been in a relationship and that the complainant had a mental health diagnosis which was considered an inevitable "credibility issue". Meanwhile, in 'Case File 19', a reviewing lawyer providing EA - exclusively in writing - on a case in which the accused was not someone previously known to the victim, rejected the OIC's substantially more minimalist proposals regarding the scope of third-party material requests. Instead, the lawyer adopted a significantly extended remit: he advised that since "at present, the suspect has denied

having sexual contact with the complainant...the issue in this case is likely to be her credibility and reliability.” Therefore, he instructed the OIC to obtain her GP records, spanning over a decade, as well as her counselling records, since “if the complainant has been receiving counselling then those records need to be viewed fully...Is there anything in the records that could undermine her reliability as a witness?” In addition, the lawyer instructed inquiries to be made as to any social services records that might indicate her dishonesty, whilst stipulating in response to the officer’s query regarding the suspect’s records that no parallel inquiries were required. Not only does the content of this Action Plan in ‘Case File 19’ raise significant questions about the paucity of a suspect-focussed-investigation, it underscores the concerns raised by some CPS colleagues that, notwithstanding new guidance and training, “some of the Action Plans I see are very lengthy...lawyers literally are sort of ticking every box in terms of making sure that everything is covered” (CPS 53). These findings sit alongside recent analysis, reported on by Area D in its Soteria tracker, that some 50% of cases with 3+ Action Plans, reviewed as part of internal Case Quality Reviews, were found not to be reasonable and proportionate in their scope.

Such inconsistencies in approach were likewise apparent in interviews with CPS personnel. On the one hand, for example, CPS 10 emphasised that there was a perception amongst their local police forces, which she was working to dispel, that “we don’t just say, because we’ve always done it, we apply for someone’s medical records.” On the other hand, a colleague in the same area, CPS 19, was keen to underscore: “it’s fairly case-specific but certain things are prevalent. For instance, third-party material, education and health records, social services material, it sometimes creates a bit of a blind spot for the police. They sometimes think just because someone’s never been in trouble with the police before, there’s no need to do it. And I have to keep saying to them, no, reliability and credibility of witnesses is so key in these cases, particularly if it is one word against one, we need to know if there’s anything within those records that might possibly show there’s a degree of untruthfulness in their past, exaggeration, attention-seeking...say at school, they were badly behaved...that sort of thing, we need to know...maybe drug dependency, things that might make them unreliable generally.”

The existence of such inconsistency in approach across prosecutors in relation to third-party material and disclosure had also not gone unnoticed by other stakeholders. Police 22 observed, for example, that “where we’re seeing inconsistency is definitely Action Plans. There are some lawyers who will give a 30-point Action Plan...And then you’ll have other lawyers that don’t give very big Action Plans at all.” Meanwhile, Police 31 commented that “the biggest thing is...what one lawyer expects will be totally different to another lawyer, especially...ways of doing disclosure.” At the same time, it was clear that there was variable practice, in turn, on the policing side in terms of their willingness to ‘push back’ against Action Plans that they felt were disproportionate or unreasonable. Police 22, for example, observed that “quite often...if you get an Action Plan, even if you think it’s unreasonable, you’ll go and do the Action because it speeds everything up. At the end of the day, your lawyer is going to be progressing that case and if that’s what they want, we’re just going to have to go and get it.” One significant disclaimer to this, she suggested, was that “if it’s something that completely, really going to impact the victim, like that second ABE, doing further downloads of her phone, that sort of thing...we’re more likely to push back.” Equally, as she went on to note, “there isn’t really a process for that pushback or for us to question Action Plans,” which

makes things difficult in practice (Police 22). Likewise, Police 19 observed that “it is starting to change” in that police are more willing to challenge: giving the example of a case the preceding week involving an historic complaint where the lawyer had asked for information that “seemed a really unreasonable request,” she reflected that “even though we might be overruled, we’re still challenging that to go, actually, we don’t agree that’s necessary.” Other officers also reflected that this increasing willingness to question had been beneficial to wider understanding and partnership working: “we’re a lot better at setting the parameters and the CPS are a lot better at agreeing those parameters and understanding why we don’t just get everything” (Police 17).

At the same time, there was also some evidence in the Case Files of such pushback causing tensions. In ‘Case File 10’, for example, there were complaints made against the same suspect by three individuals: the complaints related to historical assaults and the accounts provided clear corroboration in terms of the suspect’s *modus operandi*. An Action Plan on file requested the police to obtain full downloads of Facebook messages between the complainants, which the suspect was suggesting indicated collusion of false claims. In response, there is a note on the Investigation Management Document which indicates a refusal to take this approach, explaining “victims are exactly that, it has taken a great deal of courage to eventually disclose their experience and it was not felt proportionate to examine devices when they had not actually seen each other [for decades] and contact between them had been minimal and was only made so police could get in contact.” The police appear to have held firm to this position notwithstanding a complaint made by defence counsel against the Disclosure Officer, which alleged that he was acting unreasonably. At a subsequent ad hoc CPS review, however, the lawyer continued to insist the screenshots provided by the victims were not sufficient and that the full conversation needed to be downloaded, as requested by the defence. Another Action Plan was issued asking for these downloads to be undertaken since “the suspect is alleging that these allegations are fabricated and that the *girls* have colluded. This needs to be ruled out.”<sup>2</sup>

In our observation of ISVA engagement panels, there was also encouragement for third sector specialists to similarly feel confident in questioning requests for third-party materials, and specifically copies of their clients’ ISVA notes. In ‘Forum 1’, for example, a CPS representative emphasised that “we try our best to be proportionate, focussed and precise with our third-party material requests, but it is difficult.” In response to a suggestion from one of the ISVAs present that colleagues in their service are “still being given blank forms, sign the form to share the info” and “it is not really being explained to them what information is being shared...we’re just being told we need it all,” the police representative advised them to “push back” and ask “what do you want and why do you need it.” Echoing that, the CPS colleague added, “I totally agree...you need to demand that the request is specific and if you don’t think it is specific you are within your right to refuse.” Again, there was some evidence in interviews with ISVAs of them becoming increasingly robust in their challenges around this. ISVA 6 remarked, for example, that “in the past there’s been a lot of blanket requests for third-party material...and we’ve started pushing back on that now and saying, unless there’s something specific in our notes then we won’t be handing them over.” Similarly, ISVA 7 noted that “we are pushing back as an organisation. If an officer just does a blanket request for our notes, we

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<sup>2</sup> Emphasis added, since the complainants in this case were, in fact, mature adults by the time of the report.

just say no. If you've got a really specific reason that the CPS think it would be a good idea for them to have our notes, then fine, but you need to send that, otherwise you're not having them."

Though it was not a hugely prominent feature, one further theme that it is worth bearing in mind here, particularly in light of the effects attributed to the outcome in the *Liam Allan* case, was a measure of hesitancy amongst participants given the current lack of clarity regarding how this more targeted approach to disclosure is likely to impact at trial stage. Some interviewees expressed concern, in particular, about the extent to which members of the criminal bar and judiciary had "moved with the times in terms of things like disclosure" (CPS 54), with Police 18 noting that "we've got to get it right as the police in terms of parameter setting...we've got the change in attitude in the CPS, and the next step really is the change in attitude within the court system, with the defence and judiciary." There was also a suggestion by some participants that this may generate tensions in trial strategy – something that is discussed more substantially in Section 6 - whereby "you get advice from counsel that say, go and get all of the third-party material...and you're saying, it's not a reasonable line of inquiry" (CPS 54). This concern was echoed in 'Forum 1' where a prosecutor acknowledged that "we are still getting some 'old school' requests from barristers...that the message hasn't quite reached." In addition, even where the approach is supported by prosecution counsel, Police 18 observed that "a lot of good work can be undone at the trial stage...if there's a bit of an ambush and the judge concedes to it." In this context, CPS 57 recounted a recent case in which the judge had supported the defence's assertion that disclosure had not been dealt with correctly, since medical, educational, counselling and Children's Independent Sexual Violence Advisor (CHISVA) records in relation to a minor complainant had not been extensively searched and disclosed. Neither the CPS nor police considered this to be reasonable or proportionate since the contested issues were in relation to age and consent. CPS 57 wrote to the judge, highlighting paragraphs in the Attorney-General's Guidance which underscore the need to balance privacy with rights to a fair trial, querying how the records requested assisted the defence given the nature of the dispute and advising they were unwilling to secure them until the defence could justify the request. At the next hearing, CPS 57 reported that the defence "stepped back from it and nothing was ever given," which she suggested indicated that "if we follow the letter of the law... it absolutely works...[but] I just don't think that's translated necessarily into the way the defence approach it." Genuine change in this respect may thus require a robust judiciary.

### Improving Oversight of Action Plans and Escalating Processes

As noted above, the core aim of this particular workstream under Soteria is to ensure that Action Plans are set which are proportionate, specific, and realistically capable of being complied with in a reasonable timescale. Though, as we have outlined, there are ongoing challenges to achieving this, where it is achieved, the expectation is that it will maintain momentum in case progression and prevent unnecessary delays. As CPS 10 put it, "it's creating momentum in the investigation which otherwise wouldn't be there...but also attempting to give victims a timeline that they can try and engage with" since "they will know that in 28 days, the officer is required to come back to the CPS with a progress report." In reality, however, stretched resourcing means that RASSO cases are still often not being advanced as quickly as hoped, with actions not being completed in the timescales allocated.

The implications of this were highlighted powerfully by ISVA 7, who gave the example of a case within their service where “the officer sent the information over to the CPS, they were given a 28-day Action Plan. And 18 months on, we still haven’t had any update, that Action Plan is still floating around somewhere.” In such cases, it is obviously important that better mechanisms are in place to ensure that actions are chased, that investigations do not stagnate and that victims are informed.

Across pathfinder areas, there have been initiatives to improve escalation mechanisms in relation to cases in which an Action Plan has been set but there have been no subsequent updates. The format for this varies. In Area C, for example, cases that have been sitting with the police for 90 days or more will be highlighted and referred to the Senior District Crown Prosecutor for escalation at Chief Superintendent level, whilst in Area B, cases with Action Plans that have been with the OIC for more than 60 days will be proactively flagged. As one interview in that area put it: “we are going to start implementing checks in relation to cases that have been Action Planned, so that after about, they usually give them a month to reply, but after about two months, I think, we’re going to go back to the police to say ‘what’s happening with this, why have we not got it back, you need to make sure that you’re doing x, y and z’; so there is a handle on those cases, and we are keeping them on our radar” (CPS 21). Meanwhile, in Areas A and E, they have also implemented monthly casework meetings where lawyers examine the ‘top ten’ at risk cases within the unit with a view to precipitating progress.

At the same time, it was clear that in some areas these initiatives were not yet consistently embedded, imposed significant additional demands on case progression managers’ time, and had mixed results in terms of the effectiveness of chasers in re-establishing momentum. Police participants commented, for example, that while they appreciated the importance of setting and trying to meet Action Plan timescales, “the times are always too short” (Police 16). Some intimated that they try to manage this by “overestimating” in order to “buy everyone time,” which they acknowledged “probably isn’t in the spirit of things” (Police 16). Meanwhile, other officers reflected that they do often receive chasers from prosecutors, but appeared fairly relaxed about this, observing that “the worst that happens is it goes over and I have to email them [the CPS] and say, look, I’m really sorry it’s late” (Police 18). Some officers also observed that the monitoring process was often designed in a one-directional way, with the assumption being that police are most likely to be the ones responsible for delayed progression and no complementary mechanisms in place for escalation where delays occur with prosecutors. This could undermine the claim to be engaging in genuine partnership working. Indeed, one officer who was sympathetic to the resourcing pressures experienced by the local RASSO unit nonetheless noted that “we shouldn’t have cases with the CPS for two or three months”; and in situations where that occurs, noted that there needed to be mechanisms for “chasing the cases” (Police 12). Some police also intimated that part of the difficulty is that, after the Action Plan has been issued, CPS lawyers “don’t tend to have any oversight, they tend to leave us to it with an end date in mind...They don’t say how are you getting on with this?” (Police 32). Though resource pressures make this “task-based” approach (CPS 6) understandable, it reduces the opportunity for more responsive case management where additional lines of inquiry opened up as a consequence of tasks in an original Action Plan could, for example, be identified and responded to in the same initial time period; or tasks that have now emerged as likely to be less important than they had previously

appeared abandoned. This risk was also underscored by some police officers who cautioned that, once an Action Plan has been set, “we have a bad tendency to just be, the supervisory oversight becomes about working through CPS Action Plans and that’s it, there’s no thought gone into it” (Police 9).

Across pathfinder areas, there also remains inconsistent practice in relation to what was previously referred to as ‘admin finalisation’ (now ‘PRFI’ – ‘Pending Response: Further Investigation’), in cases where it becomes clear that longer timescales for Action Plan completion are required. For example, in Area E, they have committed under Soteria to not admin finalise cases but continue instead to maintain dialogue in relation to their progression with local police forces. This, it is hoped, will address the concern that if “you trigger admin finalised, we’ve taken our eye off it, it’s not on any tracker and it will drift” (CPS 5). A not dissimilar approach has been adopted in Area C, where it was noted that admin finalising is undesirable “because it stops you having any control.” Though cases are still admin finalised in Area C, there are regular meetings between senior police and CPS colleagues where cases are discussed to confirm whether they remain live investigations, meaning there remains “some sort of control even over the cases that have been admin finalised, but it’s not as robust as those that have got Action Plans” (CPS 6). Meanwhile, in Area B, the Soteria tracker notes that “where it is clear that the investigation is going to take substantially longer than 60 days to complete the actions on the Plan, the case is administratively finalised, giving the investigator sufficient time to complete the enquiries.” This returns responsibility for progression formally to the police and “we wait for the police to tell us that they’ve done the Action Plan or that they’ve closed their file” (CPS 9). To work effectively, this requires mechanisms by which CPS areas continue to be informed of progress and police are motivated to maintain momentum. In Area B, this has presented an ongoing challenge: CPS 9 observed, for example, that “we don’t always get that information” about the fate of cases that they have admin finalised. Equally, in Area D, it was noted that the alternative in their context was “having 400 or 500 cases sitting with the police” that had not been admin finalised but were “sitting on the books, scaring the lawyers” until the police were in a position to deal with them (CPS 7).

The logistical challenges of effective case progression and escalation were also often highlighted. In particular, not only was incompatibility across police and CPS IT systems a source of difficulty, but the fact that the CPS’s own Case Management System was “quite a clunky tool” (CPS 38) that’s “really difficult to follow” (CPS 7) and in need of “a lot of modernising” (CPS 31) was frequently commented upon. This meant that it was often an unduly complicated process to identify precisely what stage a case had reached or what documents had been lodged in respect of it, with Case Progression Managers and Paralegal Officers alike often having to devote additional time to navigating these systems, or developing their own alternative approaches that allowed them to manage data more effectively. One interviewee reflected, for example, that “we’ve got a really good [Case Progression Manager] in our team, he’s excellent, so every Monday he’ll be like ‘these are the directions for the week’ so you’re kind of bearing that in mind. But otherwise, you’d have to go out of your way to then go on each case and have a look. It’s a bit disconnected...but that’s the workaround, that we then have the Case Progression Manager who helps us remember” (CPS 31). Meanwhile, a Paralegal Officer we spoke to reflected that “I used to, when I had paper files, I’d read through it...and then on my brown correspondence folder, I would write

down...the police memo of what's outstanding...and I would just tick it off. Now I can't do that because it's all digital. I tried to do it and it got a bit too much, especially with the volume of cases, and I had to give up. So it's just, I sort of know what to do on each of my cases. I don't know how I do it, I really don't, but it happens, it works" (CPS 17). While this approach may work for someone with many years of experience in RASSO units, it is considerably less clear how sustainable such "workarounds" are in units with more mixed levels of experience within key job roles. And the implications of that were underscored by another participant, who noted that "there are so many elements to a RASSO case that are easily missed if you're not on top of things" (CPS 12).

In 2 of the 5 pathfinder areas, moreover, entries on Soteria trackers specifically recorded that ensuring more proactive case progression management would require a significant further uplift of unit resource, in particular to allow for the appointment of additional case progression personnel. Meanwhile, in Area A, efforts were made to design and pilot a new tracker system that would provide a more user-friendly and holistic platform for accessing information about case progression, including a series of automated prompts. The feasibility of transferring that tracker tool to the national level remains unclear, since it has been trialled only on a small number of cases. In Soteria tracker entries from this area, there has also been a consistent concern about lack of resourcing for the development of the new platform, culminating in an entry in early 2023 confirming that the initiative has been paused. Though early indications from the pilot were positive, with interviewees explaining that the platform provided them with a "full and up to date picture of where the case is at" (CPS 12), it was also noted that it would be likely to impose further resourcing demands, particularly on paralegal officers. Moreover, as currently designed, the tracker only covers cases post-charge so would need to be extended in order to yield improvements in the monitoring of cases with Action Plans at an earlier stage. Still, the benefits of a better integrated and streamlined IT system to monitor Action Plans and case progression, facilitate updates for counsel, judges and victims in a more timely manner, and build-in a level of systematic cross-checking that would facilitate better data collection, as well as the training and development of RASSO staff with mixed experience levels, seem clear.



## 6. Case Progression & Trial Readiness

Related to the specific initiatives around Action Plan Monitoring discussed in the previous section are a range of wider activities, under the Case Progression and Trial Readiness workstream of Soteria. These activities are designed to: support more timely and effective handling of cases from the point of charge to trial, ensure fewer adjournments at pre-trial stage and improve overall trial strategy and preparedness. Case progression here involves, amongst other things, ensuring that applications (for example, for Special Measures or admission of Bad Character Evidence) are lodged appropriately, alongside documentation to comply with disclosure obligations. It requires timely trial preparation for the Pre-Trial Preliminary Hearing (PTPH) and beyond into the substantive trial, by ensuring appropriate instruction and communication with counsel, as well as mechanisms for effective review of trial strategies.

Though several of the key activities under Soteria, and envisaged in the Joint National Action Plan, have focussed on early partnership working, investigation and progression decision-making, this focus on latter stages of the justice journey is also much needed to improve processes and outcomes, and learn lessons that might inform earlier stage activities. This is all the more so given that a series of recent HMICFRS Inspections of RASSO casework across pathfinder areas has highlighted concerns in relation to the adequacy of their post-charge reviews, development and articulation of trial strategy, and instruction and review of counsel.

In this section, we discuss our findings to date around these themes, but it is important to underscore from the outset that, as discussed in Section 1, we have not yet secured as much input from criminal barristers as hoped. Counsels' insights are clearly highly relevant in this context, and our intention in the coming months is to deepen our understanding of their perspectives regarding CPS's preparation and execution of trial strategy in RASSO cases.

### Development and Articulation of Trial Strategy

When asked what a 'well-prepared' case looked like, CPS lawyers that we spoke to tended to focus on practicalities – “being well organised, having nothing outstanding” (CPS 41), “having everything that you need on time” (CPS 31), or “ensuring that all stage dates are complied with fully...serving your evidence, dealing with the unused and everything else” (CPS 43). This was often echoed by external counsel who noted that, at the point they tend to become involved in a case, “if the unused material is dealt with right from the outset, so there's no outstanding disclosure requirements, that's ideal. Early bad character applications, a good quality ABE interview, where you've got a very good facial view of the complainant, there are no sound quality issues, and the questioning is relevant...that's a really good start to the case” (Barrister 5). The importance of all this should not be understated. In Area C, for example, a key theme identified in discussions between the CPS and RASSO counsel has been the lack of quality of ABEs in terms of the content of recordings received and the reliability of court playback equipment, which was leading to delayed or vacated trial dates. In response, senior CPS colleagues have undertaken a series of training events with local police forces to drive improvement in the focus of ABE questioning, as well as to address practical issues that affect the sound and visual quality, including positioning of microphones, background noise, etc. At the same time, it is apparent that broader problems as to the courts' facilities and technology

remain significant, and this is an issue that the CPS themselves are unlikely to be able to rectify.

The importance of dealing effectively with disclosure, and ancillary matters and applications, for example in relation to special measures and bad character evidence, has also been underscored by recent RASSO Inspections, which have highlighted considerable scope for improvement. In Area E, for example, it was noted in a recent review that only 2 of 15 cases examined fully met the required file standard in this respect, with examples cited where early opportunities to adduce evidence regarding the suspect's bad character were missed, or further inquiries that might have allowed a background context of coercive control towards the victim to be more clearly evidenced were not actioned. Meanwhile, in Area D, the Inspectorate found failures by police / prosecutors to speak with complainants about special measures, with expected standards being fully met in this regard in less than one-third of cases; in Area C, over 50% of cases reviewed included instructions to prosecutors that were considered to be insufficient in their scope and level of detail; and in Area A, it was noted that prosecutors had not always taken adequate account of potential defence arguments in developing trial strategy.

This latter point is significant given that preparing a case for trial is clearly about more than organising evidential bundles, dealing with disclosure documents, and making timely ancillary applications. In making a charge decision, reviewing lawyers are asked to complete a section on 'trial strategy' that ought to go beyond lists of exhibits and witnesses to give a narrative account of how they anticipate that the case should be opened, presented, and closed at trial. As part of developing and articulating this trial strategy, CPS Legal Guidance is clear that prosecutors have a responsibility to identify and address any myths and misconceptions that might arise or be used by the defence "in order to ensure a proper case-strategy and effective advocacy" (2021: Chapter 4). The importance of this to successful prosecution was underscored by barristers who reflected that "when I'm prosecuting a case...I always start by looking at it if I was defending, that's the way to do it. You can sit there looking as a prosecution barrister at the case, you'll miss things. I look at it...right, I'm defending this case, where are the holes, where's my line of attack? And that's really the way you plug them" (Barrister 3).

Although, as noted above, a focus on the more practical aspects of case management was common amongst CPS colleagues, there were also some lawyers who underscored the importance of taking this strategic approach. As one put it, for example, "a well-prepared case would be that the lawyer has probably anticipated pretty much what the defence are going to be saying about the case, which is all part of our strategy...ideally what we want to be saying to the defence from the beginning is we know what you're going to say and here's the reasons why you don't need to be asking this because we're able to answer it...so, it's anticipating that" (CPS 28). We also saw real-time development of this strategy within EA discussions. In 'Advice 8', for example, the complainant had disclosed allegations of rape against an ex-partner as part of an ongoing family law dispute. Here, the lawyer discussed with the OIC the retrieval of text messages between the parties, in order to "support a picture of a wider, abusive relationship." The lawyer also anticipated that the defence would be likely to argue that the victim had made the rape allegations to "up the ante" in the family court case, but noted that it may well have been that she did not feel comfortable to disclose

previously, and was only able to do so now after building a relationship of trust with her solicitor: to address this, the lawyer emphasised that “we want to take control of that narrative” and “put those disclosures into our case narrative rather than the defence case narrative” by explaining the context of her reporting.

At the same time, recent HMICFRS reports have been critical of the extent to which this anticipation of trial strategy has been a consistent feature in RASSO cases. In interviews, concern over whether lawyers had sufficient opportunity and training to ‘think trial’ was raised on several occasions. CPS 5 was of the view that prosecutors did often have a trial strategy that underpinned how they approached the case - from considering reasonable lines of inquiry to making a charging decision to submitting ancillary and evidential applications - but it was not always adequately articulated in the file and instructions to counsel: “what is lacking is the quality of structure and being really clear on what our strategy is, what our case strategy is, what our trial strategy is.” By contrast, CPS 7 was more critical, reflecting that some prosecutors too often think in terms of “what is their case, as opposed to saying this is what I’m going to do at court.” As a result, such lawyers were not “really getting to grips with that approach of addressing what the defence are saying”. This concern was echoed, moreover, by an October 2022 entry in Area D’s Soteria Tracker, which noted that files were being identified in which case strategies were unclear: whether due to a lack of analytical thinking around what was essential to the case, a lack of confidence in relation to the defence position, or a lack of time after providing lists of evidence and exhibits to document how that material is to be used. Some of the files we reviewed in this study also supported that concern. In ‘Case File 6’, for example, under the header of ‘trial strategy’, the lawyer simply wrote: “the complainant is a willing witness - case to be kept under close review - urgent review required if the complainant should withdraw her support for the prosecution. Case strategy to be discussed with Counsel.” Meanwhile, in ‘Case File 9’, the lawyer had commented more clearly elsewhere on how they felt the case should be presented to a jury, but under ‘trial strategy’ noted more vaguely: “this is a case whereby the narrative can be presented of the defendant’s singlemindedness being pursued to the detriment of and with indifference to the feelings and autonomy of the woman he claims to love.” This failed to capture much of the essence of the case which - amongst other things - featured grooming of the complainant by the suspect since she was in her early teens.

In particular - and as we highlighted in Section 4 in respect of the role of myths and stereotypes in decision-making - in the Case Files, there was a theme of potentially missed opportunities for developing trial strategy in rapes that occurred within domestically abusive relationships: specifically, where coercive or controlling behaviour had left complainants’ freedom to make a choice in relation to sexual activity radically depleted, if not obliterated. In ‘Case File 5’, for example, a ‘classic’ coercive control trajectory was demonstrated: after an initial period of intense courtship, the suspect subjected the victim to physical assaults, including strangulation, isolated her from family and friends, and secured financial control over her. In his police interview, the suspect underscored that whatever he asked the victim to do sexually she would agree to, and intimated that the idea of him “having to rape my own wife” was unfathomable. The ABE in this case was disappointing, lasting over 300 minutes with huge levels of peripheral detail but lacking clarity in relation to key issues of consent and belief in consent for the rape charge. However, the complainant described the suspect as believing that she was his property and intimated that she no longer felt able to say no to his

persistent sexual advances. The reviewing lawyer declined to charge, concluding that “it seems from her account that after he pestered her, she reluctantly gave in and thus consented, or at least the suspect may have had a reasonable belief that she was consenting.” Similarly, in ‘Case File 1’, a victim who had, since she was 18, been in an on-off relationship with the suspect (almost 30 years her senior), reported that all intercourse between them had effectively been non-consensual over the past 5 or 6 months. Identified via domestic abuse risk assessment tools as at high risk from her partner, she described herself as “petrified” of him, but “petrified of losing him.” She reported that he had physically assaulted her, strangled her, and made threats to kill her, with the suspect having a record of similar offending against previous partners. There were also indications in the file about the suspect isolating the victim, controlling her, and exerting financial control over her. She explained that she went along with sexual acts that she did not consent to in order to placate him and because she was fearful of him. In the case review, however, the lawyer focussed on the fact that “she does not use the word rape and it’s not clear whether she did not consent or just went along with what he wanted.” Again, rather than interrogating, as an integral part of the trial strategy, the possibility of meaningful consent (or reasonable belief therein) against the context of this abusive relationship, the lawyer simply flagged this “difficulty” and requested to speak with counsel about “the issue of consent.”

From their perspective, barristers recounted variable experience in the levels of preparedness of Case Files by the time they were instructed – as one put it “some cases, it might be pretty much there, and some cases you think, I have to put the whole thing together, build the whole thing” (Barrister 6). Meanwhile, Barrister 2 noted that “part of the reason for the CPS to instruct a barrister is to...get that fresh pair of eyes and check they haven’t missed anything” but that, in terms of further investigation, “on the whole, there’s not normally too much to do by the time it gets to me.” In terms of trial strategy more specifically, however, barristers were often of the view that this was under-developed. As one put it, “the trial strategy is to generally play the ABE interview, call any supporting evidence, deal with what the defendant had said in interview...The CPS tend not to give us advice on trial strategy or they’ll sometimes say ‘I’m not going to use this witness because they’re not useful or it’s an irrelevant issue...the CPS lawyer will ask the barrister whether they approve of that trial tactic and in most cases you do” (Barrister 5). Similarly, Barrister 2 observed that “it depends a bit on the lawyer” but referencing a recent case where the lawyer had “made it perfectly clear to me what her thinking has been, what she sees as the strengths and weaknesses of the case and so on”, they noted that “it’s quite unusual to get that level of information,” even though “it will be helpful to me”.

At the same time, though, barristers were broadly of the view that it was not the responsibility nor role of the CPS to develop trial strategy, and that – to the contrary – this was something best left to counsel when they are instructed. As Barrister 1 put it, “trial strategy is always a matter for the barrister because the barrister is the one presenting the facts with the narrative. And very good reviewing RASSO lawyers understand that, so they don’t present a strategy to you.” Likewise, Barrister 3 observed that “I don’t think it’s the reviewing lawyer’s job to do the trial strategy...there is a part of the advice which says trial strategy and they do put their comments in it, but ultimately it’s for the advocates,” while Barrister 2 underscored that “we will have discussions about how to approach a case and those can be pretty helpful, but by and large it is for the advocate to decide how to run a case.” Several barristers

reinforced the appropriateness of this division of labour based on disparate levels of trial experience: Barrister 3 suggested, for example, that “most of the RASSO lawyers will have had no trial experience at all, other than perhaps doing one or two cases in the magistrates court.” They went on to note that, in their local area, with a couple of exceptions, “all of them have just qualified as solicitors and then just gone through...or as barristers and gone through and remained in the CPS without much exposure to the Crown Court.” Barrister 4 also observed that “there are a lot of less experienced lawyers coming in,” but did not see this as a particular concern since “they’ll often ask for advice...and they don’t turn around and say ‘well, I’m not listening’, they are prepared to learn.” Though most areas in fact had mixed profiles in their RASSO teams in terms of Crown Court experience, often with greater levels of exposure than these barristers suggested, concerns about the variability of lawyers’ skillset and training - and the ways in which this might diminish their capacity to ‘think trial’ - were also echoed by CPS colleagues.

With this in mind, under Soteria, some pathfinder areas have focussed on increasing lawyers’ capabilities around trial strategy. In Area E, internal training has been provided; and in Area B, a series of ‘masterclasses’ were provided, designed to show “the importance of building a strategy and having a case plan, understanding how you can prove a case, how you can add value to a case and structure it in the right way for it to go to court” (CPS 22). In addition, Area B set an early ambition in its Soteria Tracker to increase lawyers’ courtroom exposure, by having them attend their own case trials end to end, and observe legal arguments, speeches and defence counsel approaches to cross-examination, in order “to ensure robust and well-informed decision-making by reviewing lawyers based on a strong knowledge and understanding of legal and practical issues.” However, subsequent entries documented that this ambition was thwarted by a lack of resourcing, with the opportunity restricted to the unit’s least experienced lawyers. Though such observations may have a limited impact on addressing the concerns raised by barristers regarding reviewing lawyers’ direct experience of advocacy, there is no doubt it could assist them in developing a more holistic understanding of prosecutorial strategy within the adversarial trial process. As CPS 23 put it, “being in the trial is helpful for things like your case strategy, being in a trial, seeing how it works”. Likewise, CPS 40 noted that “the more that [lawyers] are at court and can see what’s happening on the ground, the better that makes their decision-making.” This matters because, particularly with an increased focus on building better cases from the outset, there is greater scope for the CPS to play an active role in developing and articulating trial strategy as well as in advising on reasonable lines of inquiry. As CPS 22 put it, ideally, “you need the police to have a clear strategy from the beginning as they do the investigation. That strategy then passes to the lawyer who uses the same strategy, refining it as they prepare it for court, and then the barrister ultimately runs with that strategy.”

Of course, this ideal scenario also requires good communication and shared understanding between lawyers and the external counsel that they instruct to take cases forward. In Section 5, we alluded to the concern of some participants that barristers and the judiciary were not yet fully ‘on board’ with changes in investigative and prosecutorial approaches to delimiting reasonable lines of inquiry, third party and digital disclosure, and addressing myths and stereotypes. In the next section, we explore in more detail the engagement between the CPS and counsel across the pathfinder areas, the processes for communicating and translating case strategy into the courtroom and for reconciling any disagreements that might arise

around this. As CPS 5 put it, this is crucial because “we and the officers can be doing a sterling job and it means nothing if the advocate doesn’t bring it to life in the right way...that’s always a challenge...[but] where we’re really driving improved approach...it’s particularly marked.”

### Instruction of, Engagement with, Counsel

Though, prior to Soteria, the CPS had already committed to holding timely case conferences with counsel in all RASSO cases, it was clear that this was not being done on a consistent basis in practice. The scale of non-compliance was evident across recent HMICFRS Inspections: reports published in 2021 indicated, for example, that in Area A less than half of the cases reviewed showed evidence that a conference had taken place, whilst in Area C, conferences were not taking place in almost two-thirds of cases. Though attributable in part to the impact of the pandemic, CPS 8 underscored the unacceptability of that position: “we don’t have a conference in every RASSO case...this is the person that you’re paying money to go into court to hopefully do their very best at court, and we’re not always having a conference. Everyone’s busy, etc, etc...but that isn’t happening and that’s supposed to happen in every case.” Perhaps unsurprisingly, therefore, one of the activities in pathfinders that were performing poorly in this respect has been to address this “lapse” in practice, which was recognised by interviewees as a “massive hole” (CPS 6). Though now more confident regarding their compliance, it is important to note, as one interviewee put it, “we’re not doing anything over and above what we should have been doing, but at least we’re doing what we should have now” (CPS 6).

Such moves towards more partnership working between the CPS and counsel were welcomed by barristers who emphasised that “if you’ve got that relationship between counsel and CPS working as a team together with the police, that’s really the best way” (Barrister 3). At the same time, this was often positioned as a mechanism to compensate for their belief, discussed above, that “most RASSO lawyers will have no trial experience at all” (Barrister 3). Against that context, it is important to look beyond the mere fact that such exchanges have taken place to explore their tone and parameters, the extent to which views may diverge between prosecutors and counsel on managing aspects of the case, and how such disputes are resolved.

Some CPS interviewees were confident regarding the willingness and ability of their colleagues within RASSO units to challenge counsel advice when needed. CPS 10 observed, for example, that while counsel “do bring another dimension and sometimes will have a different perspective on case strategy...we’re not just adopting counsel’s case strategy and abandoning our own.” Meanwhile CPS 9 underscored that “most of our lawyers are robust and counsel...does act under instruction,” and though CPS 28 acknowledged that “there can be respectful disagreement” regarding matters such as disclosure, they were confident that they could be, and were, “resolved most of the time” by lawyers “explaining their thought process, why they are prosecuting in this way and why they disagree with counsel’s notion.” Typically, however, the ability to do so was linked to having a cohort of “experienced lawyers” (CPS 9); and other interviewees were more circumspect about the prospects for robust conversation, particularly involving newer lawyers. CPS 7 worried that reviewing lawyers “listen to counsel too often...just because counsel says something doesn’t mean to say it’s true.” Meanwhile, CPS 40 warned there is a risk that “some of the more junior lawyers have

counsel on a pedestal,” and CPS 29 acknowledged that “if you get someone who’s a bit dismissing and doesn’t agree...it’s quite difficult.” The potential for exchanges to become one-directional in such situations was also alluded to by Barrister 3 who noted that “in my experience...when I’ve asked for something to be done or I tell the CPS I don’t like that,...or this is the way I’m going to run with the case, I’ve never had anything back saying, well we don’t want you to do that.”

One particular aspect of trial strategy in relation to which it was suggested there may be a heightened potential for conflict was around complainants’ use of special measures. Barrister 5 opined that “there’s a difference in view between barristers and the police” whereby police are “caring for the witness at the expense of the presentation of the evidence” by offering special measures when “the barrister would rather have the witness in court...so the jury get to see them.” Though this barrister acknowledged that any link between conviction and in-person testimony was purely “anecdotal,” he noted that “prior to the case being listed for trial...I speak to [the complainant] and explain the differences in perception” in case “they can change their mind and go into court.” Likewise, Barrister 2 underscored that it is a common view amongst counsel in RASSO cases that it is “much more impactful” and “a lot more powerful” to have a witness give testimony “face to face” with the jury, and so “I do try to encourage them, if they feel able to, to do that.” This can be contrasted, however, with the endorsement of the use of special measures, including TV links, often voiced by police and prosecutors. The tensions that this can generate across criminal justice professionals were also evident. As CPS 13 put it, “I’m sick and tired of judges and barristers saying that they want the victim in court behind a screen, so the jury can see them cry and shake.” Meanwhile, CPS 39 observed that “there’s been a couple of occasions where I think counsel have tried to push that onto a witness. And maybe they need to take a step back and realise...it’s about...how they feel they’ll give their best evidence, as opposed to how you think they’ll come across better in court.” This concern was further underscored in our observation of ‘Forum 2’, where one ISVA reported she had encountered barristers telling victims they won’t secure a conviction if they are not in court because “it is like watching TV for the jury”. This was echoed by a second ISVA who emphasised that “once it is said, it can’t be unsaid,” and for those complainants who do use special measures, they can go on to blame themselves for that choice where there is an acquittal.

The handling of disclosure strategy and use of evidence to address myths and stereotypes was also identified as a further area for potential conflict. CPS 18 acknowledged that “counsel may have a different interpretation of the undermining material in a case,” but felt that “the vast majority understand what we’re driving at with the offender-centric approach” and will “prosecute robustly...what is put in front of them.” Likewise, CPS 58 noted that “we’ve been starting to say now to our counsel, you need to educate the jury,” which requires challenging defence’s use of potentially undermining material as part of the case narrative. At the same time, it was not clear that this was always achieved in practice. ‘Case File 2’ provided a rare example in our sample of a reviewing lawyer giving a detailed account of trial strategy that went beyond lists of exhibits and witnesses, and – as per CPS Legal Guidance – explored strategic approaches to addressing and responding to likely defence tactics. In this case, the complainant had recorded a series of videos on the night in question, including some in which the suspect was kissing her, apparently with her consent. In their review, the lawyer noted that several of the videos: “have limited evidential significance [but] they do provide a visual

narrative of the night which would be useful for the jury to see – the videos evidence the complainant’s intoxication...which supports this part of our case narrative. Although some of the clips could be viewed as unhelpful, I am inclined to play them all as evidence and deal with them as part of our case rather than allow the defence to rely on them as part of the defence and make the point that these are the clips that the prosecution didn’t show you.” In counsel’s advice, however, it was observed that “the principal weakness in the case is that the complainant had made, or caused to be made, a video of herself kissing the defendant...This sits uncomfortably alongside her contention that she would not have engaged in consensual sexual activity with [him].” Further, counsel noted “I am not myself convinced that all of the clips are relevant or supportive of the prosecution case” and indicated they would review this in light of the defence statement. The scope for such strategic disagreements to persist into the trial was also evidenced in a report on a project undertaken in one pathfinder area to review trial outcomes over a fixed period during Soteria. As part of that work, various stakeholders were asked to give opinions on anything that could have been done to improve the case. In one instance, it was noted that counsel – without discussion with the reviewer lawyer – chose not to play CCTV evidence, which the reviewing lawyer had identified as being key to the case.

All of this also speaks to the challenges that can arise from lawyers’ lack of presence in the courtroom during trials and the limited feedback that they receive, in that absence, regarding how the strategy is operationalised by counsel. As CPS 4 put it, “hopefully our prosecutors now provide much stronger cases to the advocates but there’s still this big gap between, you know, how do we know that what the prosecutor has said and advised in the bundle...has actually been acted on.” Likewise, while CPS 6 reported that, in her view, trial strategy was “something which some of the lawyers are getting very good at...saying how are we going to present this case...if there’s undermining material...this is the way we explain this to the jury,” she acknowledged, when asked if that was operationalised effectively in the courtroom, “if I’m honest, I can’t say...because we’re not in court, watching.” One mechanism identified for increasing confidence in this respect was the use of RASSO panels to ensure selection of counsel with appropriate experience and expertise. At the same time, some interviewees were alert to the limitations of this: as CPS 7 put it, “we don’t go and look and see” the advocates on RASSO panels, “it’s just on have you done this, have you done that, show me on paper.”

For lawyers themselves, it was clear that this lack of insight regarding latter stages of the case was often disappointing: as CPS 36 put it, “that’s one area that is quite frustrating that, you know, you’ve lived and breathed that case from start to finish but the end part is sort of a bit of a mystery to us because we’re not there, we’re not in court and we don’t get that feedback about what’s happened...you very often don’t know how a trial has panned out at all. So you’ll end up like the trial’s started, hear nothing and then you’ll get the results, whether it’s a guilty or not guilty.” For some, it was not only disappointing, but also disempowering, provoking them to take steps on their own initiative to redress this knowledge gap. As CPS 50 explained, “I’ve been to a few trials actually, I went in my own time because they were my trials and I just wanted to see them, so I went on my day off...And it was really informative to see what counsel are actually like because you don’t get to see them otherwise. We’re just briefing them and then they turn up to court with our victims...So that was really informative, and I was like, you know, I didn’t realise you were quite like that, you know, and see their



manner in speaking to victims and so on at court. It was really useful in terms of what they say and how they say it.”

In the absence of that independent initiative from lawyers, or any opportunities for observation as part of their training, the primary mediums through which feedback on the trial (including execution of case strategy) are received will be either adverse outcome reports completed by counsel or reports provided by allocated paralegal officers. In respect of the former, it was noted that these are often not particularly detailed or insightful in terms of distilling learning: as CPS 18 put it, “counsel will come back and say, you didn't miss anything. And they'll give you a reason, you know, they might just say it's a runaway jury, I can't help you.” Similarly, CPS 12 noted that the general pattern is that “counsel says the evidence went well, it's a perverse decision by the jury...the case couldn't have been prepared any better, the police couldn't have been any better prepared, I couldn't be any better prepared, it was a jury decision. So you don't get any learning out of that.” More sceptically, Police 16 observed that “what generally happens is at the end of the trial, counsel will write out a word document summarising the case, what worked well, sort of like a debrief I guess. But, of course, always how wonderful they were and they did their best with limited evidence.” Police 16 went on to contrast this with reports from paralegals which he anticipated “would probably be a bit more impartial.”

Paralegals certainly underscored to us the value of learning from being in the courtroom: as CPS 12 put it, “you tend to learn most of the things at court. You see things that went well and you see things that didn't go well. So you think, oh well I don't want that to happen again or oh this was really good. That is how you build up, just on things that you experience.” Specifically in regard to counsel's performance, another spoke of how “we're watching them at court...if counsel are doing something that's contrary [to lawyers' instructions] or I'm not happy with, then I will be alerting my managers by completing a counsel monitoring form” (CPS 17). Without supplanting initiatives to increase lawyers' direct observation, paralegal officers may thus be particularly well-positioned to supplement feedback loops from the courtroom to RASSO units. However, they are currently provided with little specialist RASSO training to support them in this role, and as with lawyers, it is likely that there will be variable levels of confidence and capacity amongst paralegals to question counsel. In addition, there is inconsistent practice in terms of whether paralegals are expected to have a dedicated presence in the courtroom or to ‘float’ across multiple trials, and it is rare that they will be present for the entirety of proceedings in any case. In a context in which CPS 17 described the paralegal role as “like a sinkhole” where she fields enquiries and makes judgment calls across a caseload of approximately 100 cases, there would clearly need to be substantial investment in the capacity and resourcing of paralegals for them to fulfil this feedback function more effectively.

In closing, it is also worth reflecting on the fact that these existing feedback mechanisms – whether via counsels' adverse outcome reports or paralegals' monitoring processes – tend to focus on what has not gone well at court, and so only ever provide partial insight. As CPS 12 put it, “everybody hones in on what went wrong but we don't concentrate enough on what went well, because when you've learned something that went well, well let's keep doing it.” This was what motivated the trial outcomes project mentioned above to be undertaken in Area A. Across an almost 3-month period, feedback from a wider range of trial stakeholders

(extending to counsel, lawyers, paralegal officers, police, witness care and victims) was collected on all RASSO trials, to explore what went well or not, and what lessons could be learned. Though a largely upbeat set of findings, including in relation to partnership working between justice professionals, it is notable that a clear desire was expressed by lawyers for “regular updates on how the trial was progressing and the outcome” with “reviewing lawyer, counsel, OIC and paralegal officers working closely, including addressing disclosure thoroughly and early.” As discussed in this section, though this is an optimal model, obstacles remain to achieving it.

### Obstacles to Progression: Court Listings and Liaison

It is also clear that some significant obstacles to success under the Case Progression and Trial Readiness workstream of Soteria are posed by processes and structures outside of the CPS itself. In particular, there are acute challenges around court listings as a consequence of trial backlogs generated by the Covid-19 pandemic, recent strike action by criminal barristers, and background issues of legal personnel scarcity and lack of investment in court infrastructure. The effects of this were evident throughout this research: for example, in its Soteria Tracker entry for October 2022, Area D noted that “the CBA strike has had a massive impact on our trials” with an adjournment rate of 79% compared to a rate of 8% in the same month in the previous year. Meanwhile, Area C’s entry for the same month also referenced the high number of rape cases being vacated and adjourned at trial as a result of the “unavailability of counsel,” which was tied to strike action, but also to ongoing recruitment challenges at the criminal bar.

A number of interviewees highlighted the negative consequences of such adjournments for victims. CPS 45 observed, for example, that the trial “gets adjourned and we don't really get told why, the reason why, so we can't tell the complainants why. And sometimes I've had cases where there's been like five or six times it keeps getting pushed back, you know, and that's so disappointing for them I think.” Meanwhile, CPS 38 went further, describing the impact on victims of these repeated trial adjournments as “prolonging their trauma.” For some prosecutors, an awareness of these impacts meant that they saw it as an additional part of their role to advocate for their cases in listings processes. As CPS 49 put it, “we're now having these problems where the court starts to decide, oh, we're not going to list it. We might list it, we might not list it. And then you're going, well, I want you to list my case...it's banging on that door and making sure that you make enough noise so that your cases get above the maelstrom of all the other work that needs to get the Crown Court listing... that's increasingly part of the role of the prosecutor is to shout – I'm being metaphorical, I'm obviously not shouting at the court – but writing the letters to make sure that the judge understands that you've been waiting. Because now it's a crushing queue to get your case heard and we need these cases heard.”

ISVAs were keen to highlight, moreover, that it was not just the associated delay that impacted negatively on clients, but the unpredictability of the process as reflected in those short notice adjournments: “we can prepare survivors for them waiting a long time for a trial but what's really difficult to prepare them for and support them in as well is when things are changed at the last minute, that's really hard. So I don't think it's necessarily...the delay is one thing but also the kind of chopping and changing is another that's really detrimental” (ISVA

14). They provided repeated examples of cases in which clients were required to refresh their memory of ABE interviews, with all the distress this could provoke, only to be told on the day of the trial that it would not be going ahead, and they would need to give testimony at a future date: “it happens a lot, especially at the moment. We’ve got trials that are adjourned left, right and centre. And some of our clients, they’re on their third or fourth adjournment. So they’ve worked themselves up for the trial to take place and it’s adjourned, and then it’s adjourned again and then it’s adjourned again, it’s terrible, absolutely terrible” (ISVA 6). They also expressed concerns about RASSO cases continuing to be put on floating or reserve lists: “sometimes I can have five or six ISVAs saying I’ve got a trial starting on this day, and I’m thinking ‘there’s no room for all those trials’...and then people are racing across city centres...and then we’re expecting people to go and achieve best evidence, it’s not fair. It’s really not fair” (ISVA 19). In ‘Forum 1’, this problem of over-listing was raised, with the CPS confirming that rape cases in that area were being listed as back-up trials at local Crown Courts, even though they ought not to be. Though CPS colleagues intimated that they had been raising concerns directly with court listing officers about this, they also reflected during the discussion on the limits of their ability to impact and the tensions that this could create in partnerships elsewhere: “we’re a bit piggy in the middle and we’re doing the best we can...I am sorry that you’re having to deal with very upset people...we’ve just got to do the best we can when the courts are floundering.”

Though not tied to the advent of Soteria, the roll-out of ‘section 28’ pre-recorded cross-examination, to be undertaken ahead of trial with a view to enabling vulnerable or intimidated witnesses to complete their participation in the process at an advanced stage, is also a relevant consideration here. Early evaluations of section 28 indicate that its provision – though often well-received by complainants and their supporters – has caused difficulties in terms of court listing and counsel availability (JICSAV, 2022; MoJ, 2023). Not only may this compound logistical challenges around adjournments, it can create increased scope for disagreement between stakeholders in relation to case strategy. Indeed, building on the divergence of views regarding special measure generally, discussed above, barristers often expressed scepticism regarding the benefits of section 28 for adult rape complainants. As Barrister 1 put it, “I think section 28 is dangerous. Asking juries to watch videos is not the way to administer and dispense justice. It’s a poor substitute for having expedient trials very quickly.” Meanwhile, Barrister 3 referred to it as a “sticking plaster” that is “attractive in that we get the evidence captured early” but, in their view, only in a form that is “completely disconnected to the trial process” and reduces the potential for “chemistry” between the complainant and the jury whilst giving testimony. Again, this was often in contrast to the views of CPS colleagues who described section 28 as “revolutionary” (CPS B19), “making life easier for the complainant” (CPS 20) and giving them “some control back” (CPS 53), with those who had conducted local analyses of its impact upon conviction finding no reliable basis for counsels’ concerns (CPS 5).

Arguably, this reflects a wider disconnect in terms of earlier stage initiatives designed to improve victim care and reduce the likelihood of witness withdrawal being afforded less priority in latter stages of the process, which continue to provoke concerns and a lack of confidence about reporting and prosecution overall. As one police officer put it, “it’s frustrating for us to go through the Soteria process and try and make sure that we’re doing everything that we can to support prosecution or not even just the prosecution but the right

outcome for the victim. And then we're losing it because our court administration is letting us down at the last hurdle. And when you think of all the resources that we've put into that to get to that point and then lose the faith of the victim is...yeah, it's just something that we can't ignore" (Police 15).

## 7. Victim Support & Communication

In Section 1, we highlighted evidence of a profound lack of public and victim confidence in the criminal justice system's handling of rape complaints and complainants. Partnership building with police to improve the quality of investigations and ensure more timely progression of cases with robust and consistent decision-making in relation to charging and trial preparation are obviously key objectives under Soteria. But they will be of limited impact if the experience of victims who report is not simultaneously improved, including in terms of handling initial disclosures, processes for testimony-giving, communication and support. Under its penultimate Soteria workstream, and in parallel with a wider Victim Transformation Programme, the CPS has committed to improving collaboration and understanding with Independent Sexual Violence Advisors (ISVAs), as well as increasing the level and quality of its communication with victims. It is hoped that these initiatives will reduce the risk of victim withdrawal, assist them in giving their best evidence, enhance procedural justice outcomes and increase overall confidence in the criminal justice process, for victims and the public alike. In this Section, we will first give a brief outline of activities undertaken to date, at national and pathfinder level, to facilitate this shift before exploring successes and challenges encountered.

### Victim Support / Victim Transformation

As with activities such as Early Advice, where the advent of Soteria prompted an acceleration and expansion of initiatives already (at least formally) in place within pathfinder areas, it can be argued that activities under the Victim Support and Communication workstream similarly represent a continuation of a trajectory that was already underway within the CPS. In particular, the Victim Transformation Programme (VTP), which is aimed at improving victims' experiences with the CPS in all cases, had been developed following a Victim and Witnesses' Strategic Needs Assessment undertaken by Crest Advisory in 2021-22. That assessment found that the service offered to victims needed to be improved in all cases and identified a particular need to prioritise specific cohorts of victims and witnesses by offering them an 'enhanced service' (Crest Advisory, 2022). Echoing findings from prior victimisation surveys that complainants of rape and sexual violence find their engagement with the justice process distressing and often retraumatising, the assessment clearly indicated the need for that enhanced service to be applied to RASSO victims. This has resulted in the development of an "adult rape operating model" designed to improve victim communication and the service offered to victims, which is currently being piloted in tandem with initiatives under Soteria.

On the one hand, this has been useful to the extent that Soteria has been able to capitalise on momentum already underway to bring change in this area, with the prior research by Crest Advisory and others having clearly demonstrated the need for it. On the other hand, it has meant some blurring of boundaries between the VTP and Soteria that makes it more difficult to clearly identify what has been implemented under which initiative. Though, ultimately, that may not matter greatly if the consequence is an improved victim experience, there is a danger in this context of slippage in organisational commitments, which may undermine the urgency with which it was envisaged that the injection of resource and focus under Soteria could bring change. Certainly, as we discuss further below, implementation of new initiatives in relation to victim communication and support has been at a generally slower pace across

pathfinder areas than in respect of activities under most other workstreams, which sits at odds from the recognition in interviews with stakeholders of the importance of improved practice in this area.

Perhaps one of the areas in which there has been most discernible progress within the CPS under Soteria has been improving partnerships with ISVAs. At the national level, the CPS and NPCC published their National ISVA Framework in 2021, which “outlines minimum standards on liaising and communicating with ISVAs and local services supporting victims.” It was intended that this should be applied by the start of 2022, so its implementation has dovetailed with the advent of Soteria activities. At the local level, moreover, there have been a variety of initiatives intended to strengthen partnerships with ISVAs and ensure better understanding of their respective roles, in a context in which Area B observed in its Soteria Tracker that “the key role of ISVAs was not fully appreciated by CPS staff...[n]or was the role of the CPS clearly understood by ISVAs.” In Area A, for example, a CPS/ISVA mailbox has been running since August 2021. This allows ISVAs to make easy, direct contact with the CPS in order to raise questions or concerns that they or their clients might have. Feedback on this initiative has been positive, with reports from Area A of receiving an average of 10 emails per month. The aim, in creating this mailbox was to make the CPS more accessible and streamline communication in a more effective way. To assist with this goal, a number of other areas have initiated ISVA Forums that create a space in which ISVAs can communicate directly with RASSO lawyers, raising issues of concern regarding overall practice or, as in Area C, running through case-specific arrangements relating to special measures, etc. ahead of impending trial dates. As with the Scrutiny Panels we discussed in Section 4, there is variable practice, however, in terms of the frequency with which such ISVA Forums are held and their occurrence is better embedded as standard practice in some areas than in others. To assist in implementing these initiatives, Area E was the first of the pathfinder areas to appoint a dedicated Victim Liaison Officer whose role is to act as a consistent point of contact within RASSO units for victims and ISVAs alike.

Alongside this, there are a number of initiatives, which have been identified or are now underway, that are intended to improve communication between the CPS and victims directly. In February 2022, the CPS published a new guide for RASSO Victims, which sets out in accessible terms how cases are handled when they come to the CPS and what support is available.<sup>3</sup> Increasingly, across pathfinder areas, schemes have also been put in place whereby ‘hello’ letters are sent to complainants at the point of receipt of a case file from the police. Again, these have varied, however, in format and design. In Area E, for example, a template has been devised in conjunction with local ISVAs and the letter is sent from the unit’s Victim Liaison Officer. Meanwhile, in Area B, they are intended to be sent directly from the reviewing lawyer who will go on to make the charging decision in the case. In addition, some areas – such as Areas C and E – have also begun to devise a more expansive communication strategy that encompasses other key moments in the justice journey, for example, where an Action Plan is set or there is a delay to anticipated trial dates. In respect of all these communications, there are some challenging issues to resolve in operationalising who is responsible for delivery of the letter, ensuring appropriate and safe channels of access where the victim is not in receipt of ISVA support, and providing adequate resource so that

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<sup>3</sup> [A guide for victims of rape and serious sexual assault](#)

responses can be given in a timely manner to victims who might take up the opportunity to make contact on receipt of such letters.

Where a charging decision is made, some pathfinder areas have also been sending a letter to victims that includes the offer to meet with the reviewing lawyer, OIC and ISVA (where applicable) for a 'familiarisation' meeting. Initially, in Area A, these were limited to victims in receipt of ISVA support but have now been expanded to all victims, as has always been the case in Area C. Some areas have, however, reported "relatively low" (Area C) levels of uptake on this offer. Indeed, CPS 43 remarked that "we've been shocked that we haven't had as much uptake of the meetings as we thought we would have had," whilst CPS 44 echoed that "we are very surprised that the uptake has been quite low." Though there are likely to be a number of factors influencing uptake of such meetings, one thing that is key is ensuring that they are proactively offered rather than more passively presented to victims as an option: and more consideration might usefully be given to any barriers that may be preventing uptake, either tied to particular victims or to the timing and format of the meeting being made available. Where they have been conducted, however, it would seem that feedback has generally been positive. ISVA 22, for example, emphasised that victims "really appreciate it. They take that on board, and they feel part of that process then. They don't feel as though they're just a commodity, just being told what to do, when to do it. I think it's a very important part of the process for the client to feel involved." Likewise, ISVA 25 spoke favourably of a comparable scheme, which offered post-charge meetings, noting it "is really helpful for survivors to have, to know they have, that option...it's a good step." Feedback requested by lawyers to be submitted to Area A's ISVA mailbox also indicates a positive appraisal, with CPS 11 summarising that victims had shared in this feedback that they "felt empowered, heard and listened to," with the provision of these meetings helping to "keep victims on track" in terms of their participation in the justice process and allowing "everybody to understand what each other's roles are."

Training, provided by third sector specialists, has also been rolled out in some pathfinder areas to increase CPS colleagues' capacity for empathy and effective communication with victims. Alongside this, and reflecting the concern expressed by CPS 3 that where the decision has been made not to proceed with charges "our letters [to complainants] have just been poor, plain poor," work has been ongoing at national and local levels to improve the quality of NFA letters. In particular, the focus here has been on developing templates that set things out in "simple language" and "break down all the jargon" (CPS 13), and on ensuring that individual letters are suitably accessible, clear in meaning, detailed in their explanation, and empathetic in tone. Though this process has benefited from the input of ISVAs in developing templates and broad guidelines, the scale and frequency with which specific letters are reviewed by ISVAs for scrutiny and learning purposes has varied across pathfinder areas. Though tied in part to the congested nature of Panel agendas, highlighted in Section 4, this is a missed opportunity in light of the reflection from CPS 57 that, in a context in which "one of the biggest fears [amongst lawyers] was saying why a decision was reached...and the impact on the survivor," "ISVAs and CHISVAs were great in terms of helping us craft those parts of the [NFA] letter."

In the rest of this section, we consider these initiatives in more detail. In particular, we will reflect on how their implementation has been experienced by CPS colleagues, and in lieu of

a reliable body of direct victim feedback, we will draw on insight from ISVAs as to how adequate they believe clients have found the support from, and communication with, the CPS to be.

### CPS as a 'Faceless Institution'

At the outset, it is important to recognise, as the majority of our participants did, that many of the challenges to victim support and communication encountered by the CPS (in and beyond RASSO) have arisen as a consequence of its tendency to be a "faceless" institution (Forum 5). As CPS 3 put it, "we need to be less faceless. I think the problem is that, as an organisation, because people don't know us and don't see us, sometimes they think we don't care."

Despite recent initiatives under Soteria to improve visibility and partnership working, this perception that the CPS are a 'faceless' institution was still echoed by participants across pathfinder areas. Importantly, this is not to say that such initiatives are not having a positive impact, but it is to underscore that the legacy impression of the CPS as an institution that is unknown and opaque may take some time and sustained investment to overcome. ISVA 7 explained, for example, how she and her colleagues often find the CPS to be an "omnipotent kind of being that...are never really present." Meanwhile, Police 10 described the CPS as "an entity that is there, and there's no face to it, there's no emotion to it, there is no relationship with it. It's just an entity." This perception of the CPS as aloof and abstract amongst other professionals in the justice process is likely not only to undermine partnership working, but to reduce their confidence in the prospects of its effective and appropriate communication with victims. Reflecting on how they believe their clients viewed the CPS, ISVA 4 explained, for example, "I think that they see it as this invisible hierarchical people, who they've never seen the face of and they don't really know, it's difficult for them to even picture it, you know, these people. Like I said, it feels like they're kind of behind closed doors making decisions about people's lives who they've never met before. I think that's how it feels to clients." In a similar vein, Police 22 observed that "the CPS have been invisible to a victim. Because they deal with the police, they know it's then gone to someone else, but a lot of people don't understand the process of CPS, police, court." Initiatives such as familiarisation meetings, hello letters and the roll out of a Guide to RASSO victims regarding the role and responsibilities of the CPS are, of course, intended to address this gulf in victim understanding and institutional accountability.

Importantly in this context, the extent to which CPS colleagues themselves appreciated the need for change was also notable. One prosecutor, having recently joined the CPS, reflected, for example, on how surprised they had been by "the lack of victim contact, face to face contact, in terms of reviewing lawyer's role" (CPS 37). Similarly, another acknowledged that they had "thought it was so strange that we didn't have a lot more contact" with victims when they joined the RASSO unit (CPS 16). Other lawyers confirmed, moreover, the assessment regarding victims' experience and impression of the CPS provided by other professionals: as CPS 25 put it, speaking about feedback that they had received from victims, it is often "very much [that] the CPS is a quite a faceless organisation" and that they "never hear from the CPS." Echoing this, other interviewees underscored that, for many victims, their only contact with the CPS has tended to be at the point of charge or the receipt of a NFA decision, which



even when issued by police is likely to reference the Full Code Test and the role of the CPS as subsequent arbiters of whether the case satisfied the standard sufficiently to merit a charge. As CPS 22 put it, “some of them probably feel they don’t have any interaction and they wonder who the heck the CPS is and why it is that the police say, we’ve sent this case to the CPS and then some man in a suit says no. I should imagine it’s very frustrating for them.” Similarly, CPS 28 observed that “I think we are totally invisible to them until we either charge or NFA it, that’s the time we become visible, is when we go, no, we’re not charging it.” Meanwhile, CPS 27 reflected – from their perspective in performing the legal role – that I “find it odd writing to somebody and saying, I’m the lawyer that’s been looking after your case for nine months and I’ve decided to drop it.” As they put it, this “feels like a very odd time to be saying hello” (CPS 27).

### Prosecutorial Independence vs. Victim Engagement

Despite this general sense among CPS participants that they ought to communicate, and engage, with complainants more readily as part of their job roles, some interviewees also spoke about their concerns over the potential implications this might have on criminal justice processes. Often these concerns stemmed from the fact that “when the CPS was set up...our identity was that there were miscarriages of justice in policing because they were too close to the action. So this is an independent process” (CPS 2). In other words, these interviewees identified a possible tension between engaging more directly with victims whilst maintaining, and being seen by others to maintain, an appropriate level of prosecutorial independence. The challenges but also feasibility of navigating this was underscored by CPS 2, who observed that “you can make independent, objective decisions, but engage really well with victims: the two are not mutually exclusive,” albeit that “it’s not an easy thing to do and takes great confidence and courage to do it well.” Likewise, ISVA interviewees – recognising lawyers’ anxiety in this regard - underscored that “you can have boundaries and still be kind and supportive and empathetic and trauma-informed, it doesn’t mean you have to just lose all your boundaries and lose your professionalism” (ISVA 13). At the same time, many participants emphasised how the CPS “still have to be impartial” because it “needs to be a fair trial” (CPS 31). Others noted that “there does remain that important kind of distinction that the CPS doesn’t act as the victim’s lawyer, and that the victim understands that process” (CPS 36). Lawyers also reflected on their concerns that this could create a “tricky situation” since they “obviously don’t represent victims” (CPS 51), and that it would require treading “such a fine line” (CPS 31) in order for them, and the CPS as an institution, to be more open with victims whilst acting as an independent body. As CPS 18 put it, “my concern is that we’re not the complainant’s prosecution service, we’re the Crown Prosecution Service, we’re an independent body who brings prosecutions, we won’t get into the whys and wherefores...we are, I think, possibly getting into the realms now with what we’re being asked to do in terms of some of the communication, of tipping the balance the other way.” Speaking about their recent experiences of being involved in victim familiarisation meetings under Soteria pilots specifically, moreover, CPS 46 articulated their concern that “once [the victim] meet you in person or even over teams they think [X] is my lawyer” and “that could be even harder and more confusing for people because they see a face and think, that’s my person, just like the defence has got someone.” Though clear explanation of the CPS’s role, facilitated where possible by ISVA support, could address much of this concern, it was something that animated

several reviewing lawyers for whom engaging with victims directly in this way was uncharted territory.

Relatedly, while ISVA 1 underscored the value in CPS lawyers meeting victims directly and reassuring them that “you’re our case, you’re our witness, you’re doing this for us and we’re honoured to have you in this courtroom,” several lawyers expressed anxieties about being accused of witness coaching, and the potential disclosure implications, if more communication with victims is encouraged. As one prosecutor explained: “we have kind of been trained, you know, to think, obviously you can’t coach victims or witnesses, you know you’ve got to be very careful of what you say to them and how you say it...it’s engrained in us that you can’t discuss the evidence with them, you can’t tell them too much” (CPS 51). Similarly, one participant reflected on previous attitudes and noted how there was: “historically a bit of anxiety amongst prosecutors that we don’t engage directly with a complainant, that you don’t speak to the complainant because of the disclosure risks and things like that” (CPS 5). Again, though these are important considerations to bear in mind as part of ensuring fair trial processes within our existing adversarial system, they are not insurmountable challenges. Though the use of pre-trial witness interviews is rare, pilots previously conducted within the CPS have indicated that they are capable of being undertaken without overstepping into coaching. Moreover, lawyers’ experiences of familiarisation meetings under Soteria generally indicated that setting ground rules with complainants at the outset as to what could and could not be discussed provided adequate protection, safeguarded further by the recording and note-taking of these meetings. As CPS 27 put it, “we absolutely have a role to play but we’ve really got to be clear about the boundaries of that role and expectations. And I think that is the value of that independent legal framework of the code because that is our guide. But we have got an accountability I feel to victims to explain our role, I think that’s a really important part of it.”

#### Victim Communication: Assessing Skills and Capacity

Alongside these concerns about risks in relation to independent decision-making, coaching and disclosure as a consequence of greater direct communication between CPS lawyers and complainants in RASSO cases, several interviewees also worried about whether they had the appropriate skills and training to speak with victims in an accessible and suitably trauma-informed way. CPS 13, for example, having emphasised that the aim is for CPS engagement with victims to be “more structured, more controlled, more informed, so it doesn’t feel like such a chaotic black hole for everybody involved...more empathetic and more nuanced,” went on to acknowledge, “I don’t think the training we have right now is sufficient to give the prosecutors the skills they need to write the letters they must and have the meetings, sensitive meetings, they need to have with these victims.” This was echoed by other participants who noted that there “were some concerns raised by prosecutors about speaking to victims because it’s not necessarily what their skillset is” (CPS 11), “it doesn’t come naturally to everyone to be able to feel comfortable in that scenario” (CPS 36), and that “this is territory which we haven’t necessarily been involved in before and...we are not experts in trauma and understanding how people want to receive communications or be heard in meetings” (CPS 32). Interestingly, moreover, this was an anxiety expressed in relation to different forms and stages of communication with victims, suggesting it was as much about

the principle of engagement as it was about the way in which it was operationalised (e.g. verbal or written communication).

Even in relation to what might be thought to be the most innocuous of victim interactions – ‘hello’ letters – there was evidence of some hesitancy, particularly in areas where it was envisaged that these would be written directly by reviewing lawyers rather than mediated through Victim Liaison Officers. While ISVA 9 described these letters as “great” because they open up channels of communication, some lawyers involved in these pilots queried the appropriateness of an introduction from the CPS at such an early stage and raised concerns about a duplication of communication with victims across police, ISVAs and CPS that could be unhelpful or overwhelming. As CPS 18 put it, “I think that actually usurps a bit the role of the police,” with the attendant concern that it could mean lawyers “being persistently chased as to where it is and where things are.” Similarly, CPS 20 explained that they “don’t want to be opening up conversations with complainants at a very early stage” since it might result in complainants saying to them “will you hurry up because this is really awful for me.” Taking these concerns into account, dedicated Victim Liaison Officers might well be better placed than reviewing lawyers to send ‘hello’ letters and to act as the CPS point of contact for victims as cases progress. At the same time, though, it is important to ensure that VLOs are not under pressure to take on all victim communications, since there will be some communications (for example, regarding a NFA decision) that ought to continue to come from reviewing lawyers.

Perhaps unsurprisingly, given the subject matter, it was the communication to victims of such NFA decisions that was the greatest area of concern for lawyers. On the one hand, this is not novel territory since lawyers are already in the practice of providing NFA letters, which also provide an opportunity for a follow-up conversation (as well as reference to other mechanisms for complaint and further review). On the other hand, recognising the concerns of various Inspectorate Reports regarding the failure in RASSO NFA letters to provide enough explanation to enable recipients to understand why their cases had been discontinued or to reflect appropriate tone and level of empathy, there has been a concerted focus under the VTP and Soteria alike to do more and better with this correspondence. Cognisant of this increased expectation, interviewees often underscored that NFA letters were a “huge challenge” to write, and that ensuring they are not written like a “lawyer business letter” but at the same time do not “come across as forced empathy” is a time-consuming and difficult task (CPS 29). CPS 23 described writing NFA letters as “the hardest things to do” in their role in the RASSO unit, since “it’s never normally because you don’t believe them” but “it’s so difficult to put into words to a victim, who is going to be so disappointed.” Similarly, CPS 20 explained how they “really worried about upsetting and disappointing people because obviously they’ve been through a lot. A lot of the time you do believe them, it’s just a legal test, rather than you don’t believe them.” Several lawyers underscored how, in seeking to strike this balance between emphasising that they did not dispute the veracity of the complaint and making it clear why they had concluded there was insufficient evidence to proceed, they struggled in particular with how much information to provide, and how to convey legal tests in an accessible way to the recipient. As CPS 53 put it, “you don’t want to re-traumatise a complainant by being too specific. But if you’re too vague, then they don’t necessarily understand the reason behind it.”

It was also clear that, in navigating this, several of the lawyers we spoke with were committing considerable time and expending significant emotional labour in the drafting of these letters that was not currently acknowledged in workloads. As CPS 13 put it, “they only get given about half an hour to 45 minutes” within generic resource efficiency models to write NFA letters, but “all the RASSO lawyers are saying, no, this takes me two or three hours...that’s time they want to spend really carefully drafting these letters and they don’t have it.” This was underscored powerfully by the reflections of CPS 54 that “they are hard letters to write. I’ve spent two days writing a letter...You’ve got to explain in nice, easy terms how that has happened to somebody who has already been traumatised once, ...you can’t just say, well, I’ll just quickly knock out a letter, that just doesn’t happen, you just can’t. You have to go through every single paragraph, all the words and, you know, is this too formal? You’ve got to also take account of the age of the victim, you know, is this person going to understand what I’m saying, does it need to be translated? There’s all of these complications that come into play.” Though, as we discuss further in the next Section, resourcing is an acute concern in RASSO units, if the opportunity is not afforded to lawyers to take time and care in drafting NFA letters, with mechanisms built in to facilitate effective review and revision, they are unlikely to serve the purpose of improving victim communication and confidence. The same can also be said, moreover, in relation to recognising that this is not a skillset that will come easily to all lawyers, nor one in which they have been substantially trained, so initiatives to improve that training and to support them in the emotional labour involved are also key. Indeed, as CPS 49 put it, “if we’re going to deal with victims, we need to be trained how to do it. We need to have less work. There needs to be a conscious understanding that it will take more time and money.”

### The Limits of Evaluation of Current Victim-Facing Initiatives

As discussed above, there are a number of initiatives being piloted across the pathfinder areas as part of Soteria that are aimed specifically at improving victim communication and support. At the time of writing, however, many of these are still not sufficiently embedded to allow for proper evaluation. In addition, partly as a consequence of the sensitivities and ethical considerations involved, it is fair to say that this is the workstream in regard to which we have had most limited access to data to inform our analysis. In relation to familiarisation meetings, for example, as discussed in Section 1, though we had hoped to be able to observe a small number of these during the research, this has not been possible to date, as a result of low uptake volume, the challenges of relying on individual lawyers or unit heads to identify and refer observations to us, and a decision on our part to restrict such observations to cases in which the complainant was in receipt of ISVA support. This has inevitably limited our ability to understand and assess the tone, content and parameters of those meetings, and the dynamics of participation. Likewise, though we have had sight of some NFA letters where they are contained in case files or have been included in the paperwork for Scrutiny Panels (and that paperwork has been shared with the research team ahead of our observation), we have not had insight across a broad enough sample – thus far at least - to be able to assess in a meaningful sense the quality and appropriateness of those letters. Instead, we have had to rely here – as in respect of familiarisation meetings – on the perspectives shared with us by interviewees, including ISVAs who have relayed to us in broad terms their sense of clients’ experiences.

That said, there can - in our view - be no question that the broad direction of travel outlined in this Section, in terms of improving victim communication and support in RASSO cases, is to be welcomed. There is a good deal more work required to embed these initiatives, to support and train CPS staff to meet the challenges of this evolving aspect of their job, and to determine how best to navigate some of the tensions that have been highlighted in regard to the prosecutorial role. But those challenges are not insurmountable, and the potential for these changes to improve victims' experiences should not be underestimated, albeit that, as we have observed elsewhere, there are aspects of the adversarial trial process itself that lie beyond the reach of these initiatives and that pose ongoing risks of re-traumatisation and disempowerment.

At the same time, however, it is important to note the paucity of direct feedback from victims themselves thus far in respect of these victim-facing initiatives. There are difficult questions to consider in terms of managing power dynamics and identifying the most appropriate timing and mediums for seeking feedback from victims, but it is also important that their experiences, in their own terms, are represented in the process of developing and evaluating CPS engagement. ISVAs can and do, of course, provide crucial and powerful insight but this should ideally be coupled with greater efforts from the CPS to hear directly from victims, and to ensure the representation of experiences from a more diverse cohort, many of whom may not have ISVA support or may be supported by smaller or more specialist organisations that may be less likely to benefit from invitation to participate in Scrutiny Panels or feedback forums. This may be especially important in regard to victims from minoritised communities or with additional needs, for example, in relation to language or communication. In this context, it is worth re-emphasising that data pertaining to victim characteristics in this research (accessed, for example, via attendance at Scrutiny Panel discussions or redacted Case Files) was often limited – whether because of a lack of systematic recording, restrictions on data sharing, variability in the level of information provided to us in advance of observations, or a combination thereof. Better understanding of the support needs of RASSO victims by the CPS requires, as a first step, more consistent and more detailed knowledge regarding protected characteristics; to be accompanied by more direct engagement with the voices and experiences of the justice process, provided by victims in and across their different and intersectional registers. Without this, revised models for victim communication, support and engagement that purport to be inclusive are likely to prove far more selective, and the ambition articulated by CPS 3 for the CPS to “have a much more person-centred approach to victim engagement” is likely to be frustrated.

### Improved Partnership Working with ISVAs

Finally, before concluding this Section, it is important to consider how effectively the other initiatives discussed above, which were designed to improve partnership working and mutual understanding of roles between CPS and ISVAs, have functioned in practice; and in particular, how they have been received by ISVA stakeholders across the Soteria pathfinder areas.

From a CPS perspective, it was clear that, broadly, interviewees felt there had been significant improvement in relationships. CPS 37 observed, for example, that “we’ve done a lot of work locally with our local ISVAs so that they understand the role of the CPS, they kind of have a better understanding around the criminal justice system...and it’s a really positive working

relationship now.” Meanwhile, CPS 51 reflected on the value that ISVAs added within the criminal justice process and the benefits, for professionals and victims alike, of their involvement: “ISVAs are unfortunately underrated within the system. I mean, you know, they are so incredibly important...so you know, let’s use them, let’s bring them in and involve them. They’re part of the prosecution team.” Amongst ISVAs, there was also a recognition of some significant improvements. ISVA 20, for example, reported that she and her colleagues are “not just, you know, a support worker anymore...[the CPS] see us at a professional level.” Similarly, welcoming this greater focus on partnership working, ISVA 8 emphasised that “all our skills lie in different departments. We have different skills and if we utilise them it can just only make it more stronger and better. Because what our prosecuting [lawyer or] barrister can do, I can’t do that, but what I can do they can’t do. So it’s about coming together for her.”

This increasing respect and recognition of ISVAs as partners was also evidenced in a number of the Panels and Forums that we observed where prosecutors worked hard to encourage contributions from ISVAs and to address their concerns. At the same time, of course, this is an evolving relationship, and we did observe some discussions in which CPS and / or police still dominated, with ISVAs speaking or being asked for their input only infrequently. It was also clear that developing effective partnerships with ISVAs is likely to be easier in some areas than others, on account of the fragmented nature of service commissioning and the variable representation of ‘by and for’ specialist organisations. In one of the pathfinder areas, for example, ISVAs – though retaining operational independence – are employed by one of the local police forces, which it was suggested often allowed for easier integration and partnership working. By contrast, ISVAs in other areas are not only spread over large geographical distances, but in some localities are employed by services with particular criteria for access, tied for example to membership of LGBTQI+ communities or having specific disabilities. Opening forums to wide participation to facilitate representation is obviously important, but as ISVA 26 intimated, it can risk undermining their functionality if a ‘tipping point’ is reached: “it’s massive, but I don’t think that it, from what I can see, it does what it was supposed to do.”

In terms of specific initiatives under Soteria that have been most particularly welcomed, the use of dedicated ISVA mailboxes to open up channels of reliable and direct communication with the CPS was particularly highlighted. In Area A, which was the first area to embed this practice, ISVA 17 observed: “I have taken a few things forward to do with cases that I’ve been working with through the ISVA mailbox...which is a really good resource, I find that really useful.” Meanwhile, ISVA 14 underscored that one of the benefits of the mailbox was its flexibility: “you can direct any queries that you might have. So if you wanted to arrange a post-charge meeting, if you had concerns about a client’s access issues, so that needs to be taken into account when listing at any given court...you know, that’s really beneficial as well;” and ISVA 18 went so far as to describe it as a “lifeline” because it has given her and her colleagues an avenue “when they have an issue with a case or something, to go ‘I don’t know why this has happened’ and ‘why has this case has been adjourned’ and ‘why has this victim’s sort of not been updated’.” So too, the creation of Forums was mentioned by some ISVAs as being particularly useful in opening up direct communication, particularly with senior leaders. However, reflecting challenges tied to representation in such forums that we raised above, it was also clear that these forums should be seen as a supplement to, rather than alternative

for, the mailboxes or bespoke points of contact that are being made available to individual ISVAs.

## 8. Our People

As noted in Section 1, amongst some CPS colleagues that we spoke with, there was a sense of opportunity, tied to Operation Soteria, for substantial organisational and operational change, on a level that they would have been sceptical could be achieved only a few years ago. At the same time, however, it was clear that this change could be challenging, that it required learning new skills and ways of operating, and imposed additional demands on time and workload, all in a context in which recruitment and retention of suitably qualified RASSO teams is difficult.

Against this context, the final workstream around Our People emerges as foundational to the success of other CPS ambitions under Operation Soteria. At a national level, it has been articulated that this workstream aims to “generate a learning culture” and “empower staff” through initiatives such as comprehensive training, enhanced wellbeing offers and sustainable resourcing of RASSO units. Across local pathfinder areas, however, there was somewhat less clarity amongst participants, and reflected in Tracker entries, regarding exactly what activities ought to be undertaken under this workstream or how to strategically localise those larger aims.

In what follows, we divide our findings across three key, and inter-related, themes that emerged during our interviews and observations: namely, around resourcing, recruitment and retention within RASSO units; emotional labour and wellbeing; and training, learning and development.

### Resourcing, Recruitment and Retention

There was a shared view expressed by almost all interviewees that the criminal justice system has been, and continues to be, substantially under-resourced. More specifically, CPS 2 spoke of having “faced significant budget cuts from 2010 onwards” which meant that agencies were still “going through a resourcing challenge.” Thus, the overriding message from many participants when asked what would be most likely to make the biggest difference to working conditions, and in particular to the capacity for CPS staff to perform their jobs to the best of their ability, was increased and sustainable resourcing. Barrister 1 begged “please just fund [the CPS] properly. It just makes life a lot easier and the justice system smoother.” Meanwhile, police reflected not only on the scarcity of resourcing in their own departments but also on the fact that “I don’t think there’s sufficient resources...to manage demand” on CPS workloads, given increased rates of rape reporting (Police 1). The consequence of this, they observed, was that CPS colleagues are “massively overworked” (Police 24) and “until they’ve got more lawyers, things won’t be as quick as we want them to be” (Police 12). This was often echoed by CPS staff themselves. Indeed, CPS 47 commented that the main thing that would ensure success under Soteria would be “more lawyers, smaller caseloads, the more time we have to dedicate to a case, the better things will be done...if the CPS wants to get things better, they need to have more people.” Similarly, CPS 34 noted that “resourcing is challenging because they are difficult cases...and the greater a caseload a lawyer has, the more difficult it is to do them justice,” while CPS 48 noted that “the amount of work that’s coming through to us, we’re having real difficulties coping with it.” This was predicted by



many to become an even more acute risk as police forces are onboarded to Soteria, and participants emphasised the need for a holistic approach: “I don’t care what resource model they’ve looked at, it’s inadequate...The work has trebled, the lawyer profile has doubled, but the PO profile has remained the same...If they don’t address that, stuff is not going to get done and...errors will be made” (CPS 33).

Though some pathfinder areas were working closer to their baseline resourcing model and saw tangible benefits from an uplift in resource specifically tied to Soteria, this was not a consistent picture. In Area E, for example, entries in their Soteria tracker documented them working under their baseline, with 9 of the 13 prosecutors in the RASSO unit being relatively new and, as such, requiring extra mentoring, development and oversight. Though significant efforts were made to recruit, Area E documented what it described as “baffling” difficulties in appointing to vacant positions, which resulted in some Soteria activities having to be scaled back or postponed. Meanwhile, CPS 56 observed during an interview that, currently within their RASSO unit, “we’re at least 10 lawyers short...[and] that’s impacting on a lot of decision-makers.” This in turn underscores the reality that, even where resourcing is made available to appoint additional lawyers into RASSO teams, recruiting suitably qualified applicants to those roles, and retaining them once recruited, can be very challenging. As CPS 8 put it, “finding people to man these units is really difficult. It’s a really hard job...You have a big caseload, the stakes are really high.” Meanwhile, CPS 58 simply observed that “RASSO lawyers, I’m afraid, don’t grow on trees.” In response, Area A has implemented a series of ‘taster sessions’ intended to demystify RASSO casework for potentially interested applicants and has designed a development pathway that it hopes will enable promising lawyers with an interest in RASSO to be transitioned into the unit. Other areas have utilised alternative strategies, including RASSO secondments made available to external counsel or CPS colleagues in other units.

Though these can provide useful ‘feeders’ for resourcing RASSO units, retention risks in relation to these cohorts of incoming staff remain. As CPS 6 put it, “we’ve had quite a few people recently who have asked to move out of RASSO. New lawyers who we’ve moved in to try and get resources up to where they should be, but they’ve then said, ‘I can’t do this, you need to move me back out’. So we’ve had literally like in a revolving door, they’ve gone in, we’ve put them on RASSO training, then they’ve come out within a couple of weeks...The area is committed to putting resources in, but we seem to be losing out the other end as quickly.”

Several participants identified these heightened risks to retention as arising, at least in part, from the increased recruitment of staff with less experience in other roles within the CPS, and in particular staff who have come from Magistrates’ rather than Crown Court units. CPS 24 emphasised this potential tension between redressing recruitment deficits and ensuring a suitably skilled and sustainable workforce: “we have been struggling to get the lawyers that we actually need. We have been traditionally under-resourced, so we have actively been trying to recruit, recruit, recruit...But then that brings another issue in terms of experience, and do we have the right experience within that legal cadre to deal with those RASSO cases?” Though the challenges posed to transition into RASSO units are likely to vary from one individual to another, and in many cases will not be insurmountable, this does highlight the importance of fulsome inductions and systematic training for incoming staff. In the final part

of this section, we will explore in more detail participants' – and our - reflections on current training provision.

Alongside the sufficiency of induction and training, the challenges identified with retention – particularly in relation to staff who have been in RASSO units for a more settled duration - also underscore the importance of taking steps to “incentivise people to stay” (CPS 55). Though this sits in tension with previous CPS initiatives to encourage rotation out of RASSO units to mitigate risks of staff burn-out, the general consensus amongst interviewees was that it was important to develop and retain expertise. At the same time, it was felt that the mechanisms to appropriately recognise and reward that specialism (whether through remuneration, status or otherwise) were not adequately in place. As CPS 41 put it, “we’re not considered specialist lawyers at all and I think we should be.” Meanwhile, CPS 1 agreed that “in the past, we’ve sort of assumed that people can go from one crime type to another” but RASSO work “takes a very specific set of skills.” At the same time, though, CPS 8 highlighted the more practical aspects of this resource-recruitment-retention dilemma: “some people say the only way you’re going to [get the personnel] is if you reward people more handsomely for what they’re doing, recognising the fact that it’s more demanding than other types of prosecutorial work...but you could never make all the people specialists and therefore give them more money.”

### Emotional Labour and Wellbeing

A further substantial risk to retention identified by several participants was tied to the demanding and stressful nature of RASSO work, including the emotional labour and risk of burn-out that this might pose. As CPS 6 put it, for example, “a huge issue...is getting people to come in who will stay, you know. And it’s not because they don’t want to do the work, it’s just they haven’t got the resilience to be able to deal with it.” Meanwhile, CPS 7 reflected that “some people can only do it for a finite period because it’s exhausting...it changes your world...people leave because they can no longer cope with the sheer weight of the horror and trauma that they’re dealing with.” Similarly, CPS 56 observed that “we’ve lost a lot of experienced staff...the problem is we’re getting in new staff...[and] some of them find it quite stressful, so some people don’t want to stay, the nature of the work doesn’t suit everybody, some people just find it quite traumatic.” Several participants noted that this was not only a reflection of the distressing nature of the subject matter in RASSO cases, which CPS 33 described as “awful” and “harrowing”, but also of the fact that colleagues were sensitive to the public scrutiny against which the handling of rape complaints was, and still is, undertaken.

While participants consistently acknowledged the challenging nature of RASSO work, they diverged in the extent to which they felt they were personally impacted by this. Some emphasised that they had developed effective coping strategies, especially with time and experience in the role, which enabled them to manage the work without negative impacts on their wellbeing. CPS 19, for example, observed that “one of the things I’ve developed over my career is an ability to be objective to the point where I can switch off,” while CPS 22 insisted that “ultimately, for me, you just have to learn the knack of turning the computer off and forgetting about it.” This idea that “you learn quite quickly internal coping mechanisms” in RASSO was also acknowledged by CPS 1, while CPS 38, who had been working in the CPS for almost two decades, observed that “you get quite de-sensitised because you have to...you

have to put it in a little box and, you know, the things I've seen you just have to." As in the comment from CPS 19 above, several participants saw such coping strategies as enabling them to perform with greater detachment, rationality, or objectivity, which they considered to be core to their legal or paralegal roles. Having observed that "the difference of this unit is emotions. It's very emotional," CPS 20, for example, went on to note "we're not taught like that. We're prosecutors and we've got the code and we've got a way of thinking. But this is about emotions." As we discuss below, this highlights the risk that individuals might perceive acknowledging and engaging with emotionality as reflecting a lack of professionalism, which in turn may make them less likely to recognise its impacts upon their wellbeing or seek support.

At the same time, the 'overflow' effects of that emotionality were also candidly acknowledged by a number of other participants. CPS 38 observed, for example, that undertaking RASSO work "does change your view of the world...because we've seen things that are beyond comprehension at times." Similarly, CPS 41 noted that "sometimes you're dealing with really, really horrible thing that you can't get out of your head afterwards, but apart from the people that you work with, and who never come into the office now anyway, there's no real outlet." Though such effects were discussed by participants across a range of RASSO roles, there was some evidence in our research to suggest that they could be felt particularly acutely by paralegal officers who, as things stand, often have a greater level of direct contact with victims, including meeting them at court. We encountered situations in interviews where paralegal officers became tearful in discussing cases. Moreover, CPS 17 disclosed that "there have been times where I have not coped" and "I was feeling it was getting on top of me," although she reported receiving excellent support from her manager and paralegal colleagues, which assisted her. Equally, CPS 42 observed "this kind of job isn't the kind of job you can talk to anyone about, it's really difficult" and though she again cited support from paralegal colleagues as helpful, she indicated she was hesitant to make too much use of peers in this way since they encountered similar challenges and "it's not nice to put that kind of information on other people."

Existing CPS wellbeing interventions typically target more generic coping techniques, accompanied by the formal availability of additional support where it is proactively requested. In the mandatory 2-day RASSO induction training, observed as part of this research, there was only fleeting reference made to prosecutors' wellbeing, prompted – potentially accidentally – by trainers' uncertainty over the meaning of a powerpoint slide in the training pack that simply showed an image of sunlit scenery. The toolkits and resources available to support colleagues' wellbeing were neither mentioned nor links provided during that brief discussion within the training, and it was not clear from the tutor brief that the facilitators otherwise relied upon heavily to guide the structure and content of the session that this was the intended function of the slide, since in the brief there is no mention at all of wellbeing across the two-day workshop. Meanwhile, the CPS's Wellbeing Toolkit itself – though providing a range of resources to colleagues including apps that offer coaching techniques and occupational health facilitated counselling support – continues to place a heavy emphasis upon line-manager check-ins, supplemented as necessary by the 'offer' of meetings with a counsellor or mental health first-aider where individuals take the initiative to request it. Alongside this, to provide additional support, some pathfinder areas have implemented peer-to-peer 'Schwartz Rounds', described in the Toolkit as creating "a safe

place to speak freely about the emotional impact of your work, sharing experiences – you are not alone. 2 or 3 panellists tell a story for five minutes about an incident on a particular theme that has impacted on them. The rest of the group listen to the stories and mentally will start to relate what they are hearing to their own experiences.”

Though, for some interviewees, these support offerings were appreciated and useful, for others they clearly did not go far enough. As CPS 44 put it, “we get general sort of support in how to deal with, you know, stresses and strains generally. But I’ve never been on a course where I’ve been given any guidance to deal specifically with what we read and what we see.” Meanwhile CPS 26 commented that “the support you get is like breathing and stuff and mindfulness,” and CPS 38 observed that work “offer help and we’ve got these welfare courses...where you can sit and chat...but it doesn’t really take away the fact that you still have that knowledge of what you have read in case files.” More broadly, it is notable that these existing initiatives are apt to encourage reliance on individualised or localised coping mechanisms, for example, through personal distressing techniques, internal strategies to develop resilience, or debriefing with peers or line-managers. This not only assumes a strong relationship with line-managers that would permit such disclosures, but places an onus on individuals, or teams of individuals, to develop a “psychological make-up that makes you able to absorb and deal with” RASSO work (CPS 1). Absorbing such impacts is not a sustainable solution, however, at either individual or institutional level. On the contrary, it can embed trauma *within* organisations, both by setting an institutional benchmark for ‘acceptable’ levels of emotionality that may deter those in need of greater support from disclosing, and by exposing peers to higher levels of distress through a shared responsibility to hold and manage colleagues’ emotional responses. In this context, the introduction of Schwartz Rounds - though potentially beneficial in creating a workplace culture with greater openness regarding mental health, emotional labour, and risks of vicarious trauma – may simply cement rather than address those difficulties, especially where the peer-to-peer conversation is envisaged as the objective in itself, without mechanisms for onward resolution.

A more structured process, involving routine, external clinical supervision is likely to be required. Though there was hesitancy amongst participants about a “one size fits all” approach (CPS 5), and a concern – based on prior experience – that there would be resistance to any mandated approach, CPS 1 also underscored that “there’s definitely something about embedding a culture that you have these, you know, almost MOTs.” The fact that this is now routine practice in other criminal justice agencies was noted by several participants; and although some argued that lawyers’ engagement with cases is qualitatively different from, for example, a police officer in attendance at the scene of a violent offence, the observations above regarding the impacts of RASSO casework underscore the extent to which emotional labour and traumatic responses can be engaged across a variety of mediums and interactions. Indeed, recent research has highlighted that engaging with video evidence, of the sort that increasingly plays a key role in RASSO cases (e.g., ABEs, CCTV, body-worn footage, and social media) also carries substantial risks of vicarious trauma for professional evaluators (Birze et al, 2022).

In addition, a number of interviewees underscored the importance of moving beyond a position where clinical support requires proactive initiative: as CPS 47 put it, “even having done [the job] this long and enjoying it as I do, I think sometimes you perhaps don’t even

appreciate the effect it could be having on you without somebody sitting down and talking to you about it.” Likewise, CPS 6 noted that “sometimes the people who most need the support don’t recognise that they need the support. So, unless it’s mandatory, how do you get them to have the support?” What is more, the building in of this provision as standard working practice is also important to ensuring its priority amongst competing demands on time – as CPS 49 put it, “I think that if I really was seriously negatively affected by a case, there would be mechanisms I could use to gain assistance [but] it’s whether you want to avail yourself of it, whether you have the time to. The thing is, when you have a very high volume of caseload, self-care gets put to one side.”

The fact that previous efforts to encourage standard use of such clinical support in the CPS have been unsuccessful does, no doubt, attest to the scale of cultural change that is required, but it is not a sufficient reason to abandon efforts to embed it at organisational level. In addition, though our evidence on this is limited, there may be a case for arguing that previous initiatives, perhaps in part due to compromises intended to limit their obtrusiveness, lacked the commitment to drive success. In respect of a past initiative, as part of which colleagues attended a training event to be followed by mandatory, periodic calls with a counsellor, CPS 1 observed that “all we said to them is, the phone call is mandated but you can literally ring them and say, I’m fine, I don’t need this conversation, thank you very much” but “the pushback even on that was really strong.” However, CPS 41, who disclosed a receptivity to clinical supervision and support, having “at times been really upset or really stressed” about work-related matters, described the training event in question as “a complete waste of time,” and noted that the phone calls from the counsellor came “in the middle of the day when we were in an open plan office, everybody sitting around, so nobody’s going to say, yes, I’ve got a problem, so nobody did.” Meanwhile, CPS 5 reported that, despite attending the event, “I’ve never had a call.” Similar equivocation regarding a mandated supervision approach was also indicated by entries in Soteria trackers where, in one pathfinder area, welfare support for RASSO staff through a national provider was investigated, but after some colleagues attended the training and provided “mixed feedback”, it was decided that it would not be routinely offered. Instead, staff were reminded that they could make use of wellbeing and resilience training on request and a RASSO ‘mental health first aider’ was identified to give a presentation internally to colleagues.

It may be an individual staff welfare issue first and foremost, but embedding routine supervision in this way is also likely to reduce the need for unit managers and peers to engage in what CPS 54 described as “enormous amounts of handholding” to mitigate the emotional demands currently placed upon colleagues. In that respect, it is also, therefore, a resource and retention issue. Moreover, and crucially, it is likely to provide a more sustainable foundation for effective and fair decision-making within RASSO units. Indeed, previous research in the context of evaluating rape allegations as part of asylum claims has indicated that unacknowledged and poorly managed emotional labour can promote the adoption of maladaptive coping strategies by decision-makers. Such strategies rely on distancing and detaching oneself from the narratives and individuals involved in a case, which in turn can function to create and sustain cultures of scepticism or victim-blaming (Baillot et al, 2013). The relevance of that risk in the RASSO context was highlighted by CPS 58, for example, who suggested that prosecutors may be able to avoid “emotional entanglement” by engaging with the case before them “almost like an exam question in university.” Meanwhile CPS 42

observed that “my colleagues say that they deal with it like it’s not real life, like it’s just some horrific story,” and CPS 12 noted that “as a coping mechanism, I think you can treat a lot of the work that you do as almost like a book, you can distance yourself emotionally from it.” Though an understandable self-protective reaction in this context, such distancing is at odds with a commitment to engaged and empathetic evaluation and risks a sense of interchangeability in relation to individual complaints that diminishes the quality of case analysis.

### Training, Learning and Development

Allied to the above discussion of resourcing, recruitment and retention in RASSO units, and initiatives to improve wellbeing support, are a wider set of issues regarding colleagues’ training, learning and development. Particularly in a context in which RASSO staff are being appointed with more diverse skillsets, and their roles are shifting towards requiring greater partnership working with police and ISVAs, more involvement in early-stage case building, and greater visibility to and communication with complainants, the need to ensure effective and robust training is key. As CPS 8 put it, “these are hard cases...you’ve got people coming into units who are inexperienced in the prosecution of those cases, and they’re expected to hit the ground running...some of the training is very good but I’m just saying that it’s a big ask.”

A minority of interviewees were of the view that the best way to deal with this would be to impose additional criteria as part of the recruitment process: “there should be a qualification to come into RASSO...are you a good enough lawyer to do these sorts of cases, because they’re really important” (CPS 7). However, perhaps in part because of existing challenges with recruitment, this was not a widely advocated for position. And despite the concern raised by CPS 8 above regarding the scale of the task in upskilling new recruits, feedback from participants in relation to existing RASSO induction was broadly positive. CPS 19 described it as “really helpful because it took me through the very, very intricate stages you have to go through...it gave me quite an insight into how to approach cases, what to look for and what to avoid.” Likewise, CPS 53 reflected that “there’s a range of course that people have to go on before they can become a RASSO specialist; and in fairness it is quite a rigorous process.”

Though the mechanisms for monitoring compliance across CPS areas have been recognised to need improvement as part of the new National Operating Model, before being ‘signed off’ by managers as RASSO lawyers, colleagues must undertake a 2-day RASSO induction course, as well as a 1-day session on Disclosure Management and a half day session on the Impact of Trauma on Memory. During this project, the research team were able to observe these training sessions, which were held online. The sessions spanned a range of topics – from substantive provisions under the Sexual Offences Acts (SOA), to indictment drafting, digital and third-party disclosure, dispelling myths and stereotypes, suspect-focussed analysis, applications for bad character and sexual history evidence, and impacts of trauma on victims’ communication and recall. At the same time, reflecting no doubt the timescales allotted to the training, much of the discussion was relatively superficial. In a context in which some inductees may have had no RASSO or Crown Court experience, and Universities do not always cover sexual offences in their core law curriculum, the overview of the legislation and relevant case authorities was limited, for example with no explicit mention of the existence of conclusive and evidential presumptions in relation to consent and reasonable belief in

consent under the SOA 2003. Meanwhile, some issues on which there was more detailed information in the Tutor Brief were moved through briskly in practice – this was notable in particular in relation to the nature and impact of sexual offending on victims and use of supporting evidence to present cases to a jury in a way that tackles the assumption that rape allegations involve ‘one word against another’, both of which were identified in previous sections as key to developing effective trial strategy. In relation to consent, moreover, the ‘consent as tea’ video,<sup>4</sup> was shown to participants with the suggestion that it was helpful in illuminating some of the key issues in RASSO cases: in a context in which this video is designed with (overly)simplistic messaging to address a very basic level of misconception, its inclusion within training to RASSO specialists is concerning.

No doubt again in part a reflection of compressed timescales for the training, there was also relatively little space made available for shared or critical reflections around the material within these sessions: the online delivery may have created additional difficulties in this respect, but the input was relatively one-directional throughout, and it was not always clear that delegates had been provided with, or done, the relevant reading in advance. Where opportunities were incorporated for group work, moreover, it was often to apply knowledge to relatively ‘easy’ case studies, thereby reducing scope for deeper engagement. For example, while a session on suspect-focussed investigation was introduced well by the trainers, both of whom underscored the importance of rebalancing scrutiny to encompass the behaviour of the suspect rather than focussing primarily on the complainant, the case study that delegates were then asked to apply this approach to did little to stretch their capabilities in terms of engaging in such scrutiny. It involved an intoxicated victim who met the suspect via ‘Tinder’ at a nightclub. The suspect stayed sober all evening, said he would take the victim home when she was heavily intoxicated, but instead took her to his home, and had intercourse with her when she was likely incapacitated. This fact pattern is amenable to a suspect-focussed narrative, of course, but it is not clear that it would greatly assist delegates in relation to other, more challenging scenarios with which they will be confronted. Similarly, the scenario on consent that delegates were asked to consider also involved a heavily intoxicated complainant, whose state of unsteadiness, slurring her words and being “absolutely out of it” was corroborated by evidence from a third party. She reported having been raped by her partner, in the context of a well-documented abusive relationship (with convictions against the suspect for ABH to a previous partner), and it was known that the victim was trying to leave him in the immediate period that preceded the attack. Again, as one of the trainers explicitly acknowledged in the session, this presented delegates with a largely straightforward case study. As such, the extent to which it encouraged prosecutors to probe at the interpretive boundaries of the legislative provisions around consent or assisted them in developing robust decision-making across more complex cases is unclear.

Notably, there were moments in the training that indicated an appetite amongst some of the delegates to engage in a more critical way with challenging scenarios, but it was not well-capitalised upon. In respect of the victims’ intoxication in the scenarios above, for example, one delegate queried, with the disclaimer that “I hope it’s not too controversial,” how to deal with the fact that drunkenness can impact memory and recall; and noted that “there is a blurred line between evidence and myths and stereotypes” in such cases. In response, the

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<sup>4</sup> [tea and consent video](#)

trainers underscored that a person is entitled to go out and drink alcohol, and suggested that someone who is drunk, though unlikely to recall extraneous details, is likely to have a good recollection of the rape. In fact, the relationship between encoding and recall of traumatic memories whilst intoxicated is complicated (Flowe & Carline, 20121), and it is not clear that the delegate's point related to the acceptability of the victim's intoxication as the responses it provoked implied. Nonetheless, no further discursive space was afforded for the question of how to navigate the evidential versus judgmental relevance of victim intoxication in developing a case strategy.

It is important to underscore, of course, that attendance at these training sessions is not the only, and perhaps not even the primary, way in which new recruits are inducted and transitioned into RASSO units. The process of completing these training sessions can take some months due to a lack of available spaces; and in the period pending completion of the mandatory training, lawyers do involve themselves in, and gain learning from, cases, under review by senior colleagues. Moreover, after completion of mandatory training, there will continue to be systems in place to review the decision-making of more junior lawyers within RASSO teams. There was a clear sense amongst interviewees that this was appropriate, since much of the knowledge required to perform the role comes not from induction training but from 'learning on the job'. At the same time, however, this learning required effective, and time-intensive, mentoring and oversight, which imposed additional pressures on unit resources and workloads. CPS 20 noted that while "everybody welcomes new lawyers because...you're thinking somebody is here to help us out," it is about more than "bums on seats." Likewise, CPS 56 observed that "we're getting in new staff and it takes a while to build them up and get them to understand," while CPS 52 commented that "we've lost a lot of very experienced lawyers so even though we may have some numbers, they're not necessarily up to speed." This was reflected in pathfinder areas' entries in Soteria trackers. In October 2022, Area D, for example, noted that five of their lawyers had been with the unit for less than 8 months, and three for less than 2 months, with the additional mentoring this necessitated impacting significantly on timescales for charge decision-making. Similarly, Area C, whose tracker entries narrated a running theme of difficulties in appointing lawyers to the team, include a note - after appointees were finally identified in the wake of a dedicated RASSO recruitment campaign - that "mentors will be identified for all new lawyers and induction plans will be drafted to ensure that all appropriate training and awareness raising is provided. The number of new lawyers, whilst welcomed, will have a significant impact on the unit in terms of support and mentoring."

Aside from the resource implications associated with this focus on 'learning on the job', there is also the question of what is being learned in this way and the extent to which it might reinforce, or sit uncomfortably alongside, messages provided in induction training. To the extent that those most likely to be undertaking mentoring roles are also likely to be those with longest service within units, they may be least likely to have undertaken recent training themselves. Especially in respect of evolving aspects of the prosecutorial role, this risks perpetuating out-dated approaches or mindsets that will undermine ambitions within Soteria.

In previous sections of this report, we have highlighted the need for additional training to support *all* CPS colleagues in relation to consistent approaches to disclosure strategy,



ensuring that myths and stereotypes are challenged in decision-making, articulating trial strategy and engaging in robust discussions with counsel around this, and communicating with empathy and clarity to complainants throughout their justice journeys. As part of the research, we also asked interviewees about the areas in which they felt that further training would be especially beneficial, and these often mapped to the same broad terrain. In particular, participants identified the need for “trauma-informed training around victims” (CPS 4), which was coupled with a recognition that it was important to “give an external perspective that raises awareness of issues that maybe the CPS training doesn’t cover so much, really giving an insight into victim perspective” (CPS 10). In a context in which there is limited space afforded within existing training for thinking about the interactions between victimisation, trauma, and diversity (for example, ethnic and cultural diversity, neurodiversity, or disability), this intervention from third sector experts is also likely to be particularly beneficial. In Area B, this has prompted the implementation of a series of workshops, provided over a 6-month period by a specialist organisation to lawyers and paralegals, on the impact that sexual violence can have on victims and trauma-informed communication techniques. Meanwhile, in Area D, there have been training sessions with doctors experienced in providing care at sexual assault referral centres. In addition, as highlighted in the previous Section, participants also emphasised the need for training, more specifically, on communicating and engaging with victims in a manner that preserved their prosecutorial independence whilst making them more accessible, and conveying appropriate levels of respect, empathy and sensitivity throughout their interactions. Beyond this, a number of interviewees also underscored the benefits of collaborative training undertaken by both police and prosecutors, with two pathfinder areas specifically highlighting in their Tracker entries the benefits that colleagues had derived from sessions on the ‘whole story model’ and how it could be used to support suspect-focused investigation, which were provided by Dr Patrick Tidmarsh as part of activities by the Soteria policing research team.

In conclusion, then, we would underscore that what is important here is both that induction training for incoming RASSO team members is rigorous and fit for purpose, and that mechanisms are in place to ensure continuing professional development and refresher training for all colleagues, regardless of career stage. This should also extend to paralegal officers who do not currently receive any bespoke induction on arrival into RASSO units, notwithstanding the unique - and uniquely demanding - nature of their role in this context. This, of course, will impose further challenges in terms of resourcing, but it is a vital investment in terms of staff wellbeing, retention, and progression, as well as ensuring the best quality performance, decision-making and communication across RASSO teams. To work most effectively, such training and development pathways should dovetail with mechanisms for oversight and scrutiny in relation to case strategy, progression and outcomes that have been discussed elsewhere in this report, including drawing learning meaningfully from multi-agency reviews.

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