



**HMCPSI**

HM Crown Prosecution  
Service Inspectorate

# 2019 rape inspection

A thematic review of rape cases by  
HM Crown Prosecution Service Inspectorate

**December 2019**

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## Who we are

HM Crown Prosecution Service Inspectorate inspects prosecution services, providing evidence to make the prosecution process better and more accountable.

We have a statutory duty to inspect the work of the Crown Prosecution Service and Serious Fraud Office. By special arrangement, we also share our expertise with other prosecution services in the UK and overseas.

We are independent of the organisations we inspect, and our methods of gathering evidence and reporting are open and transparent. We do not judge or enforce; we inform prosecution services' strategies and activities by presenting evidence of good practice and issues to address. Independent inspections like these help to maintain trust in the prosecution process.

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# Chief Inspector's foreword

## Chief Inspector's foreword

If 58,657 allegations of rape were made in the year ending March 2019 but only 1,925 successful prosecutions for the offence followed, something must be wrong. The National Criminal Justice Board has commissioned work to determine where exactly the justice system is failing victims.

This inspection looks at one small part of the overall picture. It examines whether the Crown Prosecution Service (CPS) is part of the problem. Has the CPS changed the test it applies when deciding whether to prosecute? Is the CPS demanding unnecessary further investigations be carried out before being prepared to reach a decision? Is the CPS risk averse? The three questions are interlinked and our conclusions are set out in the report that follows, as well as in the underlying data published on our website.

What we found is a complex series of issues that cannot be answered with a 'yes' or 'no', although we have tried to simplify them in the summary that follows. The first is that the criminal justice system is itself complex and not always understood. After all, if a complainant provides an honest and credible account of being raped, why should a prosecution not follow? In part, the answer turns on the position of the suspect in the system. A suspect is innocent until proved otherwise. A suspect can only be convicted if the jury is satisfied so that it is sure, on the evidence put before it, of guilt. Rape often occurs in circumstances that result in a jury being asked to try and assess, as best they can, what was going on in the minds of the participants. The complainant and the suspect may know each other. They may be in a relationship in which consensual sexual activity has taken place. What may start as consensual may quickly turn non-consensual. Alcohol may cloud memories. And finally, even if consent was refused, did the suspect have a reasonable belief that it had been given? Because if so, that is a defence.

Add to that the fact that the CPS applies the test for prosecution set out in the Code for Crown Prosecutors when deciding whether or not to prosecute. That test is whether, on the basis of the totality of the admissible evidence, there is a realistic prospect of conviction and, if there is, whether a prosecution is in the public interest. Assessing evidence to determine whether there is a realistic prospect of a jury being satisfied so that they are sure of guilt is not easy. It is not a scientific process with a right or wrong answer; rather, it is an exercise of judgement and experience by the prosecutor. It is also the case that two similarly experienced prosecutors may assess the same evidence and reach different conclusions.

In every inspection in which we examine cases, we identify Code test failures. These are decisions prosecutors have made that are clearly wrong, wholly unreasonable decisions. We identified a few in this inspection. But unusually, I also asked my inspectors – all of whom have prosecutorial experience, some recent, some less so – to indicate whether they would have made a different decision to that made by the CPS. These are honest assessments reaching different conclusions. In remarkably few cases did my inspectors disagree with the decision of the CPS lawyer. And the differences were fairly balanced between bringing and not bringing prosecution.

The CPS uses specialist rape lawyers working in special units called Rape and Serious Sexual Offences (RASSO) units. In carrying out this inspection, we found areas where the CPS could improve and have identified some areas of concern. What we unfailingly found was the commitment and determination of individual RASSO lawyers to do the best they can for both complainant and accused in circumstances where their workload is often unreasonable. There can only be an effective criminal justice system – and one in which the public can have confidence – if it is properly resourced. The one we have has been under-resourced so that it is close to breaking point. In the case of the police, it may have gone beyond that, and while that is for others to assess, the number of rape allegations lost in the investigative process is damning.

Rape is a crime that is committed primarily by men against women. However, it is also perpetrated against men and boys, so in this report we refer to the complainant and the suspect as ‘them’ or ‘they’, because penetrative offences are gender neutral. I recognise that there have been discussions over the use of ‘complainant’, ‘victim’ and ‘survivor’ and of ‘suspect’, ‘accused’ and ‘defendant’. We have used ‘complainant’ and ‘suspect’ throughout. If we have erred, it is not through disrespect.

I am grateful to HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) for their assistance in this inspection, which has allowed us to look at a small number of police files. It allows us to recommend that further work through joint inspection would provide a greater understanding of why so few rape allegations make it to trial.



# 1. Summary

## What this report is about

**1.1.** This inspection came about at the Attorney General's request for independent evidence to support a review, commissioned by the National Criminal Justice Board (NCJB), of the criminal justice system's response to adult rape and serious sexual offences.

**1.2.** This NCJB review was commissioned because of concern that, while the number of rape allegations being reported to the police was increasing, there was a clear fall in the volume of police referrals to the Crown Prosecution Service (CPS) and a decrease in the number of charges of, and prosecutions and convictions for, rape.

**1.3.** The review identified four priorities, of which one (priority 3) related to the CPS. Originally, the CPS was to carry out its own internal review, but concerns about the CPS 'marking its own homework' led to requests that an external, independent assessment be carried out by HM Crown Prosecution Service Inspectorate (HMCPSI). We agreed to do so following our usual methodology and processes as an independent and experienced assessor of the quality of CPS casework. The four priorities focused on possible causes for the decline in rape referrals and prosecutions, with priority 3 considering: "Changes in CPS charging outcomes, particularly the decline in charge rate for rape-only flagged cases". In this section, we set out some of the issues that our inspection activity has highlighted in answer to the question raised by priority 3.

**1.4.** Rape cases are probably the most difficult cases in the criminal justice system to deal with, and often present evidential challenges that rarely arise with such frequency in other types of offending. Rape often takes place in private and without witnesses. The psychological impact on complainants may present as shame, reluctance to report it to the police or talk about it to others, or fear that they somehow brought it on themselves. This is something that complainants in many other crimes do not experience.

**1.5.** In rape cases involving adults, the issue is frequently consent. Did the complainant consent? If not, did the suspect reasonably believe they did? In this respect, too, rapes and sexual assaults are unlike almost every other crime. Historically, the successful prosecution of rape cases has been hampered by myths and stereotypes, typically focused on perceptions relating to the complainant's behaviour, such as how much they had drunk, what they were wearing, or whether they engaged in some form of sexual activity short of intercourse.

**1.6.** In 2016, HMCPSI carried out an inspection of CPS Rape and Serious Sexual Offences (RASSO) units<sup>1</sup>. As well as looking at how the newly formed units were operating, we assessed the standard of casework being carried out in the units. Our 2016 findings highlighted that at the stage of charge, in 10.1% of cases prosecutors were not correctly applying the Code for Crown Prosecutors. In many of the cases, we were concerned that some lawyers had misunderstood the application of the merits based approach and viewed it as outweighing the Code for Crown Prosecutors.

**1.7.** The CPS keeps cases under review up to and including trial, and is supposed to identify cases that have been charged incorrectly or where the Code test is no longer met. In the 2016 report, we found that in 13.6% of cases the CPS was failing to do so. In many of these cases, prosecutors failed to weigh correctly the evidential and public interest tests in line with the Code. We recommended: “All RASSO lawyers to undergo refresher training”.

**1.8.** Since the 2016 report was published, there has been a 42.5%<sup>2</sup> rise in the report of rape allegations to the police and a 22.6%<sup>3</sup> decline in the number of rape cases charged by the CPS. Over the same period there have also been a number of high-profile cases which have called into question how the CPS is handling and assessing evidential and unused material in rape cases.

**1.9.** The environment of the criminal justice system has also changed since we examined the cases that formed the basis of the 2016 inspection. The police and CPS have seen significant reductions in their resources. A number of non-recent high-profile sex cases have raised the profile of this kind of offending and have resulted in more complainants being prepared to come forward. Cases have also increased in complexity because of the passage of time in non-recent cases and the increase in the evidential importance of digital media. There has been increased public and media scrutiny of how the criminal justice system is dealing with sexual offending, and a growing narrative of failure that does not always take into account the difficulties of investigating and prosecuting the most emotive and finely balanced cases that can come into the criminal justice system.

**1.10.** This inspection provides a number of insights and findings that, while not conclusive, do highlight themes and issues and provide evidence which should

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<sup>1</sup> *CPS rape and serious sexual offences (RASSO) units*; HMCPSI; February 2016  
[www.justiceinspectors.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units](http://www.justiceinspectors.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units)

<sup>2</sup> Full year figures year ending March 2017 compared to year ending March 2019.

<sup>3</sup> Ibid

help contextualise some of the current debate about why the number of cases being charged is decreasing.

### **Is the CPS charging fewer cases?**

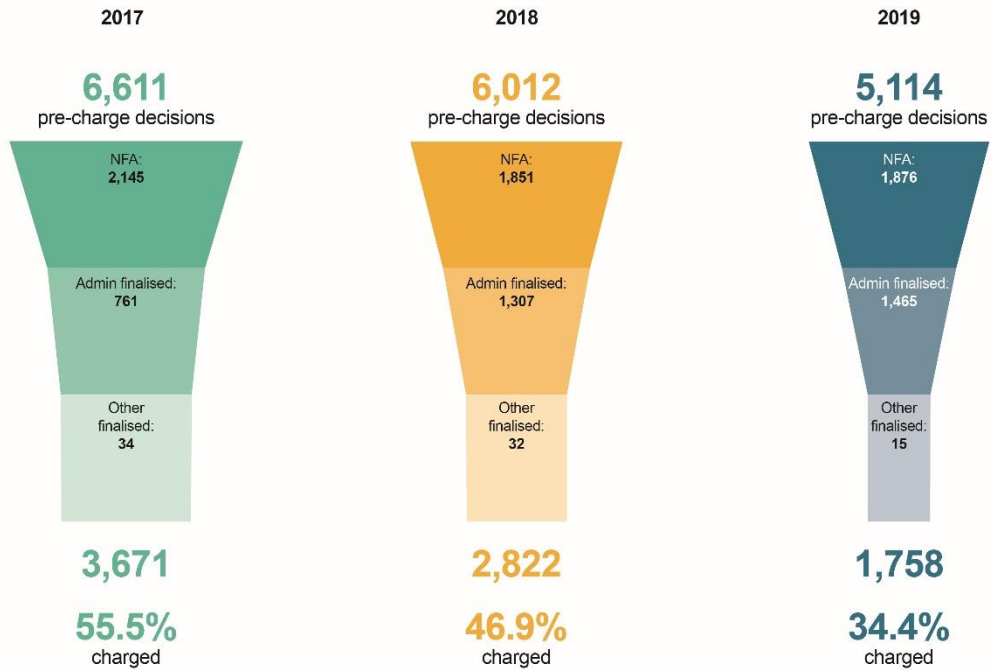
**1.11.** Yes. The inspection highlights a number of factors which may be causes of this but, equally, the relatively narrow scope of the inspection means that a number of assumptions have been made. This topic should be subject to further inspection.

**1.12.** There is no doubt that the number of RASSO cases being referred by the police to the CPS is declining. Of those referred, the CPS has charged a falling proportion of cases across the three years 2016–19. In rape-flagged cases, the number of receipts has decreased from 6,611 in the year ending March 2017 to 5,114 in the year ending March 2019 – a 22.6% decrease. Of those cases received from the police, the number of cases the CPS charges – that is, which proceed to prosecution – has decreased from 3,671 to 1,758 (a 52.1% decrease). This would seem to indicate a trend to prosecute fewer cases, but it is not as straightforward as it may appear.

**1.13.** The number of cases that the CPS lawyer, having considered the evidence provided by the police, decides do not pass the Code test (categorised as 'NFA' – cases where no further action will take place) decreased by 12.5% between 2017 and 2019, and by 1.3% between 2018 and 2019. In the vast majority of cases in our inspection where the CPS decided not to charge (NFA), HMCPSP inspectors agreed with the decision. Therefore, the inspection has found no evidence that the CPS is inappropriately refusing to charge.

**1.14.** Cases which are considered by the CPS will, with very few exceptions, result in a charge, a decision to take NFA or a third eventuality: admin finalisation. Charge and NFA are self-explanatory, as set out above; admin finalisation, much less so.

**Figure 1: Cases charged as a percentage of the pre-charge decisions referred from the police**

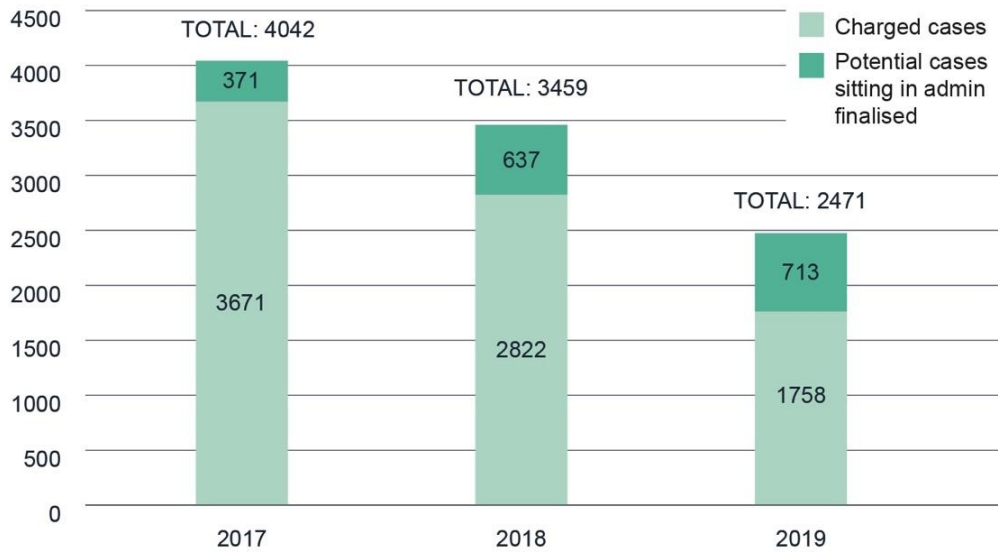


## Admin finalisation

**1.15.** ‘Admin finalised’ is a misleading term because it suggests the case has been concluded. This is not so, and many cases which have been admin finalised are, in fact, still under investigation. This administrative holding of cases in abeyance allows the CPS to manage cases on the case management system in a more effective way, and reflects the CPS workload more accurately. Admin finalised cases would be better named ‘with the police, awaiting further action’, a phrase that reflects the true position.

**1.16.** For a number of reasons (see paragraph 1.20), the numbers of rape cases that are shown as admin finalised substantially increased between 2017 and 2019. In 2018–19, admin finalisations accounted for 28.6% of outcomes of cases that the CPS reviewed pre-charge – a 17.1% increase from 11.5% in 2016–17. In our inspection of 200 admin finalised cases, 18% had been reactivated (returned to the CPS by the police) by the time we came to examine them. In 80 admin finalised cases from one police force, which we examined in more detail, 48.7% were still active and being investigated by the police. These findings point to the fact that a considerable number of admin finalised cases are being worked on by the police, will come back to the CPS and may result in a charge.

**Figure 2: Number of potential cases when admin finalised cases that are still under investigation are included**



**1.17.** The misunderstanding of the meaning of admin finalised cases is negatively affecting public understanding of the actual decrease in the number of cases being charged. If the proportion of admin finalised cases that are still active, using our data (48.7%), is added to the charged numbers, then the 52.1% decrease set out in paragraph 1.12 becomes 38.9% (Figure 2).

**1.18.** Cases usually come to be categorised as admin finalised in the following way: if the police submit a case to the CPS that is missing any of the agreed list of items that should be submitted, an administrator will reject the submission and ask the police to supply the missing items. Alternatively, if the file does not contain all the evidence that is needed for a properly informed charging decision, the prosecutor will draft an action plan which sets out what further work needs to be done. This is then returned to the police to action. If no response to the administrator’s or lawyer’s request is received within 90 days, the case is admin finalised, which simply means that it is still a live case but not actively under consideration by the CPS.

**1.19.** There are many reasons why the police might not be able to respond in 90 days, including awaiting results from forensics, receipt of third-party material, or for a suspect to be located and arrested or extradited. In 54.4% of the cases we looked at, the initial police file submitted to the CPS for a charging decision did not comply with the expected standards. Many of these cases were returned to the police with an action plan but received no response from the police within 90 days, and so became admin finalised.

**1.20.** The number of cases not being progressed in a timely way has increased significantly. In many instances, this can be the result of limited

resources. In the inspection, we saw requests for forensic examination of phones taking up to 11 months to complete, and securing third-party material taking an inordinate amount of time. In many cases, we could find no explanation recorded in the case files for police delays in completing the CPS action plan. This would benefit from further inspection work, since it is clear that delays affect the likelihood of a prosecution and, quite separately, have a significant negative impact on the complainant and the suspect.

### **Delay**

**1.21.** In our sample of cases that were charged or ended with advice for no further action, an average of 237 days elapsed between the first report of the offence to the police and the police's first submission of the file to the CPS for a charging decision. In the admin finalised cases, the average was 200 days. As outlined in paragraph 1.19, contributing factors include a shortage of resources in the police and backlogs in forensic labs responsible for recovering and analysing DNA or other crime scene evidence, or examining digital devices. We would suggest that some further inspection activity is required to understand the reasons for these delays. HMICFRS file examination, along with work carried out by inspectors from both Inspectorates, also highlighted that, in a number of cases, delays were caused by the lead officer being abstracted for leave, training or other absences, during which time nothing would be done on the case. There was also evidence of a lack of grip on progressing some cases. Most of the admin finalised cases from the one force that we examined had investigative plans, but very few had deadlines for completion.

**1.22.** Once a file arrives with the CPS for a charging decision, unless the suspect is in custody, the file is subject to administrative triage, and will then be allocated to a lawyer to review. In our file sample, the charging decision took an average of 17 days, but this was from the final submission of an acceptable police file to the final consultation at which the charging decision was made. The case is often sent back from the CPS to the police when it fails a triage or with a lawyer's action plan requiring further investigative work to be done. If it is not admin finalised, it will then be returned to the CPS with additional material. Where the police dripfeed the answers to actions to the CPS, this adds to the delay. When we assessed how long it took, including admin actions and all the consultations, we found that only just over half of the charging decisions were timely. The CPS data shows a decline in timeliness over the past year, and it is not meeting its own target for the number of days taken.

**1.23.** The evidence from CPS staff and our file examination shows that delays do have an impact on the outcome. Delays in the police investigation affected the outcome in 6.4% of our charged or NFA cases. Only one complainant cited delay as the reason for withdrawing their support for a prosecution, but there are

many others where the reason for the withdrawal was not known, or where delay may have played a part – for example, when a complainant says they want to move on. In one case involving a very young complainant, the delay in recording the video evidence was such that they struggled to remember the incident clearly enough to provide any effective evidence by the time they were interviewed.

**1.24.** We also found that there is a real need for communication between the police and CPS to improve across a range of interactions, including what enquiries are required and why, appropriate timescales, and providing feedback to one another. The present situation is not conducive to effective case progression.

**1.25.** The inspection evidence is that delay is more than likely a contributing factor to attrition in the cases in the system. There was some evidence that in cases which had been delayed, the complainant withdrew their support and the police categorised the cases NFA without coming to the CPS for a charging decision. It can be assumed that there are a number of cases reported to the police where the complainant withdraws support. A report compiled by the London Victims' Commissioner and MOPAC, *The London rape review: a review of cases from 2016*<sup>4</sup>, found that 58% of victims withdrew their allegation prior to the police submitting the case to the CPS. The report found that this was not because victims did not want to continue with the investigation, but because they did not feel that they could. Research by the London team showed that the most common reasons given for withdrawal were stress and trauma due to lack of police contact, lack of information or updates, or the sheer length of time it took for investigations to progress.

**1.26.** What this inspection has not been able to assess is how many of the rape allegations reported to the police are still under investigation and may result in a case that will eventually be submitted to the CPS for a charging decision. The gap between the 58,657 cases reported and the 5,114 cases where the CPS are requested to make a charging decision does not form part of the priority 3 question. However, there is evidence that there are changes in the landscape of how rape cases are dealt with by the criminal justice system, under-resourcing and communication between the police and CPS. These changes would benefit from further investigation or inspection.

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<sup>4</sup> *The London rape review: a review of cases from 2016*; Mayor's Office for Policing and Crime and University of West London; July 2019  
[www.london.gov.uk/sites/default/files/london\\_rape\\_review\\_final\\_report\\_31.7.19.pdf](http://www.london.gov.uk/sites/default/files/london_rape_review_final_report_31.7.19.pdf)



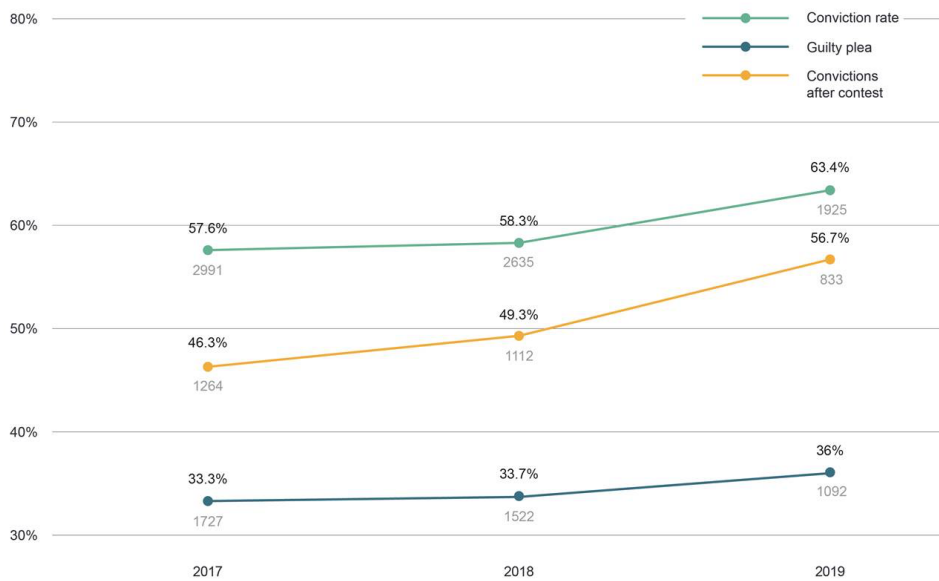
## Is the CPS risk averse?

**1.27.** One of the criticisms of the CPS is that it is increasingly risk averse when deciding which cases to prosecute. This is not easy to test or measure accurately. Recent criticism of the use of levels of ambition or targets for rape conviction rates included assertions that the CPS was only charging easy cases where a conviction was more likely, rather than applying the test for prosecution contained in the Code for Crown Prosecutors. That view is not supported by the findings from this inspection. As set out in paragraph 1.6, in 2016 we expressed concerns that the CPS was applying the Code incorrectly in 10.1% of rape cases. In this context, this means the decision was a wholly unreasonable one. In this inspection, of the 250 charge and NFA files we examined, there were five cases (2%) where we concluded that the decision was wholly unreasonable. The fact that we found so few Code test failure cases, and that the mistakes went in both directions, both for and against a charge, is not supportive of the view that the CPS is only proceeding with strong cases.

**1.28.** For the first time in an HMCPSI inspection, we asked the inspectors – who all have prosecutorial experience, some recent, some less so – if they would have made the same decision as the CPS on the basis of the available evidence. This is not the same as identifying wholly unreasonable decisions. The application of the Code is not scientific. It is a decision based on judgement and experience. It follows that different prosecutors may consider the same evidence and reach different conclusions, which is why the CPS and Inspectorate alike have quality assurance processes that help ensure consistency. There were 13 cases (5.2%) where the inspector would have made a different decision to the CPS. Seven of these 13 cases were charged and six NFA, which tends to show that, rather than the CPS being risk averse, these decisions are often finely balanced, with many difficult matters to weigh up in the evidence. Inspectors found nothing to suggest that any charging decision made by the CPS was influenced by a desire to meet a target or achieve a higher conviction rate.

**1.29.** In trying to assess whether the CPS is risk averse, there are two relatively blunt measures that can be used to look at the data. One is the balance between charged, NFA and admin finalised cases. The largest shift in the data in the past three years is toward admin finalised, which would suggest that the police and lawyers are working to build cases and looking for evidence to determine the right decision. Another broad measure is the rate of conviction. Many suspects plead guilty, but the CPS also measures the conviction rate that follows a contested trial. If the CPS was being risk averse, this might show a rise in the conviction rate after a contested trial, although there would be other possible reasons for this, too. The conviction rate after contest has risen from 46.3% in 2016–17 to 56.7% in 2018–19.

**Figure 3: Broad measures related to potential risk aversion**



**1.30.** Conviction rates rise if only the strongest cases are charged. However, they also rise if weaker cases are built to make them stronger before charge. Systemic changes have been made since 2015 with the CPS and Association of Chief Police Officers (ACPO) agreeing a protocol for handling rape cases, and changes to the handling of digital evidence after the Allan case in late 2017. This has meant a great deal more work is undertaken pre-charge, and those cases where there is cogent undermining material are, or should be, removed from the system before they reach a court. The extra work involved in examining digital devices or obtaining third-party material has also generated more material for the officer in the case and the lawyer to evaluate, which can make the delicate balancing exercise even harder.

**1.31.** This inspection was never going to provide all the answers to what might lie behind the decrease in rape cases being charged by the CPS. The report by the London Victims' Commissioner and MOPAC, published in July 2019, sets out in great detail the proportion of cases that fall out of the system before the police are in a position to seek charging advice from the CPS. This report outlines in detail some of the concerns that we have about the interface between the police and CPS, and how delays, resources and a lack of effective communication may hinder the effective progression and handling of cases received by the CPS.

**1.32.** While this inspection provides some evidence for what happens once the CPS receives the case, it does not provide any view of the gap between the allegations of rape and cases charged. This is something that the Government may want to consider as part of the wider review under the direction of the National Criminal Justice Board.



## Recommendations, issues to address and strengths

### Recommendations

HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services should carry out a joint inspection of the Crown Prosecution Service and police response to rape, and include within it consideration of areas of potential concern identified in this inspection (paragraph 2.7).

Crown Prosecution Service Headquarters should consider the variations in Area conviction rates, particularly after trial, to ensure that decision-making is sound and that cases are being progressed effectively (paragraph 4.8).

Crown Prosecution Service Headquarters should work with the police to develop a more effective system for monitoring rape and serious sexual offences cases that have been returned to the police for any reason pre-charge. The system should involve structured communication between Areas and their local police forces so that the Area is made aware of likely timescales for the file to return to them, and when cases have been concluded with a no further action decision by the police. The national process should incorporate clear timelines and escalations, with monitoring of compliance at a senior level (paragraph 4.24).

Areas should work with their local police partners to improve communication and reinforce the need for appropriate challenge by both parties at an operational level. This should be with the aim of achieving more effective case progression, and should include better understanding and communication of timescales for common investigative steps so that realistic targets for actions can be set, and unnecessary escalations avoided (paragraph 4.42).

The revised Director's Guidance on Charging should:

- focus on the types of rape cases where early investigative advice will bring most benefit
- mandate timescales for submission of a request for early investigative advice that take into account what can be achieved in that time for the types of cases that require early investigative advice
- set expectations for the papers to be submitted with a request for early investigative advice

require compliance with the Director's Guidance in all police forces (paragraph 5.10).

Crown Prosecution Service Headquarters should provide national information on what data can be obtained from social media platforms, and Areas should tailor the national information to include what methods are used by their local forces, what they deliver and in what timeframe for different digital devices (paragraph 5.52).

Crown Prosecution Service Areas should work with their local police forces to make better use of the many avenues for feedback between them, including providing accurate information on the quality of service each supplies, making robust challenges and seeking appropriate and timely information (paragraph 5.62).

Crown Prosecution Service Areas should engage with their local police forces to identify key specific priorities for focused improvement activity, which should align with the targets for Crown Prosecution Service and police internal assurance work (paragraph 6.20).

Crown Prosecution Service Areas should take urgent steps to ensure that, in rape and serious sexual offences cases, compliance with the timescales set out in the Victim Communication and Liaison scheme and the standard of letters sent improve significantly (paragraph 7.5).

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**Issues to address**

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The Crown Prosecution Service policy document should be updated to reflect the removal of the mandatory second opinion for cases where no further action is advised, and promulgated to Areas (paragraph 2.34).

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Crown Prosecution Service Headquarters should engage with police partners to develop a National File Standard for the first submission of a rape case for a full Code test charging decision (paragraph 5.23).

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Area managers should ensure that they instruct counsel to give advice before charge only in those cases where it is justified by the complexity or seriousness of the case (paragraph 5.38).

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**Strengths**

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Rape and serious sexual offences lawyers are maintaining a professional focus, achieving a high level of Code compliance and delivering high quality casework while struggling with heavier workloads from more complex cases. They and their managers build cohesive, supportive and committed teams (paragraph 2.50).

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Crown Prosecution Service lawyers are correctly applying the revised threshold test for charging, and challenging the police when they do not agree with the police's proposal to withhold bail at the point of charge (paragraph 5.39).

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## **2. Context and background**

## Background to the inspection

**2.1.** As part of a cross-departmental violence against women and girls (VAWG) strategy, the VAWG inter-ministerial group and the National Criminal Justice Board (NCJB) commissioned a review into the criminal justice response to adult rape and serious sexual offences across England and Wales. Announced in March 2019, it was in response to “concerning outcomes for complainants, including the observed rise in police recording against falls in the volume of police referrals to the Crown Prosecution Service (CPS), charges, prosecutions and convictions for adult rape and serious sexual offences...”

**2.2.** A report by MOPAC and the Victims’ Commissioner for London<sup>5</sup> published in July 2019 provides a very useful insight into the data trends that caused these concerns and the factors that have an impact on rape cases as they reach various stages in the criminal justice system. Key headline findings, from a sample of 501 rapes from April 2016, included:

- 84% of allegations reported to the police were classified as a crime by the police
- 86% of rapes reported to the police did not get referred to the CPS
- only 9% were charged by the CPS, 6% proceeded to trial and 3% resulted in a conviction
- complainant withdrawal was the most common form of attrition in the sample of classified cases (58%), followed by no further action by police (29%)
- the average length of time from the date of reporting to the trial outcome was 18 months.

**2.3.** The findings of this report clearly set out some of the challenges that face the criminal justice system, and the landscape that this inspection has had to navigate. We are grateful to the London Victims’ Commissioner and MOPAC for allowing us to use the data in this report.

**2.4.** The Government review is guided by a sub-group of the NCJB, formed of senior officials representing all parts of the criminal justice system. A stakeholder reference group, comprising representatives of third sector organisations, was also convened to inform and assist the review process. The planned completion

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<sup>5</sup> *The London rape review: a review of cases from 2016*; Mayor’s Office for Policing and Crime and University of West London; July 2019  
[www.london.gov.uk/sites/default/files/london\\_rape\\_review\\_final\\_report\\_31.7.19.pdf](http://www.london.gov.uk/sites/default/files/london_rape_review_final_report_31.7.19.pdf)



date of the review is Spring 2020, with recommendations to be cleared by the NCJB and the VAWG inter-ministerial group.

**2.5.** The first phase of the review identified four priority areas.

- Priority 1: Increase in ‘evidential difficulties, suspect identified – complainant does not support prosecution’ outcome (led by the Home Office).
- Priority 2: Variation in referral to charge volumes by police force area and CPS regions (led by the Home Office).
- Priority 3: Changes in CPS charging outcomes, particularly the decline in charge rate for rape-only flagged cases (initially proposed to be led by the CPS).
- Priority 4: Why do a lower proportion of rape-only prosecutions result in conviction? (Led by the Ministry of Justice.)

**2.6.** The third priority was initially allocated to the CPS, who planned to investigate charged and NFA cases, the overall time taken to reach a charging decision, cases where the police did not respond to an action plan and those where responses took an excessive amount of time. These were sound proposals, but strong opposition based on a perceived lack of objectivity led the Director of Public Prosecutions (DPP) to request that the Attorney General ask HMCPSP’s Chief Inspector to conduct an inspection. This was supported by the parties on the working group as it would bring independence to the evidence for priority 3.

**2.7.** The inspection has used our established methodology, which we explain further from paragraph 3.3 and in Annex A. To support our understanding of the police service’s impact on the CPS, we engaged the support of inspectors from HMICFRS to conduct a small, focused file review in one police force. This file review was not statistically significant or geographically representative, but aimed to provide some extra details about what happened to some admin finalised cases on the policing side. We have had to expedite the inspection to ensure that the report could be published in time to inform the Government review, and this has meant that we have not been able to expand the inspection to cover ground that we feel needs further work. We therefore recommend that we and HMICFRS revisit this topic next year.

### Recommendation

HM Crown Prosecution Services Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services should carry out a joint inspection of the Crown Prosecution Service and police response to rape, and include within it consideration of areas of potential concern identified in this inspection.

## Our 2016 report

**2.8.** Our inspection of rape and serious sexual offences (RASSO) units<sup>6</sup>, which we published in February 2016, showed that in 10.1% of cases, the Code for Crown Prosecutors<sup>7</sup> (the Code) was not applied correctly at the charging stage. All but one of these were flawed decisions to charge. At later review, the Code was not applied correctly in 13.6% of relevant cases. Inspectors were concerned that some lawyers had misunderstood the application of the “merits based” approach (which we discuss from paragraph 2.34) and viewed it as outweighing the Code. Inspectors recommended that all RASSO lawyers undergo refresher training, including the role of the merits based approach in the context of the Code.

**2.9.** In the 2016 report, we found that lack of time was an issue for almost all rape specialists, and in many Areas the time taken for a charging decision was measured in months, with an average of 53 days to charge against a target of 28 days. We also reported on the impact of the quality of the police file on the timeliness of decision-making, and observed that poor file quality was the biggest contributing factor to duplication and re-work on a case.

## Changes since late 2017

**2.10.** In November 2017, the jury in the trial of Mr Liam Allan on 12 counts of rape and sexual assault was discharged after three days. This was to allow the defence team time to review a disc containing about 4,000 texts and social media messages from the complainant’s phone, which included some sent by the complainant to Mr Allan and to the complainant’s friends. The messages, which should have been revealed by the police to the prosecution and by the prosecution to the defence much earlier, wholly undermined the complainant’s allegations, and meant there was not a realistic prospect of conviction. In December 2017, the prosecution offered no evidence, and Mr Allan was

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<sup>6</sup> *CPS rape and serious sexual offences (RASSO) units*; HMCPsi; February 2016  
[www.justiceinspectors.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units/](http://www.justiceinspectors.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units/)

<sup>7</sup> *The Code for crown prosecutors*; CPS; October 2018  
[www.cps.gov.uk/publication/code-crown-prosecutors](http://www.cps.gov.uk/publication/code-crown-prosecutors)

acquitted. Had the messages been disclosed before the CPS reviewed the case for the first time, Mr Allan would almost certainly not have been charged.

**2.11.** This was not the only rape case with similar failings, but Mr Allan's experience was probably the most high-profile and best remembered. It prompted a review by the Metropolitan Police Service and CPS, which identified a number of failings in the police and the CPS handling of the case. The review led, in turn, to a National Disclosure Improvement Plan (NDIP), training and the appointment of disclosure champions. The CPS also reviewed all live rape cases in England and Wales – a huge piece of work which inevitably diverted resources away from progressing new allegations.

**2.12.** In line with all cases, rape cases now have to be front-loaded, which is shorthand for ensuring that all the relevant information is discussed by the police and CPS, with the possible sources of evidence and unused material followed up before a charging decision is taken. In practice, this means that reasonable lines of enquiry – such as examining phones and other digital devices, and exploring third-party material such as education, medical or Social Service records – are investigated much sooner. Where the CPS identifies enquiries that the police have not carried out, and which may have an impact on the charging decision, it should set an action plan, and not charge until those actions have been satisfactorily completed.

## Requests for more evidence

**2.13.** The extent of the work that is now being carried out on a rape or serious sexual offences investigation, and the quantity of material that now needs to be reviewed pre-charge, has led to much more work on each case. While that is work that ought to have been done in any event, it is apparent that it was not happening in all cases, and certainly not at the right stage. There is a need to address that, while also recognising that it is important to devote time and care to ensuring that the right cases proceed on the right evidence and with the right disclosure made to the defence. If this takes more time, as long as the time is not wasted, then it is inevitable and right that it should do so.

**2.14.** Our survey of managers and lawyers (see paragraph 3.7) confirmed that there is more work to do on most cases, partly because of the challenges presented by digital devices, and partly because more lines of enquiry are being explored, especially in relation to unused and third-party material. We asked whether requests for digital evidence had increased since January 2018, when the NDIP was introduced (Table 1). The comments we received made frequent reference to the Allan case and the focus on reasonable lines of enquiry as central to this shift.

**Table 1: Have requests for digital evidence increased since the NDIP was introduced?**

	Lawyers	Managers
<b>Pre-charge, in rape cases, are lawyers making more frequent requests of the police since January 2018 for evidence relating to phones, other digital devices and social media information?</b>		
Yes, more frequently	70.5%	78%
No, about the same frequency	29.5%	20%
No, less frequently	0%	2%
Total	100%	100%

**2.15.** Two of the biggest challenges for the police and CPS now are:

- to ensure that the enquiries are proportionate, so that complainants are not subjected to any more intrusion than is necessary in the circumstances of their particular case
- to ensure that people are not deterred from reporting sexual offences to the police for fear that irrelevant details of their private life will be exposed to the suspect.

**2.16.** To address these challenges, the DPP published *Guidelines on communication evidence* in January 2018<sup>8</sup> and *A guide to “reasonable lines of enquiry” and communications evidence* in July 2018<sup>9</sup>. This guidance has subsequently been endorsed by the Court of Appeal<sup>10</sup>.

<sup>8</sup> *Guidelines on communication evidence*; CPS; January 2018  
[www.cps.gov.uk/legal-guidance/disclosure-guidelines-communications-evidence](http://www.cps.gov.uk/legal-guidance/disclosure-guidelines-communications-evidence)

<sup>9</sup> *A guide to “reasonable lines of enquiry” and communications evidence*; CPS; July 2018  
[www.cps.gov.uk/legal-guidance/disclosure-guide-reasonable-lines-enquiry-and-communications-evidence](http://www.cps.gov.uk/legal-guidance/disclosure-guide-reasonable-lines-enquiry-and-communications-evidence)

<sup>10</sup> R v E [2018] EWCA 2426 (Crim)

## Performance data

**2.17.** The CPS captures data from its case management system, management information system, budgeting and resource tools, and quality assurance work. It also accesses performance information from the police and HM Courts and Tribunals Service (HMCTS). The data gathered is intended to be used at a national level to hold Area managers to account for their performance and locally to identify good practice and where improvement is required.

**2.18.** The wealth of data available is such that the CPS has chosen some of the data for more scrutiny than others. At different times, the most important aspects have been set out as targets or priority measures (which the CPS calls high weighted measures), and the latter have had attached to them high performing benchmarks or levels of ambition.

**2.19.** Over the years since the CPS was created, there have been different measures and targets. These have changed as criminal justice system or Government priorities and initiatives have been introduced, such as in 2002–03, when public service agreements were introduced for the criminal justice system with the aim of narrowing the justice gap. This included shared targets for offences brought to justice (OBTJ), ineffective trials and public confidence. However, OBTJ created conflicting targets, with the police looking to increase solved crimes (called sanction detections, which included diversions from charge such as cautions or penalty notices) and the CPS targeting conviction rates. This encouraged perverse behaviours, and after a significant increase in out of court disposals, the target was revised in 2008 to focus on more serious offences.

**2.20.** In 2005–06, for the first time, the CPS set targets for attrition rates in the magistrates' courts and Crown Court in CPS-charged cases, and for unsuccessful outcomes in hate crime cases (domestic abuse, homophobic offending, and racially and religiously aggravated offences).

**2.21.** In 2007–08, the CPS added a target for conviction rates for rape. In 2008–09, domestic abuse, rape and sexual offences were assessed against three targets for attrition, with an internal framework that began to monitor Area performance against these targets.

**2.22.** By 2010–11, specific targets for casework had ceased, and performance in Areas was measured over time and against the national average. This continued until 2013–14, when the CPS set levels of ambition for various priority aspects of performance: the high weighted measures. The levels of ambition for outcomes included one for convictions in all cases of VAWG: that is, domestic abuse, rape, and sexual offences. In 2015–16, the level of ambition for VAWG was split into separate levels for rape and domestic abuse.

**2.23.** Our report on CPS RASSO units, published in February 2016, highlighted concerns about how well Areas captured data and ensured it was accurate, and about the finalisation of cases where the police had sought early investigative advice. The team had examined cases from 2014–15 and analysed data up to June 2015, so the report did not refer to the (then recently introduced) level of ambition for rape. We did, however, make a number of recommendations regarding how the CPS should record cases, and the need to improve its quality assurance of data.

**2.24.** In 2018–19, the CPS removed the levels of ambition for rape, domestic abuse, hate crime and other conviction rates, but retained high weighted measures for some aspects of delivery. The CPS continues to monitor and assess Area and national performance against its high weighted measures.

**2.25.** In the Inspectorate, we use much of the CPS, police and HMCTS data, combined with our own evidence-gathering, to assess not only the performance levels themselves, but also how well the CPS is managing its service delivery. For example, in our Area Assurance Programme of inspections, published between June 2016 and May 2019, we referred to the levels of ambition, mainly those the CPS attached to conviction rates.

**2.26.** It is essential that there should be some way for the CPS to assess performance and identify whether there are issues either nationally or at Area level. However, we have always used conviction rates as but one of a parcel of key performance indicators, since the CPS has only partial influence over conviction rates. Decisions made by other parties – including out of court disposals, for example – and the contributions to effectiveness and efficiency made by the police and courts will influence the criminal justice system whatever the CPS does.

**2.27.** We share the widespread view that the criminal justice system ought not to be judged solely by the rate of convictions; the system works as intended when difficult cases are left to the court or jury to decide, whether that results in a finding of guilty or not guilty. Inspectors fully understand that decisions not to charge or to stop a case where more information emerges, or cases that result in an acquittal, demonstrate that the system is working effectively. A conviction rate of 25% would cause concern, but one of 100% would be equally indicative of systemic flaws.

**2.28.** In our inspection, we have not found evidence that targets or levels of ambition for conviction affect the quality of decision-making. Indeed, in one Area, we saw evidence of managers expressing concerns that their conviction rate had increased, and that “sustained performance above the national average

could be indicative of a quality imbalance in our charge vs NFA decision making”.

**2.29.** In this report, we discuss the five charged or NFA cases where we determine that the decision was not in accordance with the Code for Crown Prosecutors. Three of those were decisions to advise no further action (of which one was charged by the CPS after the complainant asked for a review) and two were decisions to charge which were flawed. There were also 13 cases, seven charged and six NFA, where the inspector would have made a different decision to the CPS lawyer. Our findings do not indicate a pattern of charging only the strongest cases, or of Code decisions being driven by an imperative to increase the conviction rate. Rather, they speak to a tranche of casework that is difficult, relating as it often does to incidents where consent is central, which take place in private with no witnesses, and where decisions are finely balanced.

## CPS policy and guidance

### Policy

**2.30.** The CPS’s current policy for prosecuting rape cases<sup>11</sup> was published in 2012 with the aims of explaining the way that the CPS deals with such cases and ensuring the delivery of high quality casework. It covers various aspects, including bail, helping complainants and witnesses to give evidence, accepting pleas, keeping complainants informed, and sentencing.

**2.31.** It also sets out how prosecutors make decisions about whether to prosecute, highlighting that decisions must comply with the two-stage test laid down in the Code for Crown Prosecutors. This means that a case should only proceed where there is a realistic prospect of conviction and it is in the public interest to do so. In respect of the second stage, the policy states: “If the evidential test is passed, we believe that rape is so serious that a prosecution is almost certainly required in the public interest.”

### Second opinions

**2.32.** CPS policy requires that a decision by a rape specialist prosecutor to advise NFA must be confirmed by a second specialist prosecutor. This requirement was introduced in response to the HMCPSI and HM Inspectorate of

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<sup>11</sup> *Prosecuting rape: CPS policy*; CPS; 2012  
[www.cps.gov.uk/legal-guidance/prosecuting-rape-cps-policy](http://www.cps.gov.uk/legal-guidance/prosecuting-rape-cps-policy)



Constabulary (as it was then) joint review *Without consent*<sup>12</sup>, published in 2007, which also led to the introduction of the first national rape protocol.

**2.33.** In 2014, the CPS carried out an internal review of RASSO cases which found that they were being prosecuted entirely by specialist units with a performance regime that was sufficiently robust, when complemented by the Victims' Right to Review scheme, to capture any significant issues in the quality of decision-making. The review found little evidence that the mandatory second opinion was adding value and recommended it be removed.

**2.34.** CPS Headquarters agreed to remove the mandatory element, but also determined that RASSO unit heads should have discretion to use second opinions as a development or performance management tool. In July 2015, all Deputy Chief Crown Prosecutors and RASSO unit heads were notified of this change of policy. The notification was sent by email, and the published policy was not, and has not been, revised to reflect this change in approach. It is not surprising, therefore, that there is inconsistent awareness and/or approaches in Areas. In our survey of lawyers and managers, some managers reported that NFA decisions were all quality-assured by either a second opinion or a local case management panel, and 37.3% of lawyer respondents seek a second opinion in all cases.

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#### **Issue to address**

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The Crown Prosecution Service policy document should be updated to reflect the removal of the mandatory second opinion for cases where no further action is advised, and promulgated to Areas.

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### **Legal guidance**

**2.35.** The CPS publishes legal guidance<sup>13</sup> designed to guide prosecutors through every stage of a rape prosecution from pre-charge early consultation to sentencing. As with the rape policy, there is emphasis on the need for the Code test to be satisfied before a prosecution can take place.

**2.36.** In 2009, the then-DPP, Keir Starmer QC, instructed all Chief Crown Prosecutors to ensure that all those reviewing rape cases understood how prosecutors should reach Code decisions. In his note, the DPP emphasised that the approach described by the Divisional Court in 2009 (*R (on the application of*

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<sup>12</sup> *Without consent: a report on the joint review of the investigation and prosecution of rape offences*; CJI; January 2007

[www.justiceinspectors.gov.uk/hmicfrs/media/without-consent-20061231.pdf](http://www.justiceinspectors.gov.uk/hmicfrs/media/without-consent-20061231.pdf)

<sup>13</sup> [www.cps.gov.uk/prosecution-guidance](http://www.cps.gov.uk/prosecution-guidance)



B) v DPP<sup>14</sup>) – a purely predictive approach or “bookmaker’s approach”, based on past experience in similar cases – would be wrong. The judgement in that case explained: “There are some types of case where it is notorious that convictions are hard to obtain, even though the officer in the case and the crown prosecutor may believe that the complainant is truthful and reliable. So-called “date rape” cases are an obvious example. If the crown prosecutor were to apply a purely predictive approach based on past experience of similar cases (the bookmaker’s approach), he might well feel unable to conclude that a jury was more likely than not to convict the suspect.”

**2.37.** The court coined the expression “merits-based approach” to explain how the prosecutor “should imagine himself to be the fact finder and ask himself whether, on balance, the evidence was sufficient to merit a conviction taking into account what he knew about the defence case.” The DPP reinforced that this was the right route to decisions on the Code.

**2.38.** In 2010–11, the DPP’s principal legal advisor held a series of roadshows to advise rape prosecutors about the merits based approach. The note about their presentation says: “...the Rape Policy does not supersede the Code for Crown Prosecutors. In other words, the test for rape prosecutions is the same as for any other offence: it must still be more likely than not that there will be a conviction ... the prosecutor should proceed on the basis of a notional jury which is wholly unaffected by any myths or stereotypes of the type which, sadly, still have a degree of prevalence in some quarters ... the merits-based approach simply reminds prosecutors of how to approach the evidential stage of the Full Code Test in tricky cases. It does not establish a different standard for sexual offences.”

**2.39.** The CPS launched legal guidance on the merits based approach in March 2016. The guidance advised that the use of the word “approach” did not indicate any change to what is required when applying the Code for Crown Prosecutors. The guidance on the merits based approach was removed in November 2017, although we note that there remains a brief reference to it in chapter 1 of the current guidance.

**2.40.** We reported in February 2016 on our review of RASSO units, and said of the merits based approach that: “There is evidence from a limited number of Areas that some lawyers apply the merits based approach far too vigorously and cases are charged that do not have a realistic prospect of conviction. Inspectors were also made aware of times when the merits based approach has been viewed as separate to the Code for Crown Prosecutors rather than an integral

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<sup>14</sup> [www.bailii.org/ew/cases/EWHC/Admin/2009/106.html](http://www.bailii.org/ew/cases/EWHC/Admin/2009/106.html)

part of it; this can result in poor decision-making, an increase in unsuccessful outcomes and ultimately a poor service to complainants.” We found that prosecutors had failed to apply the Code correctly at charge in 10.1% of cases.

**2.41.** We recommended that all RASSO lawyers should “undergo refresher training, including the role of the merits based approach in the context of the Code for Crown Prosecutors.” Later that year and in 2017, the Director of Legal Services and the DPP’s legal advisor visited all 14 Areas to deliver that refresher.

**2.42.** Lawyers and managers we spoke to in this inspection did not have a consistent understanding of the merits based approach, what it meant for Code decisions, and the messages from CPS Headquarters. Most reported that the Code was always paramount, but there was a minority who felt that the merits based approach had represented a change of tack, or had not been implemented as intended, and that it had led to cases that ought not to have been prosecuted reaching the courts. The refresher presentations in 2016–17 were seen variously as a simple repetition of the need to apply the Code, or as a necessary recalibration or shift of focus back onto the Code.

**2.43.** All our focus groups contained lawyers who had joined their RASSO unit a matter of months or a year ago as a result of the CPS’s rotation policy. The newer joiners tended to be clearer than longer-standing RASSO team members that the message from CPS Headquarters was the primacy of the Code.

## Joint protocol

**2.44.** In 2015, the Association of Chief Police Officers (as it was then) and the CPS agreed a revised joint protocol for investigating and prosecuting rape offences and all other penetrative offences. The objectives of the protocol are:

- to reflect national police and CPS policy
- to achieve improved and consistent performance in the investigation and prosecution of rape
- to improve the service to complainants of rape and increase public confidence in the police's and CPS's response to rape.

**2.45.** The protocol sets out the framework within which the police and CPS can work in partnership to build effective cases. This revision to the earlier 2008 protocol recognised developments in this area, including the rollout from 2013 of dedicated CPS RASSO units.

## Caseloads and resourcing

**2.46.** We have commented in previous inspections about the impact that under-resourcing can have on casework, and it is apparent that is also the case here.

**2.47.** CPS caseloads have fallen from 5,190 rape cases in 2016–17 to 3,034 in 2018–19, a decline of 34%. However rape cases are front-loaded now (see paragraph 2.12), with vastly more digital and third-party material obtained and evaluated during an investigation and decision to charge or take NFA.

**2.48.** Lawyers in RASSO units are undoubtedly stretched. In our survey, 51% of managers said that their unit was not staffed to the level set by the CPS resourcing model. In 39.2% of survey responses, lawyers felt their caseload was heavy but manageable, but more (39.9%) felt it was heavy and unmanageable. In one Area we visited, lawyers had worked many hours' overtime at weekends in an effort to reduce the backlog in charging decisions. Managers told us that they keep a close eye on their teams' caseloads, and lawyers confirmed that work will be redistributed when colleagues are particularly under pressure, but where all lawyers are very busy, the scope for moving the load around is limited. Despite this pressure, lawyers in our focus groups were universally committed and professional.

**2.49.** For the most part, lawyers report they have received the right training (79.9%) and are supported by their managers and/or colleagues (93%), and the CPS provides access to formal counselling through its workplace wellness

provision. Notwithstanding these measures, the lawyers we interviewed were feeling the pressures of the need to make right and fair decisions for the complainant and suspect, and the ever-increasing and intense public scrutiny of their work. They would welcome greater understanding by the media and the public of how nuanced and difficult the cases are.

**2.50.** We noted how dispiriting RASSO teams found current media reporting, and that they would welcome more publicly supportive communication from CPS Headquarters about their role. Nevertheless, the teams remain cohesive, supportive, and passionate about providing a quality service.

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**Strength**

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Rape and serious sexual offences lawyers are maintaining a professional focus, achieving a high level of Code compliance and delivering high quality casework while struggling with heavier workloads from more complex cases. They and their managers build cohesive, supportive and committed teams.

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### **3. Framework and methodology**

## Inspection framework

**3.1.** The framework for this inspection consisted of an overarching inspection question and nine sub-questions. The inspection question was: “What level of confidence can the public have in the CPS to deliver fair and successful outcomes in the most efficient and effective way through the provision of high-quality decision-making by specially trained and experienced prosecutors in rape cases?”

**3.2.** The nine sub-questions can be found in annex A, which also contains a fuller explanation of the methodology.

## Methodology

**3.3.** Inspection requires skill and experience in inspection techniques, methodology and how to achieve a fair and independent review, as well as a thorough understanding of how those being inspected operate. It is advantageous if some of the inspectors involved in the inspection have recent expertise in the subject matter. In general terms, HMCPSI achieves this balance by having a staffing model that consists of a proportion of permanent staff and staff on loan, usually from the CPS. Those on loan often come to the Inspectorate for two- to three-year postings, although for specific inspections we may use seconded staff or associate inspectors as part of the inspection team.

**3.4.** Inspection needs to be informed but it also needs to be independent and objective in its findings. We do that in a number of ways. All inspectors’ work is subject to dip-sampling and quality assurance, and we also conduct regular consistency exercises, where all inspectors examine, then discuss, the same files. Annex A provides a more detailed explanation of our methodology.

**3.5.** HMCPSI inspectors examined 200 rape-flagged cases which had been recorded on the CPS case management system as admin finalised. The term is unhelpful because the cases may not actually be concluded at the point they are shown as being admin finalised, as explained from paragraph 1.15.

**3.6.** In our file examination, we had the benefit of HMICFRS inspectors’ assessment of the police files in 80 admin finalised cases from one police force, which, as mentioned in paragraph 2.7, was not geographically or statistically representative. We also examined 250 rape-flagged cases where the CPS lawyer had advised charge or NFA. The sample included 40 charged cases that received a pre-charge decision in 2014–15, to supplement the findings for rape cases from our inspection of RASSO units, on which we reported in February 2016. We assess and report on compliance with the Code for Crown

Prosecutors and other significant elements of casework and, as in Area Assurance inspections, we use ratings of excellent, good, fair or poor where appropriate.

**3.7.** Other evidence-gathering included interviews with legal managers, focus groups with RASSO lawyers, surveys of lawyers and managers, reviews of documents and information provided by the CPS and analysis of performance data.

**3.8.** We use a raft of measures, and our own extensive file examination and other evidence-gathering, to give a rounded view of CPS delivery, and also to identify risks and areas where future inspection activity may be beneficial. We assess the strength of partnership-working as a key part of most Area and thematic inspections, and evaluate casework against a wide range of measures. These include conviction rates, but also the quality of legal decision-making, charging advice, case progression, complainant and witness care, and protecting the public.

**3.9.** Where we give percentages, they may not total 100% because of rounding to one decimal place.

**3.10.** Because the focus of this report is pre-charge decision-making, we have used the legal terminology for all parties prior to a case entering the court process: 'complainant' for a person who is said to have been the subject of a sexual assault and 'suspect' for the person against whom the allegation has been made. The choice of this terminology is in no way intended to deflect from the impact of rape on survivors, but merely to reflect the fact that we were considering these cases at the earliest stages in the criminal justice process.

## Cases examined

### Reported by

**3.11.** Just over half our sample of 450 cases (53.3%) were reported to the police by the complainant or, in the case of recent cases involving children, by a parent, guardian or foster parent. Other main sources of reporting were friends or the family of adult complainants (14.2%), or professionals such as GPs, teachers, social workers and sexual assault referral centre teams (11.1%). We could not identify the source in 5.6% of cases. The rest (13.3%) were identified by police officers when investigating other offences, or reported by a wide range of people, such as hotel or hostel staff, security officers at entertainment venues, work colleagues, members of the public and, in one case, the suspect themselves.

**3.12.** The split between complainant reports (53.3%) and non-complainant reports (46.7%) is similar to that found by MOPAC and the London Victims' Commissioner in a sample of cases from 2016 (58% and 42% respectively).

### Recent and non-recent

**3.13.** A fifth of the charged or NFA allegations were non-recent incidents. For the cases examined from 2018–19, we recorded as non-recent any occurring before 5 June 2013, which is the date used by the CPS national child sexual abuse referral panel. For the 40 cases that we looked at from 2014–15, we used the same date four years earlier (5 June 2009). Non-recent allegations led to a decision to charge less often than recent incidents (38% compared to 53%).

### Types of offences

**3.14.** Rape or attempted rape of an adult or child accounted for 86.4% of our sample. There were 31 allegations of offences against children, 20 of which (64.5%) resulted in a charge and 11 (35.5%) in NFA. For offences against adults, 52.1% resulted in a charge and 47.9% in NFA. The disparity is likely to be related, at least in part, to the role that consent plays in offences against adults. We refer to the full file sample as 'rapes' for the purposes of simplicity.

**3.15.** Our sample consisted of cases that were all flagged as rape, albeit not all correctly. It included 112 cases also flagged as domestic abuse (24.9%) and 146 also flagged as child abuse (32.4%). There were 32 cases (7.1%) that carried both additional flags.



## **Suspect characteristics**

**3.16.** The suspect was an adult (when the offending was alleged to have taken place) in 82% of our 450 cases and a child in 16.2%. The allegations spanned their 18th birthday in the remaining 1.8%. All but six of the suspects were male, with the remaining suspects either female (five) or non-binary (one).

## **Complainant characteristics**

**3.17.** The complainant was an adult (when the offending was alleged to have taken place) in 60.9% of our 450 cases and a child in 38.7%. The offence spanned their 18th birthday in the remaining 0.4%.

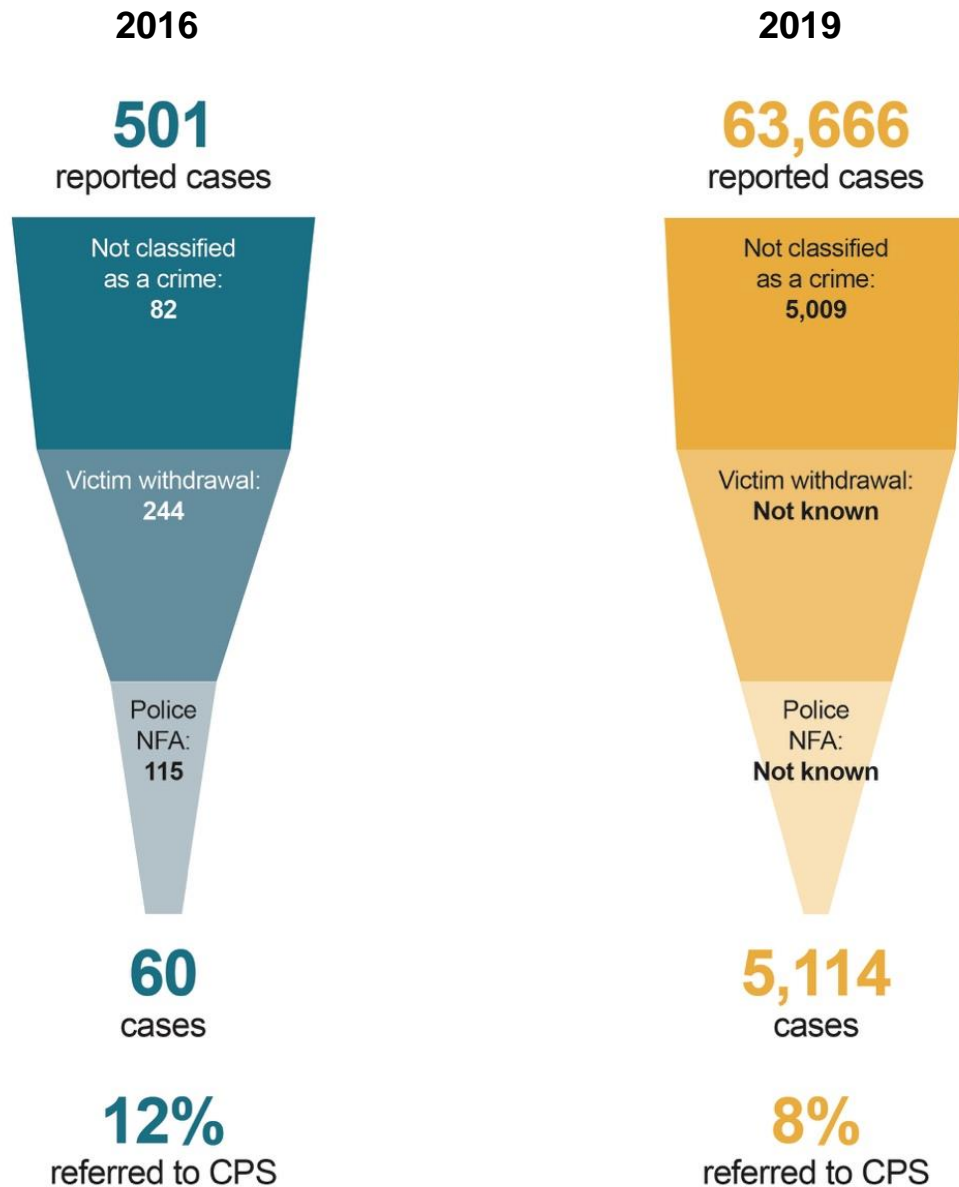
**3.18.** A total of 214 complainants in our file sample were vulnerable at the point when we considered the case: 52.8% were children, 27.1% had mental health issues, 11.2% were vulnerable in another way (such as being elderly or disabled), 5.1% had learning difficulties, and the rest (3.7%) had more than one vulnerability.

## 4. Attrition

## Victims' Commissioner for London data

4.1. The Victims' Commissioner for London and the Mayor of London's Office for Policing and Crime (MOPAC) published a report in July 2019, which analysed key characteristics and outcomes for 501 rapes reported to the police in April 2016.

Figure 4: Cases reported and referred to the CPS



4.2. In all, 12% of the cases reported to the police were referred to the CPS. Using the most recent Home Office recorded crime data (2019), the downward trend in referrals to the CPS of rape offences for charging can be seen. Figure 4 shows that the 12% figure in 2016 from the MOPAC data has now decreased to 8%.

## Police and CPS data

**Table 2: CPS pre-charge decisions 2018–19**

	# of cases	%
Referred to CPS	3,375	
Pre-charge decisions by CPS	5,114 <sup>15</sup>	100%
Charged	1,758	34.4%
No further action (NFA)	1,876	36.7%
Admin finalised	1,465	28.6%
Other	15	0.3%

**Table 3: Outcomes of charged cases 2018–19**

	# of cases	%
Total charged cases finalised	3,034	100%
Contested cases	1,468	48.4%
Of which:		
Convicted	833	27.5%
Acquitted	635	20.9%
Guilty pleas	1,092	36%

**4.3.** Key aspects from the CPS charging data and high-weighted measures dashboard are set out below.

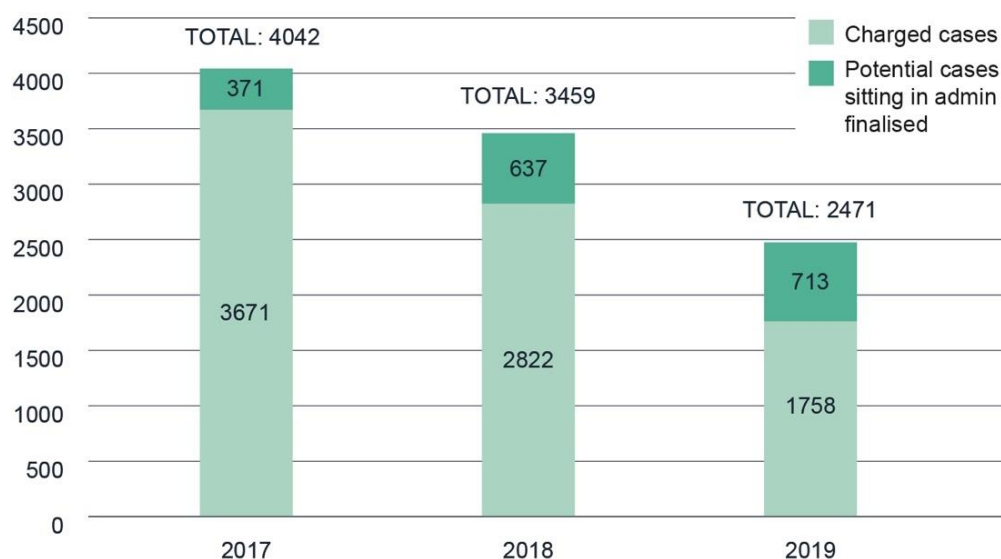
**4.4.** Referrals from the police have consistently fallen over the past three years (Table 4).

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<sup>15</sup> This figure includes pre-charge decisions on cases referred by the police to the CPS before 2018–19 as well as referrals in 2017–18 or earlier, which is why it is larger than the volume of pre-charge receipts within the same time period.

**Table 4: Rape receipts**

	Year	Volume
National data for rape cases received by the CPS from the police	2016–17	4,595
	2017–18	4,370
	2018–19	3,375
	12 months to Sept 2019	2,889

**Figure 5: Number of potential cases when admin finalised cases still under investigation are included**

**4.5.** The rate of charge (including and excluding admin finalised cases) has declined between 2016–17 and 2018–19, but the 12-month period to September 2019 shows a small increase (Table 5).

**Table 5: Charge rate in rape cases**

	Year	% charged
National data including admin finalised	2016–17	55.6%
	2017–18	46.9%
	2018–19	34.4%
	12 months to Sept 2019	36.6%
National data excluding admin finalised	2016–17	62.8%
	2017–18	59.9%
	2018–19	48.1%
	12 months to Sept 2019	51.8%

**4.6.** The proportion of admin finalised cases has fallen since the third quarter of 2018–19, but still accounts for more than a quarter (26.2%) of charging outcomes (Table 6).

**Table 6: Charging outcomes in RASSO cases**

	Q3 18–19	Q4 18–19	Q1 19–20	Q2 19–20
Charged	27.9%	34.3%	41.1%	43.5%
No further action	33.2%	36.0%	33.8%	29.3%
Admin finalised	37.9%	29.0%	24.4%	26.2%
Other <sup>16</sup>	0.9%	0.7%	0.7%	1.0%
Total	100%	100%	100%	100%

**4.7.** Conviction rates in rape cases have increased by 5.8% between 2016–17 and the second quarter of 2019–20 (Table 7).

**Table 7: Successful outcomes in rape cases**

	Year	% charged
Conviction rate since 2016-17 by year	2016–17	57.6%
	2017–18	58.3%
	2018–19	63.4%
Conviction rate in the year to date by quarter	Q3 2018–19	61.4%
	Q4 2018–19	63.4%
	Q1 2019–20	63.8%
	Q2 2019–20	65.7%
Conviction after trial	2016–17	46.3%
	2017–18	49.3%
	2018–19	56.7%

**4.8.** As Table 7 shows, the conviction after trial rate has increased from 46.3% in 2016–17 to 56.7% in 2018–19. More recent data shows a continued increase. As we explain in paragraph 2.26, convictions are not the only indicator of successful decision-making. However, in a number of Areas recently, there appears to be a significant rise in the rate of convictions after trial. This is to be expected as the CPS continues to build stronger cases with partners. However, this trend may need further analysis, particularly where Areas are far apart.

<sup>16</sup> These account for a small number of cases. For example, if two defendants were referred to the CPS for a charging decision, one was charged and the other was not subject to charge or NFA, then when the case was finalised, the uncharged defendant would come within 'other'.

### Recommendation

Crown Prosecution Service Headquarters should consider the variations in Area conviction rates, particularly after trial, to ensure that decision-making is sound and that cases are being progressed effectively.

## Reporting to the police

**4.9.** Just over half our sample of 450 cases (53.3%) was reported to the police by the complainant or, in the case of recent cases involving children, by a parent, guardian or foster parent.

**4.10.** There was no significant difference in the decision to charge or take NFA between when the rape was reported by the complainant or by some other party. Eight of the nine cases where the main reason for an NFA decision was the complainant withdrawing support had originally been reported directly to the police by the complainant. In one other such case, the complainant told the police about it while being taken through a domestic abuse risk assessment.

## Admin finalised cases

**4.11.** Our file sample included 200 rape-flagged cases that had been recorded on the CPS case management system (CMS) as admin finalised. As we explain in paragraph 1.15, the term is unhelpful because the cases are often not over at the point they are shown as being admin finalised.

**4.12.** Cases are admin finalised across a wide range of offences, not just RASSO, and in various circumstances, not all of which involve the case being concluded. The reasons include, but are not limited to:

- where a file submission has been rejected at triage because items are missing, and the police have been asked to supply the additional material and have not responded to chase-ups
- where the lawyer has set actions for the police to carry out, and the police have not responded to the action plan or to chase-ups
- where the case has been returned to the police, with or without a lawyer's advice and/or actions, and the police decide to take no further action on the allegation
- where the actions set by the lawyer will take some time to carry out, or there is some other reason why the case will not be back with the CPS soon (for example, because extradition of the suspect is necessary).

**4.13.** In our sample, 36 (18%) of the cases that were admin finalised had been reactivated on the CMS before we came to examine them, and it is likely that more have been reactivated since.

**4.14.** Admin finalisation serves a useful purpose. It removes cases that are in abeyance for some reason from the list of open cases. There is a process for checking and chasing up responses where required, which was set up because the CPS recognised that, in the past, there had been little communication from the police on progress. The process sets out that the action plan should be chased after 30 days (the first chaser) and again after 60 days (the second chaser) if there has been no response from the police. If the police reply and say they need more time, or the lawyer has set action dates beyond the 30 or 60 days, the dates for the first and second chasers can be postponed. If longer periods had been set or agreed, we used those to assess timeliness rather than the standard 30 days.

**4.15.** If there is no reply to the first or second chaser 90 days after the actions were tasked, the case should be admin finalised. The police then have to ask the CPS to reactivate it on the CMS before any new material can be submitted.

**4.16.** We found that there was very patchy compliance with the process that the CPS has in place. 21.2% of the first chasers were sent at 30 days, with 6.5% sent early, 50% sent late, and 22.4% not at all. Of the second chasers, 22.7% were sent at 60 days, 6.7% were early, 44% were late, and 26.7% were not done at all.

**4.17.** There was no response from the police to 68.2% of first chasers or to 54.5% of second chasers. In many cases, therefore, it was impossible for us to determine whether the case was still being investigated, what stage enquiries had reached, or when the police expected to be resubmitting the file. When the police decided to take NFA in a case rather than carrying out the requested actions, they often did not explain their reasoning to the CPS.

**4.18.** In one Area, the performance manager produced lists of cases that had been back with the police for more than 90 and more than 180 days. The District Crown Prosecutors (DCPs) then contacted the local police forces to establish what was happening with the cases, and whether they were likely to be built to the point where they could be charged. The DCPs now check all cases at the 90-day stage before admin finalisation and, if there is no response, they check again and escalate, if need be, at the 120-day point. This is a recent innovation, so has yet to show impact.

**4.19.** Of the 80 admin finalised cases examined by HMICFRS inspectors, 40 (50%) were no longer under investigation. In cases where the police decided to



take NFA, they had communicated this to the CPS in just over half (22 out of 40, or 55%). If those rates (which we recognise are only an indicator because they are based on a file sample of 80 cases) were replicated across all forces in our sample, that would mean a total of 100 cases that were concluded, and 55 where the police had told the CPS they had decided to take NFA. That would leave 100 cases still being investigated.

**4.20.** When it came to administrative finalisations, again, reality did not match the CPS process, with 11% admin finalised at the 90-day point. Of those that were not finalised at 90 days, 36.5% were finalised before 90 days and 63.5% after (Table 8). The correct finalisation code was used in 64.5% of the 200 cases. Nearly a quarter of cases (23.6%) were finalised at or after 180 days from the actions being set (or extended timelines where set).

**Table 8: Days until admin finalisation**

	1–89	91–179	180+	Total
<b>If not admin finalised at 90 days, how many days were there until finalisation?</b>				
2018	27.7%	31.0%	11.9%	25.3%
Q1 2019	33.8%	21.1%	11.9%	23.6%
Q2 2019	16.9%	23.9%	21.4%	20.8%
Q3 2019	21.5%	22.5%	54.8%	29.8%
Q4 2019 (Oct only)	0.0%	1.4%	0.0%	0.6%
Total	100%	100%	100%	100%

**Table 9: Reasons for admin finalisation**

Reason for admin finalisation	# of cases	%
No response from the police to the charging action plan set by the CPS	27	13.7%
No response from the police to the early investigative advice action plan or no resubmission of the case by the police after they received this plan	54	27.4%
Police file submission was not accepted and not submitted again	2	1%
Police notified the CPS that the police had decided to take no further action	53	26.9%
Police notified CPS that they would not be ready to respond for some time	6	3%
The response from the police to the action plan was inadequate and the file was not resubmitted thereafter	8	4.1%
Other	47	23.9%
Total	197 <sup>17</sup>	100%

<sup>17</sup> The sample of 200 cases included three 'not applicable' responses.

**4.21.** The 'other' reasons in Table 9 included cases where:

- the lawyer administratively finalised the case at the same time as setting an action plan (12 cases)
- the lawyer suggested the police ought to make the decision to take NFA (nine cases)
- the case was concluded without charge or requesting charging authority (eight cases)
- the police resubmitted the case on a new unique reference number (three cases)
- the case was transferred to the Services Prosecuting Authority (two cases).

**4.22.** The process for dealing with cases awaiting a response to an action plan, or the outcome of further investigative activity, is clearly not working. There is a process for the CPS to chase the police, which is not being applied properly and is draining valuable resources. It is assurance work that, perhaps, should properly be undertaken by the police, but it is also part of a joint commitment by the prosecution team.

**4.23.** HMCPSP's position is that, until the police take responsibility for responding to action plans, the CPS should do what it reasonably can to help them deliver a quality product. The CPS accepts this and carries out such work when, for example, it reports back on police file quality or delivers feedback on police compliance on disclosure.

**4.24.** In admin finalised cases where the CPS and police are not communicating effectively, and neither agency really knows which cases may eventually lead to a charge, the system is failing. Bearing the impact of the delay and uncertainty on their emotions, wellbeing and daily lives, it is the complainant and suspect who suffer the consequences.

### Recommendation

Crown Prosecution Service Headquarters should work with the police to develop a more effective system for monitoring rape and serious sexual offences cases that have been returned to the police for any reason pre-charge. The system should involve structured communications between Areas and their local police forces so that the Area is made aware of likely timescales for the file to return to them, and when cases have been concluded in a no further action decision by the police. The national process should incorporate clear timelines and escalations, with monitoring of compliance at a senior level.

## Delay

### Police

**4.25.** In our sample of charged or NFA cases, an average of 237 days elapsed between the first report of the allegation to the police and the first submission for a charging decision – nearly eight months. In admin finalised cases, the average was 200 days.

**4.26.** In the charged or NFA sample, the longest delay between report and submission for which we could not find an adequate explanation recorded on the file was 751 days. For admin finalised cases, it was 741 days. There were four cases which took longer, but for each, there was a satisfactory reason.

1. The complainant reported a rape to her support worker, who contacted the police. The complainant was unwilling to provide a statement or video-recorded account until a year later, and the suspect, who was wanted for failing to surrender to a court, was then not located and arrested for another nine months.
2. A third-party reported allegations of the rape of two children, but then would not assist the investigation. One of the complainants denied anything had happened, and the other could not be identified and traced. Fresh allegations against the same suspect two years later provided further information enabling the police to locate the second complainant.
3. The suspect was unknown until he committed a theft five years later, leading to a DNA match to the sample left during the rape.
4. The complainant reported the rape, then decided not to proceed, but reported it again 11 years later.

**4.27.** In our survey of CPS lawyers, 19.1% reported that there were delays in all cases before submission to the Area, or after an action plan had been set.

Another 56.7% of respondents reported that there were delays most of the time and 24.2% said there were delays some of the time. Managers cited delays most of the time in 62.7% of investigations before submission and 51% after an action plan has been set.

**4.28.** Over two thirds (68.8%) of the lawyers' and managers' survey responses reported that, some of the time, delays in rape cases appeared to be warranted by the complexity of the case, the type of evidence that needed to be gathered or other features of the investigation. Another 14.9% of respondents thought delays were warranted most of the time, but 14.9% said they were rarely warranted. In interviews with CPS staff, we were told of officers reporting that their cases had not been covered by someone else while they were on maternity, sick or other leave, or on training courses. Where officers had moved on, CPS staff reported that cases were not reallocated in a timely manner. The examination of police files by HMICFRS confirms that there was drift in some cases because of sickness or late reallocation, that there were numerous changes of officers, and that the police's grip on some cases needed to improve. While we only looked in detail at one force, interviews with CPS staff and managers would indicate that this drift is common in other forces. This merits further joint inspection.

**4.29.** CPS lawyers and managers we spoke to suggested that police inexperience and lack of resources are also problematic, and delays in obtaining digital, forensic and third-party material are also having an effect. In several Areas, the CPS is kept up-to-date with likely timescales for downloading and analysing the contents of a phone. At the time of our inspection, one force gave the likely timescale as 11 months for a level 2 analysis (partway between the least and most detailed examinations). We were told in another force, it was 15 weeks, and one of the police files showed delays of seven months for forensics results. In one Area, a local council had nobody in place to deal with third-party material, which had hindered the police carrying out that part of their investigation.

**4.30.** Most of the 80 admin finalised cases examined in one police force had an investigative plan, but only five included deadlines for actions, and HMICFRS inspectors thought two of those were unrealistic.

**4.31.** As we discuss from paragraph 5.49, we saw cases where the Area lawyer had set an unrealistic target date for actions or had not been specific about the nature of the action required, such as the parameters or level for a phone examination. This hampers the ability of the officer in the case to prioritise and plan their next steps to best effect.

## Crown Prosecution Service

**4.32.** The target for most rape decisions where the suspect is not in custody is 28 days, but some police forces and their related CPS Areas are taking part in a charging pilot, which reduces the target to 21 days.

**4.33.** In our charged or NFA sample, the average time between an acceptable file submission and the CPS decision to charge or take NFA was 17 days. In 65% of cases, the charge or NFA decision was made in 0–21 days, and the longest wait was 82 days. In the 2014–15 cases we examined in this inspection, and for our earlier inspection of RASSO units, 45.8% of cases were charged within 21 days, and the longest wait was 207 days, so there has been a clear improvement.

**4.34.** We also assessed the overall timeliness of charging – which took into account all consultations, not just the final one – and any delays in administrative actions. On this basis, 56% of charge or NFA decisions were timely, which has improved from 47.5% in the sample of 2014–15 cases, but still shows room for improvement.

**4.35.** The CPS data for the average time for a RASSO charge in the second quarter of 2019–20 is 37.1 days. This, too, takes into account all consultations in a case, not just the time from the final acceptable submission. It shows a decline in timeliness from the average of 32.6 days in the third quarter of 2018–19.

**4.36.** We saw too many instances where cases drifted without recorded explanation between receipt of a police submission and it being reviewed, and too few instances of the police chasing late advices – another symptom of poor communication between police and Areas.

**4.37.** Delays also arise when an action plan does not identify all the necessary enquiries, so that the file needs to be returned for further work, or does not set parameters, so that the police take longer than necessary.

### Case study

One case had four consultations with actions set each time, all of which could have been requested at the outset. In each review, the lawyer noted that they had spoken to a manager to discuss the progression of the case. After the fourth action plan, the police decided to take NFA in the case and it was admin finalised.

## Young witnesses

**4.38.** In the case of very young complainants and witnesses (under ten years old), there is a protocol agreed between the police, courts and CPS<sup>18</sup> which calls for all parties to expedite the case, including a requirement that the CPS provides charging advice within seven days. The need for urgency reflects the fact that very young children may not be able to recall events as clearly, after a relatively short interval, as an older child or adult could.

**4.39.** Our evidence makes it apparent that these very sensitive cases are not being treated as such. We saw instances where a video-recorded interview with a child as young as four or five was recorded several weeks after the incident was reported to the police and, in one case, the child was not able to recall anything clearly enough to provide effective evidence by the time they were interviewed. We also heard frequent reports that the police did not expedite their investigation, even when reminded by the CPS of the protocol, and saw cases where the CPS had not expedited their review.

**4.40.** We did not record timeliness specifically for complainants or witnesses under ten, but we did note whether the complainant was a child at the time of the investigation. The average time taken by the police to submit a file to the CPS from the date of report was 258.2 days where the complainant was not a child, and 238.9 days where they were. The average time taken by the CPS to provide a charging decision from receipt of an acceptable file submission was 17.5 days where the complainant was not a child, and 17.1 days where they were. So the police and CPS handled cases where the complainant was a child more quickly, but not by so much as to assure the public that young complainants are being progressed quickly enough.

## Impact

**4.41.** We concluded that there were 16 cases in the charged or NFA sample (6.4%) where the time taken by the police to investigate the allegation, submit it for a charging decision and carry out actions had an impact on the outcome. In the charged or NFA cases, delay was cited by one complainant as their reason for withdrawing their participation, and we were told of other such cases by interviewees. We were also given other examples of the impact of delay, including cases involving youth suspects that were stopped because of the time

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<sup>18</sup> *A protocol between NPCC, CPS and HMCTS to expedite cases involving witnesses under 10 years*; Courts and Tribunals Judiciary; July 2018  
[www.judiciary.uk/publications/judicial-protocol-expedition-of-cases-involving-witnesses-under-10-years/](http://www.judiciary.uk/publications/judicial-protocol-expedition-of-cases-involving-witnesses-under-10-years/)

taken to reach the point of charge. In surveys, we asked lawyers and managers for their views on the impact of delays (Table 10).

**Table 10: Survey results about the impact of delays**

Question	Answer	All cases <sup>19</sup>
<b>Lawyers' survey responses</b>		
Has police delay in the <b>police investigation</b> in rape cases impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely?	All of the time	0%
	Most of the time	3.8%
	Some of the time	54.5%
	Rarely	30.8%
	Never	3.2%
	Unable to tell	7.7%
Has delay in the <b>police responses to action plans</b> in rape cases impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely?	All of the time	0.6%
	Most of the time	0.6%
	Some of the time	50%
	Rarely	36.5%
	Never	3.8%
	Unable to tell	8.3%
<b>Managers' survey responses</b>		
Has police delay in the <b>police investigation</b> in rape cases impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely?	All of the time	0%
	Most of the time	11.8%
	Some of the time	58.8%
	Rarely	29.4%
	Never	0%
Has delay in the <b>police responses to action plans</b> in rape cases impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely?	All of the time	0%
	Most of the time	13.7%
	Some of the time	54.9%
	Rarely	29.4%
	Never	2%

<sup>19</sup> Rounding to one decimal point means that the total is not always 100%.



**4.42.** Interviewees told us that judges would ask about delay where it was apparently unwarranted, and that to be able to answer this, or to consider a possible abuse-of-process argument, some lawyers would ask the police about the time taken to investigate. We saw instances of this in the cases we examined, and also of the police volunteering an explanation or chronology. However, there were still many files where we were unable to establish why there had been a delay by the police or CPS, so we could not determine for ourselves whether it was warranted.

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**Recommendation**

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Areas should work with their local police partners to improve communication and reinforce the need for appropriate challenge by both parties at an operational level. This should be with the aim of achieving more effective case progression, and should include better understanding and communication of timescales for common investigative steps so that realistic targets for actions can be set, and unnecessary escalations avoided.

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## **5. Casework quality**

## Early investigative advice

**5.1.** The Director's Guidance on Charging<sup>20</sup> requires the police to refer to the CPS all cases involving rape and serious sexual offences (RASSO) "as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail".

**5.2.** This early investigative advice (EIA) is an opportunity for the CPS to help the police "determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court". Identification at this early stage of the strengths and weaknesses of the case, and of reasonable lines of enquiry for the police to pursue, can build stronger cases and avoid unnecessary work on cases that are not going to satisfy the test for prosecution.

**5.3.** We identified in our inspection of RASSO units (on which we reported in February 2016) that EIA was under-used and not effective. We recommended better guidance on its use. It was apparent from our file examination, interviews and surveys for this inspection that EIA is still not being used as anticipated. Of the cases where the decision to charge or take no further action (NFA) was made by the Areas, 64.9% did not have EIA. EIA was even less likely to be sought in cases that featured sexual offences against children or domestic abuse.

**5.4.** Many of the cases submitted by the police for EIA were well along the investigative path, and several months after the suspect had been identified. Comparing the results for the 2014–15 cases from this and the previous inspection with the findings for the 2018–19 cases in this sample, EIAs have declined in timeliness from 85.7% to 62%. This, too, echoes the finding from our 2016 report that EIA was being confused with gatekeeping and police supervision. We discuss the quality of the police file further from paragraph 5.11.

**5.5.** Our interviews confirmed that there was a widespread belief that the police did not understand the purpose of EIA. We were told of one police force that has decided not to seek EIA any longer, because they concluded that it does not add value.

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<sup>20</sup> *Charging (the Director's guidance) 2013 – fifth edition*; CPS; May 2013  
[www.cps.gov.uk/legal-guidance/charging-directors-guidance-2013-fifth-edition-may-2013-revised-arrangements](http://www.cps.gov.uk/legal-guidance/charging-directors-guidance-2013-fifth-edition-may-2013-revised-arrangements)

**5.6.** One Area we visited had very recently begun an EIA surgery, where managers were making themselves available to the police to deal with very early questions. The police are expected to provide a detailed summary of the case, but need not open it on the CPS case management system (CMS). Managers are discussing how to ensure their advice is captured, so that it is available if and when the case is submitted for advice. We agree this is an important part of the audit trail. Managers in the Area are also checking the standard of formal EIA submissions and rejecting them if it is clear that the police should decide to take NFA. It is too early to say whether these steps will help officers build cases and seek formal EIA in a more appropriate and timely manner.

**5.7.** In two other Areas, lawyers give EIA on a set day each week, and the police are told which day their file will be reviewed. This makes it easier for the officer and lawyer to have a phone discussion about the case.

**5.8.** In our sample of charged or NFA cases, fewer than half the EIA responses by the CPS added value, with 45.6% assessed as fully meeting the expected standard. This was often because of the lack of sufficient timeliness, and/or lack of specificity in either the police request or the lawyer’s response. Another 40.5% of EIA responses added some value and 13.9% added no value.

**Table 11: Effectiveness of early investigative advice**

	Answer	All responses
<b>Is early investigative advice (EIA) in rape cases being used effectively by the police and CPS?</b>		
Lawyers’ survey responses	All the time	1.3%
	Most of the time	18.8%
	Some of the time	39.6%
	Rarely	37.7%
	Never	2.6%

**5.9.** We did see cases where the police put very specific and tailored requests for early advice to the CPS. These often led to more value in the advice the lawyer supplied in return.

### Case study

In a difficult case, where the complainant's recollection of events was impaired, the police submitted a comprehensive and thorough request for EIA 12 days after the incident. The CPS lawyer demonstrated a strong grip on the case from this early stage and built the case well. The lawyer was assisted by a proactive approach to case-building by the police. Both the officer and the lawyer were alert from the outset to the need to identify what was evidence and what was unused material that may assist or undermine. The case is now set down for trial.

**5.10.** The sixth edition of the Director's Guidance on Charging is in draft as we write. We anticipate it will make EIA discretionary in rape cases and give guidance on the circumstances where it ought to be sought. We raised concerns in our 2016 report about the issues with EIA, and we note that these remain unresolved.

### Recommendation

The revised Director's Guidance should:

- focus on the types of rape cases where early investigative advice will bring most benefit
- mandate timescales for submission of a request for early investigative advice that take into account what can be achieved in that time for the types of cases that require early investigative advice
- set expectations for the papers to be submitted with a request for early investigative advice
- require compliance with the Director's Guidance in all police forces.

## Police file quality

**5.11.** There is clearly much work to do to bring the quality of police files up to an acceptable level. In our file sample, the police submission for a charging decision met the required standard around half the time: 51.6% in cases resulting in a charge or NFA and 49.1% in admin finalised cases. There was a significant variation between the standard of files received by Areas. For example, one Area's first police submissions were compliant in 20% of charged or NFA cases, whereas another's met the agreed standard in 60.5% of cases.

**5.12.** In some police forces, there are gatekeepers who assess the quality of the file before it goes to the CPS, either for all cases or specifically for RASSO work, and a number of forces have embedded an officer or officers in their local CPS RASSO unit to address concerns over police file quality. Our file sample

contained only a small number of cases for most forces, but did not show a clear impact on file quality from the existence of a gatekeeper or embedded officer – although Area lawyers and managers told us that both do improve file standards. One force has employed an ex-CPS lawyer to act as a gatekeeper, and the Area reported to us that they were seeing fewer cases rejected at triage as a result.

**5.13.** The police supervisor should assess whether the case contains sufficient evidence to merit a referral to the CPS and, if it does not, the police should make the decision to take no further action. CPS staff in focus groups told us that in some instances, police referred cases that should not have been. In some instances, those we spoke to thought the police wanted the CPS to ratify and make decisions in these difficult cases that should not have been referred. Our file sample bore this out – for example, there were nine cases that were admin finalised because the CPS lawyer had sent it back to the police to NFA.

**5.14.** Areas expressed concern about the impact on police standards of having inexperienced officers dealing with these specialist cases, and cited examples of lack of understanding of investigative roles and duties, such as those related to unused material. Where forces do not have specialist units, officers may not build up the same level of experience, or find themselves abstracted for non-RASSO duties, both of which hamper effective investigation and file preparation. Lawyers also reported that they find it harder to get hold of officers and supervisors when they are in non-specialist teams.

**5.15.** More than half the charged or NFA cases in our file sample did not meet the expected file submission standard. In these cases, the failure was fatal to the lawyer's ability to review the case. This was usually because the police had not supplied the complainant's video-recorded interview, also known as the achieving best evidence (ABE) interview, which happened in over a third of the sub-standard charged or NFA cases (35.5%) and nearly half (45.2%) of the relevant admin finalised cases. Other deficiencies in both types of cases included an inadequate summary of the case and investigation (as recorded on the Manual of Guidance Form 3), no supervisor's certificate or file contents checklist, or missing key statements.

### **Case study**

In one case, where the victim reported a rape, the officer in the case investigated thoroughly and promptly, including tracing and speaking to a number of witnesses and obtaining a great deal of third-party material. The file submission passed the first triage, and the high standard of the file, including the detailed summary of the unused material, enabled the lawyer to make a decision without the need for further enquiries.

**5.16.** We discuss the quality of the ABE interview in chapter 7, The service to complainants, witnesses and the public.

**5.17.** Our file sample of 250 cases highlights that the police were generally not very good at accurately identifying the strengths and weaknesses of the case they were submitting, only doing so fully in 49% of charged or NFA cases, and partially in another 38.5% of those cases. This left 12.6% of cases where the analysis was very weak or missing.

**5.18.** Relevant unused material, or an adequate report on it, was supplied in 81.3% of relevant charged or NFA cases. The standard file submission for RASSO cases does not have to include unused material schedules, except where local agreement mandates them. About a third of police submissions in charged or NFA cases included schedules, but only 34.9% of them were satisfactory. Missing items from a schedule was the most common error, but listing things on the wrong schedule and poor descriptions also featured, and interviewees expressed concerns that officers did not understand their duties or the concept of relevance in relation to unused material. If the schedules or summaries of unused material are deficient, either they are sent back to the police, causing delay, or the lawyer proceeds on the basis of incomplete or inaccurate information, which carries a risk that relevant undermining material is overlooked.

**5.19.** The examination of 80 admin finalised police files in one force showed that nearly all the cases had been dealt with by specialist officers, with adequate supervisory involvement in the setting of an investigation plan, and with 80% of the initial actions undertaken in a timely manner. In 97.4% of cases, there was evidence of supervision before submission to the CPS. Despite that, the force's initial file submissions were noted to be missing key elements in 13.8% of cases.

**5.20.** In our overall sample, the force's response to actions tasked by the CPS also showed room for improvement, with no response in nearly a quarter (23.4%) and only a partial response in over a third (36.4%). Responses were timely in just under two-thirds (64.4%). This supports interviewees' accounts that material is drip-fed to them by the police, which hampers their ability to assess cases thoroughly and efficiently. In our admin finalised sample as a whole, 30% of action plans met with a proper response.

## **Phones and other digital devices**

**5.21.** In the 80 police admin finalised cases we examined with HMICFRS inspectors, there were 58 where the complainant's phone and/or other digital devices may have been relevant as part of the police investigation. In 52 of those (89.7%), appropriate requests were made by the police, but in all but one of the remaining six cases, the police did not request devices when they should have. In 86.9% of relevant cases, the suspect's phone or other devices were seized by the police appropriately. The information resulting from digital communication devices in the force's admin finalised cases was reviewed by the officer in good time in 56.9% of cases, reviewed late in 15.7%, and not reviewed in 25.5%. In the final case (2%), we could not tell from the police force's systems whether it had been reviewed or not.

**5.22.** In the majority of relevant cases (60.9%), both admin finalised and charged or NFA, the lawyer properly identified where an action did or did not need to be raised for a complainant's phone or other digital devices, and set out a proportionate request where it did. This means that in nearly four out of ten cases, they did not, causing additional work for the police and producing more material to be evaluated. We discuss this further from paragraph 5.50.

## **Administrative triage**

**5.23.** The CPS undertakes administrative (or admin) triage to assess whether the police file submission complies with the agreed standard. We have been told that the cost of administrative triage to the CPS amounts to £1.7 million a year. The fact that the agreed file standard, which is set nationally and agreed with senior police partners, is often subject to local variation is unhelpful, especially for a national organisation with standard operating practices. This local variation means that administrative staff (and inspectors) can find themselves weighing different police forces' work against differing standards.



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**Issue to address**

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Crown Prosecution Service Headquarters should engage with police partners to develop a National File Standard for the first submission of a rape case for a full Code test charging decision.

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**5.24.** The administrator conducting the triage will check for the presence or otherwise of the required material, not the contents, although we did see administrative staff rejecting Manual of Guidance Form 3s (MG3s) for being formatted in a way that made them hard to read.

**5.25.** In our sample of charged or NFA cases, there were a number (15.5%) where admin triages did not take place on the initial file submission. This did not have an impact on the time taken to reach a charging decision or the number of consultations. Where admin triages took place on charged, NFA and admin finalised cases, they correctly identified the acceptability or otherwise of the police file most of the time (80.7%). The most common error was accepting an unsatisfactory submission (11.8%). Subsequent triages recognised whether the police's later submissions were satisfactory or not in 70.5% of cases, and said they were acceptable when they were not in 10.4%.

**5.26.** CPS data for the 12 months to September 2019 shows that 46.2% of admin triages accepted the first police submission. Our equivalent data shows acceptance in 36.8%.

**5.27.** There was an average of 1.9 triages per case in our sample of 450 cases. 77.7% had one or two triages, and 13.1% had three, but the rest (9.1%) had four or more, which is indicative of lack of efficient joint work to drive timely charging decisions. Police drip-feeding their responses to action plans also increase the number of triages and rejections.

**5.28.** Admin triages are meant to be carried out within 48 hours of the file being received from the police. In our 450 cases, the first triage was timely 60.2% of the time, and later triages were within 48 hours in 76.2% of relevant cases.

**5.29.** In one Area, a system of lawyer triages had been introduced. This was resource-intensive and has now ceased.

## Legal decision-making

### Wholly unreasonable decisions

**5.30.** As with almost all other casework-based inspections, we assessed whether the Code for Crown Prosecutors<sup>21</sup> was applied correctly at the point of charge. Unusually, in this inspection we also looked at cases where the CPS advice was for NFA.

**5.31.** If a wholly unreasonable decision is taken at this key point, it can lead the complainant or witnesses either to be disappointed (if there is to be NFA) or to have unrealistic expectations (if there is a charge). It can also mean that a suspect has a prosecution hanging over them when there is no realistic prospect of conviction, or that a suspect has not been brought to justice. In these serious cases, the impact is likely to be significant and long-lasting.

**5.32.** Our focus groups were consistent on the primacy of the Code in making decisions about charge. Focus group lawyers did not tell us there was pressure to charge more or only the strongest cases, and some said precisely the opposite. There were some doubts about whether the merits based approach had been properly understood or was helpful, but the lawyers we spoke to were clear about taking decisions based on the Code. The file sample contained five cases where CPS lawyers had not succeeded in doing that, but in none of them did we see evidence that pressure to secure convictions or risk aversion was the cause of a flawed decision.

**5.33.** We examined 250 cases which led to a decision to charge or NFA, of which 40 dated from 2015, and the rest from 2018–19. Of the 250 cases, there were five (2%) which featured a wholly unreasonable decision, so the Code was applied correctly in 98% of cases.

**5.34.** One of the cases with a wholly unreasonable decision dated from 2015 and the rest from 2018–19. Our inspection of RASSO units in 2015 (on which we reported in February 2016) found five out of 61 relevant rape cases featured a wholly unreasonable decision. To those cases, we added the one wholly unreasonable decision out of our sample of 40 cases from 2015 in this inspection to give an overall 2015 Code compliance rate of 94.1%. The Code compliance for the 210 cases from 2018–19 (206/210) was 98.1%, so there has been a clear improvement.

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<sup>21</sup> *The Code for Crown Prosecutors*; CPS; October 2018  
[www.cps.gov.uk/publication/code-crown-prosecutors](http://www.cps.gov.uk/publication/code-crown-prosecutors)

**5.35.** Of the five cases in this inspection which featured a wholly unreasonable decision, two were decisions to charge and three were decisions for NFA. Both decisions to charge were overturned later when more information came to light. In both cases, the information ought to have been provided by the police and evaluated by the CPS pre-charge. Of the three NFA decisions, two were subject to a Victims' Right to Review scheme request. The first was overturned following that review, and the suspect charged with rape and attempted rape. They have since pleaded guilty to the rape and are awaiting sentence (see case study below). The second request under the Victims' Right to Review scheme involved considerable additional work by the police at the CPS's behest – work which should have been done before the NFA decision, and which confirmed that NFA was the appropriate outcome. The third NFA decision was also a very premature decision, but it is not possible to say whether that case was capable of being built sufficiently to provide a realistic prospect of conviction.

**5.36.** The mix of flawed NFA and flawed charge decisions, and the nature and outcome of those decisions, tell against there being a policy to take forward only cases that are strong. If the correct decisions had been taken at the outset, and based on all the right information, the result would probably have been four NFAs and one charge.

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**Case study**

The offence in this case had been reported 11 years earlier by the complainant, who at that point decided not to pursue the complaint. However, more recently, the complainant asked that the case be reopened and investigated further.

The complainant was intoxicated by drink and had possibly been surreptitiously drugged. They and the suspect had consensual sex at the suspect's home, a short part of which was filmed by another person present. Afterwards, the complainant became unconscious, and while in this condition, the suspect used their phone to film themselves raping the complainant.

The suspect's partner found the footage and reported the incident to the police. The complainant, when shown the footage, did not recall the events, but was sure they would not have consented to having sex while being filmed in the earlier part of the evening. The footage did not support this.

The charging lawyer's thinking became bogged down in issues of consent relating to that part of the case, without properly analysing what happened later, which led to them deciding there should be no further action on the whole case. The decision not to charge in relation to the rape that took place while the complainant was unconscious was flawed.

The decision was overturned when the complainant exercised their right to ask for reconsideration under the Victims' Right to Review scheme, and the suspect has since pleaded guilty. They are awaiting sentence.

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**5.37.** Three of the five cases with wholly unreasonable decisions demonstrated the need to undertake careful enquiries pre-charge, and the fourth (see case study below) demonstrated the need for accurate information to be supplied by the police.

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**Case study**

The police sought a threshold test decision from CPS Direct (CPSD), because they planned to ask the court to remand the suspect into custody. CPSD lawyers are not expected to view a complainant's video-recorded evidence, given the time it can take and the fact that not all forces can make it available in a viewable format, so they are reliant on an accurate summary from the police of what a complainant says.

In this case, the summary omitted the information that the complainant had consented to vaginal intercourse. The complainant also feared they had been raped orally, to which they could not consent because they had been asleep, but the evidence to show oral penetration had taken place was merely speculative. CPSD charged oral and vaginal rape. Both were discontinued promptly once an Area lawyer reviewed the complainant's interview.

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## Use of counsel

**5.38.** There were 13 cases out of our full sample of 250 in which counsel was instructed to give charging advice, none of which were serious, sensitive or complex enough to merit such a step. The benefit of instructing counsel pre-charge comes from their early engagement in a difficult or complex case that they will then see through at court, with the trial strategy set from the outset. It does not absolve the CPS lawyer, to whom is delegated the power to make the decision to charge, from reviewing the evidence and circumstances to determine for themselves whether the Code is met. It is therefore of limited use as a time-saving device, as we said in our 2016 report on our inspection of RASSO units. This time, nine of the 13 advices by counsel were not properly ratified by the CPS lawyer by way of a full review.

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### Issue to address

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Area managers should ensure that they instruct counsel to give advice before charge only in those cases where it is justified by the complexity or seriousness of the case.

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## Use of CPS Direct

**5.39.** Since CPS Direct (CPSD) lawyers cannot view a complainant's video-recorded interview, it is important that rape cases are only sent to them when it is essential. Often, the police seek application of the threshold test because enquiries are still at an early stage. We found that prosecutors in CPSD usually set out their reasoning for each of the elements that need to be satisfied for a threshold test decision, and robustly applied them. There were a number of examples where CPSD lawyers declined to apply the threshold test because they did not think it was appropriate to seek to remand the suspect in custody, and where they tasked the police with seeking advice from their local Area. In CPSD and Areas, there were only four cases (two each) where the threshold test had been wrongly applied.

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### Strength

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Crown Prosecution Service lawyers are correctly applying the revised threshold test for charging, and challenging the police when they do not agree with the police's proposal to withhold bail at the point of charge.

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## Reasons for NFA decisions

**5.40.** Undermining material accounted for nearly half of the 125 NFA decisions in our sample (61 cases or 48.8%). In 57 of those 61, the undermining material related to the complainant. 39 of those cases included the complainant giving inconsistent accounts in previous statements to the police or others, or being contradicted by other credible evidence. A lack of participation from the complainant (which we discuss further from paragraph 7.10), accounted for nine NFA decisions. There was insufficient evidence to prove the mental element of the offences in 18 cases, and this usually related to belief in consent. Other evidential reasons – which included a combination of factors (such as the two cited above), not being able to identify the suspect, or lack of clear evidence of part of the actus reus (for example, whether penetration had taken place) – accounted for 33 NFAs.

**5.41.** There were four cases where public interest was the reason that the case did not proceed. In two, the suspects were children, in one the suspect was receiving end-of-life hospice care, and in the fourth, the suspect died while the police were still carrying out the CPS action plan.

## Our judgement

**5.42.** For the first time in an inspection, legal inspectors recorded whether they would have made the same decision as the CPS lawyer in the charged or NFA cases. This is not the same as finding that a decision was wholly unreasonable, but involves the inspectors substituting their judgement for that of the CPS lawyers. Of the 250 cases, inspectors would have made a different decision in 13 (5.2%), of which six were CPS decisions to NFA, and seven were charged cases. In other words, inspectors would have charged one fewer case than the CPS lawyers did. This undermines the suggestion that lawyers are charging only the strongest cases in an effort to increase conviction rates.

## The standard of charging advice

**5.43.** There was proper case analysis and strategy in more than half the charged or NFA cases (54.4%), and partial analysis in another 31.2%, but no proper strategy in 14.4%. Flaws included poor assessment of the weaknesses and strengths or how to build a stronger case, and lack of a trial presentation plan. This was one of the most common reasons for marking down the overall standard of the MG3. CPSD's advice was generally stronger than that produced by Areas.

**Table 12: Overall standard of the charging advice, including action plan**

	Answer	All cases <sup>22</sup>
All 250 cases 2018–19	Fully met	33.2%
	Partially met	52.0%
	Not met	14.8%
	Total	100%
CPS Direct 2018–19	Fully met	35.7%
	Partially met	57.1%
	Not met	7.1%
	Total	99%
Areas 2018–19	Fully met	32.9%
	Partially met	51.4%
	Not met	15.8%
	Total	101%
2014–15 cases	Fully met	41.6%
	Partially met	42.6%
	Not met	15.8%
	Total	100%

**5.44.** The MG3 dealt with unused material fully in 64.5% of cases, and partially in 20.3%. The most common failing was not addressing the impact of disclosable unused material on the evidence. We also noted that in 12.3% of the cases with partial or no case analysis and strategy, the lawyer had over-emphasised the impact of undermining material in the complainant’s account, background or other circumstances, and had under-emphasised it in 6.1% of such cases.

**5.45.** In our 2016 report on RASSO units, we examined disclosure throughout the case, rather than just pre-charge. With that caveat, we noted that the standard of handling of unused material appears to have improved (Table 13).

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<sup>22</sup> Rounding to one decimal point means that the total is not always 100%

**Table 13: The quality of handling of unused material by the CPS**

	Answer	All cases <sup>23</sup>
2014–15 cases	Fully met	48%
	Partially met	21.3%
	Not met	30.7%
	Total	100%
2018–19 cases	Fully met or excellent plus good	68.8%
	Partially met or fair	22.1%
	Not met or poor	9%
	Total	99.9%

**5.46.** There was no disclosure document, or any action taken to commence one, in nearly a third (30.3%) of the cases that called for one.

**5.47.** The lawyer complied with CPS policy in 86.4% of cases, including viewing the complainants' and/or witnesses' video-recorded interviews in 89.5% of relevant cases, and choosing the right charges 93.6% of the time. There were nine cases in this inspection where the lawyer failed to identify rape myths and stereotypes and how to address them. Compliance with policy, choosing the right charges and the rate of viewing of the complainant's evidence have all improved since 2014–15.

**5.48.** The CPS action plan was assessed as fully meeting the required standard in just over a third (38.4%) of all charged, NFA and admin finalised cases, and as partially meeting it in nearly half (47.6%), leaving 14% where it did not meet the standard at all. In the 2014–15 cases we examined for this and the RASSO units inspection, the proportion of action plans that did not meet the required level was 22.6%, so there has been clear improvement.

**5.49.** One of the issues we identified was the lawyer not setting realistic dates for actions. In 32.2% of relevant cases, the timescales were not realistic. While some Areas are providing information about backlogs in forensic labs, there were still some lawyers in our focus groups who would find it helpful to have more information, for example about how data is recovered from phones and how long that usually takes in their police forces.

**5.50.** In the majority of relevant cases (60.9%), the lawyer properly identified where an action did or did not need to be raised for a complainant's phone or other digital devices, and set out a proportionate request where it did. For other information or evidence, 71.4% of requests were made or not made appropriately. Where there were issues, the most common were not setting out

<sup>23</sup> Rounding to one decimal point means that the total is not always 100%.



proper parameters for an action to get information from the complainant's digital devices, and making requests for third-party material (such as education, medical or Social Services records) that were not necessary. We also saw examples of action plans that consisted of a generic list of actions without any tailoring to the facts of the case. The recent training on the revised Code for Crown Prosecutors included reasonable lines of enquiry, but it is apparent there is an appetite and need for more. This may be addressed in some part by a new training programme on the use of disclosure management documents, including additional guidance on reasonable lines of enquiry, which is being delivered to all RASSO units and is planned to conclude in February 2020.

**5.51.** It is unhelpful if the lawyer does not explain to the officer in the case why a line of enquiry is reasonable and proportionate, because it feeds the perception in the police that the CPS asks for things that are not needed. It also misses an opportunity to give the officer, who may be quite inexperienced, some on-the-job learning.

**5.52.** Some prosecutors are still asking for a full download of a complainant's or suspect's phone. We think this may be because of a lack of awareness of the types of download that are available, and what they can provide. There are often changes to how digital devices and social media platforms operate – for example, how they store information or what can be retrieved after deletion. Some Areas do provide this information to prosecutors, but it would save duplication of effort and assist all Areas if CPS Headquarters marshalled this information at a national level and updated it where necessary. Areas need to ensure that their RASSO teams understand the various interrogation methods their local forces use, what they deliver and in what timeframes.

<b>Recommendation</b>
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Crown Prosecution Service Headquarters should provide national information on what data can be obtained from social media platforms, and Areas should tailor the national information to include what methods are used by their local forces, what they deliver and in what timeframe for different digital devices.
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**5.53.** We assessed the overall grip on cases shown by the lawyer and rest of the team. Our assessment includes many of the aspects highlighted above, but also the accuracy and timeliness of administrative actions, and any delay in providing charging advice that was attributable to the CPS. The level of grip is slightly better in the 2018–19 cases than it was in the 2014–15 cases.

**Table 14: Overall grip on cases**

	Answer <sup>24</sup>	All cases
<b>The lawyer or team exercised sound judgement and grip throughout the case.</b>		
Admin finalised cases	Excellent	0%
	Good	40.5%
	Fair	41.5%
	Poor	18.0%
	Total	100%
Charged or NFA decisions	Excellent	2.0%
	Good	43.2%
	Fair	40.4%
	Poor	14.4%
	Total	100%
All 2018–19 cases	Yes	46.2%
	No	53.8%
	Total	100%
2014–15 cases	Yes	45.3%
	No	54.7%
	Total	100%

## Sharing feedback

**5.54.** As with many other inspections, we found that, while there are processes in place for performance management at more senior levels, the police and CPS are missing opportunities to provide feedback on individual cases.

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<sup>24</sup> In the 2016 report, we marked grip as 'yes' or 'no'. For comparison purposes, we have treated excellent and good ratings as yes, and fair and poor as no.

## Police challenge to the CPS

**5.55.** In the file examination, we reviewed how often the police challenged the proportionality of action plan requests and timescales, and how the CPS responded to those challenges. In the police files we reviewed from one force, there were very few instances of the police challenging CPS requests. Whether the police did or did not challenge, they were right in their approach most of the time (Table 13). However, the data shows there were still instances of the CPS setting actions and timescales that were not proportionate, and which went unchallenged, especially in those cases where the timescales set by the lawyer was wholly unreasonable. The CPS responded appropriately to a challenge in about seven in ten cases.

**Table 15: Police challenge to the CPS**

	Answer	Charged or NFA cases
<b>Where the police challenged the proportionality of a CPS action plan request</b>		
The police were right to challenge	Yes	80%
	No	20%
The CPS responded appropriately	Yes	66.7%
	No	20%
	No response	13.3%
<b>Where the police did not challenge the proportionality of a CPS action plan request</b>		
The police were right not to challenge	Yes	81.6%
	No	18.4%
<b>Where the police challenged the timescales set in a CPS action plan</b>		
The police were right to challenge	Yes	80%
	No	20%
The CPS responded appropriately	Yes	70%
	No	20%
	No response	10%
<b>Where the police did not challenge the timescales set in a CPS action plan</b>		
The police were right not to have challenged	Yes	71.7%
	No	28.3%

## **CPS challenge to the police**

### **Administrative triage**

**5.56.** The first opportunity for feedback to the police on their service is often the administrative triage, which we have discussed in more detail from paragraph 5.23.

**5.57.** Where they took place, initial admin triages in admin finalised cases correctly identified whether the police file was acceptable or not 76.7% of the time, but in the remaining 23.3% they did not. The corresponding figures for charged or NFA cases were 82.9% and 17.1%. Subsequent triages correctly accepted or rejected later submissions in similar proportions.

### **Lawyer review**

**5.58.** The next and more important opportunity for feedback from the CPS comes when the lawyer reviews the submission and identifies what is and is not acceptable. Across the admin finalised and charged or NFA cases, lawyers identified and fed back failings to the police 74.1% of the time. The feedback was in the form of comments in the body of the MG3 43.3% of the time, but almost as often (42.6%) it took the form of actions in the action plan. This is less helpful, because it does not necessarily make clear to an officer that the action reflects a defect in the file they put together.

**5.59.** When we looked at 80 admin finalised files for one force, we found that the police had noted and taken action on the feedback in just over half the relevant cases (51.3%), and that the feedback had been noted but not actioned in 10.3%, and neither noted nor actioned in 38.5% of cases. This supports the concern that less direct feedback may well be missed.

### **Number of consultations**

**5.60.** Cases may well have more than one consultation, but the more consultations there are, the less likely it is that the CPS and police are working effectively together to progress cases to charge.

**5.61.** CPS charging data for rape cases for the 12 months to September 2019 shows an average of 2.7 consultations per case. The period 2016–19 shows a trend of yearly increases.

**5.62.** In our charged or NFA sample, the average number of consultations per case was 1.9, and 31.2% of cases had only one consultation. There were two consultations in 34.4% of cases and three in 19.6%. There were 15 cases that had four consultations, seven that had five, and 15 that had six or more. In these

cases, clearly, efficiency was not at the forefront of the CPS or the police approach.

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**Recommendation**

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Crown Prosecution Service Areas should work with their local police forces to make better use of the many avenues for feedback between them, including providing accurate information on the quality of service each supplies, making robust challenges and seeking appropriate and timely information.

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## **6. Quality assurance and performance management**

**6.1.** There are a number of quality assurance tools in use across the Areas we visited and the personnel we surveyed. Some of these are well established, such as individual quality assessments (IQAs) across all casework (not just rape and serious sexual offences cases) for checking the quality of legal decisions and other casework. All Areas carry out IQA with a disclosure theme, which should identify issues with reasonable lines of enquiry and pre-charge handling of unused material, and some Areas specifically target pre-charge rape cases for IQA. We have not assessed the application of IQA in this inspection, but in March 2018 we reported on the operation of IQA<sup>25</sup> and expressed concerns about the clarity of understanding and robustness with which it was applied.

**6.2.** Local case management panels are also standard across the CPS, although the types of cases called for panel review and who sits on the panel may vary. Since late 2018, all threshold charge cases are subject to local case management panel review. There are criteria for the most serious cases, when the panel should be chaired by the Chief Crown Prosecutor (CCP), and some Areas have chosen to supplement these. In one Area, for example, there are panels in all rape and serious sexual offences (RASSO) cases, led by the District Crown Prosecutor (DCP) for cases involving sexual touching over clothing, by the Senior District Crown Prosecutor (SDCP) for cases of sexual assaults which involve touching skin, and by leaders as senior as the Deputy Chief Crown Prosecutor (DCCP) and Chief Crown Prosecutor (CCP) for all rape cases. In our surveys, 76.6% of lawyers and 90% of managers reported that case management panels were held pre-charge in appropriate cases.

**6.3.** Some Areas still require a second opinion in rape cases where an NFA decision is made. More than a third of lawyer respondents to our survey seek a second opinion in all cases. One Area moved away from assuring all NFA decisions to assuring all charged cases before the decision were finalised. The process was intended to be light-touch, but became rather formal and time-consuming. The Area has now moved to reviewing reasonable lines of enquiry before the charge is confirmed. Scrutiny panels for violence against women and girls are held in all Areas, and in some, these are supplemented by Area involvement in police scrutiny panels, including, in one force, a panel specifically for RASSO NFA cases.

**6.4.** Casework quality boards or committees sit in all Areas, and consider themes emerging from IQAs, adverse cases and the other pieces of quality assurance work.

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<sup>25</sup> *The operation of individual quality assessments in the CPS*; HMCPSI; March 2018 [www.justiceinspectorates.gov.uk/hmcpsi/inspections/the-operation-of-individual-quality-assessments-in-the-cps-mar-18/](http://www.justiceinspectorates.gov.uk/hmcpsi/inspections/the-operation-of-individual-quality-assessments-in-the-cps-mar-18/)

**6.5.** Areas have carried out dip-sampling on cases – for example, one SDCP checked all the NFA decisions in one month to assure themselves that the correct decision had been reached.

**6.6.** Other cases are quality-assured by managers as they pass across their desk for other reasons, such as where a lawyer asks for their input, the police have appealed a decision to refuse charge, the CPS has received a complaint or request for a review by a complainant, or there has been an adverse outcome.

**6.7.** In one Area we visited, the manager discusses every case with the lawyer before the latter finalises their charging decision, to assure themselves that all reasonable lines of enquiry have been explored. In the same Area, all cases charged by CPS Direct are reviewed once they reach the Area to ensure that reasonable lines of enquiry have been addressed.

**6.8.** Managers provide IQA results to individuals as they are completed and reported, feeding back to their teams on other quality assurance and performance data in team meetings, weekly or fortnightly team briefings, or other communications. Feedback from the appeals and review unit in CPS Headquarters, which carries out the second stage of decisions not to charge under the Victims' Right to Review scheme, is also shared with Areas, and from there with RASSO teams.

**6.9.** We asked lawyers about the feedback they get on their own cases, and on the team's work. Most thought they got the right amount of feedback and information, but more so for the former than the latter (Table 16).



**Table 16: Feedback on cases and casework**

Answer		%
<b>Do you get sufficient feedback from your managers on the decisions you are making and advice you are giving in rape pre-charge cases?</b>		
Lawyers' survey responses	I get about the right amount of feedback	64%
	I get too little feedback	23%
	I get too much feedback	2%
	Other	11%
	Total	100%
<b>Do you get sufficient information about good practice and lessons to be learned from the RASSO team's work on rape cases?</b>		
Lawyers' survey responses	I get about the right amount of information	55.7%
	I get too little feedback	32.9%
	I get too much feedback	1.9%
	Other	9.5%
	Total	100%

**6.10.** Managers were familiar with their teams' casework. They were aware of, and eager to cite to us, examples of cases that their teams had handled well, as were the lawyers themselves. It is clear that successful outcomes in difficult cases do engender a sense of pride and achievement. It is also clear that the handling of rape cases is being assessed in many ways, both formally and informally, and that these systems are effective in ensuring a level of oversight which would identify any prosecutor who may demonstrate a misunderstanding of the CPS position on the Code test, or who may be chasing convictions. The evidence from the files we examined in this inspection shows that in general the level of assurance is effective.

## Performance management

### Internal

**6.11.** The Areas we visited and those we surveyed held regular internal performance meetings, including management and operational team meetings at various levels within the Areas, sometimes as frequently as daily, although these are informal. Casework committees also discuss performance, and there are regular discussions about charging levels and any backlogs between managers. Nationally, there has been a longstanding focus on rape performance through regular discussion at quarterly Area Performance Review meetings, where Area senior management teams are challenged on performance by the Directors of Legal Services and the Director of Business Services. One Area has recently introduced a RASSO governance board (with police involved), and another has a RASSO action plan, but it is too soon to determine what improvements have

resulted. In one region, the Areas' disclosure champions attended a disclosure conference focusing on reasonable lines of inquiry, digital evidence and disclosure. One Area has also asked another Area to peer-review some of its cases, to independently assess their quality. There was no evidence of any Area chasing a conviction target, although there was clear evidence that conviction rates were discussed as one of a series of measures of performance.

**6.12.** All the Areas we visited have processes for checking the timeliness of charging advice and monitoring the number of cases awaiting advice. The managers we interviewed have regular discussions about volumes outstanding and ensuring that backlogs are tackled. We were told that the recent summer holiday season had caused charging work to build up, and some cases to miss their timeliness target.

## **External**

**6.13.** Externally, Areas are holding regular meetings with police colleagues at different levels across both organisations. These include local and Area prosecution team performance management meetings, usually between the SDCP and DCP grades from the CPS and Detective Chief Inspectors or Superintendents from the police. Performance data and other information are also shared and analysed at more senior levels, up to and including the DCCP, CCP, Deputy or Chief Constable and Local Criminal Justice Boards. These Boards' discussions will also involve other agencies and stakeholders, such as the Police and Crime Commissioner.

**6.14.** Specific examples of joint work include:

- Areas and forces working together to produce an agreed template for the police Manual of Guidance Form 3 (MG3) summary of the case
- a monthly meeting about police file quality, chaired by a very senior officer, at which the CPS is represented at DCCP level or by a deputising SDCP
- a project between one police force and the Area to examine action plans and ensure they were proportionate
- regular calls between a CPS manager and their local police specialist RASSO team to discuss what cases are shortly to be submitted to the Area, so that there is better planning of workstreams
- training on disclosure with the police
- a CPS–police conference, attended by police from two of the Area's forces and most of the RASSO lawyers, at which the delegates worked through a

rape case study, discussing reasonable lines of enquiry and how to complete the disclosure management document.

## Performance data

**6.15.** There is a wealth of data available to support performance discussions – and a risk that there is too much to allow for proper focus. One Area has introduced a bespoke charging data tool to give managers and police more accessible and understandable data. This has been well received.

**6.16.** We asked managers about the use of performance data at their meetings with police. About a quarter of managers (25.5%) reported that performance discussions with the police were supported by relevant performance data all the time, with another 52.9% reporting that was the case most of the time, and 17.6% some of the time. A very small number (3.9%) said relevant performance data was rarely used to support discussions.

## Impact

**6.17.** There is considerable quality assurance and joint performance management being undertaken, but the evidence we gathered shows that it needs to be more robust to deliver more consistent improvement. Much of it has come about in the last two years, and in response to public concern about failed cases. Some is even more recent and has yet to show impact.

**6.18.** Managers responding to our survey agreed, both for internal and external work, that improvements did not necessarily follow from quality assurance and performance management work. Only 7.8% reported that internal performance discussions and quality assurance always led to improvements. Another 43.1% of managers reported that this work led to improvement most of the time, but the remaining 49% felt it did only some of the time.

**6.19.** We also asked managers about their discussions with their forces about the quality of the police service, and whether that engagement delivered improvement. Nearly three quarters (72.5%) reported that improvement resulted some of the time, and 15.7% said it did most of the time, but over a tenth (11.8%) said their work rarely led to the police service becoming better.

**6.20.** The joint work being carried out is intensive and probably not sustainable at current levels with current resources. There is also a risk that lawyers in RASSO teams will become deskilled or feel disempowered. The CPS needs to identify and focus more on very specific areas of weakness, such as setting clear parameters for actions, communicating about timescales for actions with

the police, or identifying what is happening with admin finalised cases, in order to deliver improvements.

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**Recommendation**

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Crown Prosecution Service Areas should engage with their local police forces to identify key specific priorities for focused improvement activity, which should align with the targets for Crown Prosecution Service and police internal assurance work.

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## **7. The service to complainants, witnesses and the public**

## Police service

**7.1.** In our file examination, we rate the quality of the achieving best evidence (ABE) interview with the complainant and/or witnesses. This was of good quality in more than half the applicable cases (54.5%), and partially met expectations in another 34.8%. Technical issues, such as camera angle or sound quality, were responsible for nearly a fifth of the ABE interviews that were marked down. Flaws in the interviewing itself were also common, including overly long interviews, not eliciting sufficient detail about the allegation, asking leading questions or failing to deal with the difference between truth and lies for child witnesses. Better feedback to the police from CPS lawyers who have reviewed the ABE interview and can identify strengths and weaknesses and their impact on the case, would assist the police in improving their standard.

**7.2.** We considered that the complainant may have benefited from the use of an intermediary to assist them in giving their account in 19 cases, but in eight of those, no intermediary was used. There may be different reasons why intermediaries were not used and may not have been recorded. This merits further consideration.

## CPS service

**7.3.** The CPS Victim Communication and Liaison (VCL) scheme requires letters to be sent to complainants or their families in certain circumstances, and within set timescales (one or five days, depending on whether the complainant is entitled to an enhanced service). Where there is a decision during a consultation between the police and CPS (digitally or otherwise) to take NFA and not charge, the responsibility for telling the complainant falls on the police, except in homicide cases. The policy says: "In other pre-charge scenarios, whether to send a VCL communication is a matter for individual Areas – however, it is good practice to do so in RASSO cases".

**7.4.** The expectation in all the Areas we visited is that it will be the CPS that tells the complainant about an NFA decision at the charging stage, and most managers we surveyed (from all 14 Areas) expect RASSO lawyers to write their own VCL letters rather than having them drafted by the Victim Liaison Unit. However, we noted that the reality in one Area did not match expectations, with no letter sent by the Area in 16 out of 20 applicable cases. Of those 16 cases, nine of the police Manual of Guidance Form 3s (MG3s) included a reminder for the police to tell the complainant about their right to review, and two contained case-specific information for the police to pass on to the complainant about the reason the case was not proceeding.

**7.5.** In our file sample, 98 VCL letters were sent in cases with NFA decisions. Of those, 76 (77.6%) were sent on time. Just under half (45.9%) met the expected standard, which is particularly weak given that they are usually drafted by the lawyer who dealt with the case. Of those that did not meet the standard, nearly a quarter (24.5%) lacked clarity or sufficient information in the explanation of why there was to be no charge, and 10.2% did not display empathy. All the VCL letters in our sample referred to the Victims' Right to Review scheme where appropriate. There were no marked differences between the 2014–15 cases and those from 2018–19 in terms of timeliness or quality, but there has been a significant improvement in correct referrals to the Victims' Right to Review scheme – from 56.7% of letters in the 2014–15 cases to 100% of letters in our file sample for this inspection.

#### **Recommendation**

Crown Prosecution Service Areas should take urgent steps to ensure that, in rape and serious sexual offences cases, compliance with the timescales set out in the Victim Communication and Liaison scheme and the standard of letters sent improve significantly.

**7.6.** The use of an intermediary for a complainant or witness was considered in more than half the relevant cases (57.1%). Failure to consider special measures or orders on sentencing (such as restraining orders or sexual harm prevention orders) accounted for 81.3% of the 75 charged cases where the lawyer did not adequately consider applications and ancillary matters. The consideration of ancillary matters has worsened since 2014–15.

**7.7.** Pre-trial witness interviews are rarely held before charging decisions are made. Nearly all (96.1%) of the lawyer respondents in our survey reported holding none, and the rest had held only one or two in the past 12 months.

**7.8.** Two of the Areas we visited (following the lead of an Area we did not visit) were just beginning a scheme of writing to complainants, firstly at the point of charge to introduce the lawyer and signpost them to information on the CPS website, and secondly after a not guilty plea, to introduce the trial advocate and give information about special measures.

**7.9.** The lawyer considered public protection by the appropriate use of applications to remand in custody or for bail conditions fully or partially in 64.7% of the charged cases.

## Complainant participation

**7.10.** In our sample of 450 cases, there were 37 where the complainant did not participate through to charge. Of these, 24 were admin finalised, nine were NFA decisions and four proceeded to charge. In 13 of these 37 cases (35.1%), the reason for the complainant's lack of participation or withdrawal was not apparent from the file because the police had not explained it. This is unhelpful, since it denies the CPS an opportunity to suggest measures which might re-engage the complainant.

**7.11.** Five cases showed that the complainant decided not to proceed against a partner or family member. In one case, the CPS was told that the complainant was intimidated and had withdrawn the case as a result. There was one instance where the prosecution's poor handling of a linked case in the magistrates' court caused the complainant to withdraw. Other reasons included the complainant wanting to move on or deciding that the case was having an impact on their health.

**7.12.** The lawyer considered appropriate ways to re-establish the complainant's participation, or proceed without it, in nearly two-thirds of relevant charged or NFA cases (63.6%). Police made efforts to re-engage the complainant in 85% of the 80 admin finalised files examined by HMICFRS, and offered support to reluctant witnesses and complainants in 91.8% of applicable cases. The police made referrals to support agencies 89.3% of the time.

**7.13.** Our sample of 250 charged or NFA files included 45 cases (18%) where the complainant had refused to allow the police access to their phone or other digital devices. The complainant was participating in other parts of the investigation in 41 of those cases. In 16 of the 45 cases, the complainant had also denied access to their social media accounts, and in 13 to third-party material, such as their medical records. The lack of consent for such material played a part in the decision to take NFA in eight of the 45 cases (17.8%), in all of which the complainant was otherwise fully engaged.



**7.14.** In the admin finalised sample of 200 cases, there were 16 cases (8%) where the complainant did not consent to the police accessing their phone, social media or third-party material.

**7.15.** We also saw instances where text messages or other communication material appeared to have been deleted from the complainant's phone or other digital device before it was given to the police, which had the potential to undermine the strength of the case.

**7.16.** Nearly a third (29.1%) of the lawyers we surveyed said that since January 2018 (when the National Disclosure Improvement Plan was introduced), they had experienced more frequent refusals by the complainant to allow access to their phone, other digital devices and social media information. However, most (69.3%) felt that refusals were as frequent as before, and 1.6% thought the frequency of refusal had declined. Managers' responses were split evenly between more frequent and the same level of refusals. Lawyers' and managers' comments frequently referenced heightened concerns about privacy as causes for less co-operation, but also referenced misunderstandings about what would happen to the material, adverse media coverage, and CPS requests not restricting the request by the proper use of parameters.

**7.17.** We also asked lawyers how often, in the past 12 months, they had decided on NFA because of the complainant refusing access to digital material. Over three quarters (76%) had had no such cases, 23.3% had experienced one to five, and one person (0.7%) had had more than five. Many of the staff we spoke to were keen to explain that they look to digital devices in the hope that the information will strengthen the evidence, not only to assess whether there is any undermining material. Better communication with the police would help officers explain to complainants why their phone is needed.

**7.18.** In one Area, there was a conference scheduled for the CPS and independent sexual violence advisors. This was to build understanding of CPS work in RASSO cases, and to explain the role of digital devices in its decision-making, so as to help advisors provide good quality information to their clients. At the time of writing, the conference had not yet taken place, so we were unable to assess the impact and determine if it was good practice.

# **Annex A**

## **Inspection framework and methodology**

## Inspection framework

The framework for this inspection consisted of an overarching inspection question and nine sub-questions.

### Inspection question

What level of confidence can the public have in the CPS to deliver fair and successful outcomes in the most efficient and effective way through the provision of high-quality decision-making by specially trained and experienced prosecutors in rape cases?

### Sub-questions

1. Has there been a change in approach in the CPS to the provision of rape charging and decision-making which is impacting the numbers of cases charged?
2. What is driving the change in the balance of decisions between those cases charged, recommended for no further action or administratively finalised (awaiting a response from the police)?
3. Does the timeliness of the decision to charge have an impact on the overall levels of cases progressing and cases charged?
4. Are there any trends in numbers of consultation per case that are driving a change in charge rate? Are consultations appropriate?
5. Are cases received from the police by the CPS for a charging decision or advice of such a quality to allow for efficient and effective case handling?
6. Are CPS action plans proportionate and are the requests being made of the police for any additional material proportionate?
7. Was the request for digital evidence prior to charge proportionate? Was any request specific to the facts of the case and a reasonable line of enquiry?
8. Is the police response to CPS action plans timely and appropriate?
9. Has the CPS Code compliance rate improved since the findings of the 2016 thematic review? Has the issue with the “merits based test” been addressed since the 2016 report?

## Inspection methodology

### Inspection explained

Inspection is a skill recognised by the Civil Service. Like the audit function that it resembles, effective inspection requires skill and experience in inspection techniques, methodology and how to achieve a fair and independent review. As well as inspection being a skill in its own right, effective inspection also requires a thorough understanding of how those being inspected operate. In the case of HMCPsi, this requires that inspectors have knowledge of the relevant law, practice and guidance under which the inspected body operates. It is also advantageous for some involved in the inspection to have recent expertise in the subject matter.

In general terms, HMCPsi achieves this balance by having a staffing model that consists of a proportion of permanent staff and staff on loan, usually from the CPS. Those on loan often come to the Inspectorate for two- to three-year postings, although for specific inspections we may use seconded staff or associate inspectors as part of the inspection team.

This knowledge and experience is essential for the inspection report to be accepted as informed and as showing an understanding of the work of the body being inspected. Only then can reports have the traction to drive improvement in the inspected organisation.

Legal file examination plays a key role in the majority of inspections we carry out. HMCPsi has direct access to the CPS case management system. This gives HMCPsi the ability to examine case files without the need to have paper files sent to us. In all inspections where there is a file examination element, each case is examined against a set of questions specifically formulated for the inspection. These questions provide the framework that allows individual inspectors to achieve a consistent approach to file examination, and ensures that all aspects set out in the inspection framework are covered. Inspection frameworks are shared with the inspected body in line with the ten principles of inspection<sup>26</sup>.

Inspection needs to be informed, but it also needs to be independent and objective in its findings. We ensure that in a number of ways. All inspectors' work is subject to dip-sampling and quality assurance, and no inspection is conducted by one inspector working alone. There is also an established methodology. This includes the use of consistency exercises. The basis of a consistency exercise is

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<sup>26</sup> *The ten principles*; CJI; July 2003  
[www.justiceinspectorates.gov.uk/cji/about-cji/how-we-inspect/the-ten-principles/](http://www.justiceinspectorates.gov.uk/cji/about-cji/how-we-inspect/the-ten-principles/)

that all inspectors examine the same files against the file examination guidance and note their answers to all of the questions posed in respect of each case. A meeting is then held at which every inspector involved in the inspection sets out their judgement and answers in respect of each file examined. In this way, we can make sure the approach and the standards being applied are consistent, and we can discuss any misinterpretation of the inspection question or the associated guidance. If, as a result of the quality assurance, any inspector is identified as being regularly inconsistent, that inspector can be more closely supervised. In line with our inspection methodology, we carry out consistency exercises throughout the period of the file examination.

### **File examination**

In this inspection, we chose to examine cases that were flagged as rape on the CPS case management system (CMS). The cases may also have had other flags, such as domestic or child abuse or disability hate crime, but we did not select specifically for those other categories. Cases were originally chosen from the five CPS Areas we planned to visit (East Midlands, East of England, London North, London South and Wessex), but a lack of sufficient recent cases meant that we added cases from CPS Thames Chiltern and CPS North West.

### **Admin finalised cases**

HMCPsI inspectors examined 200 cases that had been recorded on CMS with a pre-charge event between October 2018 and August 2019 and which were shown as having been admin finalised. The term is unhelpful because the cases may not actually be concluded at the point they are shown as being admin finalised. Indeed, 36 of the cases in our sample (18%) had been reactivated on CMS before we came to examine them, and more may well have been reactivated since.

Cases across a range of offences are administratively finalised on CMS in various circumstances, not all of which involve the case being concluded. The reasons include, but are not limited to:

- where a file submission has been rejected at triage because items are missing, and the police have been asked to supply the additional material and have not responded to chase-ups
- where the lawyer has set actions for the police to carry out, and the police have not responded to the action plan or to chase-ups
- where the case has been returned to the police, with or without a lawyer's advice and/or actions, and the police decide to take no further action on the allegation

- where the actions set by the lawyer will take some time to carry out, or there is some other reason why the case will not be back with the CPS soon (for example, because extradition of the suspect is necessary).

We assessed the 200 admin finalised cases against a set of 71 questions, which can be found in annex B with the file examination results. The sample included 80 cases from one force, and these were assessed by HMICFRS inspectors on the force's systems, against a set of 73 questions.

### **Charged and NFA cases**

We examined 250 cases where the CPS lawyer had advised charge or no further action. The sample was split evenly between these two outcomes, and assessed against a set of 105 questions, some of which were the same as in the admin finalised question set.

The sample included 40 charged cases that received a pre-charge decision in the 2015 calendar year, and which were concluded in the same year. We used this data to supplement the findings for rape cases from our inspection of RASSO units, on which we reported in February 2016<sup>27</sup>. The remaining 210 cases received a charging decision in 2018 or 2019.

## **Other evidence-gathering**

### **Surveys**

We surveyed RASSO lawyers and legal managers across all 14 CPS Areas. We had 158 responses from lawyers and 51 from managers. The survey results can be found in Annex C.

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<sup>27</sup> *CPS rape and serious sexual offences (RASSO) units*; HMCPsi; February 2016  
[www.justiceinspectorates.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units/](http://www.justiceinspectorates.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units/)

## Data and documents

We were provided with relevant material by CPS Areas and Headquarters, and we accessed and analysed CPS and police performance data. The information we sought from CPS Areas was:

1. Minutes or meeting notes for discussions with police from the past six months on rape charging performance measures (such as police file quality, number of triages and/or consultations, charges, length of time taken for advice, police responses to action plans, complainant withdrawal rates)
2. Minutes or meeting notes for any Area reviews of rape charging performance measures from the past six months.
3. Any themes identified by individual quality assessments, Victims' Right to Review scheme outcomes, case management panels, violence against women and girls scrutiny panels or other quality assurance in relation to:
  - a. timeliness of charging advice
  - b. quality of charging advice
  - c. proportionality of action plans
  - d. quality of police service
4. Action plan(s) or other improvement measures put in place to tackle any issues identified by actions under 1, 2 and 3 above in relation to rape charging performance, and details of how often the plan/measure is reviewed
5. Template or example of a police Manual of Guidance Form 3 (MG3)<sup>28</sup> disclosure management document insert from the force(s) in your Area that are using one.

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<sup>28</sup> Used by the police to request advice from the CPS, and by the CPS to record that advice and any charging decision.

6. What training has been carried out in the Area in 2018–19 and 2019–20 on the following topics (please supply course outline and/or agenda if it was not a national training package)
  - a. RASSO
  - b. disclosure
  - c. reasonable lines of enquiry
  - d. digital devices
7. How are requests for early investigative advice and charging decisions allocated?
8. Current average caseload per RASSO lawyer for:
  - a. charging advices
  - b. charged cases
9. Are RASSO lawyers expected to write their own Victim Communication and Liaison scheme letter, and how is the Victim Liaison Unit involved, if at all?
10. How many pre-trial witness interviews (if any) have been held before charge in rape cases in 2018–19 and 2019–20?
11. Are no further action decisions at charge in rape cases reviewed by a second rape specialist, and if so, which role/grade carries out the second review?

### **On-site activity**

We visited five CPS Areas (East of England, East Midlands, London North, London South and Wessex) where we interviewed legal managers and conducted focus groups of RASSO lawyers. In CPS Headquarters, we interviewed policy and inclusion leads, the Directors of Business and Legal Services and the Director of Public Prosecutions. During interviews and focus groups, we explored issues identified from the other evidence we had gathered (such as responses to surveys, the file examination and document and data analysis) on matters relevant to the framework. Staff were also offered the opportunity to cover any matter they considered pertinent.



# **Annex B**

## **File examination question sets**

- **Admin finalised**
- **Charged/NFA**

## Admin finalised file examination question set

#	Question	Possible answers	Question type
<b>Key dates</b>			
1	Date of offence		Factual (F)
2	Offence reported to police		F
3	Arrest of lead D		F
4	Redundant		
5	Redundant		
6	First submission to CPS for charging decision		F
7	Final submission to CPS		F
8	Allocation to lawyer		F
9	Lawyer's first review with action plan		F
10	Lawyer's final review		F
11	Finalisation date		F
<b>Charging data</b>			
12	How many admin triages were there?	0/1/2/3/4/5/6+/NA	F
13	How many charging consultations were there?	0/1/2/3/4/5/6+/NA	F
14	Total number of days from report to arrest	3 minus 2	F
15	Total number of days between date of report to request for advice	6 minus 2	F
17	Total number of days from acceptable police submission for advice to finalisation	11 minus 7	F
<b>Case information</b>			
18	How did the allegation come to police attention?	Victim reported	F

#	Question	Possible answers	Question type
		Friend or family reported (adult) Parent/guardian/foster parent reported (child) Teacher reported Social worker reported GP, counsellor or other medical Sexual assault referral centre (SARC) Identified during DASH assessment CCTV Other (please note) Not able to determine from file	
19	Was the case properly flagged?	Yes, has rape flag correctly No, has rape flag incorrectly NA	Judgement on CPS service (CPS)
20	Are the allegations recent?	Yes No NA	F
21	Was the action plan responded to by the police?	Yes No NA	F
22	If yes to Q21, was this response admin triaged?	Yes No NA	F
<b>Admin triage: first triage</b>			
23	Did the first admin triage accurately identify the standard of the initial police file submission?	Yes, identified it was acceptable Yes, identified it was not acceptable No, identified as acceptable when it was not No, identified as not acceptable when it was No, admin triage did not take place No, other (please note) NA	CPS

#	Question	Possible answers	Question type
24	If the initial police file submission was rejected during the first admin triage, what was the most significant thing that was not provided or inadequate?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS Unused material Other (please note) NA	Judgement on police service (P)
25	Was the admin triage on first receipt timely?	Yes No NA	CPS
26	Did the police supply missing items that had been identified in the first triage rejection?	Yes No NA	P
27	Did they do so in a timely manner?	Yes No NA	P
28	Did the police indicate that they were not going to provide the items identified in the first triage rejection?	Yes No NA	P
29	If yes to either Q26 or Q28, was there appropriate action taken on the response from the police to the first triage rejection?	Yes No, no action taken No, action was taken only when something else came in/happened on file No, other	CPS

#	Question	Possible answers	Question type
		NA	
<b>Admin triage: final admin triage</b>			
30	Did later admin triages accurately identify the standard of further submissions of material from the police?	Yes, identified they were acceptable Yes, identified they were not acceptable No, identified as acceptable when they were not No, identified as not acceptable when they were No, admin triage did not take place No, other (please note) NA	CPS
31	Did the later admin triage accurately identify the standard of further submissions of material from the police?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS Unused material Other (please note) NA	P
32	Were admin triages on later police submissions timely?	Yes No NA	CPS
33	Did the police supply missing items that had been	Yes No NA	P

#	Question	Possible answers	Question type
	identified in later triage rejections?		
34	Did they do so in a timely manner?	Yes No NA	P
35	Did the police indicate that they were not going to provide the items identified in later triage rejections?	Yes No NA	P
36	If yes to either Q33 or Q35, was there appropriate action taken on the response(s) from the police to later triages?	Yes No, no action taken No, action was taken only when something else came in/happened on file No, other NA	CPS
<b>Admin finalisation</b>			
37	Was the action plan (or the last one, if more than one) chased at the 1-month stage?	Yes No, done early No, done late No, not done NA	CPS
38	Was there any response to the 1-month chase from the police?	Yes No NA	P
39	Was the action plan (or the last one, if more than one) chased at the 2-month stage?	Yes No, done early No, done late No, not done NA	CPS
40	Was there any response to the 2-month chase from the police?	Yes No NA	P
41	Was administrative action taken to finalise the case at the expiry of 90 days?	Yes No NA	CPS
42	Was the case finalised at the 90 day point?	Yes No NA	F
43	If Q42 is no, how many days until finalisation?	1-30 31-60	CPS

#	Question	Possible answers	Question type
		61-90 91 -120 121-150 151-180 over 180 days NA	
44	Was there a reason noted for the admin finalisation?	Yes No NA	CPS
45	If Yes to Q44, what was the recorded reason?	No response to EIA action plan from police or resubmission of case after EIA advice provided No response from police to PCD action plan set Response from police to action plan inadequate, not accepted and no further response thereafter Police notify CPS they have decided to NFA at the police stage. Police tell CPS they will not be ready to respond for some time. Charged but awaiting extradition or re-entry to the country to charge the suspect Other (Please note) N/A	F
46	Was the correct finalisation code used?	Yes No NA	CPS
<b>Lawyer actions</b>			
47	The action plan met a satisfactory standard	Fully met Partially met Not met NA	CPS
48	Were the lawyer's request(s) for the victim's phone and any other digital devices to be searched or	Yes No, requests made re V's devices that were not needed	CPS

#	Question	Possible answers	Question type
	downloaded (or other enquiries made of the victim's phone) necessary and proportionate?	No, requests not made re V's devices that were needed No, requests made at charge re V's devices that should have been made pre charge No, did not set proper parameters for the request(s) No, other (please note) Not known NA	
49	Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes No, requested items that were not needed No, did not request items that were needed No, requested at charge material that should have been requested pre charge No, did not set proper parameters for the material requested No, other (please note) Not able to determine from file NA	CPS
50	What was the most significant of the material and/or further enquiries referenced in Q49?	Previous incidents involving V Previous incidents involving D Victim credibility Possible witnesses D's phone or other digital devices Identification CCTV BWV 999 Comms Social media Crime scene or forensic Sexual assault referral centre records	F



#	Question	Possible answers	Question type
		Other medical or psychiatric Social Services Family court Education Other third party/expert Other (please note) NA	
51	What was the next most significant of the material and/or further enquiries referenced in Q49?	Previous incidents involving V Previous incidents involving D Victim credibility Possible witnesses D's phone or other digital devices Identification CCTV BWV 999 Comms Social media Crime scene or forensic Sexual assault referral centre records Other medical or psychiatric Social Services Family court Education Other third party/expert Other (please note) NA	F
52	Did the police challenge the proportionality of CPS requests?	Yes No NA	P
53	Were the police right to challenge or not challenge?	Yes No NA	P
54	If Q52 is Y, did the CPS respond appropriately?	Yes, withdrew a disproportionate request Yes, amended to make the request more proportionate Yes, explained why the request was proportionate Yes, other	CPS

#	Question	Possible answers	Question type
		No, did not withdraw or amend a disproportionate request No, did not explain why the request was proportionate No, did not respond at all. No, other NA	
55	Did the lawyer set realistic timescales for material and further enquiries requested in the action plan?	Yes No Not able to determine from file NA	CPS
56	Did the police challenge the timescales set in the action plan?	Yes No NA	P
57	Were the police right to challenge or not challenge?	Yes No NA	P
58	If Q56 is Y, did the CPS respond appropriately?	Yes, amended to make the timescale more realistic Yes, explained why the timescale was realistic Yes, other No, did not amend an unrealistic timescale No, did not explain why the timescale was realistic No, did not respond at all No, other NA	CPS
59	Did the charging lawyer identify and feedback to the police any failings with the police file submission that had not already been addressed in triage?	Yes, identified and fed back No, identified but not fed back No, not identified and not fed back NA	CPS
60	What form did the feedback take?	NFQ assessment on CMS Action plan Highlighted in the body of the charging advice but not in action plan Email	CPS

#	Question	Possible answers	Question type
		Other NA	
<b>Victims and witnesses</b>			
61	Did the victim participate in the investigation?	Yes, through to charge No, never supported a prosecution No, withdrew after report but before the police requested charging advice No, withdrew after an action plan was given to police but before charging decision made No, other NA	F
62	What was the primary reason given for the V not participating?	V decided not to prosecute partner/family member in a DA context V intimidated or in fear V health impacted The time taken to investigate and/or reach charging decision Request for V's phone or other electronic devices Request for an additional ABE Other Not able to determine from file NA	F
63	Did a refusal by the victim to allow the police access to their phone play any part in the admin finalisation?	Yes No Not able to determine from file NA	F
64	Did the refusal by the victim to allow the police access to social media accounts play any part in the admin finalisation?	Yes No Not able to determine from file NA	F
65	Did the refusal by the victim to provide consent to third	Yes No	F

#	Question	Possible answers	Question type
	party material play any part in the admin finalisation?	Not able to determine from file NA	
66	Did the reviewing lawyer consider appropriate ways to re-establish the victim's participation or to proceed without it?	Yes No NA	F
<b>Reactivation</b>			
67	Was the case reactivated after being admin finalised?	Yes, further request for advice Yes, D has been charged by police Yes, D has now been located or returned to England/Wales Yes, other No NA	F
68	Number of days between admin finalisation and reactivation	1-30 31-60 61-90 91 -120 121-150 151-180 over 180 days NA	F
<b>Overall quality</b>			
69	The lawyer or team exercised sound judgement and grip throughout the case.	Excellent Good Fair Poor NA	CPS
70	The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met NA	CPS



## Charged/NFA file examination question set

#	Question	Possible answers	Question type
<b>BMI questions: key dates</b>			
1	Date of offence		Factual (F)
2	Offence reported to police		F
3	Arrest of lead D		F
4	Redundant		
5	Redundant		
6	First submission to CPS for charging decision		F
7	Final submission to CPS		F
8	Allocation to lawyer		F
9	Lawyer's first review with action plan		F
10	Lawyer's final review		F
11	Finalisation date		F
<b>BMI questions: charging data</b>			
12	How many admin triages were there?	0/1/2/3/4/5/6+/NA	F
13	How many charging consultations were there?	0/1/2/3/4/5/6+/NA	F
14	Total number of days from report to arrest	3 minus 2	F
15	Total number of days between date of report to request for advice	6 minus 2	F
16	Total number of days from acceptable police submission to final advice	10 minus 7	F
<b>Case information</b>			
18	How did the allegation come to police attention?	Victim reported Friend or family reported (adult) Parent/guardian/ foster parent reported (child)	F

#	Question	Possible answers	Question type
		Teacher reported Social worker reported GP, counsellor or other medical Sexual assault referral centre (SARC) Identified during DASH assessment CCTV Other (please note) Not able to determine from file	
19	Was the case properly flagged?	Yes, has rape flag correctly No, has rape flag incorrectly NA	Judgement on CPS service (CPS)
20	Are the allegations recent?	Yes No NA	F
21	What decision did the charging lawyer make?	Charge No further action (NFA) NA	F
22	What was the main offence charged, or considered in No further action (NFA)?	Rape (SOA 2003 or pre-2003) Pre-SOA 2003 sexual offences other than rape S.2 SOA assault by penetration S.3 sexual assault S.5 rape of child under 13 S.6 assault of child under 13 by penetration S.7 sexual assault of child under 13 S.30(3) penetrative sexual assault with person with mental	F

#	Question	Possible answers	Question type
		disorder impeding choice Other sexual offence involving adult Other sexual offence involving child Other (please note) NA	
23	What was the reason for NFA?	V not participating Identification Other essential element of actus reus missing Mens rea not capable of proof Undermining or assisting material Evidential other PI other disposal PI age/illness of D PI other NA	F
24	Where there was communication evidence or information, what was the most impactful?	Direct contact between D and V (text, letter, phone call or in person) Social media contact between D and V Direct contact between D and a W Social media contact between D and a W Contact between D and another Contact between V and another Other contact (please note) NA	F



#	Question	Possible answers	Question type
25	Where there was undermining or assisting material, what was the most impactful?	Victim credibility Witness credibility Witness account(s) Contact between D and V, W or others Social media Crime scene or forensic Counselling Sexual assault referral centre records Other medical Psychiatric Social Services Family court Education Other third party/expert Identification Other (please note) NA	F
26	Where there was undermining or assisting material, what was the <u>next</u> most impactful?	Victim credibility Witness credibility Witness account(s) Contact between D and V, W or others Social media Crime scene or forensic Counselling Sexual assault referral centre records Other medical Psychiatric Social Services Family court Education Other third party/expert Identification Other (please note) NA	F

#	Question	Possible answers	Question type
27	Where there were issues with the victim's credibility, what was the most impactful?	Victim has disclosable previous convictions Victim has made previous inconsistent statements during this case Victim's evidence is contradicted by other cogent evidence Victim has capacity, mental health or other issues that may impact on their ability to give cogent evidence Victim has made previous allegations (sexual or other offences) that are proved or believed to be false Other (please note) NA	F
28	For NFA decisions, was the correct finalisation code used?	Yes No NA	CPS
29	For NFA decisions, was the correct <u>disclosure</u> finalisation code used?	Yes No NA	CPS
<b>Police service pre-charge</b>			
30	Did the first submission comply with expected standards?	Yes No NA	Judgement on police service (P)
31	If Q30 is no, was the failure fatal to the lawyer being able to review the case?	Yes No NA	P

#	Question	Possible answers	Question type
32	If Q30 is no, what was not provided or inadequate (excluding unused material)?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre (SARC) records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS Other (please note) NA	P
33	Did the police supply the MG6 series at charge?	Yes No NA	F
34	If supplied, were the MG6 schedules satisfactory?	Yes No, item(s) missed off an SDC or MG6C No, item(s) missed off an MG6D No, items missed off an MG6E No, item(s) listed on MG6C in error No, item(s) listed on MG6D in error	P

#	Question	Possible answers	Question type
		No, item(s) description inadequate No, irrelevant material was included No, evidential material was included Other (please note) NA	
35	Was the unused material supplied or an adequate report provided?	Yes, the material was supplied Yes, an adequate report was provided No, the material was not supplied and the report was inadequate No, there was no material or report supplied NA	P
36	Did the police accurately identify the strengths and weaknesses of the case?	Fully met Partially met Not met NA	P
37	Were any ABEs of good quality?	Fully met Partially met Not met Not able to determine from file NA	P
38	If Q37 is PM or NM, what is the most impactful failing?	Questions do not elicit sufficient information about the allegation The interview is poorly structured or not properly focused	P

#	Question	Possible answers	Question type
		Covers irrelevant material or another investigation Asks leading questions Interview is too long Camera angle or sound impact on clarity of evidence Other (please note) NA	
39	If Q37 is PM or NM, did the charging lawyer ask for a further interview with the victim or witness to address the failing(s)?	Yes Time does not allow Not appropriate (V/W) Not appropriate (other) No NA	CPS
40	Was the police use of an intermediary appropriate to take evidence from the victim?	Yes, used and was indicated/ needed Yes, not used and not indicated/ needed No, used but not indicated/needed No, not used but was indicated/ needed Insufficient information provided by the police about the victim's circumstances to assess NA	P
<b>Administrative actions: first triage</b>			
41	Did the first admin triage accurately identify the standard of the initial police file submission?	Yes, identified it was acceptable Yes, identified it was not acceptable	CPS

#	Question	Possible answers	Question type
		No, identified as acceptable when it was not No, identified as not acceptable when it was No, admin triage did not take place No, other (please note) NA	
42	If the initial police file submission was rejected during the first admin triage, what was the most significant thing that was not provided or inadequate?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS MG6 series Other (please note) NA	P
43	Was the admin triage on first receipt timely?	Yes No NA	CPS

#	Question	Possible answers	Question type
44	Did the police supply missing items that had been identified in the first triage rejection?	Yes No NA	P
45	Did they do so in a timely manner?	Yes No NA	P
46	Did the police indicate that they were not going to provide the items identified in the first triage rejection?	Yes No NA	P
47	If yes to either Q44 or Q46, was there appropriate action taken on the response from the police to the first triage rejection?	Yes No, no action taken No, action was taken only when something else came in/ happened on file No, other (please note) NA	CPS
<b>Administrative actions: final admin triage</b>			
48	Did the later admin triage accurately identify the standard of further submissions of material from the police?	Yes, identified they were acceptable Yes, identified they were not acceptable No, identified as acceptable when they were not No, identified as not acceptable when they were No, admin triage did not take place No, other (please note) NA	CPS
49	If the police file submission was rejected during the later admin triage, what was the most significant thing that was not provided or inadequate?	Checklist MG3 ABE Key statement(s) 999 call CCTV	P

#	Question	Possible answers	Question type
		Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS MG6 series Other (please note) NA	
50	Was admin triage on later police submissions timely?	Yes No NA	CPS
51	Did the police supply missing items that had been identified in later triage rejection?	Yes No NA	P
52	Did they do so in a timely manner?	Yes No NA	P
53	Did the police indicate that they were not going to provide the items identified in later triage rejection?	Yes No NA	P
54	If yes to either Q51 or Q53, was there appropriate action taken on the response(s) from the police to later triage?	Yes No, no action taken No, action was taken only when something else came in/ happened on file	CPS



#	Question	Possible answers	Question type
		No, other (please note) NA	
<b>Pre-charge decision by CPS</b>			
55	Was there an early consultation/EIA?	Yes No	F
56	Was the EIA timely?	Yes No	CPS
57	Did the EIA add value?	Fully met Partially met Not met NA	CPS
58	Was Counsel instructed to provide advice on charge?	Yes No	F
59	If Q58 is yes, was that warranted by the complexity, seriousness or sensitivity of the case?	Yes No NA	CPS
60	Was Counsel's advice adopted properly?	Yes after full review by CPS lawyer of the advice and evidence No, adopted but without review of evidence by CPS lawyer No, nothing to suggest it was properly considered No, other (please note) NA	CPS
61	Did the charging decision apply the right test?	Yes, FCT correct Yes, THT correct No, FCT should have been THT No, THT should have been FCT NA	CPS

#	Question	Possible answers	Question type
62	Was there evidence that any ABEs were viewed before the pre-charge decision was made?	Yes No NA	CPS
63	The CPS decision to charge was compliant with the Code Test.	Yes No NA	CPS
64	Was the decision to charge or NFA timely?	Yes No NA	CPS
65	Were the most appropriate charges chosen?	Yes No NA	CPS
66	Did the advice comply with CPS policy on rape and serious sexual offences?	Yes No NA	CPS
67	The CPS MG3 included proper case analysis and case strategy.	Fully met Partially met Not met NA	CPS
68	If Q67 is PM or NM, what was the most impactful failing?	Poor assessment of strengths and weaknesses of the case Over-emphasised the impact of possible weaknesses or inconsistencies in the victim's account and circumstances Under-emphasised the impact of possible weaknesses or inconsistencies in the victim's account and circumstances Did not identify relevant rape myths and stereotypes and	CPS

#	Question	Possible answers	Question type
		how to address them Did not adequately address how the case could be built Other (please note) NA	
69	Was the merits-based approach said to be applied in the pre-charge decision?	Yes No NA	CPS
70	The CPS MG3 dealt appropriately with unused material (UM).	Fully met Partially met Not met NA	CPS
71	If Q70 is PM or NM, what was the main or most significant failing with unused material?	Did not address unused material at all Did not address the impact of disclosable unused on the evidence Did not discuss any sensitivity of unused Did not set appropriate actions in the action plan in relation to unused material Other (please note) NA	CPS
72	Was there a disclosure management document where required?	Yes No NA	CPS
73	If Q72 is yes, did the police and CPS comply with the requirements for a DMD at the pre-charge stage?	Both complied Police supplied info and CPS did not need to do DMD Police supplied info but CPS did not complete a DMD Police did not supply info but	P + CPS

#	Question	Possible answers	Question type
		CPS completed DMD Neither complied NA	
74	The CPS MG3 made reference to all relevant applications and ancillary matters.	Yes No NA	CPS
75	If Q74 is no, what was the most impactful aspect that the lawyer failed to consider adequately?	Bad character Hearsay Special measures Restraining order Other preventative orders (eg SHPO) Other (please note) NA	CPS
76	Did the charging advice consider the need for an intermediary where appropriate?	Yes No NA	CPS
77	The action plan met a satisfactory standard.	Fully met Partially met Not met NA	CPS
78	Were the lawyer's request(s) for the victim's phone and any other digital devices to be searched or downloaded (or other enquiries made of the victim's phone) necessary and proportionate?	Yes, correct request made re V's devices Yes, request correctly not made re V's devices No, requests made re V's devices that were not needed No, requests not made re V's devices that were needed No, requests made at charge re V's devices that should have been made pre charge No, did not set proper parameters for the request(s)	CPS

#	Question	Possible answers	Question type
		No, other (please note) NA	
79	Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes, correct request made re other items Yes, request correctly not made re other items No, requested items that were not needed No, did not request items that were needed No, requested at charge material that should have been requested pre charge No, did not set proper parameters for the material requested No, other (please note) NA	CPS
80	What was the most significant of the material and/or further enquiries referenced in Q79?	Previous incidents involving V Previous incidents involving D Victim credibility Possible witnesses D's phone or other digital devices Identification CCTV BWV 999 Comms Social media Crime scene or forensic	F

#	Question	Possible answers	Question type
		Sexual assault referral centre records Other medical or psychiatric Social Services Family court Education Other third party/expert Other (please note) NA	
81	What was the next most significant of the material and/or further enquiries referenced in Q79?	Previous incidents involving V Previous incidents involving D Victim credibility Possible witnesses D's phone or other digital devices Identification CCTV BWV 999 Comms Social media Crime scene or forensic Sexual assault referral centre records Other medical or psychiatric Social Services Family court Education Other third party/expert Other (please note) NA	F
82	Did the police challenge the proportionality of CPS requests?	Yes No NA	P
83	Were the police right to challenge or not challenge?	Yes No	P

#	Question	Possible answers	Question type
		NA	
84	If Q82 is Y, did the CPS respond appropriately?	Yes, withdrew a disproportionate request Yes, amended to make the request more proportionate Yes, explained why the request was proportionate Yes, other No, did not withdraw or amend a disproportionate request No, did not explain why the request was proportionate No, did not respond at all. No, other NA	CPS
85	Did the lawyer set realistic timescales for material and further enquiries?	Yes No NA	CPS
86	Did the police challenge the timescales set in the action plan?	Yes No NA	P
87	Were the police right to challenge or not challenge?	Yes No NA	P
88	If the police did challenge appropriately, did the CPS respond appropriately?	Yes, amended to make the timescale more realistic Yes, explained why the timescale was realistic Yes, other No, did not amend an unrealistic timescale No, did not explain why the timescale was realistic	CPS

#	Question	Possible answers	Question type
		No, did not respond at all. No, other NA	
89	Did the charging lawyer identify and feedback to the police any failings with the police file submission that had not already been addressed in triage?	Yes identified and fed back No, identified but not fed back No, not identified and not fed back NA	CPS
90	What form did the feedback take?	NFQ assessment on CMS Action plan Highlighted in the body of the charging advice but not in action plan Email Other (please note) NA	CPS
91	For CPS charged cases rate the overall quality of the MG3 including action plan.	Fully met Partially met Not met NA	CPS
<b>Victims and witnesses</b>			
92	Did the victim participate in the investigation?	Yes, through to charge No, never supported a prosecution No, withdrew after report but before the police requested charging advice No, withdrew after an action plan was given to police but before charging decision made No, other (please note) NA	F



#	Question	Possible answers	Question type
93	What was the primary reason given for the V not participating?	V decided not to prosecute partner/family member in a DA context V intimidated or in fear V health impacted The time taken to investigate and/or reach charging decision Request for V's phone or other electronic devices Request for an additional ABE Other (please note) Not known NA	F
94	Did a refusal by the victim to allow the police access to their phone or other digital devices play any part in the decision to NFA?	Yes No Not able to determine from file NA	F
95	Did the refusal by the victim to allow the police access to social media accounts play any part in the decision to NFA?	Yes No Not able to determine from file NA	F
96	Did the refusal by the victim to provide consent to third party material play any part in the decision to NFA?	Yes No Not able to determine from file NA	F
97	Did the reviewing lawyer consider appropriate ways to re-establish the victim's participation or to proceed without it?	Yes No NA	
98	The needs and interests of the public were protected through custody and bail decisions, and proper monitoring of CTLs.	Fully met Partially met Not met NA	CPS

#	Question	Possible answers	Question type
99	There was a timely VCL when required.	Yes No, not done No, not done on time NA	CPS
100	The VCL was of a high standard.	Yes No, inaccurate No, lack of empathy No, lack of clarity in explanation No, insufficient information No, used jargon No, spelling or grammar errors No, other (please note) NA	CPS
101	Did the VCL refer to the victim's right to review where appropriate?	Yes No NA	CPS
<b>Overall quality</b>			
102	Has the time taken by the police to investigate, submit for a charging decision and carry out actions had an impact on the outcome?	Yes No Not able to determine from file NA	P
103	The lawyer or team exercised sound judgement and grip throughout the case.	Excellent Good Fair Poor NA	CPS
104	The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met NA	CPS
105	Would the inspector have made the same decision on charge or NFA as the charging lawyer?	Yes No NA	F

# **Annex C**

## **File outputs**

- **Admin finalised**
- **Charged/NFA**

## File outputs: Admin finalised

Question	Answers	Results All cases
<b>Case information</b>		
How many admin triages were there?	0	51.0%
	1	34.0%
	2	11.0%
	3	1.5%
	4	1.5%
	5	0.5%
	6+	0.5%
	<b>Total</b>	<b>100.0%</b>
How many consultations were there?	0	0.5%
	1	80.0%
	2	12.5%
	3	4.5%
	4	1.0%
	5	1.5%
	6+	0.0%
	<b>Total</b>	<b>100.0%</b>
Number of days between date reported to police and arrest of lead defendant	0-30	73.9%
	31-60	8.5%
	61-90	4.8%
	91-120	4.2%
	121-160	1.8%
	161-199	0.6%
	200+	6.1%
	Not able to determine from file	
	<b>Total</b>	<b>100.0%</b>
Number of days between date reported to police and request to CPS for advice	0-30	33.1%
	31-60	8.0%
	61-90	7.4%
	91-120	5.7%
	121-160	10.3%
	161-199	6.3%
	200+	29.1%
	Not able to determine from file	
	<b>Total</b>	<b>100.0%</b>
Number of days between police final submission and finalisation	0-30	15.2%
	31-60	12.6%
	61-90	24.7%

Question	Answers	Results All cases
	91-120	12.6%
	121-160	14.1%
	161-199	8.6%
	200+	12.1%
	Not able to determine from file	
	<b>Total</b>	<b>100.0%</b>
How did the allegation come to police attention?	Friend or family reported (Adult)	14.0%
	GP/counsellor or other medical	2.2%
	Identified during DASH assessment	2.2%
	Parent/guardian/foster parent reported (child)	8.4%
	Sexual assault referral centre (SARC)	0.6%
	Social worker reported	3.4%
	Teacher reported	3.4%
	Victim reported	51.4%
	Other	14.5%
	Not able to determine from file	
	<b>Total</b>	<b>100.0%</b>
Was the case properly flagged?	Yes, has rape flag correctly	96.0%
	No, has rape flag incorrectly	4.0%
	<b>Total</b>	<b>100.0%</b>
Are the allegations recent?	Yes	84.0%
	No	16.0%
	<b>Total</b>	<b>100.0%</b>
Was the action plan responded to by the police?	Yes	30.0%
	No	70.0%
	NA	
	<b>Total</b>	<b>100.0%</b>
If the action plan was responded to by the police, was this response admin triaged?	Yes	50.0%
	No	50.0%
	NA	
	<b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
<b>First admin triage</b>		
Did the first admin triage accurately identify the standard of the initial police file submission?	Yes - identified it was not acceptable	30.3%
	Yes - identified it was acceptable	50.6%
	No - admin triage did not take place	
	No - identified as acceptable when it was not	15.7%
	No - identified as not acceptable when it was	3.4%
	No - other	
	NA	0.0%
	<b>Total</b>	<b>100.0%</b>
If the initial police file submission was rejected during the first admin triage, what was the most significant thing that was not provided or inadequate?	ABE	43.3%
	Checklist	10.0%
	MG3	16.7%
	Other	26.7%
	Summary of third party material	3.3%
	NA	
	<b>Total</b>	<b>100.0%</b>
Was the admin triage on first receipt timely?	Yes	72.2%
	No	27.8%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the police supply missing items that had been identified in the first triage rejection?	Yes	64.5%
	No	35.5%
	NA	
	<b>Total</b>	<b>100%</b>
Did they do so in a timely manner?	Yes	65.0%
	No	35.0%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the police indicate that they were not going to provide the items identified in the first triage rejection?	Yes	3.2%
	No	96.8%
	NA	
	<b>Total</b>	<b>100.0%</b>
If police did supply missing items or indicated that they were not going to, was there appropriate action taken	Yes	85.0%
	No	5.0%

Question	Answers	Results All cases
on the response from the police to the first triage rejection?	No - action was taken only when something else came in/happened on file No - no action taken No - other NA <b>Total</b>	5.0% 5.0%  <b>100.0%</b>
<b>Later admin triages</b>		
Did later admin triages accurately identify the standard of further submissions of material from the police?	Yes - identified they were not acceptable Yes - identified they were acceptable No - identified as acceptable when they were not No - identified as not acceptable when they were No - other (please note) No - admin triage did not take place NA <b>Total</b>	34.4% 43.8% 9.4% 6.3% 6.3%  <b>100.0%</b>
If the police file submission was rejected during later admin triages, what was the most significant thing that was not provided or inadequate?	ABE Checklist Key statement(s) Other (please note) Unused material MG3 NA <b>Total</b>	25.0% 25.0% 8.3% 16.7% 8.3% 16.7%  <b>100.0%</b>
Were admin triages on later police submissions timely?	Yes No NA <b>Total</b>	81.3% 18.8%  <b>100.0%</b>
Did the police supply missing items that had been identified in later triage rejections?	Yes No NA <b>Total</b>	8.3% 91.7%  <b>100.0%</b>
Did they do so in a timely manner?	Yes No NA	0.0% 100.0%

Question	Answers	Results All cases
	<b>Total</b>	<b>100.0%</b>
Did the police indicate that they were not going to provide the items identified in later triage rejections?	Yes No NA <b>Total</b>	25.0% 75.0% <b>100.0%</b>
If police supplied missing items or indicated they were not going to, was there appropriate action taken on the response(s) from the police to later triages?	Yes No - no action taken No - other (please note) NA <b>Total</b>	25.0% 25.0% 50.0% <b>100.0%</b>
<b>Admin finalisation</b>		
Was the action plan (or the last one, if more than one) chased at the 1-month stage?	Yes No - Done early No - Done late No - Not done NA <b>Total</b>	21.2% 6.5% 50.0% 22.4% <b>100.0%</b>
Was there any response to the 1-month chase from the police?	Yes No NA <b>Total</b>	31.8% 68.2% <b>100.0%</b>
Was the action plan (or the last one, if more than one) chased at the 2-month stage?	Yes No - done early No - done late No - not done NA <b>Total</b>	22.7% 6.7% 44.0% 26.7% <b>100.0%</b>
Was there any response to the 2-month chase from the police?	Yes No NA <b>Total</b>	45.5% 54.5% <b>100.0%</b>
Was administrative action taken to finalise the case at the expiry of 90 days?	Yes No NA <b>Total</b>	43.0% 57.0% <b>100.0%</b>
Was the case finalised at the 90 day point?	Yes No NA <b>Total</b>	11.0% 89.0% <b>100.0%</b>



Question	Answers	Results All cases
If the case was not finalised at the 90 day point, how many days until finalisation?	1-30	17.4%
	31-60	11.2%
	61-89	7.9%
	91-120	17.4%
	121-150	12.9%
	151-180	9.6%
	over 180 days	23.6%
	<b>Total</b>	<b>100.0%</b>
Was there a reason noted for the admin finalisation?	Yes	98.5%
	No	1.5%
	NA	
	<b>Total</b>	<b>100.0%</b>
If there was a reason noted for the admin finalisation, what was the recorded reason?	No response from police to PCD action plan set	13.7%
	No response to EIA action plan from police or resubmission of case after EIA advice provided	27.4%
	Not accepted and no further response thereafter	1.0%
	Police notify CPS they have decided to NFA at the police stage	26.9%
	Police tell CPS they will not be ready to respond for some time	3.0%
	Response from police to action plan inadequate	4.1%
	Other	
	NA	23.9%
	<b>Total</b>	<b>100.0%</b>
	Was the correct finalisation code used?	Yes
No		35.5%
NA		
<b>Total</b>		<b>100.0%</b>
<b>Lawyer actions</b>		
The action plan met a satisfactory standard	FM	47.2%
	PM	36.7%
	NM	16.1%
	NA	
	<b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
Were the lawyer's request(s) for the victim's phone and any other digital devices to be searched or downloaded (or other enquiries made of the victim's phone) necessary and proportionate?	Yes	56.1%
	No - did not set proper parameters for the request(s)	25.4%
	No - other	
	No - requests made re V's devices that were not needed	6.1%
	No - requests not made re V's devices that were needed	8.8%
	Not able to determine from file	3.5%
	NA	
	<b>Total</b>	<b>100.0%</b>
Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes	67.8%
	No - did not request items that were needed	2.3%
	No - did not set proper parameters for the material requested	8.6%
	No - other	3.4%
	No - requested items that were not needed	17.8%
	Not able to determine from file	
	NA	
	<b>Total</b>	<b>100.0%</b>
What was the most significant of the material and/or further enquiries referenced in the previous question?	999	1.1%
	BWV	0.6%
	CCTV	1.7%
	Comms	2.9%
	Crime scene or forensic	6.9%
	D's phone or other digital devices	12.6%
	Education	4.0%
	Family court	1.1%
	Other (please note)	14.9%
	Other medical or psychiatric	12.0%
	Other third party/expert	
	Possible witnesses	2.3%
Previous incidents involving D	15.4%	
		1.7%

Question	Answers	Results All cases
	Previous incidents involving V	
	Sexual assault referral centre records	3.4%
	Social media	1.1%
	Social Services	
	Victim credibility	4.6%
	NA	6.3%
	<b>Total</b>	<b>7.4%</b>
		<b>100.0%</b>
What was the next most significant of the material and/or further enquiries referenced in Q49?	999	2.0%
	CCTV	2.0%
	Comms	4.0%
	Crime scene or forensic	4.6%
	D's phone or other digital devices	9.3%
	Education	4.0%
	Family court	2.0%
	Identification	0.7%
	Other (please note)	4.6%
	Other medical or psychiatric	13.2%
	Other third party/expert	
	Possible witnesses	2.0%
	Previous incidents involving D	18.5%
	Previous incidents involving V	4.0%
	Sexual assault referral centre records	5.3%
	Social media	2.6%
	Social Services	6.0%
	Victim credibility	9.3%
	NA	6.0%
	<b>Total</b>	<b>100.0%</b>
Did the police challenge the proportionality of CPS requests?	Yes	3.4%
	No	96.6%
	NA	
	<b>Total</b>	<b>100.0%</b>
Were the police right to challenge or not challenge proportionality?	Yes	69.1%
	No	30.9%
	NA	
	<b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
If police did challenge the proportionality of CPS requests, did the CPS respond appropriately?	Yes - amended to make the request more proportionate	16.7%
	Yes - explained why the request was proportionate	50.0%
	No - did not respond at all	
	NA	
	<b>Total</b>	<b>33.3%</b>
		<b>100.0%</b>
Did the lawyer set realistic timescales for material and further enquiries requested in the action plan?	Yes	50.3%
	No	49.7%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the police challenge the timescales set in the action plan?	Yes	3.4%
	No	96.6%
	NA	
	<b>Total</b>	<b>100.0%</b>
Were the police right to challenge or not challenge timescales?	Yes	58.6%
	No	41.4%
	NA	
	<b>Total</b>	<b>100.0%</b>
If the police did challenge timescales, did the CPS respond appropriately?	No - did not amend an unrealistic timescale	16.7%
	No - did not respond at all	16.7%
	Yes - amended to make the timescale more realistic	66.7%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the charging lawyer identify and feedback to the police any failings with the police file submission that had not already been addressed in triage?	Yes - identified and fed back	81.8%
	No - identified but not fed back	2.3%
	No - not identified and not fed back	15.9%
	NA	
	<b>Total</b>	<b>100.0%</b>
What form did the feedback take?	Action plan	25.0%
	Email	13.9%
	Highlighted in the body of the charging advice but not in action plan	52.8%

Question	Answers	Results All cases
	NFQ assessment on CMS	2.8%
	Other	
	NA	5.6%
	<b>Total</b>	<b>100.0%</b>
<b>Victims and witnesses</b>		
Did the victim participate in the investigation?	Yes - through to charge	88.0%
	No - never supported a prosecution	1.0%
	No - other (please note)	3.0%
	No - withdrew after an action plan was given to police but before charging decision made	5.0%
	No - withdrew after report but before the police requested charging advice	3.0%
	NA	
	<b>Total</b>	<b>100.0%</b>
What was the primary reason given for the V not participating?	V decided not to prosecute partner/family member in a DA context	13.0%
	V intimidated or in fear	4.3%
	Other	34.8%
	Not able to determine from the file	47.8%
	NA	
<b>Total</b>	<b>100.0%</b>	
Did a refusal by the victim to allow the police access to their phone play any part in the admin finalisation?	Yes	6.7%
	No	93.3%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the refusal by the victim to allow the police access to social media accounts play any part in the admin finalisation?	Yes	0.0%
	No	100.0%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the refusal by the victim to provide consent to third party material play any part in the admin finalisation?	Yes	0.0%
	No	100.0%
	NA	
	<b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
Did the reviewing lawyer consider appropriate ways to re-establish the victim's participation or to proceed without it?	Yes	46.7%
	No	53.3%
	NA	
	<b>Total</b>	<b>100.0%</b>
<b>Reactivation</b>		
Was the case reactivated after being admin finalised?	Yes - further request for advice	15.0%
	Yes - other	2.0%
	Yes - D has been charged by police	1.0%
	No	82.0%
	<b>Total</b>	<b>100.0%</b>
Number of days between admin finalisation and reactivation	1-30	19.4%
	31-60	25.0%
	61-90	25.0%
	91-120	2.8%
	121-150	5.6%
	151-180	5.6%
	over 180 days	16.7%
	<b>Total</b>	<b>100.0%</b>
The lawyer or team exercised sound judgement and grip throughout the case.	Excellent	0.0%
	Good	40.5%
	Fair	41.5%
	Poor	18.0%
	<b>Total</b>	<b>100.0%</b>
The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	FM	69.0%
	PM	27.5%
	NM	3.5%
	<b>Total</b>	<b>100.0%</b>

## File outputs: Charged/NFA

Question	Answers	Results All cases
<b>Case information</b>		
How many admin triages were there?	0	29.6%
	1	22.8%
	2	26.4%
	3	13.2%
	4	4.8%
	5	1.6%
	6+	1.6%
	<b>Total</b>	<b>100.0%</b>
How many consultations were there?	0	0.0%
	1	31.2%
	2	34.4%
	3	19.6%
	4	6.0%
	5	2.8%
	6+	6.0%
	<b>Total</b>	<b>100.0%</b>
Number of days between date reported to police and arrest of lead defendant	0-30	76.3%
	31-60	6.4%
	61-90	3.4%
	91-120	5.1%
	121-160	2.1%
	161-199	2.1%
	200+	4.7%
	Not able to determine from file	
	<b>Total</b>	<b>100.0%</b>
Number of days between date reported to police and request to CPS for advice	0-30	21.5%
	31-60	5.0%
	61-90	3.3%
	91-120	5.0%
	121-160	7.9%
	161-199	6.2%
	200+	51.2%
	Not able to determine from file	
	<b>Total</b>	<b>100.0%</b>
Number of days between police final submission and CPS advice provided	0-7	34.7%
	8-14	13.7%
	15-21	16.1%
	22-31	17.3%

Question	Answers	Results All cases
	32-49	14.1%
	50+	4.0%
	Not able to determine from file	
	<b>Total</b>	<b>100.0%</b>
How did the allegation come to police attention?	Friend or family reported (Adult)	15.9%
	GP/counsellor or other medical	4.5%
	Identified during DASH assessment	2.8%
	Parent/guardian/foster parent reported (child)	7.7%
	Sexual assault referral centre (SARC)	0.8%
	Social worker reported	3.7%
	Teacher reported	4.5%
	Victim reported	46.3%
	Other	13.8%
	Not able to determine from file	
	<b>Total</b>	<b>100.0%</b>
Was the case properly flagged?	Yes, has rape flag correctly	89.6%
	No, has rape flag incorrectly	10.4%
	<b>Total</b>	<b>100.0%</b>
Are the allegations recent?	Yes	80.0%
	No	20.0%
	<b>Total</b>	<b>100.0%</b>
What decision did the charging lawyer make?	Charge	50.0%
	NFA	50.0%
	<b>Total</b>	<b>100.0%</b>
What was the main offence charged, or considered, in NFA?	Other	1.6%
	Other sexual offence involving child	2.8%
	Pre-SOA 2003 sexual offences other than rape	1.6%
	Rape (SOA 2003 or pre-2003)	81.6%
	S.2 SOA assault by penetration	2.4%
	S.3 sexual assault	1.2%



Question	Answers	Results All cases
	S.5 rape of child under 13	7.6%
	S.6 assault of child under 13 by penetration	0.4%
	S.7 sexual assault of child under 13	0.4%
	Other sexual offence involving adult	0.4%
	<b>Total</b>	<b>100.0%</b>
What was the reason for NFA?	Evidential other	23.2%
	Identification	1.6%
	Mens rea not capable of proof	15.2%
	PI other	2.4%
	Undermining or assisting material	48.0%
	V not participating	7.2%
	PI age/illness of D	0.8%
	Other essential element of actus reus missing	1.6%
	NA	
	<b>Total</b>	<b>100.0%</b>
Where there was communication evidence or information, what was the most impactful?	Contact between D and another	8.3%
	Contact between V and another	18.2%
	Direct contact between D and a W	4.1%
	Direct contact between D and V (text, letter, phone call or in person)	49.6%
	Other contact (please note)	9.1%
	Social media contact between D and a W	3.3%
	Social media contact between D and V	7.4%
	NA	
	<b>Total</b>	<b>100.0%</b>
Where there was undermining or assisting material, what was the most impactful?	Contact between D and V	6.2%
	Counselling	2.1%
	Crime scene or forensic	3.1%
	Education	1.0%
	Identification	2.6%
	Other (please note)	8.2%

Question	Answers	Results All cases
	Other medical	1.5%
	Social media	0.5%
	Social Services	1.5%
	Victim credibility	56.7%
	Witness account(s)	14.4%
	Witness credibility	1.5%
	Psychiatric	0.5%
	NA	
	<b>Total</b>	<b>100.0%</b>
Where there was undermining or assisting material, what was the next most impactful?	Contact between D and V	8.3%
	Counselling	0.8%
	Crime scene or forensic	4.5%
	Education	3.0%
	Identification	1.5%
	Other (please note)	9.1%
	Other medical	6.8%
	Other third party/expert	0.8%
	Sexual assault referral centre records	2.3%
	Social media	2.3%
	Social Services	12.1%
	Victim credibility	16.7%
	W or others	6.1%
	Witness account(s)	21.2%
	Witness credibility	3.8%
	Psychiatric	0.8%
	NA	
	<b>Total</b>	<b>100.0%</b>
Where there were issues with the victim's credibility, what was the most impactful?	Mental health or other issues that may impact on their ability to give cogent evidence	7.6%
	Victim has capacity	0.6%
	Victim has disclosable previous convictions	5.3%
	Victim has made previous allegations (sexual or other offences) that are proved or believed to be false	5.3%
	Victim has made previous inconsistent statements during this case	34.5%

Question	Answers	Results All cases
	Victim's evidence is contradicted by other cogent evidence	18.7%
	Other	28.1%
	NA	
	<b>Total</b>	<b>100.0%</b>
For NFA decisions, was the correct finalisation code used?	Yes	78.4%
	No	21.6%
	NA	
	<b>Total</b>	<b>100.0%</b>
For NFA decisions, was the correct disclosure finalisation code used?	Yes	81.6%
	No	18.4%
	NA	
	<b>Total</b>	<b>100.0%</b>
<b>Police Service</b>		
Did the first submission comply with expected standards?	Yes	45.6%
	No	54.4%
	<b>Total</b>	<b>100.0%</b>
If first submission did not comply with expected standards, was the failure fatal to the lawyer being able to review the case?	Yes	58.8%
	No	41.2%
	NA	
	<b>Total</b>	<b>100.0%</b>
If first submission did not comply with expected standards, what was not provided or inadequate (excluding unused material)?	ABE	34.6%
	CCTV	0.7%
	Checklist	14.0%
	Communications evidence or information	3.7%
	Key statement(s)	7.4%
	Medical evidence or information including counselling	2.2%
	MG3	7.4%
	Other	22.8%
	Summary of RLE	3.7%
	Summary of third party material	2.9%
	Forensic SFR or statement	0.7%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the police supply the MG6 series at charge?	Yes	30.4%
	No	69.6%

Question	Answers	Results All cases
	NA <b>Total</b>	<b>100.0%</b>
If supplied, were the MG6 schedules satisfactory?	Yes	34.9%
	No - item(s) description inadequate	6.3%
	No - item(s) listed on MG6C in error	4.8%
	No - item(s) listed on MG6D in error	7.9%
	No - item(s) missed off an MG6 D	1.6%
	No - item(s) missed off an SDC or MG6C	22.2%
	No - items missed off an MG6E	4.8%
	Other	17.5%
	NA <b>Total</b>	<b>100.0%</b>
Was the unused material supplied or an adequate report provided?	Yes - the material was supplied	30.9%
	Yes - an adequate report was provided	50.4%
	No - the material was not supplied and the report was inadequate	10.4%
	No - there was no material or report supplied	8.3%
	NA <b>Total</b>	<b>100.0%</b>
Did the police accurately identify the strengths and weaknesses of the case?	FM	49.0%
	PM	38.5%
	NM	12.6%
	NA <b>Total</b>	<b>100.0%</b>
Were any ABEs of good quality?	FM	57.7%
	PM	36.9%
	NM	5.4%
	Unable to determine	
	NA <b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
If the ABE quality is Partially or Not Met, what is the most impactful failing?	Asks leading questions	5.6%
	Camera angle or sound impact on clarity of evidence	23.9%
	Interview is too long	19.7%
	Questions do not elicit sufficient information about the allegation	22.5%
	The interview is poorly structured or not properly focused	23.9%
	Other	0.0%
	Covers irrelevant material or another investigation	4.2%
	NA	
<b>Total</b>		<b>100.0%</b>
If the ABE quality is Partially or Not Met, did the charging lawyer ask for a further interview with the victim or witness to address the failing(s)?	Yes	11.3%
	No	14.1%
	Not appropriate (V/W)	54.9%
	Not appropriate (other)	19.7%
	NA	
<b>Total</b>		<b>100.0%</b>
Was the police use of an intermediary appropriate to take evidence from the victim?	Yes - used and was indicated/needed	16.9%
	Yes - not used and not indicated/needed	63.6%
	No - not used but was indicated/needed	13.0%
	Insufficient information provided by the police about the victim's circumstances to assess	6.5%
	NA	
<b>Total</b>		<b>100.0%</b>
<b>First admin triage</b>		
Did the first admin triage accurately identify the standard of the initial police file submission?	Yes - identified it was not acceptable	40.7%
	Yes - identified it was acceptable	29.4%
	No - admin triage did not take place	15.5%
	No - identified as acceptable when it was not	

Question	Answers	Results All cases
	No - identified as not acceptable when it was No - other (please note) NA <b>Total</b>	8.2%  2.1%  4.1%  <b>100.0%</b>
If the initial police file submission was rejected during the first admin triage, what was the most significant thing that was not provided or inadequate?	ABE Checklist Communications evidence or information Forensic SFR or statement Key statement(s) Medical evidence or information including counselling MG3 MG6 series Summary of third party material Other Summary of RLE NA <b>Total</b>	46.4% 8.3% 3.6% 1.2% 6.0% 2.4%  7.1% 3.6% 4.8%  11.9% 4.8%  <b>100.0%</b>
Was the admin triage on first receipt timely?	Yes No NA <b>Total</b>	53.7% 46.3%  <b>100.0%</b>
Did the police supply missing items that had been identified in the first triage rejection?	Yes No NA <b>Total</b>	96.5% 3.5%  <b>100.0%</b>
Did they do so in a timely manner?	Yes No NA <b>Total</b>	65.9% 34.1%  <b>100.0%</b>

Question	Answers	Results All cases
Did the police indicate that they were not going to provide the items identified in the first triage rejection?	Yes	0.0%
	No	100.0%
	NA	
	<b>Total</b>	<b>100.0%</b>
If yes to either 'did police supply missing items' or 'did police indicate they would not supply missing items', was there appropriate action taken on the response from the police to the first triage rejection?	Yes	89.0%
	No - action was taken only when something else came in/happened on file	3.7%
	No - no action taken	
	No - other (please note)	1.2%
	NA	6.1%
	<b>Total</b>	<b>100.0%</b>
<b>Later admin triage</b>		
Did the later admin triage accurately identify the standard of further submissions of material from the police?	Yes - identified they were acceptable	35.9%
	Yes - identified they were not acceptable	21.2%
	No - admin triage did not take place	32.4%
	No - identified as acceptable when they were not	8.8%
	No - identified as not acceptable when they were	0.6%
	No - other	
	NA	1.2%
	<b>Total</b>	<b>100.0%</b>
If the police file submission was rejected during the later admin triage, what was the most significant thing that was not provided or inadequate?	ABE	16.2%
	CCTV	2.7%
	Checklist	2.7%
	Communications evidence or information	2.7%
	Key statement(s)	18.9%
	MG3	5.4%
	MG6 series	10.8%
	Summary of RLE	2.7%
	Summary of third party material	5.4%
	Other (please note)	29.7%
	Forensic SFR or statement	2.7%
NA		

Question	Answers	Results All cases
	<b>Total</b>	<b>100.0%</b>
Was admin triage on later police submissions timely?	Yes	74.8%
	No	25.2%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the police supply missing items that had been identified in later triage rejection?	Yes	97.3%
	No	2.7%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did they do so in a timely manner?	Yes	70.3%
	No	29.7%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the police indicate that they were not going to provide the items identified in later triage rejection?	Yes	2.7%
	No	97.3%
	NA	
	<b>Total</b>	<b>100.0%</b>
If police did supply missing items or indicated they were not going to, was there appropriate action taken on the response(s) from the police to later triage?	Yes	89.2%
	No - action was taken only when something else came in/happened on file	2.7%
	No - no action taken	
	No - other	2.7%
	NA	5.4%
	<b>Total</b>	<b>100.0%</b>
<b>PCD by CPS</b>		
Was there an early consultation/EIA?	Yes	31.6%
	No	68.4%
	<b>Total</b>	<b>100.0%</b>
Was the EIA timely?	Yes	63.3%
	No	36.7%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the EIA add value?	FM	45.6%
	PM	40.5%
	NM	13.9%
	NA	
	<b>Total</b>	<b>100.0%</b>



Question	Answers	Results All cases
Was Counsel instructed to provide advice on charge?	Yes	5.2%
	No	94.8%
	<b>Total</b>	<b>100.0%</b>
If Counsel was instructed, was that warranted by the complexity, seriousness or sensitivity of the case?	Yes	0.0%
	No	100.0%
	NA	
<b>Total</b>	<b>100.0%</b>	
Was Counsel's advice adopted properly?	Yes - after full review by CPS lawyer of the advice and evidence	30.8%
	No - adopted but without review of evidence by CPS lawyer	53.8%
	No - other	7.7%
	No - nothing to suggest it was properly considered	7.7%
	NA	
<b>Total</b>	<b>100.0%</b>	
Did the charging decision apply the right test?	Yes - FCT correct	84.8%
	Yes - THT correct	13.6%
	No - THT should have been FCT	1.6%
	<b>Total</b>	<b>100.0%</b>
Was there evidence that any ABEs were viewed before the pre charge decision was made?	Yes	89.5%
	No	10.5%
	NA	
<b>Total</b>	<b>100.0%</b>	
The CPS decision to charge was compliant with the Code Test.	Yes	98.0%
	No	2.0%
	NA	
<b>Total</b>	<b>100.0%</b>	
Was the decision to charge or NFA timely?	Yes	57.4%
	No	42.6%
	NA	
<b>Total</b>	<b>100.0%</b>	
Were the most appropriate charges chosen?	Yes	93.6%
	No	6.4%
	NA	
	<b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
Did the advice comply with CPS policy on rape and serious sexual offences?	Yes	86.4%
	No	13.6%
	<b>Total</b>	<b>100.0%</b>
The CPS MG3 included proper case analysis and case strategy.	FM	54.4%
	PM	30.8%
	NM	14.8%
	<b>Total</b>	<b>100.0%</b>
If MG3 case analysis and strategy is PM or NM, what was the most impactful failing?	Did not adequately address how the case could be built	17.5%
	Did not identify relevant rape myths and stereotypes and how to address them	7.9%
	Over-emphasised the impact of possible weaknesses or inconsistencies in the victim's account and circumstances	12.3%
	Poor assessment of strengths and weaknesses of the case	17.5%
	Under-emphasised the impact of possible weaknesses or inconsistencies in the victim's account and circumstances	6.1%
	Other (please note)	
	NA	
	<b>Total</b>	<b>38.6%</b>
		<b>100.0%</b>
Was the merits based approach said to be applied in the pre-charge decision?	Yes	4.0%
	No	96.0%
	<b>Total</b>	<b>100.0%</b>
The CPS MG3 dealt appropriately with unused material (UM).	FM	64.4%
	PM	21.3%
	NM	14.2%
	NA	
	<b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
If CPS MG3 handling of UM is PM or NM, what was the main or most significant failing with unused material?	Did not address the impact of disclosable unused on the evidence	34.1%
	Did not address unused material at all	23.5%
	Did not discuss any sensitivity of unused	3.5%
	Did not set appropriate actions in the action plan in relation to unused material	17.6%
	Other (please note)	
	NA	21.2%
	<b>Total</b>	<b>100.0%</b>
Was there a disclosure management document (DMD) where required?	Yes	69.7%
	No	30.3%
	NA	
	<b>Total</b>	<b>100.0%</b>
If there was a DMD, did the police and CPS comply with the requirements for a DMD at the pre-charge stage?	Both complied	25.0%
	Neither complied	5.3%
	Police did not supply info but CPS completed DMD	1.3%
	Police supplied info and CPS did not need to do DMD	47.4%
	Police supplied info but CPS did not complete a DMD	21.1%
	NA	
	<b>Total</b>	<b>100.0%</b>
The CPS MG3 made reference to all relevant applications and ancillary matters.	Yes	43.6%
	No	56.4%
	NA	
	<b>Total</b>	<b>100.0%</b>
If CPS MG3 did not make reference to all relevant applications and ancillary matters, what was the most impactful aspect that the lawyer failed to consider adequately?	Bad character	10.7%
	Hearsay	1.3%
	Restraining order	8.0%
	Special measures	38.7%
	Other preventative orders (eg SHPO)	34.7%
	Other (please note)	6.7%
	NA	
	<b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
Did the charging advice consider the need for an intermediary where appropriate?	Yes	60.0%
	No	40.0%
	NA	
	<b>Total</b>	<b>100.0%</b>
The action plan met a satisfactory standard.	FM	30.5%
	PM	58.2%
	NM	11.3%
	NA	
	<b>Total</b>	<b>100.0%</b>
Were the lawyer's request(s) for the victim's phone and any other digital devices to be searched or downloaded (or other enquiries made of the victim's phone) necessary and proportionate?	Yes - correct request made re V's devices	40.3%
	Yes - request correctly not made re V's devices	25.2%
	No - did not set proper parameters for the request(s)	18.7%
	No - requests made at charge re V's devices that should have been made pre charge	0.7%
	No - requests made re V's devices that were not needed	5.0%
	No - requests not made re V's devices that were needed	5.8%
	No - other	4.3%
	NA	
	<b>Total</b>	<b>100.0%</b>
	Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes - correct request made re other items
Yes - request correctly not made re other items		0.5%
No - did not request items that were needed		2.8%
No - did not set proper parameters for the material requested		7.0%
No - other (please note)		3.3%
No - requested at charge material that should have been requested pre charge		0.5%
No - requested items that were not needed		

Question	Answers	Results All cases
	NA	10.8%
	<b>Total</b>	<b>100.0%</b>
What was the most significant of the material and/or further enquiries referenced in the previous question?	BWV	0.5%
	CCTV	2.8%
	Comms	5.2%
	Crime scene or forensic	7.5%
	D's phone or other digital devices	8.5%
	Education	1.9%
	Family court	1.4%
	Identification	2.8%
	Other (please note)	12.7%
	Other medical or psychiatric	8.9%
	Other third party/expert	
	Possible witnesses	2.3%
	Previous incidents involving D	15.0%
	Previous incidents involving V	4.7%
	Sexual assault referral centre records	5.2%
	Social media	2.3%
	Social Services	2.8%
	Victim credibility	9.9%
	NA	5.6%
	<b>Total</b>	<b>100.0%</b>
What was the next most significant of the material and/or further enquiries referenced?	999	1.0%
	BWV	1.6%
	CCTV	5.8%
	Comms	1.6%
	Crime scene or forensic	6.3%
	D's phone or other digital devices	5.2%
	Education	8.4%
	Family court	0.5%
	Identification	2.1%
	Other (please note)	12.0%
	Other medical or psychiatric	15.2%
	Other third party/expert	
	Possible witnesses	0.5%
		11.0%

Question	Answers	Results All cases
	Previous incidents involving D	4.7%
	Previous incidents involving V	4.7%
	Sexual assault referral centre records	2.1%
	Social media	2.1%
	Social Services	9.4%
	Victim credibility	5.8%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the police challenge the proportionality of CPS requests?	Yes	7.1%
	No	92.9%
	NA	
	<b>Total</b>	<b>100.0%</b>
Were the police right to challenge or not challenge CPS proportionality?	Yes	81.5%
	No	18.5%
	NA	
	<b>Total</b>	<b>100.0%</b>
If the police did challenge CPS proportionality, did the CPS respond appropriately?	Yes - withdrew a disproportionate request	26.7%
	Yes - explained why the request was proportionate	40.0%
	No - did not respond at all	13.3%
	No - did not withdraw or amend a disproportionate request	20.0%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the lawyer set realistic timescales for material and further enquiries?	Yes	67.8%
	No	32.2%
	NA	
	<b>Total</b>	<b>100.0%</b>
Did the police challenge the timescales set in the action plan?	Yes	4.8%
	No	95.2%
	NA	
	<b>Total</b>	<b>100.0%</b>
Were the police right to challenge or not challenge the timescales?	Yes	72.1%
	No	27.9%
	NA	
	<b>Total</b>	<b>100.0%</b>

Question	Answers	Results All cases
If the police did challenge timescales appropriately, did the CPS respond appropriately?	Yes - amended to make the timescale more realistic	40.0%
	Yes - explained why the timescale was realistic	20.0%
	No - did not explain why the timescale was realistic	10.0%
	No - other	
	Yes - other	
	No - did not respond at all	10.0%
	NA	10.0%
	<b>Total</b>	<b>100.0%</b>
Did the charging lawyer identify and feedback to the police any failings with the police file submission that had not already been addressed in triage?	Yes - identified and fed back	71.5%
	No - identified but not fed back	1.5%
	No - not identified and not fed back	26.9%
	NA	
	<b>Total</b>	<b>100.0%</b>
What form did the feedback take?	Action plan	49.5%
	Email	6.5%
	Highlighted in the body of the charging advice but not in action plan	39.8%
	NFQ assessment on CMS	4.3%
	NA	
	<b>Total</b>	<b>100.0%</b>
For CPS charged cases rate the overall quality of the MG3 including action plan.	FM	33.2%
	PM	52.0%
	NM	14.8%
	<b>Total</b>	<b>100.0%</b>
<b>Victims and witnesses</b>		
Did the victim participate in the investigation?	Yes - through to charge	94.7%
	No - never supported a prosecution	1.2%
	No - withdrew after an action plan was given to police but before charging decision made	3.2%
	No - other	0.4%

Question	Answers	Results All cases
	No - withdrew after report but before the police requested charging advice NA <b>Total</b>	0.4%  <b>100.0%</b>
What was the primary reason given for the victim not participating?	The time taken to investigate and/or reach charging decision V decided not to prosecute partner/family member in a DA context V health impacted Other Unable to determine from file NA <b>Total</b>	9.1% 18.2% 27.3% 45.5%  <b>100.0%</b>
Did a refusal by the victim to allow the police access to their phone or other digital devices play any part in the decision to NFA?	Yes No NA <b>Total</b>	17.8% 82.2%  <b>100.0%</b>
Did the refusal by the victim to allow the police access to social media accounts play any part in the decision to NFA?	Yes No NA <b>Total</b>	18.8% 81.3%  <b>100.0%</b>
Did the refusal by the victim to provide consent to third party material play any part in the decision to NFA?	Yes No Unable to determine from file NA <b>Total</b>	8.3% 91.7%  <b>100.0%</b>
Did the reviewing lawyer consider appropriate ways to re-establish the victim's participation or to proceed without it?	Yes No NA <b>Total</b>	63.6% 36.4%  <b>100.0%</b>
The needs and interests of the public were protected through custody and bail decisions, and proper monitoring of CTLs.	FM PM NM NA <b>Total</b>	54.7% 10.0% 35.3%  <b>100.0%</b>



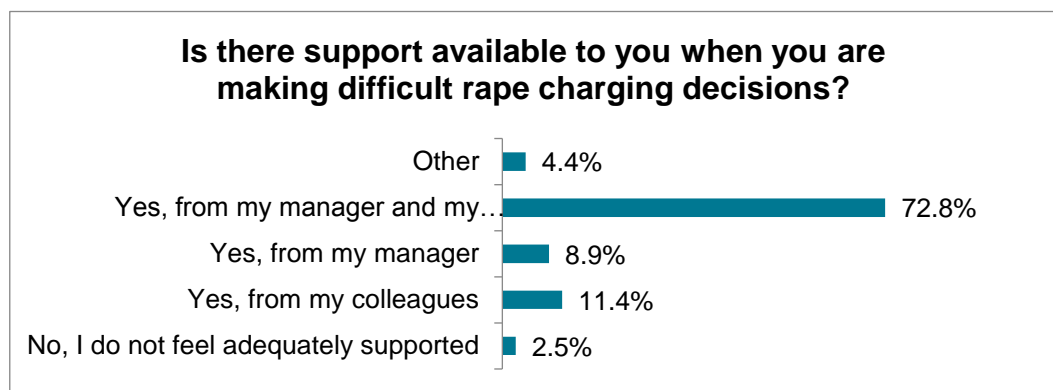
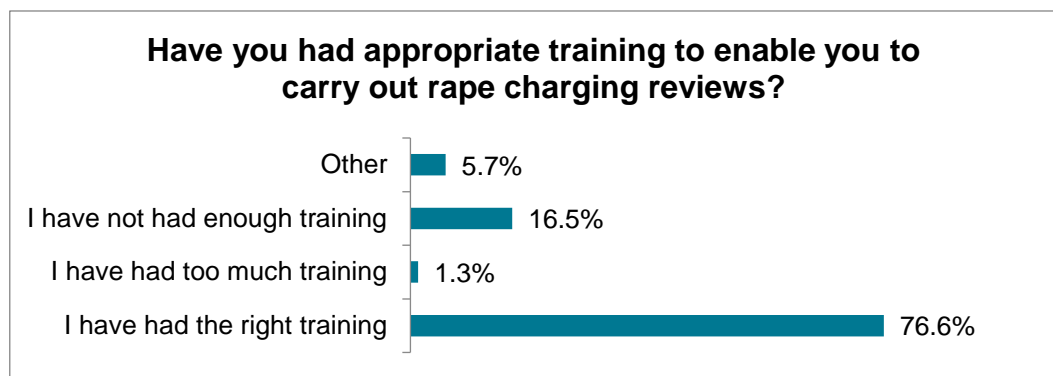
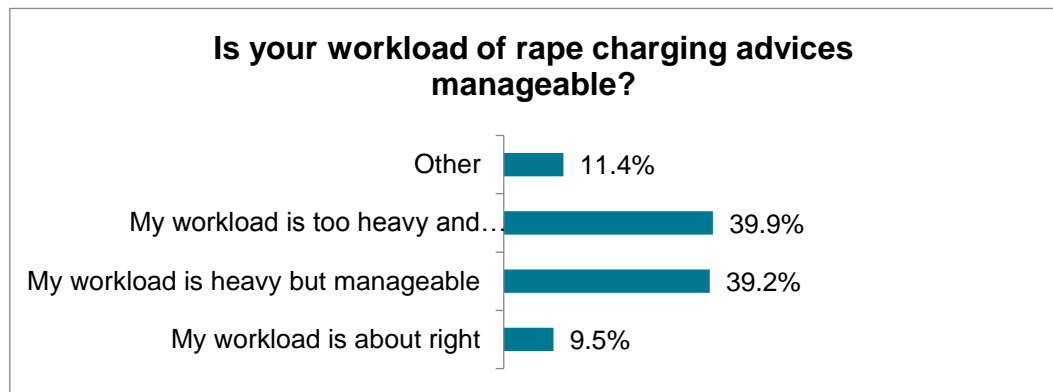
Question	Answers	Results All cases
There was a timely VCL when required.	Yes	62.8%
	No - not done	19.0%
	No - not done on time	18.2%
	NA	
	<b>Total</b>	<b>100.0%</b>
The VCL was of a high standard.	Yes	45.9%
	No - inaccurate	2.0%
	No - insufficient information	12.2%
	No - lack of clarity in explanation	12.2%
	No - lack of empathy	
	No - other (please note)	10.2%
	No - spelling or grammar errors	10.2%
	No - used jargon	2.0%
	NA	5.1%
	<b>Total</b>	<b>100.0%</b>
Did the VCL refer to the victim's right to review where appropriate?	Yes	100.0%
	No	0.0%
	NA	
	<b>Total</b>	<b>100.0%</b>
<b>Overall quality</b>		
Has the time taken by the police to investigate, submit for a charging decision and carry out actions has an impact on the outcome?	Yes	6.7%
	No	93.3%
	Unable to determine from file	
	<b>Total</b>	<b>100.0%</b>
The lawyer or team exercised sound judgement and grip throughout the case.	Excellent	2.0%
	Good	43.2%
	Fair	40.4%
	Poor	14.4%
	<b>Total</b>	<b>100.0%</b>
The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	FM	68.4%
	PM	24.8%
	NM	6.8%
	<b>Total</b>	<b>100.0%</b>
Would the inspector have made the same decision on charge or NFA as the charging lawyer?	Yes	94.8%
	No	5.2%
	<b>Total</b>	<b>100.0%</b>

# **Annex D**

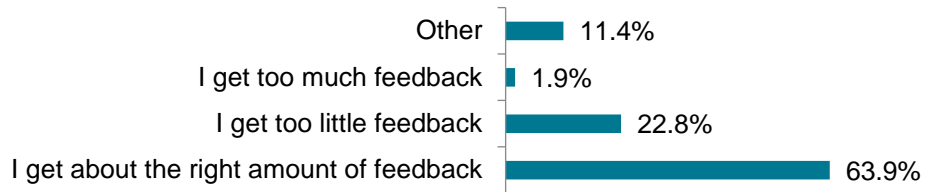
## **Survey results**

- **Lawyers**
- **Managers**

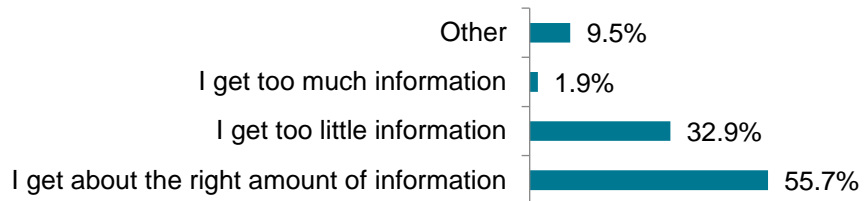
## Lawyers' survey results



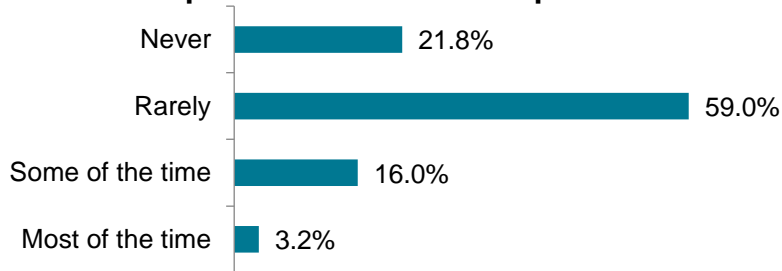
**Do you get sufficient feedback from your managers on the decisions you are making and advice you are giving in rape pre-charge cases?**



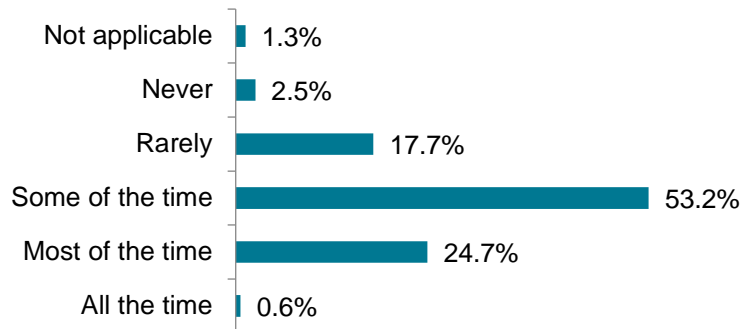
**Do you get sufficient information about good practice and lessons to be learned from the RASSO team's work on rape cases?**



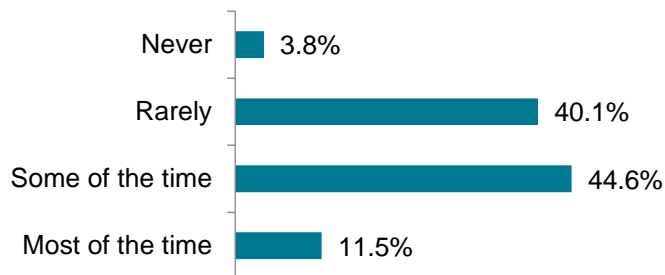
**Do the police provide sufficient evidence and other information to enable you to provide charging advice for rape cases at the first request?**



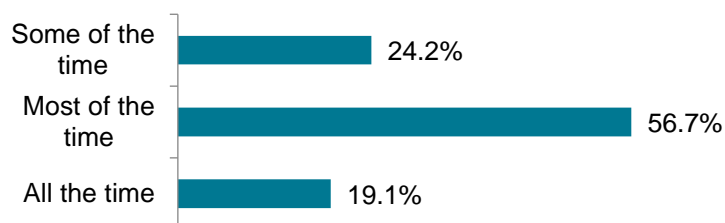
**When you set an action plan in rape cases, do police then supply the right evidence and other information?**



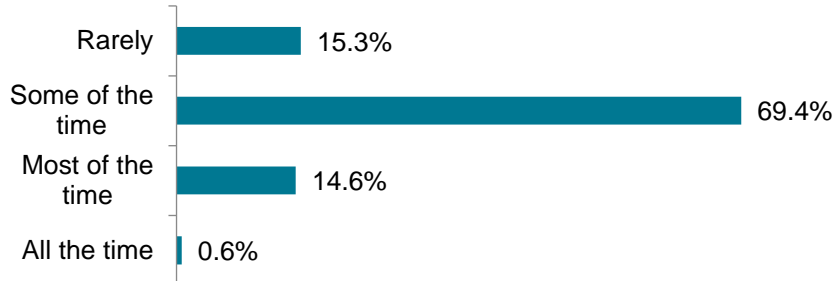
**Do the police respond in a timely way, i.e. within the timescales you set, to your action plans or other requests in rape cases?**



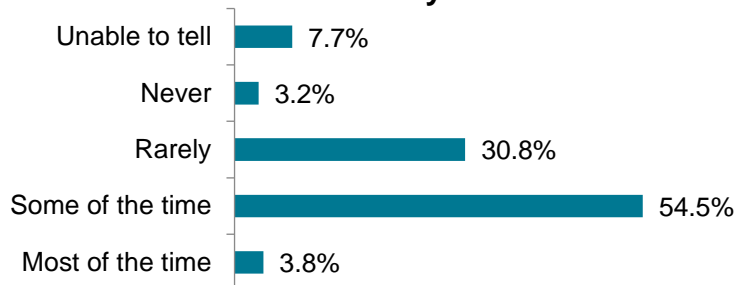
**Are there delays in police investigations, in rape cases, before cases reach you for a charging decision or once you have set an action plan?**



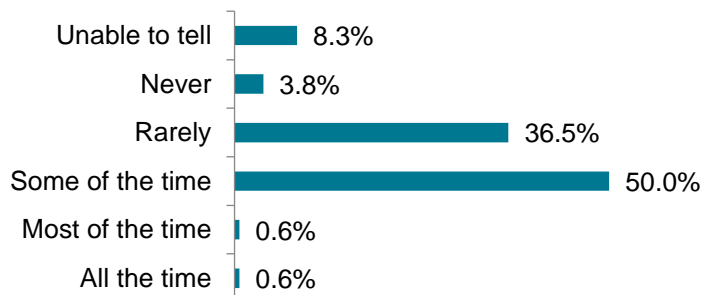
**Do any delays in rape cases appear to be warranted by the complexity of the case, the type of evidence that needs to be gathered or other features of the investigation?**



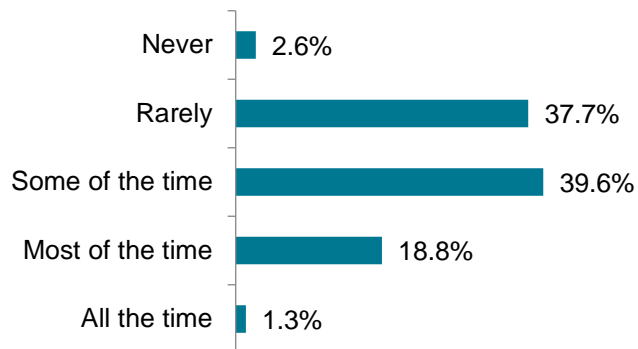
**In those cases, where there has been delay in the police investigation in rape cases, has it impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of a conviction is less likely?**



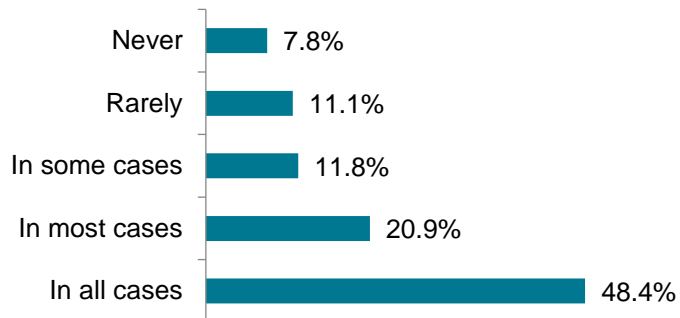
**In those cases, where there has been delay in the police responses to action plans in rape cases, has it impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of a conviction is less likely?**



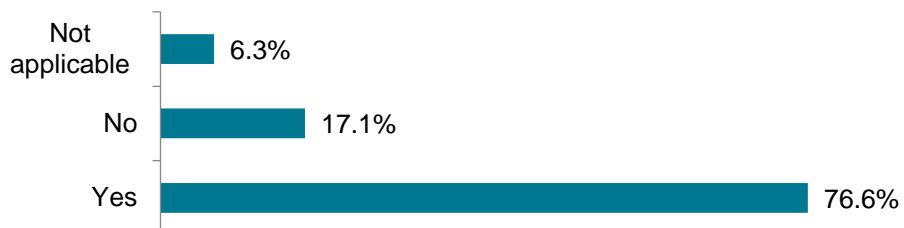
**Is early investigative advice in rape cases being used effectively by the police and CPS in your experience?**



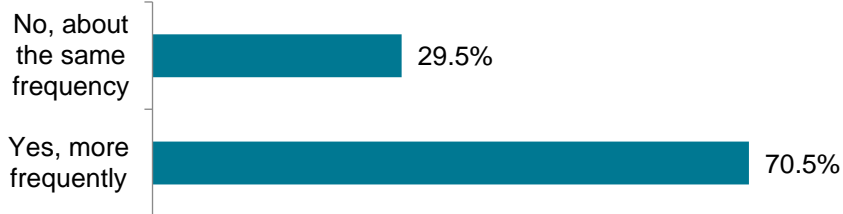
**Do you complete a disclosure management document pre-charge in rape cases?**



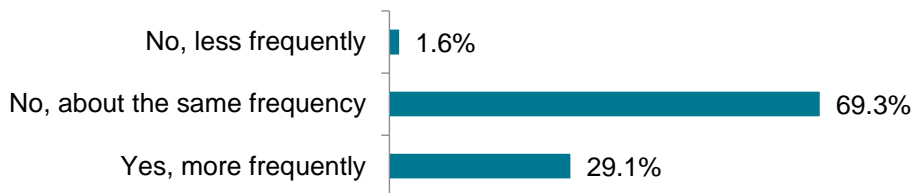
**Are case management panels held pre-charge in appropriate rape cases?**



**Pre-charge, in rape cases, are you making more frequent requests of the police since January 2018 for evidence relating to phones, other digital devices and social media information?**



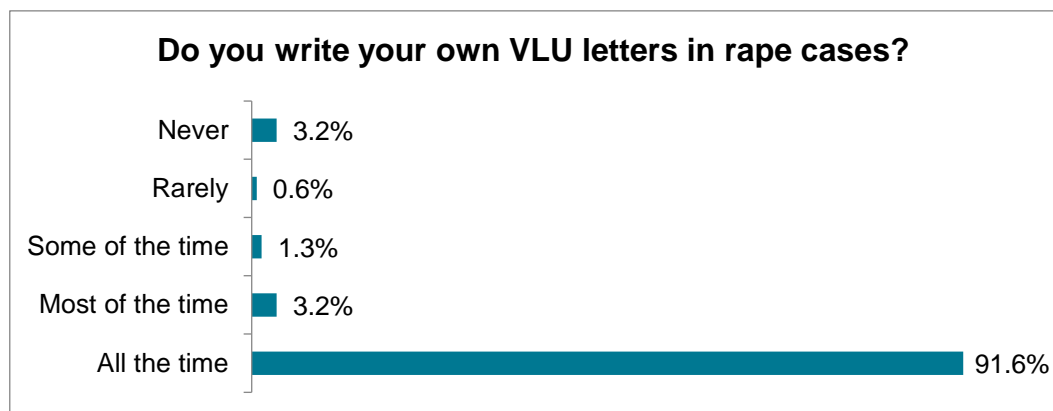
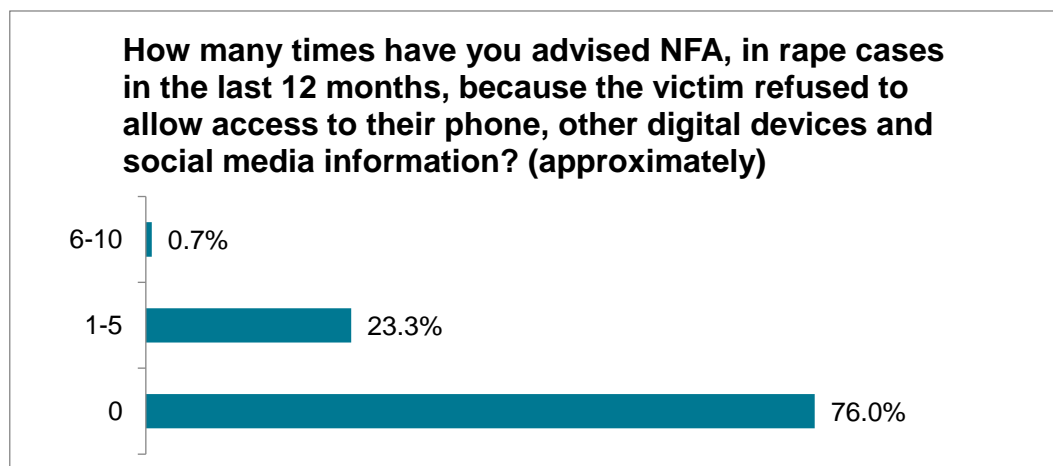
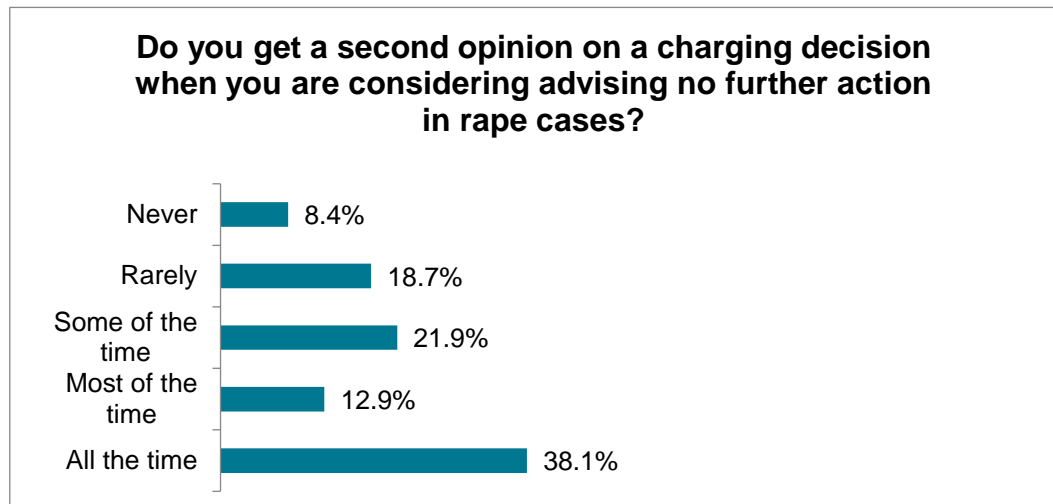
**Pre-charge, in rape cases, are you experiencing more frequent refusals by the victim since January 2018 to allow access to their phone, other digital devices and social media information?**



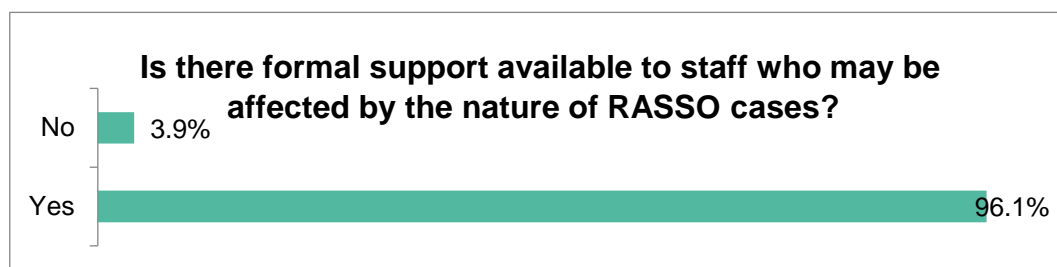
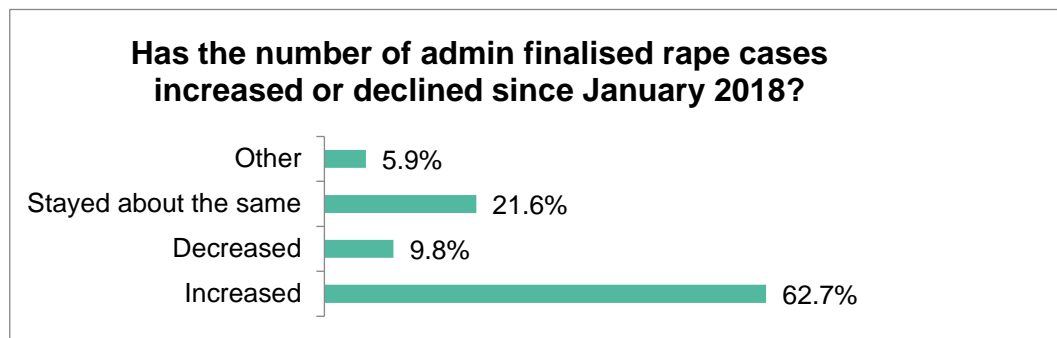
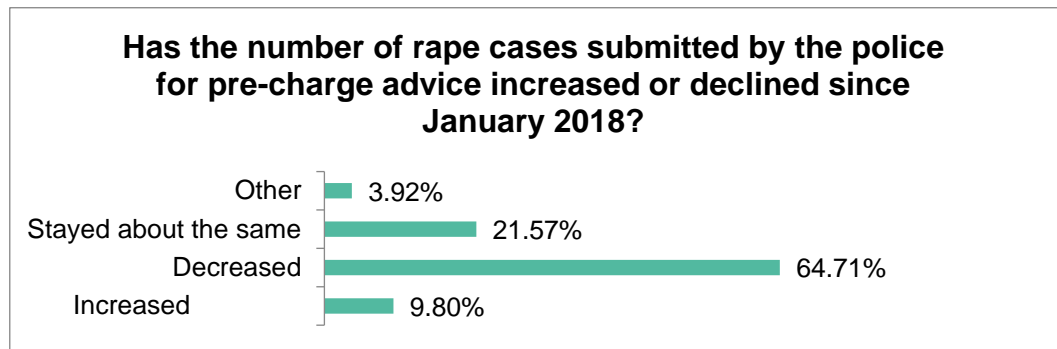
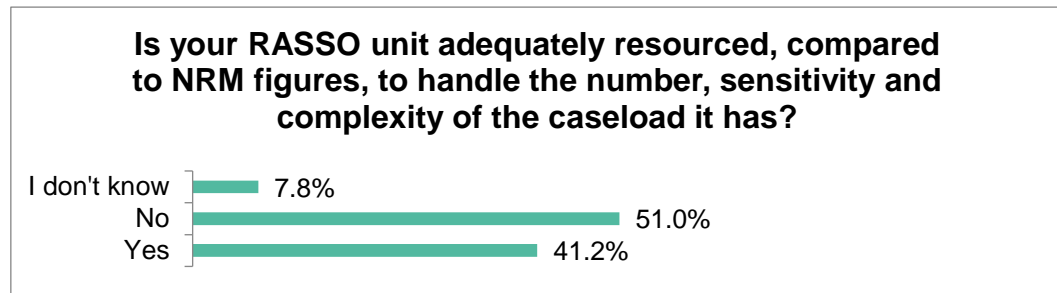
**How many times have you held a pre-trial witness interview, in rape cases in the last 12 months, before you make your pre-charge decision? (approximately)**



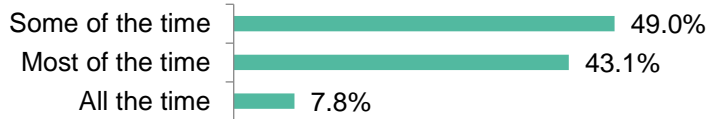




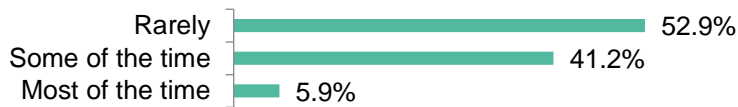
## Managers' survey results



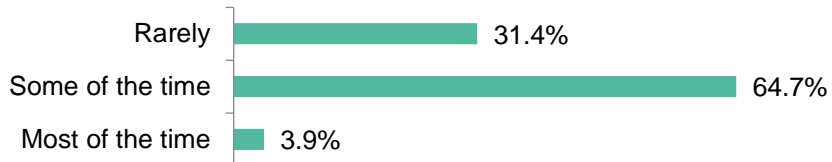
**Do performance discussions and quality assurance lead to improved quality and timeliness of decisions in rape cases?**



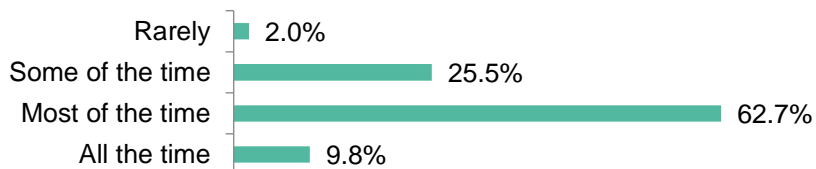
**Do the police provide sufficient evidence and other information to enable lawyers to provide charging advice at the first request or in response to action plans in rape cases?**

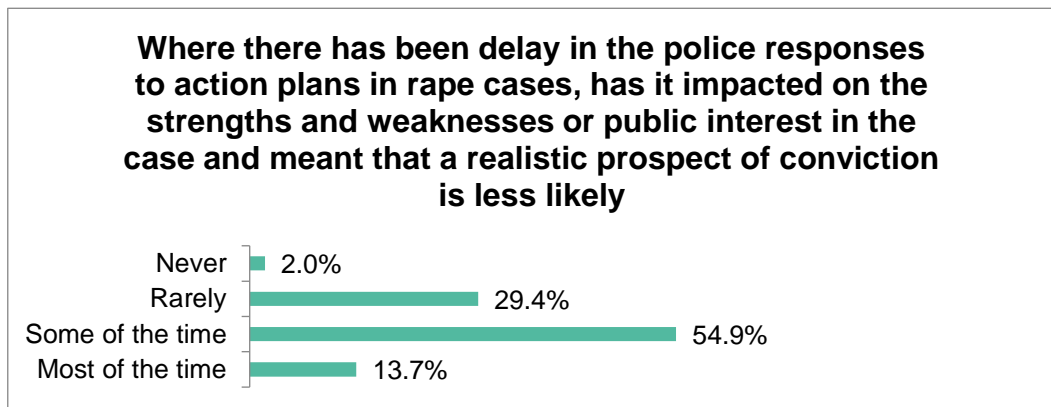
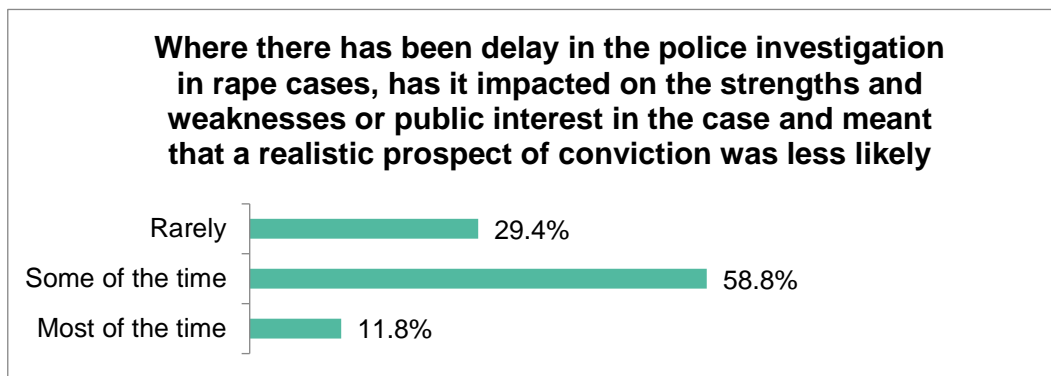
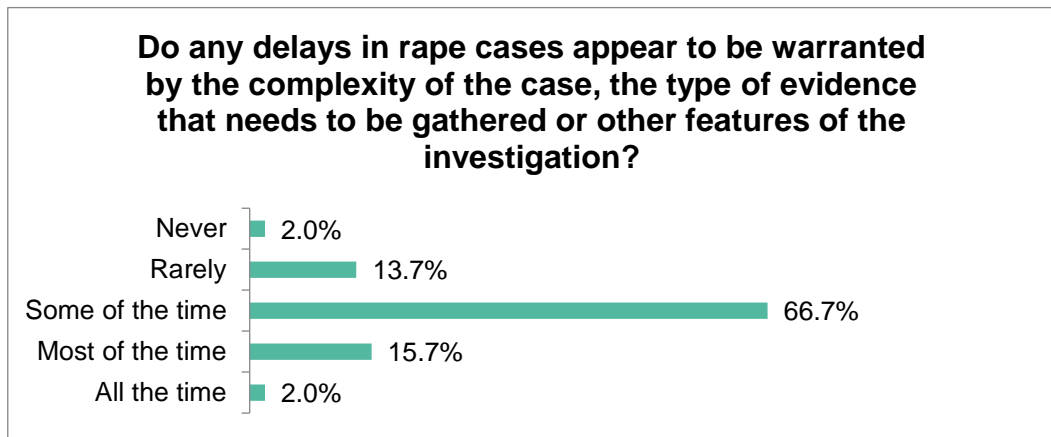
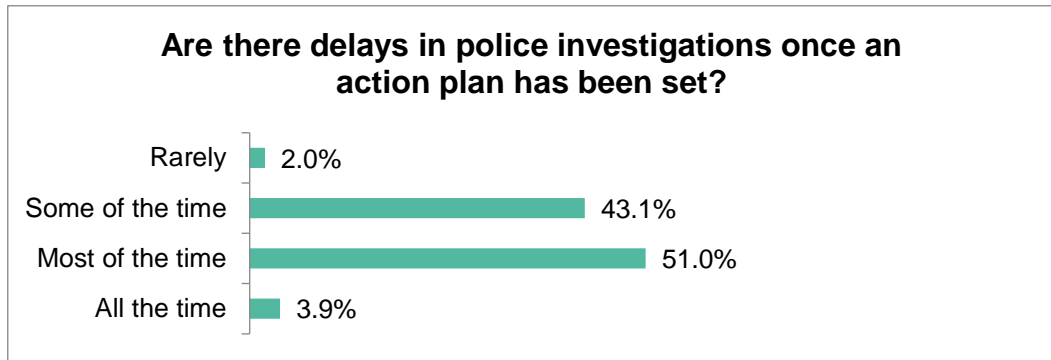


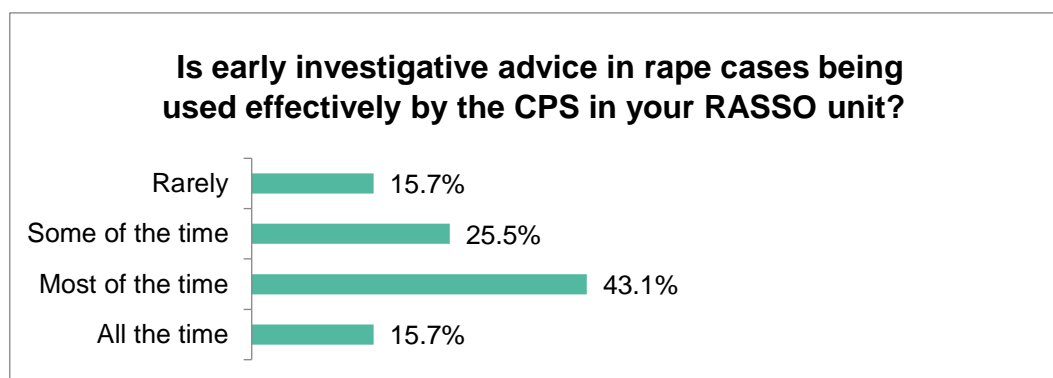
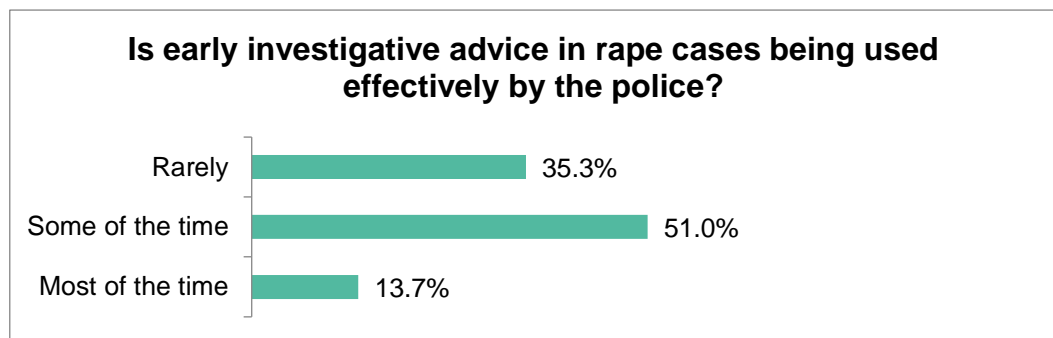
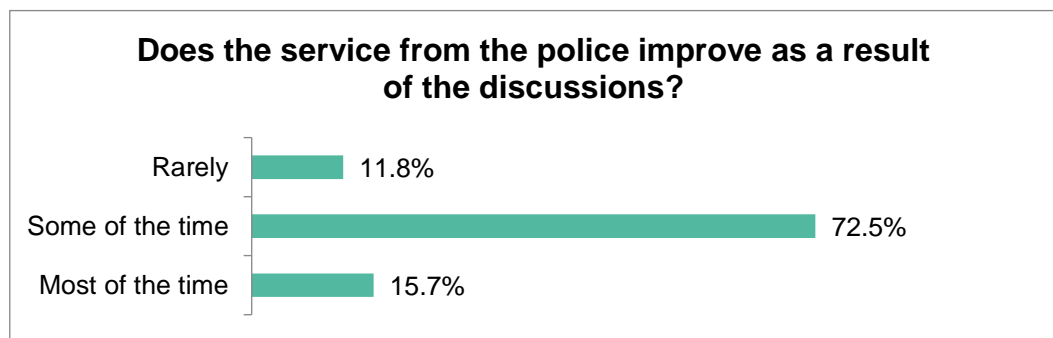
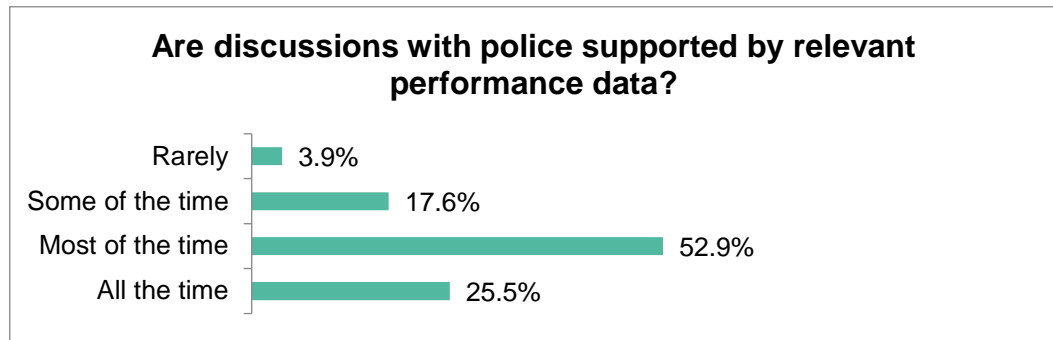
**Do the police respond in a timely way to action plans or other requests in rape cases?**

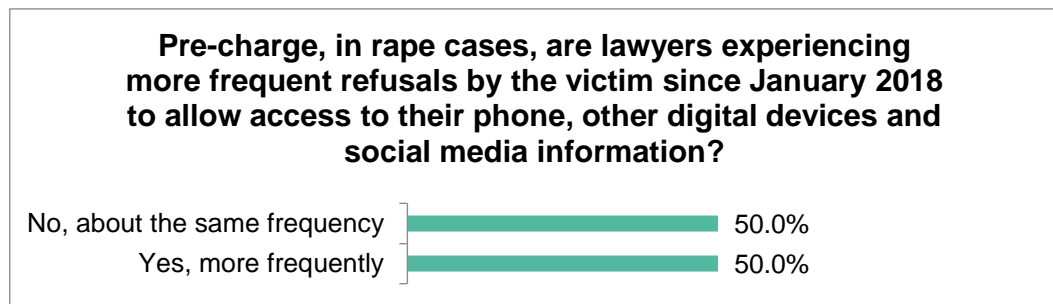
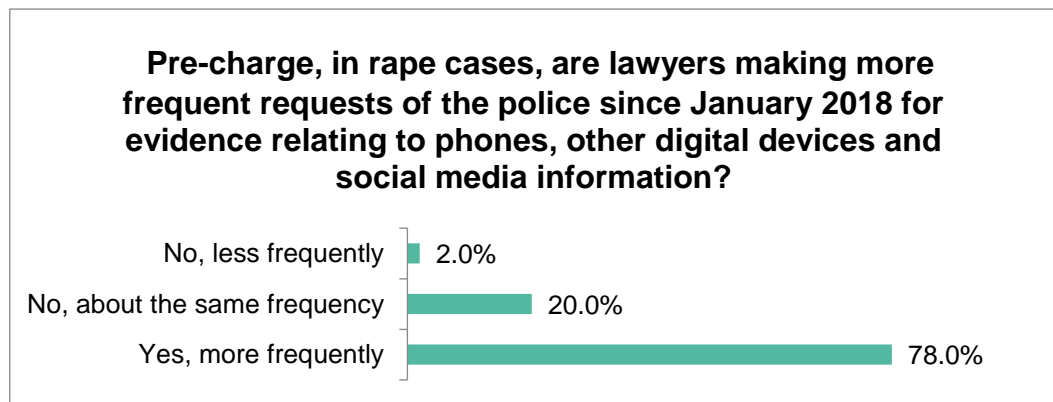
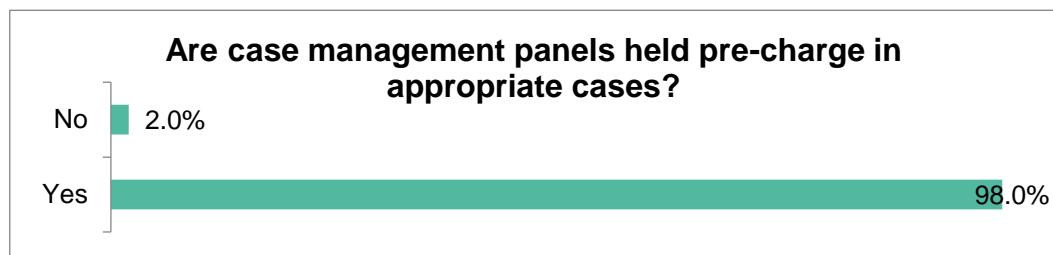
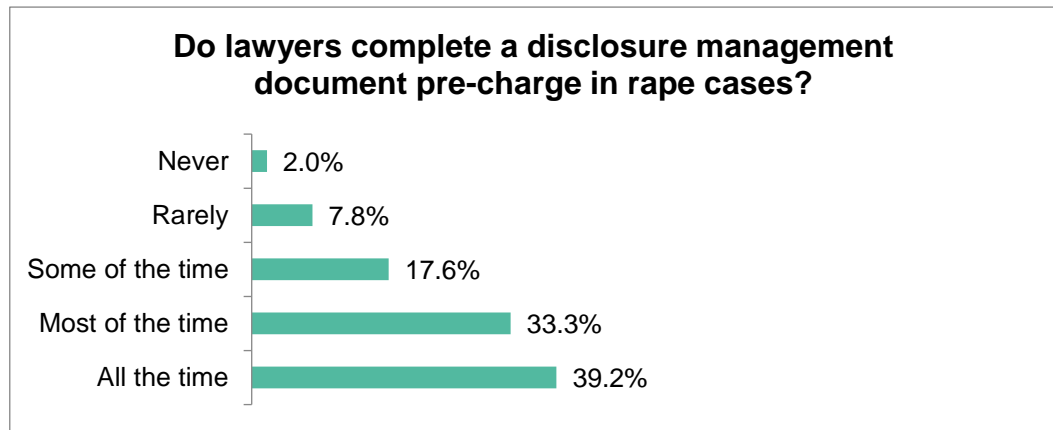


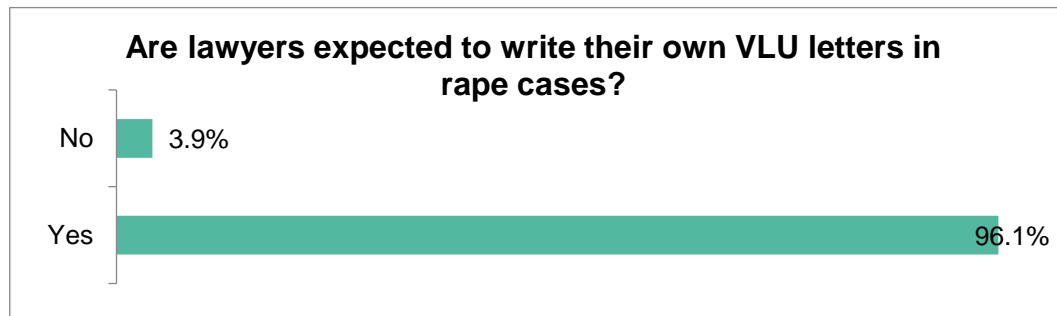
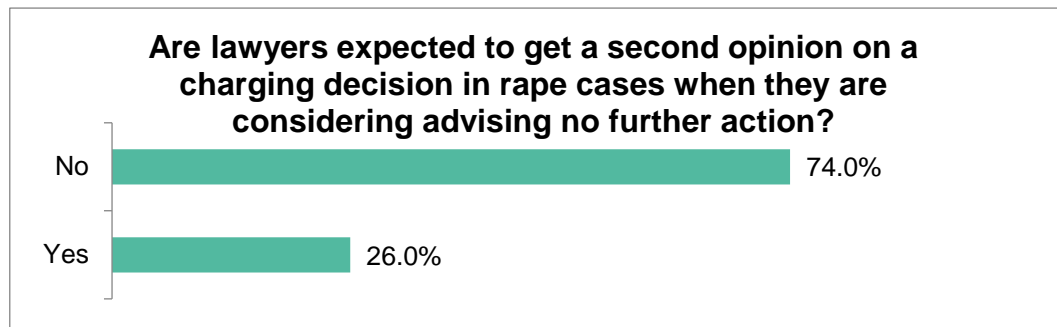
**Are there delays in police investigations before rape cases reach the RASSO team for a charging decision?**











# Annex E

## CPS performance data



## England and Wales, police recorded rapes

	Year ending March 2019	Year ending March 2018	Year ending March 2017
Offences initially recorded	63,666	57,938	43,741
Transferred or cancelled records <sup>29</sup>	5,009	3,961	2,591
Offences recorded	58,657	53,977	41,150
Total transferred or cancelled records as % of offences initially recorded	8%	7%	6%

Source: Home Office, Crime Outcomes reports for years ending March 2017, 2018 and 2019

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<sup>29</sup> Transferred or cancelled records were previously referred to as “no crime”.

## England and Wales, police rape referrals to CPS for charging decision

	Year ending March 2019	Year ending March 2018	Year ending March 2017
Total pre-charge receipts from police	3,375	4,370	4,595
Total legal pre-charge decisions by CPS <sup>30</sup>	5,114	6,012	6,611
Proceeded to prosecution (charged)	1,758	2,822	3,671
No further action (NFA)	1,876	1,851	2,145
Admin finalised <sup>31</sup>	1,465	1,307	761
Other finalisation	15	32	34

Source: CPS

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<sup>30</sup> Pre-charge decisions completed by the CPS will be a total of those referred by the police (flagged by the police and CPS at registration) together with any flagged by CPS prosecutors and administrators at a later date, but before the final pre-charge decision is completed. The total pre-charge decisions data will be based on the date the charging advice was completed and provided to the police. Therefore, 2018–19 data may include pre-charge decisions on cases referred by the police to the CPS in 2018–19, 2017–18 or earlier. This explains why the volumes of pre-charge decisions are larger than the volume of pre-charge receipts, within the same time period.

<sup>31</sup> Cases are administratively finalised where the police have not responded to an action plan or where the police have decided not to pursue the investigation following early advice from prosecutors. A case which is administratively finalised will not always be at an end. An administratively finalised case which has not been categorised as "no further action" by the police could be reopened by the CPS if the police provided a response to the action plan.

## England and Wales, CPS rape outcomes<sup>32</sup>

	Year ending March 2019	Year ending March 2018	Year ending March 2017
Post-charge finalisations (caseload)	3,034	4,517	5,190
Convictions	1,925 (63.4%)	2,635 (58.3%)	2,991 (57.6%)
Cases which were contested	1,468	2,255	2,731
Convictions after contest	833 (56.7%)	1,112 (49.3%)	1,264 (46.3%)
Acquittals/dismissed after trial	635	1,143	1,467
Prosecutions dropped	426	659	642
Guilty pleas	1,092 (36.0%)	1,522 (33.7%)	1,727 (33.3%)

Source: CPS

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<sup>32</sup> Number of cases which were contested and number of non convictions after contest exclude any cases which were mixed pleas. Number of guilty pleas includes mixed plea cases. The remaining cases which make up the total number of post-charge finalisations (caseload) are cases which have been admin finalised. Post-charge administratively finalised cases are those where a prosecution cannot proceed because a defendant has failed to appear at court and a bench warrant has been issued for their arrest; or the defendant has died, or is found unfit to plead; or where proceedings are adjourned indefinitely. If a bench warrant is executed the case may be reopened.

# **Annex F**

## **Glossary**

### **Achieving Best Evidence (ABE)**

Ministry of Justice guidance issued in 2011 for how to interview victims and witnesses and make use of special measures in place to help a witness at court. The acronym ABE is now commonly used to refer to the video-recorded interview of the complainant.

### **Action plan**

A list of actions that the CPS lawyer has asked the police to complete before the lawyer can make a decision about whether to advise charging the suspect. Examples of frequently occurring actions include obtaining a statement from a witness, obtaining medical records, or providing a list of previous convictions for a witness.

### **Actus reus and mens rea**

To prove a crime, the prosecution needs to prove all the actions, conduct, consequences or circumstances of an offence (the actus reus) and the guilty mind (mens rea). For example, for the prosecution to prove an offence of actual bodily harm (committed when a person intentionally or recklessly assaults another, thereby causing actual bodily harm), they must prove that there was an assault of another and that actual bodily harm was caused (the actus reus) and that the person assaulting the other was doing so intentionally or recklessly (mens rea).

### **Admin finalised**

Describes cases that have had an administrative step taken to put them into abeyance on the CPS case management system. This is a misleading term because it suggests the cases have been concluded. Many cases that have been admin finalised are in fact still under investigation but awaiting some further evidence or information from the police, or for something else to happen, such as the suspect being located and arrested. Admin finalised cases would be better described as 'police awaiting further action'.

### **Adverse case**

Where a case ends in the CPS dropping the charges, or the court orders that it cannot continue.

### **Applications or ancillary matters**

Matters about which the prosecution can ask the court to make orders – for example, to admit a piece of evidence that would otherwise not be allowed, to allow a witness to give their evidence from a different venue by video-link, or to make orders at sentencing preventing the defendant from contacting the victim.

### **Area Assurance Programme (AAP)**

A series of inspections of all 14 Areas of the CPS, which HMCPsi carried out between 2016 and 2019. [The reports are available from our website](#)<sup>33</sup>.

### **Attorney General**

The chief legal advisor to the Government, who also oversees the Crown Prosecution Service, the Serious Fraud Office, HMCPsi and the Government Legal Department.

### **Attrition**

The number of cases that fall out of the system between two set points in the process, such as between a report being made to the police and the police referring a case to the CPS, or between charge and conviction.

### **Case management panel (CMP)**

A discussion held between the lawyer and their manager(s), or between managers, to discuss progress on a case and determine what other work needs to be undertaken. The panel may review whether the decision to charge was correct or, if there has been a significant change in the case, whether it still ought to proceed.

### **Case management system (CMS)**

An IT system for case management used by the CPS, which records most of the details of cases and provides management information and data. Through links with police systems, the case management system receives electronic case material. Such material is intended to progressively replace paper files.

### **Charge**

The process by which the allegation is put to a suspect by the police at the police station, and also the formal record of the allegation. The charge is then sent to the court, which sets the first hearing date for the case. Another common way of notifying the defendant that they are being accused of a criminal offence is by a summons, which is usually sent through the post.

### **Chief Crown Prosecutor (CCP), Deputy Chief Crown Prosecutor (DCCP), Senior District Crown Prosecutor (SDCP), District Crown Prosecutor (DCP)**

Management roles in the CPS in descending order of seniority. The Chief Crown Prosecutor is the legal head of a CPS Area.

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<sup>33</sup> [www.justiceinspectors.gov.uk/hmcpsi/](http://www.justiceinspectors.gov.uk/hmcpsi/)

### **Code for Crown Prosecutors**

A public document, issued by the Director of Public Prosecutions, which sets out the general principles CPS lawyers should follow when they make decisions on cases. It contains a test for establishing whether a prosecution should take place, which has two stages: evidential and public interest. This means that a case should only proceed where there is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to prosecute the suspect.

### **Consent**

Permission for something to happen or agreement to do something. Often in sexual offences, consent to the activity means that the suspect is not acting unlawfully. Consent in sexual offences is complicated. [The CPS has published information on consent on its website.](#)<sup>34</sup>

### **Consultation**

When the police ask the CPS to give advice about whether there is enough evidence to prosecute and whether a prosecution is in the public interest. Consultations may be by phone, in person or by the police sending the papers electronically and the CPS lawyer reviewing them.

### **Conviction rate**

The proportion of the cases charged by the CPS resulting in the defendant pleading or being found guilty.

### **Counsel**

A barrister who has been asked to advise on a case and/or present it at court.

### **CPS Direct (CPSD)**

The CPS Area that provides charging decisions on priority cases, mostly out of office hours. It enables the CPS to provide charging decisions at any time of the day or night, all year round.

### **Crown Prosecution Service (CPS)**

The main public agency for conducting criminal cases in England and Wales, responsible for: prosecuting criminal cases investigated by the police and other investigating bodies; advising the police on cases for possible prosecution; reviewing cases submitted by the police; determining any charges in more serious or complex cases; preparing cases for court; and presenting cases at

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<sup>34</sup> *What is consent?*; CPS  
[www.cps.gov.uk/sites/default/files/documents/publications/what\\_is\\_consent\\_v2.pdf](http://www.cps.gov.uk/sites/default/files/documents/publications/what_is_consent_v2.pdf)

court. It has been operating since 1998 and is headed by the Director of Public Prosecutions.

### **Director of Public Prosecutions (DPP)**

The head of the CPS, with personal responsibility for its staff and the prosecutions it undertakes every year. The role was created in 1879, and the current holder is Max Hill QC.

### **Director's Guidance on Charging**

Guidance issued by the Director of Public Prosecutions to the CPS and police. It sets out the arrangements for the joint working of police officers and prosecutors during the investigation and prosecution of criminal cases.

### **Disclosure**

The criminal law (Criminal Procedure and Investigations Act 1996) lays down specific steps the police must take to retain and record information, documents or other material that is relevant to an investigation but which is not going to be part of the prosecution case (which is collectively called the 'unused material'). The police must reveal relevant unused material to the CPS, who then have to disclose to the defence anything that undermines the prosecution case or assists the defence.

### **Disclosure champion**

A person in each CPS Area nominated to lead on matters relating to disclosure, including giving help and support to colleagues.

### **Domestic abuse and domestic violence**

Domestic abuse is abuse that occurs in relationships or between family members. Domestic violence is one type of domestic abuse, but domestic abuse also includes other types, such as emotional abuse (like controlling behaviour, isolating and belittling) or threats and intimidation.

### **Drip-feed**

In the context of this report, when the CPS lawyer sets a number of actions for the police to carry out, and the police send back the results as they become available rather than waiting until everything is complete. It could also be where the CPS lawyer sets actions for the police, and gets the results, then sets more actions that could have been set at the outset.

### **Early investigative advice (EIA)**

Where a CPS lawyer provides guidance and advice in serious, sensitive or complex cases, or any case where a police supervisor considers it would be of



assistance. The advice is meant to be given at a very early stage, to help decide what evidence will be required to support a prosecution or to decide if a case can proceed to court.

### **Finalisation code**

Where a case is complete, it has to be marked as finished on the CPS case management system with a finalisation code, which indicates how it came to end. For example, there is a code for where a witness failed to attend court and the case could not proceed without them, or where the CPS has decided not to proceed because the defendant has pleaded guilty to other matters and the pleas are acceptable.

### **Flagged and rape-only flagged**

Cases on the CPS case management system have notifications (called flags) to indicate a particular feature of the case, such as rape, racially aggravated offences or media interest. A rape-only flagged case is one that only has a flag for rape and does not also have flags for child abuse or domestic abuse.

### **Full Code test and threshold test**

Two types of test for determining whether a case should proceed, as set out in the Code for Crown Prosecutors. The full Code test should be applied where the suspect is not in police custody. The threshold test is used where the suspect is in custody and enquiries are not complete, but the police will be asking the court to hold the suspect in custody after charge.

### **Gatekeeper**

Someone in a police force who checks the documents prepared by the case officer and makes sure they are all there and meet the standard required for them to be submitted to the CPS. Not all police forces have gatekeepers.

### **Grip**

What needs to happen on a case for it to be managed effectively and efficiently. It includes, but is not limited to:

- making sound decisions at the right stages in the case
- building a strong case by working with the police to get the right evidence
- weighing up the impact of any unused material (see *Disclosure*)
- taking account of victims' and witnesses' needs

- preparing the prosecution case and sending it to the court and defence in good time for them to play their part.

### **Her Majesty's Crown Prosecution Service Inspectorate (HMCPsi)**

Set up in 2000, HMCPsi inspects the work carried out by the CPS and other prosecuting agencies. The purpose of our work is to enhance the quality of justice and make an assessment of prosecution services that enables or leads to improvement in their efficiency, effectiveness and fairness.

### **Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)**

Established in 1856, HMIC (as it was then) oversees, inspects and reports upon the efficiency and effectiveness of all Home Office police forces, as well as other forces and agencies by invitation. From 2017, it extended its responsibility to the inspection of fire and rescue services in England, and became HMICFRS.

### **High-weighted measures**

The data the CPS thinks is most important when analysing its own performance. The high-weighted measures currently in use include, for example, the number of cases dropped at third or subsequent hearings and the number of guilty pleas at first hearing.

### **Independent sexual violence advisor**

A person who is trained to provide emotional and practical support to survivors of rape, sexual abuse and sexual assault who have reported to the police or are considering reporting to the police.

### **Individual quality assessment (IQA)**

The process the CPS uses to assess casework done by a prosecutor on a case or the advocate at court. This is a set of questions, which the manager goes through, covering the full range of work that might need to be done. The process calls for feedback to be provided to the prosecutor or advocate, and for themes identified by managers to feed into improvement work across the Area.

### **Intermediary**

An independent communication specialist who assists children and vulnerable adults at police interviews and trials, helping to improve the quality of their evidence.

### **Level of ambition**

The level of performance the CPS would like to reach in some of its performance measures (see *High-weighted measures*).

### **Manual of Guidance Forms (MG3, MG6)**

Standard forms included in the police and CPS manual of guidance for how the police should build a file to send to the CPS. The MG3 is for the police to summarise the case, and for the CPS to record its charging decision. The MG6 series of forms relates to unused material (see *Disclosure*).

### **Mayor of London's Office for Policing and Crime (MOPAC)**

Established in 2012 to oversee the Metropolitan Police. MOPAC and the London Victims' Commissioner published a report in July 2019 which analysed key characteristics and outcomes for 501 rapes reported to the police in April 2016. We have used some of this data with the kind permission of the London Victims' Commissioner and MOPAC.

### **Merits based approach**

The Divisional Court coined this phrase when considering what approach the prosecutor should take in deciding if there were a realistic prospect of conviction. The court said the prosecutor "should imagine himself to be the fact-finder and ask himself whether, on balance, the evidence was sufficient to merit a conviction taking into account what he knew about the defence case".

### **Myths and stereotypes**

A myth is a commonly held belief, idea or explanation that is not true, and a stereotype is a widely held, but fixed and oversimplified, image or idea of a particular type of person or thing. Historically, the successful prosecution of rape cases has been hampered by myths and stereotypes, such as "it can't be rape if the victim didn't fight back", "it's not rape if the victim didn't report it immediately", or "sex workers can't be raped". [The CPS has guidance on common myths on its website](#)<sup>35</sup>.

### **Narrowing the justice gap (NTJG)**

A Government initiative of public service agreements introduced in 2002–03 aimed at narrowing the justice gap – in other words, reducing the difference between the number of offences recorded by the police and the number of offences resulting in a caution, conviction or other successful disposal.

### **National Criminal Justice Board (NCJB)**

Brings together senior leaders from across the criminal justice system, including the police, CPS, courts service, judiciary, prisons and probation. The Board

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<sup>35</sup> *Rape and sexual offences – chapter 21: societal myths*; CPS [www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-21-societal-myths](http://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-21-societal-myths)

works to set cross-system priorities and ensure these are understood and implemented<sup>36</sup>.

### **National Disclosure Improvement Plan (NDIP)**

A plan released in January 2018 by the CPS, the National Police Chiefs' Council and the College of Policing. It set out the actions the three organisations planned to take to improve how the criminal justice system deals with disclosure. Phase two was published in November 2018, with the purpose of embedding the improvement measures introduced under Phase 1 and ensuring that the changes were having the intended effect in the police and CPS.

### **No further action (NFA)**

When a criminal allegation has been reported to the police, the police may decide at any stage during an investigation that there is insufficient evidence to proceed, so they will take no further action. Alternatively, they may refer a case to the CPS who may advise the police that no further action should be taken, either because there is not enough evidence or because a prosecution is not in the public interest.

### **Non-recent allegations**

Allegations of criminal offending that occurred some time ago. For the purposes of this report, we used 5 June 2013 as the date before which offences were non-recent for cases in our sample from 2018–19, and 5 June 2009 for cases we examined from 2014–15.

### **Offences brought to justice (OBTJ)**

The total number of convictions, cautions and other disposals, such as where the court takes an offence into account when sentencing for another, usually more serious, matter. Targets for OBTG were set by the Government under its narrowing the justice gap initiative.

### **Out of court disposals**

Diversions from charge such as cautions, penalty notices, youth reprimands or warnings.

### **Police file submission**

When the police send a set of papers to the CPS to consider charge, or after charge, for the trial.

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<sup>36</sup> For more information about the National Criminal Justice Board, see [www.gov.uk/government/groups/criminal-justice-board](http://www.gov.uk/government/groups/criminal-justice-board)

### **Pre-trial witness interview**

An interview with a witness conducted by a prosecutor before the trial. It was introduced first in December 2007 in pilot Areas, and the national Code of Practice was signed by the Director in February 2008. The guidance sets out that the purpose of a pre-trial witness interview is threefold: to allow the prosecutor to assess the reliability of the witness; to assist the prosecutor in understanding complex evidence, and to explain the criminal process.

### **Rape**

Rape is a crime under section 1 or section 5 of the Sexual Offences Act 2003.

*Section 1: A person (A) commits an offence if—*

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

*Section 5: A person commits an offence if—*

- a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and*
- b) the other person is under 13.*

### **Rape and serious sexual offences (RASSO) units**

Units composed of specialist rape prosecutors and other members of the team, organised by the CPS to build and share experience.

### **Reasonable lines of enquiry**

When conducting an investigation, the Code of Practice on disclosure says that the police investigator “should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances”. [The CPS has issued guidance on reasonable lines of enquiry and communications evidence](#)<sup>37</sup>.

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<sup>37</sup> *A guide to “reasonable lines of enquiry” and communications evidence*; CPS; July 2018 [www.cps.gov.uk/legal-guidance/disclosure-guide-reasonable-lines-enquiry-and-communications-evidence](http://www.cps.gov.uk/legal-guidance/disclosure-guide-reasonable-lines-enquiry-and-communications-evidence)

### **Rotation policy**

A policy for moving people out of rape and serious sexual offences units after they had been in the unit for five years. This was to ensure that other prosecutors had a chance to join and build specialist skills, and to refresh the skills of prosecutors who had been in the unit for a long time and may have become stale at other aspects of CPS work. Five-year rotation is no longer mandatory.

### **Sanction detections**

A sanction detection occurs when:

- a crime has been committed and reported to the police, who have recorded it
- a suspect has been identified and made aware of the fact
- the CPS evidential test is satisfied
- the victim has been informed that the offence has been detected
- the suspect has been charged or reported for summons, or the offence has been taken into consideration when an offender is sentenced, or the suspect has been dealt with by way of an out of court disposal.

Non-sanction detections are where offences are counted as cleared, but where no further action is taken (for example, where the CPS advises that a prosecution is not in the public interest).

### **Service Prosecuting Authority**

Formed in 2009 by combining prosecuting agencies for the Army, Navy and Royal Air Force, the Service Prosecuting Authority initiates and conducts prosecutions in criminal cases and offences contrary to military discipline.

### **Sexual Offences Act 2003<sup>38</sup>**

The Government's response to recommendations made by two review teams and a subsequent public consultation for reforms to the law on sexual offences, and for strengthening measures to protect the public from sexual offending.

### **Successful outcome**

Where a prosecution concludes in a guilty plea or conviction after trial.

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<sup>38</sup> *Sexual Offences Act 2003*; UK Government; 2003  
[www.legislation.gov.uk/ukpga/2003/42/notes/division/3](http://www.legislation.gov.uk/ukpga/2003/42/notes/division/3)

### **Third-party material**

Evidence or information relating to a crime, held by various agencies or organisations. For example, in an assault carried out in public, the local council may have CCTV footage and the local hospital may have an A&E record, both of which could be useful evidence. This is referred to as third-party material, especially when the information is not being used as part of the prosecution case (see *Disclosure*).

### **Third sector**

A range of different organisations that are in neither the public sector (the state) nor the private sector (commercial enterprises). It includes charities, self-help organisations, faith and community groups and housing associations.

### **Threshold test**

See *Full Code test*.

### **Triage**

In the context of this report, triage is a check carried out by a member of CPS staff, usually an administrator, to make sure that what the police have sent to the CPS includes the right documents and other items. In this context, it is a check for the presence of the required material, not the quality of their contents.

### **Unused material**

See *Disclosure*.

### **Victim Communication and Liaison scheme (VCL) and enhanced service**

A CPS scheme under which victims are informed of decisions to discontinue or alter substantially any charges. The CPS must notify the victim of a decision to drop or substantially alter a charge within one working day for vulnerable or intimidated victims (the enhanced service) and within five working days for all other victims. In some case categories, the victim will be offered a meeting to explain these decisions. Formerly known as Direct Communication with Victims (DCV). [There is more information about the scheme on the CPS website](#)<sup>39</sup>.

### **Victim Liaison Unit (VLU)**

A dedicated team of CPS staff in every Area, responsible for: all direct communication with victims; administering the Victims' Right to Review scheme; complaints; and overseeing the service to bereaved families.

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<sup>39</sup> *Victim Communication and Liaison (VCL) scheme*; CPS; December 2019  
[www.cps.gov.uk/legal-guidance/victim-communication-and-liaison-vcl-scheme](http://www.cps.gov.uk/legal-guidance/victim-communication-and-liaison-vcl-scheme)

### **Victims' Commissioner for England and Wales**

The role of the Victims' Commissioner is to promote the interests of victims and witnesses of crime, encourage good practice in their treatment, and regularly review the Code of Practice for Victims, which sets out the services victims can expect to receive.

### **Victims' Right to Review scheme (VRR)**

Under this scheme, victims can seek a review of CPS decisions: not to charge; to discontinue (or withdraw in the magistrates' courts) all charges, thereby ending all proceedings; and to offer no evidence in all proceedings.

### **Violence against women and girls**

The umbrella under which rape and serious sexual offences sit for work undertaken internationally, across government, across the agencies and within the CPS.



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