



# Forging the links: Rape investigation and prosecution

**A joint review by HMIC and HMCPSI**

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# Executive summary

## Introduction

This is a joint report by Her Majesty's Inspectorates of Constabulary and the Crown Prosecution Service on rape investigation and prosecution. Our inspection activity has comprised three phases:<sup>1</sup>

- site visits to some forces and Crown Prosecution Service Areas by HMIC and HMCPSI;
- an examination by HMIC of the specific challenges associated with 'stranger' rape and 'serial' offenders; and
- a more general assessment by HMIC of record keeping and the tools used to gather and analyse information about rape (at a local and national level).

We make a number of practical recommendations aimed at improving the way intelligence is gathered in rape investigations and cases are built against suspects. Implementing these changes should not require significant investment in time or money (since they are on the whole drawn either from existing best practice, or from a more stringent application of policies already in place): but they could make a real difference to the police's ability to understand and solve rape crimes.

We recognise and welcome at the outset the comprehensive and recent work on the treatment of victims by the agencies of the criminal justice system,<sup>2</sup> and we hope that our report will contribute to improving services as well as bringing perpetrators to justice. The safe conviction of those guilty of rape is powerful protection for victims and society at large.

### **'A different approach': the importance of intelligence material in preventing, investigating and prosecuting rape**

In her 2010 review of how rape complaints are handled by public authorities in England and Wales, Baroness Stern recommended that this report should take 'a different approach to

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<sup>1</sup> A full methodology is at Annex A.

<sup>2</sup> Sara Payne (2007) *Redefining Justice*; Baroness Stern (2010) *The Stern Review*. See the methodology (Annex A) for more detail on these reports.

the one adopted for previous thematic inspections' (p.21). This, she stated, should include an assessment of forces 'against... good practice in the collection of intelligence material'.

All rapes are serious; but that does not mean all strategies for dealing with rape should be the same. Preventing rape and catching perpetrators are activities that are supported by good intelligence material so that the right investigative approach is selected and resources are targeted effectively. Without that material, the risk to the identification of repeat offenders, or perpetrators whose crimes are escalating in seriousness can increase, and opportunities to strengthen prosecutions be lost.

This inspection therefore concentrates on the identification and management of intelligence material to support investigations, prosecutions and the protection of victims. This is a structured process that if improved would result in better outcomes.

Intelligence gathering begins at the first report of rape, and develops throughout the investigation and prosecution process. We therefore examined the systems and processes used at each stage of the process. Our key findings are summarised here.

## **Key findings**

### **Rape statistics**

We know that the number of rapes recorded by the police has risen by 3,261 (26%) over the last three years. Criminal justice agencies attribute this to victims having more confidence that police and prosecutors will deal with offences sensitively and professionally, improved recording,<sup>3</sup> and better links between the police and other agencies to whom rape victims turn,<sup>4</sup> rather than an increase in actual offending.<sup>5</sup> Nevertheless, the rise in reported rape is a very real cause for concern, because of the impact on victims entering the criminal justice process and on strategies designed by criminal justice agencies to deal with the rising number of cases. Action is therefore required not only to maintain and improve the victim

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<sup>3</sup> See Home Office (2011) *Crime in England and Wales 2010/11* (second edition) p.18. Available from [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk).

<sup>4</sup> See p. 16 for more information on this.

<sup>5</sup> This is supported by the July 2011 British Crime Survey (available from [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)), which indicates that there was no statistically significant change in the prevalence of rape or sexual assault crimes over this period.

experience of the criminal justice system but to identify strategies to manage increasing numbers of cases, and ensure that the response of police and prosecutors is robust and effective.

We have principally examined rape in the adult world. However, our work also revealed an increase in the numbers of rapes of children – a subject of concern which we will return to in future inspections.

### **The initial police response has improved...**

There is absolutely no room for complacency; but we recognise (in line with the Stern report) that there have been improvements over time to the way victims of rape are treated. The initial response to rape is improving:

- Call handling systems are more responsive
- Specially trained officers or their equivalents have been widely introduced
- Training for police and prosecutors is improved
- Access to sexual assault referral centres (SARCs) is either in place or planned in all forces
- Use of early evidence kits is widespread.

### **... but intelligence gathering is not meeting the demands of the rise in recorded rape**

The importance of solving individual crimes should not be underestimated; but long-term investigative success should be equally dependent on ensuring that police forces understand the nature of the rape problems in their areas. The performance management regime of the past has tended to overvalue what can be measured and rape has been part of that culture. Forces have been asked to concentrate on bringing offenders to justice and regularly produce statistics on the number of rapes that have been solved as a proportion of recorded crime. This is important – but the production of statistics for their own sake has overshadowed the importance of forces undertaking a more sophisticated analysis of rape across their areas.

If improvements are to be made in this area while the number of cases being reported continues to rise, there needs to be a greater emphasis on intelligence gathering and analysis.

## **Crime recording practices**

One of the principle sources of intelligence material lies in the records made when a rape is reported to the police. These records play an integral part in the investigation process, and so maintaining this information on the system is vital. We found that there were wide variations across forces in the number of rapes that remained on the system (and so were investigated) compared to those that were 'no crimed' (i.e. removed from the crime recording system because the police decide that a crime has not been committed).<sup>6</sup>

If crimes of rape are incorrectly removed from crime figures, services to victims are reduced and offenders left at liberty to commit further offences. It also means that no further intelligence is gathered, which might help the police link the offender to other cases. In view of the inconsistencies in recording practices, HMIC will undertake further visits to forces in Spring 2012 to establish whether there are any underlying perceptions about rape that have generated these inconsistencies.

## **Force-level intelligence tools**

We examined intelligence gathering across 12 forces with particular regard to *serial and linked offences*. We found examples of good detective work but that overall intelligence was not managed in a systematic way. For instance: a long series of offences, which started with the inappropriate touching of women in the street, progressed with ever increasing severity towards attempted rape. The offences were allocated to different officers for investigation and were only pulled together when a detective spotted the similarities.

It is important that investigators identify potential patterns of offending at an early stage, in order to address the victims and catch the perpetrators.

### **Recommendation 1**

We recommend that forces should initially consider every 'stranger' rape to be part of a pattern of serial offending, so that investigating officers consider the wider links to other crimes.

*Rape problem profiles* are used by forces to draw together information on rape offences from all available sources, so that it can be analysed and used to deploy officers where they can

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<sup>6</sup> For more information on 'no crimes', see HMIC (2011) *The Crime Scene: A review of police crime and incident reports*. Available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

have the most effect. Their usefulness, however, is dependent on the quality and currency of the intelligence provided. We found that this varied from force to force: and only three forces (7%) had a rape problem profile which was current, met National Intelligence Model standards, and considered serial/linked offences.

More robust and detailed problem profiles (as are required under the National Intelligence Model) would allow for a more scientific interpretation of the rise in rape cases and a broader understanding of the nature of offending in communities – whether victims are targeted on a night out, in a domestic setting or trafficked across local or international boundaries.

#### **Recommendation 2**

We recommend that forces ensure that their rape problem profiles are relevant and up to date.

#### **Definitions of ‘repeat’ and ‘serial’ offenders**

We found a lack of clarity in forces about what is meant by the terms ‘repeat’ and ‘serial’ offender. These are terms correctly used to differentiate between repeat offenders who may abuse the same victim more than once, such as in a domestic setting, and a perpetrator who commits a series of offences targeting different victims. Without a clear understanding of such terms, forces’ ability to make links across offences and offenders is likely to be inadequate, and a national picture of potential risk by known or suspected perpetrators will not be available.

#### **Recommendation 3**

We recommend that clear definitions of ‘repeat’ and ‘serial’ offenders are promulgated by forces (supported by ACPO) to ensure consistent approaches across forces in relation to intelligence gathering and crime recording.

#### **The Serious Crime Analysis Section (SCAS)**

The SCAS (currently an operational unit of the National Policing Improvement Agency) was created to provide intelligence material on serious sexual offences at a national level, by identifying and linking serial crime within and across force areas. However, we found that the unit directs too much resource towards assessing force compliance with the process for

supplying information to the unit. This bureaucratic process consumes police and SCAS resources which would be better directed at identifying potential perpetrators.

A change of approach at the Serious Crime Analysis Section could increase the numbers of serious sexual offences that are analysed in 'real-time' investigations.

#### **Recommendations 4 and 5**

We note that the Codes of Practice for SCAS sets out how the current monitoring arrangements should operate and may need to be amended if SCAS is to fulfil the responsibilities as we have suggested. We therefore invite the Home Office to consider revising the Codes of Practice in line with the commentary in this report, so that they are more focused on securing outcomes.

We recommend that SCAS, in consultation with users, conduct a review of its services and functions, including backlogs and prioritisation processes, to ensure that cases meeting the criteria are analysed in a timely manner and that robust qualitative feedback on all submissions is provided.

#### **Foreign intelligence and conviction information**

Information on foreign rape intelligence and conviction information can be accessed by all forces (principally through the Interpol database). However, confirming recent Home Office findings about use of this facility across all offence types,<sup>7</sup> we found that checks in relation to rape were not regularly conducted. This is partly because of a perception in forces (which we found to be unfounded) that the process for getting to this information was complicated and unwieldy. Increased awareness of the facilities to access intelligence on foreign nationals committing rape offences in domestic jurisdiction could be instrumental in identifying serial and repeat offenders earlier.

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<sup>7</sup> This found that 'there is still a significant gap between the numbers of EU nationals convicted (c.35,000 in 2010) and the number on whom the UK law enforcement agencies have sought previous convictions (about 5,500 in 2010'. Mason, S. (2011) *Criminal Records Regime Review – Phase Two*, p. 48. Available from [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

**Recommendation 6**

We recommend that ACPO should support an urgent and all force review of the awareness and use of existing processes for identifying foreign intelligence to ensure the risks to the public are mitigated and that available intelligence information that may assist in the identification of suspects is captured and used in current investigations.

**DNA profiles**

The review team found that opportunities to secure forensic evidence were taken at every stage in all forces visited. However, the potential use of 'partial' DNA profiles (i.e. those that are not complete enough to meet the required threshold for the database) was not well understood. Partial profiles may have little evidential value, but have the potential to provide at least a tentative link between offences (indicating the involvement of a serial offender), or help eliminate a suspect, thus also enabling resources to be targeted more effectively.

Where, for example, the police are faced with identifying an unknown offender, partials can provide valuable intelligence to reduce the number of suspects so that innocent people are quickly eliminated from enquiries and the investigation advances in the right direction.

**Recommendation 7**

We recommend that ACPO should consider national guidelines, in consultation with the National DNA Database Strategy Board, the Forensic Science Regulator, the Custodian of the National DNA Database, and forensic service providers, to ensure that information from sub-threshold partial profiles is managed consistently by forces and is available across force borders and between jurisdictions.

**Early investigative advice**

Seeking early investigative advice from the prosecutor has clear benefits for the investigator: the prosecutor is able to ensure that evidence is being sought to address all the relevant legal issues; early consideration can be given to the possible use of bad character or hearsay evidence; and the prosecutor can help the investigator to construct the case with knowledge of the way in which juries tend to regard certain issues. Such close cooperation helps to ensure that continuing investigations are focused and efficiently and effectively undertaken. Jointly agreed action plans also enable the police to undertake effective and efficient investigations.

The review team found limited evidence that the police were regularly seeking early investigative advice from prosecutors in relation to rape investigations despite the recommendation in our joint thematic report in 2007.<sup>8</sup> Early investigative advice was given in 13 of the 36 cases in the HMCPSI file sample, although it had only been sought by the police in seven cases.

### **Multi-agency training**

We looked at whether training arrangements across police forces and prosecutors contributed to a mutual understanding of how best to build strong cases, and found that training received by both first response officers and investigation officers varied. While all Specially Trained Officers (STOs)<sup>9</sup> in all forces visited had received specialist training, access to refresher training varied. While recognising that all training comes at a cost, forces must not lose their focus on ensuring that specialist expertise is maintained.

### **Charging decisions**

In the files reviewed, both the charging decisions and the conduct of the cases were handled by CPS rape-trained specialist prosecutors, although not always the same prosecutor throughout. Most of the rape charging decisions reviewed were well considered and very detailed. While the analysis of the evidence was often strong, there was less evidence of detailed case strategies being considered. The decision to authorise a charge complied with the test in the Code for Crown Prosecutors in every case in the file sample. The right charges were selected in 17 of the 18 cases.

### **Building strategies and search of information which may help achieve a successful prosecution**

We found evidence of good analysis of rape cases by the CPS, although detailed case strategies were sometimes lacking.

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<sup>8</sup> Recommendation 8 from HMIC/HMCPSI (2007) *Without Consent: A joint review of the investigation and prosecution of rape offences*. Available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

<sup>9</sup> STOs are specialist police officers who have been trained to understand the specific needs of a victim and to provide support and guidance from initial report through to final outcome.

There are a number of ways that a prosecutor can build a strong case, with the assistance of the police, once a defendant has been charged. One of the most important of these is to make an application to court in rape cases to introduce evidence of 'bad character'.<sup>10</sup>

One way to obtain supporting evidence for bad character applications is through the information contained in the modus operandi (MO) used in previous convictions. However, recording an MO on the Police National Computer is not mandatory.

We found that the absence of a regular and systematic recording process for records of MO meant that prosecutors and investigators had to trawl through case files to access the information required, increasing the bureaucratic burden and causing delay. The introduction of mandatory records of MO on the Police National Computer could assist both investigators and prosecutors in identifying material that could be used to support a prosecution.

#### **Recommendations 8 and 9**

We recommend that the NPIA,<sup>11</sup> in liaison with ACPO, should consider introducing the mandatory requirement to record 'modus operandi' on the Police National Computer.

We recommend that the CPS and ACPO review the use of Bad Character and hearsay evidence in rape cases to find a more efficient way of ascertaining the existence of material that would support these applications.

#### **Protocols with Social Services**

Third-party material is frequently sought from Social Services in rape cases. However, obtaining this information was problematic in areas where there was no protocol to assist in doing so, which built in delay (which of course has an impact on all those involved, including the courts, police, victim and defendant) and increased costs for both the CPS and Social Services.

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<sup>10</sup> "Bad character" in criminal proceedings means "evidence of or a disposition towards misconduct" (section 99 Criminal Justice Act 2003). This definition applies to both defendants and non-defendants and can apply to conduct arising out of a conviction, or conduct where there has been an acquittal (*R v Z* [2000] 2 AC 483) and a person who has been charged with another offence, and a trial is pending, the use of the evidence relating to that charge in current proceedings.

<sup>11</sup> The NPIA is due to be phased out in 2012. Responsibility for this recommendation will then be transferred to the National Crime Agency.

### **Recommendation 10**

We recommend that protocols between the police, CPS and Social Services are obtained across all areas to facilitate the handling of third party material in accordance with previous recommendations.<sup>12</sup>

## **Conclusions and next steps**

We found that progress has been made: the reactions of practitioners are far more attuned to the needs of **victims** and the problems associated with investigation and prosecution of this offence. But greater direction and proactivity are now needed to secure intelligence material so **offenders**, particularly serial and repeat offenders, are identified speedily by the police and where possible/appropriate that intelligence material is converted into evidence to support a robust prosecution.

Where former performance regimes have acted as an encouragement to keep the number of recorded crimes down to the irreducible minimum, this culture may inherently limit police understanding of the overall picture of rape offending. By contrast a regime that places equal emphasis on an analysis of rape crimes and associated intelligence acts as an encouragement to retain crime records on the system. The data collected on rape cases potentially provides real intelligence material that enables forces to target offenders quickly and to prevent offending by training resources on perpetrators at the earliest possible opportunity.

No intelligence system is infallible; but there are systems and practices in place that could be improved to support frontline investigators and prosecutors so that they can forge links across offences to identify offenders and enhance public protection: and these are the focus of this report. Strengthening the intelligence systems at local and national levels will enable police forces to catch perpetrators quickly and provide strong cases for prosecution. These are our strong recommendations – greater clarity of definitions for rape cases, a new focused analysis on outcomes at a national level and improved compliance with the systems

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<sup>12</sup> This recommendation was also included in previous reports: it was Recommendation 12 of our joint thematic review of the investigation and prosecution of rape, published in April 2002; and Recommendation 3.4 of the Stern Review published in March 2010. We acknowledge however the ongoing CPS work around obtaining protocols across services.

in place for getting foreign intelligence can make a real difference in catching and convicting repeat and serial rapists.

Some of the issues we have identified will be resolved locally; others will require action at a national level. The Rape Monitoring Group<sup>13</sup> (comprising representatives for all the relevant agencies as well as the voluntary sector) is well placed to monitor progress and ensure that the issues highlighted in this report result in real difference in preventing, investigating and prosecuting rape.

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<sup>13</sup> The Rape Monitoring Group is a cross-Government group, with a broad representation led by HMIC, which undertakes monitoring activity across agencies in respect of rape.

# 1. Recording rape

## Introduction

- 1.1 Most people hear reports of how crime has gone up or down. The data used in these reports is supplied by police forces throughout England and Wales. They are responsible for recording incidents and crimes, including rape, so that the public as well as the police and police authorities have a detailed understanding about crime in their areas.
- 1.2 Crime records, however, represent more than the means of gathering data. Accurate and timely information enables the police to identify trends, establish 'hot spots' of criminal activity, identify potentially dangerous offenders and, through good management of this information, deploy resources and engage tactics that reduce crime and help catch and prosecute those responsible. Once a crime has been recorded, services to victims can be identified and the risks managed appropriately.
- 1.3 We have dedicated chapter 1 of this report to the way police forces record offences of rape. We are aware of research that suggests that rape is under-reported and therefore under-recorded. We agree; but we have started with an analysis of what we do know from the records that are kept. We have also sampled some cases across forces to help us understand the issues in more detail.

## Rape: The true picture?

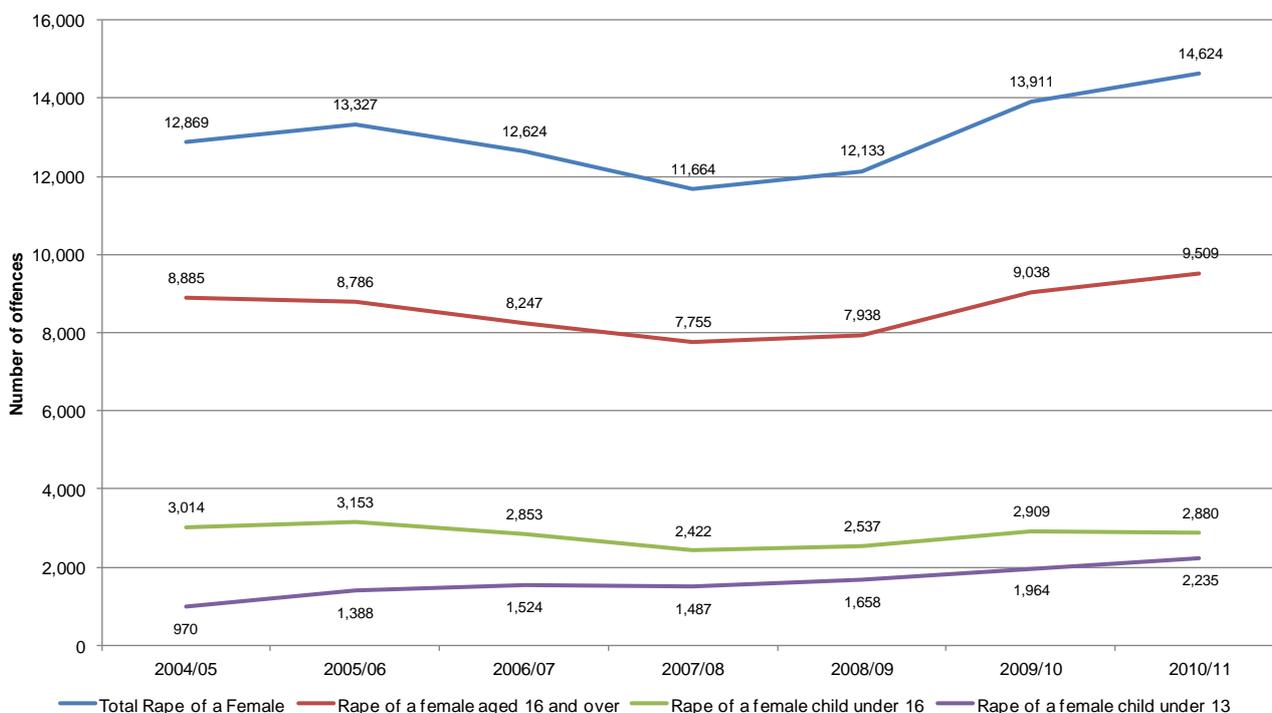
- 1.4 The implementation of the Sexual Offences Act 2003 broadened the definition of rape to include offences that would not previously, by their nature, have been recorded as rape.<sup>14</sup> In addition, significant changes were made to the Home Office Counting Rules (HOCR) in 2002/03 in order to reflect that new legislation. For consistency, therefore, we have focussed our analysis on rape offences recorded after that period.

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<sup>14</sup> Rape previously did not include penetration of the mouth. The Act also changes the way in which lack of consent may be proved, and section 75 and 76 of the Act list circumstances in which lack of consent may be presumed. A new offence of '*assault by penetration*' is defined as penetration with any object to the anus or vagina.

1.5 The number of rape offences against females,<sup>15</sup> among all age groups, recorded by police has increased steadily in recent years as shown in Figure 1, below.

**Figure 1: Female Rape Offences by Age Group (2004/05–10/11)<sup>16</sup>**



1.6 In 2010/11, recorded female rape accounted for 32% of all serious sexual crime<sup>17</sup> and 0.4% of all recorded crime.

1.7 The numbers of recorded male rapes are much lower, but have similarly increased from 1,144 recorded offences in 2004/05 to 1,310 offences in 2010/11. In 2010/11, recorded male rape accounted for 3% of all serious sexual crime and 0.03% of all recorded crime.

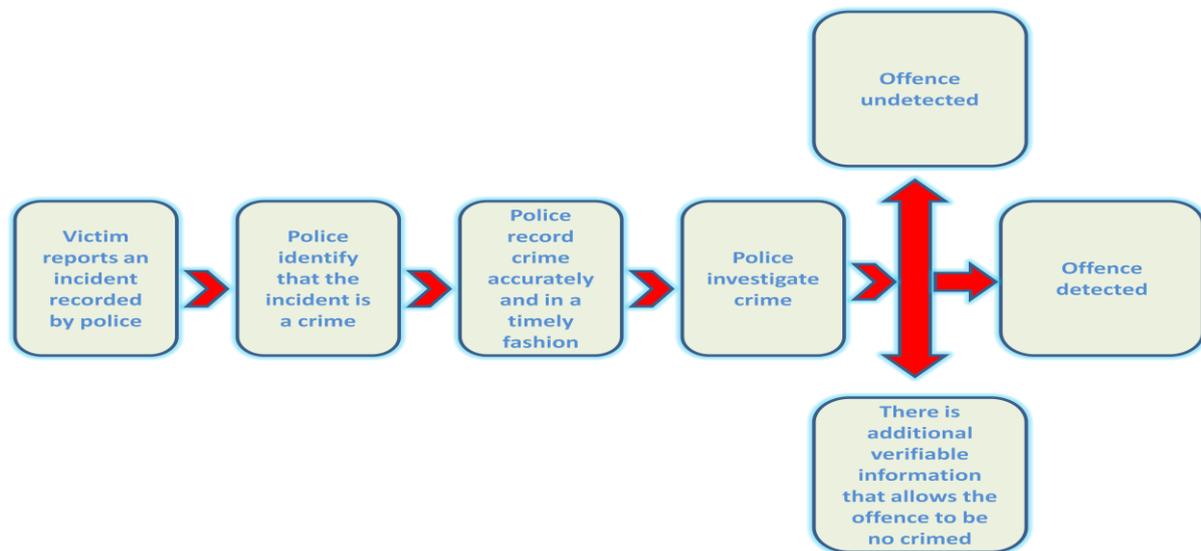
1.8 These figures are of concern, but they do not show the whole picture. Accurate rape crime figures, as with any crime data, rely on a number of factors<sup>18</sup> as illustrated by the figure overleaf.

<sup>15</sup> 'Female' is the term used by the Home Office to describe offences against women and girls.

<sup>16</sup> These figures include British Transport Police data.

<sup>17</sup> Serious sexual crime includes rape, sexual assault, sexual activity offences, abuse of children through prostitution or pornography, and trafficking for sexual exploitation.

**Figure 2: Factors affecting police crime figures**



### Reporting a crime of rape

1.9 Over recent years the Association of Chief Police Officers (ACPO) has made significant efforts to improve how the police record rape crime. Arrangements have also been put in place to secure better both information and third-party reporting of rape by other agencies to whom victims turn (such as Rape Crisis): for instance, information-sharing protocols are now in place with all major accident and emergency hospitals, so that the police and community safety partnerships are informed if someone is admitted who may be the victim of rape or violence. It is difficult to establish how much of this effort has contributed to the rise in recorded rape crime, but the most recent British Crime Survey (BCS), published in July 2011, indicated that there was no statistically significant change in the prevalence of rape crime over the period considered above.

1.10 The BCS uses a self-reporting module to assess the prevalence of intimate violence among adults aged 16 to 59 years. Their results indicated that in the period between 2004/05 and 2010/11, the number of adults reporting that they had been raped remained steady between 0.2% and 0.3%.<sup>19</sup> The BCS sample size varied between 11,041 and

<sup>18</sup> An explanation of this area of 'no crime' can be found at paragraph 1.23.

<sup>19</sup> Smith, K. et al (2011) *Homicides, Firearm Offences and Intimate Violence 2009/10*. Home Office Statistical Bulletin 01/11. London: Home Office.

24,583 adults and the results are weighted, so a direct correlation to recorded rape figures is not possible although it is arguable that reports of rape are catching up with the true position.

## Identifying a crime

1.11 The National Crime Recording Standard (NCRS) was introduced nationally on 1 April 2002 following research from Association of Chief Police Officers (ACPO), the Home Office (Review of Police Forces' Crime Recording Practices, *Burrows et al, 2000*) and Her Majesty's Inspectorate of Constabulary ('On the Record', HMIC 2000) that revealed a lack of consistency in recording practices across police forces. The aim of the NCRS was to promote greater consistency in the recording of crime and to take an approach to crime recording which focused more on the needs of the victim.

1.12 Both the NCRS and the Home Office counting rules (HOCR) state:

*All reports of incidents, whether from victims, witnesses or third parties and whether crime related or not, will result in the registration of an incident report by the police.*

1.13 Registering all incidents and recording as much information as possible is intended to allow for: an accurate assessment of the incident for classification; an audit trail to be created; and, as importantly, to provide a source of intelligence.

1.14 For an incident to be identified as a crime, the HOCR instruct that the decision is made to record a crime if '**on the balance of probabilities**' the circumstances as reported amount to a crime and there is no credible evidence to the contrary.

1.15 From 2003, the Audit Commission (AC) annually reviewed the quality of police crime and incident data.<sup>20</sup> Their 2007 review found that while the quality of crime data had improved, nearly 50% of forces had poor recording of anti-social behaviour incidents and there were also poor recording practices in forces for violence and domestic incidents.

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<sup>20</sup> Reports are available from [www.audit-commission.gov.uk](http://www.audit-commission.gov.uk).

1.16 In their 2007 report, the AC recommended that “forces need to place a high priority on contact with victims and witnesses to understand the nature and full circumstances of the incident”.

1.17 Clearly, in respect of rape offences, it is critical for the police to understand the full circumstances and for these to be accurately recorded so that an appropriate decision can be made as to whether a crime has or has not occurred.

1.18 Since 2007, there has been no further AC review of these issues; however, HMIC has recently completed a review of crime and incident reports.<sup>21</sup> The findings from this review confirm a lack of consistency among forces in identifying where incidents should be converted into crimes, and identify a number of occasions when incidents – including rapes – that were reported to police should have resulted in a recorded crime but did not.

### **Recording an offence of rape**

1.19 The HOCR provide guidance, and a multitude of examples, for police as to what and when to record crime. Both NCRS and HOCR are victim based; even if the victim declines to provide personal details and does not want to take the matter further if they confirm a crime has taken place (and there is no credible evidence to the contrary) then a crime must be recorded.

1.20 HOCR require that a crime should be recorded as soon as the reporting officer is satisfied, that on the balance of probability, a crime has been committed. The timing should be the earliest that the police force’s crime recording system allows, and in practice this is **normally** within 24 hours. It is a national requirement that an incident should be recorded as a crime within a standard timescale of 3 x 24 hour periods (known as the ‘72-hour rule’) from the time the incident is first logged. This period of 72 hours was set down when NCRS was first evolved 10 years ago in recognition of the fact that many forces were, at that time, still dependent on paper-based recording. That situation has changed completely since then.

1.21 In a survey of all forces conducted as part of HMIC’s 2012 review, there were variations in interpretation of the HOCR particularly in relation to the ‘72-hour rule’. Some

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<sup>21</sup> HMIC (2012) *The Crime Scene: A review of police crime and incident reports*. Available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

forces recorded the rape as a crime unless there was **clear evidence** that the offence had **not occurred**; and, other forces did not record the rape as a crime unless there was **clear evidence** that the offence **had occurred**. Establishing 'clear evidence' is contrary to the requirement of 'balance of probability' and suggests that some forces may have a higher threshold for converting incidents to crimes than others.

### **'No crimes'**

1.22 There are a number of instances when a recorded crime can be re-classified as 'no crime.' The HOCR require adherence to the following rule to help forces determine when it is appropriate to remove the crime from the crime figures:

*Where following the report of an incident, which has subsequently been recorded as a crime, additional **verifiable** information is available which determines that **no notifiable crime** has been committed.*

This requirement is a higher test than that set out for the initial recording as it requires information to be available that determines the crime (in this case, the rape) did not happen and is therefore not centred on a balance of probabilities assessment.

1.23 If crimes of rape are incorrectly removed from crime figures this may result in the reduction of services to victims and may leave offenders at liberty to commit further offences.

1.24 The need for 'additional verifiable information' is a key requirement in order to 'no crime' an offence and the HOCR specifically use a crime of rape in an example of 'no crime'. It states that if following an investigation of a reported rape the police are 'unclear' as to whether an offence has taken place, then the rape remains recorded.

1.25 In reality a rape that has been reported and then recorded as a crime, should only be 'no crimed' if for example, the victim states that the crime did not occur. Even in these circumstances it should be anticipated that there would be further verifiable information available to support this, because our experience shows that victims may withdraw allegations because they cannot face the criminal justice process. In other words if there

is any doubt the crime remains recorded. There is a key difference between a victim who retracts their allegation and one who withdraws from the investigative process.

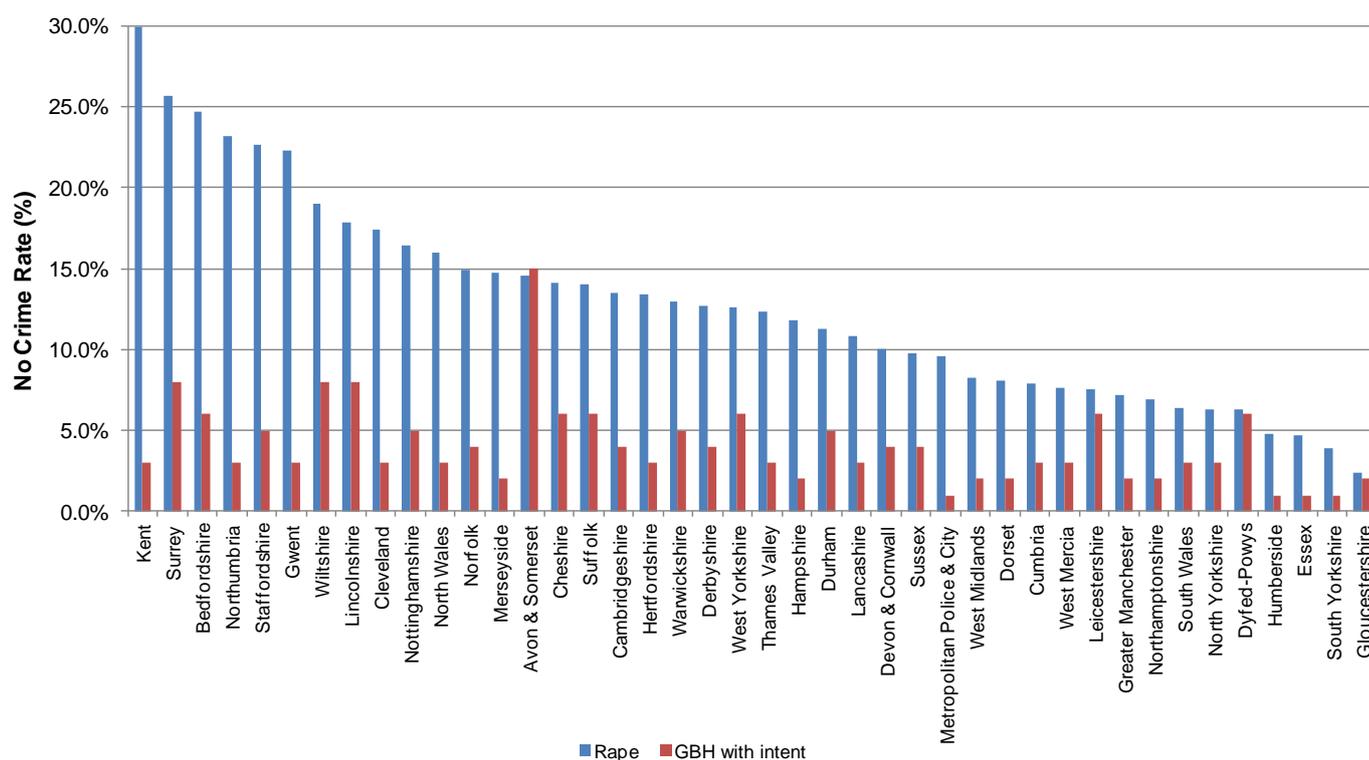
1.26 If 'on the balance of probabilities' a reported crime is recorded, it must remain so unless there is verifiable information available that determines the crime did not happen and we would intuitively expect that the number of rape offences that are 'no crimed' to be low. HMIC's 2011 review of crime recording provided some reassurance around the quality of rape 'no crime' decisions (with 90% deemed correct).<sup>22</sup> However, according to figures submitted to the Home Office by police forces, in 2010/11 the volume of rape offences 'no crimed' was 2,131, nearly 12% of the total number of recorded rape crimes; and the variation of no crime figures between forces is significant, from 30% in Kent to 2.4% in Gloucestershire that year. To note: Data related to 'no crimes' are management information as provided to the Home Office by forces, and have not been subjected to the usual quality assurance carried out for National Statistics on crime. Therefore caution should be used when interpreting the results, as forces may not be directly comparable, and the data is only provisional.

1.27 If you compare this with the offence of causing grievous bodily harm with intent (see Figure 3 below) only 3% of those recorded crimes are 'no crimed'. So offences of rape are 'no crimed' four times more often. To note: we have used the statistics on GBH as a comparator here because the numbers of offences are broadly similar (there were 19,474 offences of GBH with intent and 15,934 rape offences in 2010/11), and because GBH with intent is of similar seriousness to the offence of rape in the sense that both carry a maximum life sentence upon conviction. While we acknowledge that no two crime types are the same, we think the comparison is worth making, in order to help illustrate what we believe is a considerable problem.

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<sup>22</sup> HMIC (2011) *The Crime Scene: A review of police crime and incident reports*. Available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

**Figure 3: No crime rates – Rape compared with GBH with intent by force (2010/11)**



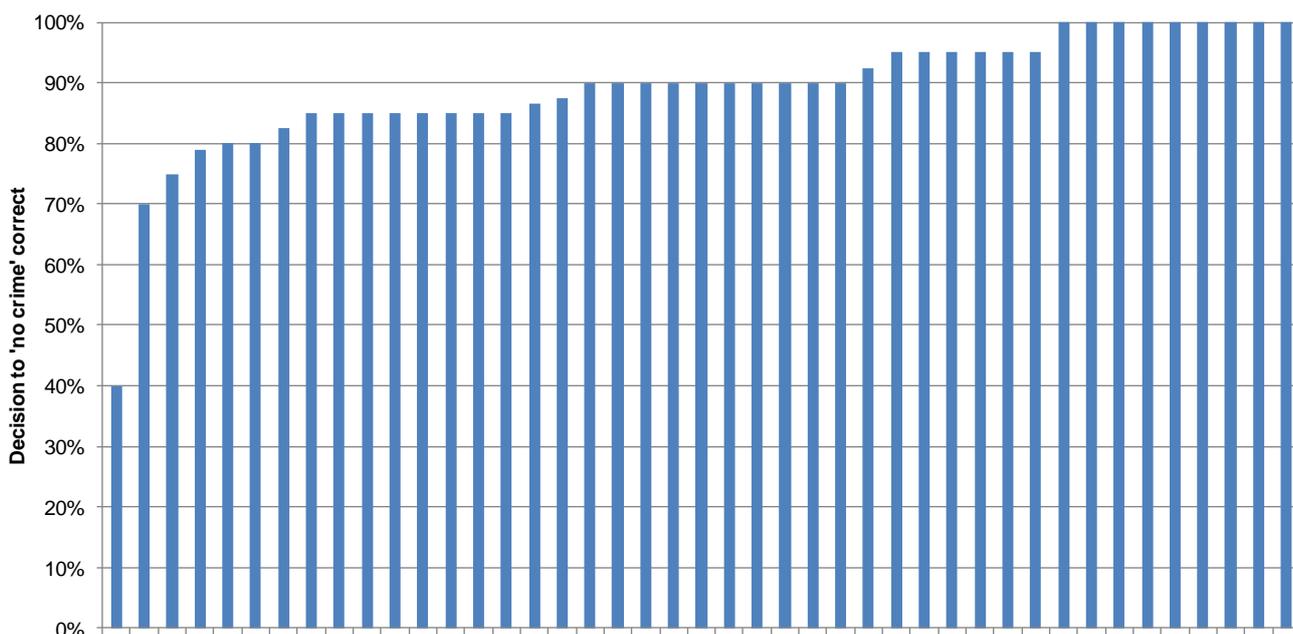
1.28 There is difficulty in explaining this from two perspectives; firstly the substantial disparity between forces’ ‘no crime’ rates and secondly the difference between the ‘no crime’ rate for rape compared with other offences.

1.29 In the past performance pressures may have influenced forces approaches to either the initial recording or subsequent levels of “no crimes” for rape. As we have recognised in previous reports the incentives of the former performance regime where police forces were required to increase the numbers of cases solved as a proportion of recorded cases acted as an encouragement to keep the number of recorded crimes down to the irreducible minimum.

1.30 In 2011, we therefore sampled cases across forces to establish whether decisions to ‘no crime’ were correct (see Figure 4 overleaf). Around 100 no crimes were examined in each force (with around 200 in the larger, metropolitan forces), from across burglary, robbery, vehicle, violence and rape records. While this may provide an indicator of the quality of the force’s no crime decisions, the sample size is not statistically significant; it therefore cannot and should not be extrapolated to measure whole-force or to compare force-by-force performance in this area of business.

1.31 Although it was not a statistically robust sample, we found that 11% of those ‘no crime’ record examined had been incorrectly ‘no crimed’. These were similar to the findings from our 2007 report,<sup>23</sup> which recommended that forces should routinely audit rape ‘no crime’ within routine auditing processes to ensure that all ‘no crimes’ were sustainable and compliant with HO CR.

**Figure 4: Percentage of rape cases reviewed by HMIC in 2011 where no crime decisions were correct<sup>24</sup>**



**Solving rape crime<sup>25</sup>**

1.32 The HO CR set out the rules under which for statistical purposes a recorded crime may be counted by the Police as being detected or solved. In the case of rape this will usually mean that a suspect has been identified and charged with the offence by the CPS.

<sup>23</sup> HMIC/HMCP SI (2007) *Without Consent: A joint review of the investigation and prosecution of rape offences*.

<sup>24</sup> It should be noted that the number of records reviewed was small and not representative; they are therefore not statistically significant and no overall themes or assumptions can be drawn from them (although they may suggest some indication of where further review is required). In addition to this, some forces had an even smaller number of records available to review because they do not ‘no crime’ many cases over all.

<sup>25</sup> Solving (or ‘detecting’) a crime means that the police log that a recorded crime has been resolved.

- 1.33 The total number of solved (detected) rape cases has increased over the last five years. The proportion of rape offences 'solved' is 24%, which is 4% below the national average for all 'solved' crimes.
- 1.34 The importance of solving these individual crimes should not be underestimated but long-term investigative success should be equally dependent on ensuring that police forces understand the nature of the rape problems in their areas. As we discuss above (para 1.29), former performance regimes have acted as an encouragement to keep the number of recorded crimes down to the irreducible minimum; this will inherently limit police understanding of the overall picture of rape offending. By contrast a regime that places equal emphasis on an analysis of rape crimes and associated intelligence acts as an encouragement to retain crime records on the system.
- 1.35 In view of the inconsistencies in recording practices, HMIC will undertake further visits to forces in the Spring of 2012 to establish whether there are any underlying perceptions about rape at a national level which have generated these inconsistencies.

## 2. Gathering intelligence

### Introduction

- 2.1 It is not possible to prevent every rape or guarantee that offenders will be so well managed they never re-offend. It would however seem reasonable that those areas where there is a level of predictability should be well managed. Rape can occur virtually anywhere at any time but potential victims are at increased risk in particular instances; where victims are targeted on a night out or those abused by their partners, vulnerable young people or sex workers, even the vulnerable or elderly in care homes. In addition there are individuals who can be identified as a particular threat from intelligence material and information gathered from investigations.
- 2.2 Those risks can be identified and managed locally through the National Intelligence Model (NIM) and nationally at the Serious Crime Analysis Section (SCAS).<sup>26</sup>

### Using the National Intelligence Model (NIM)

- 2.3 *NIM is an information based deployment system and cornerstone of the management of law enforcement operations in England and Wales. Historically most policing has been driven by the need to respond to calls from the public. This is necessary police business but crime and incident patterns are not identified. NIM identifies patterns of crime and enables a more fundamental approach to problem solving in which resources can be tasked efficiently against an accurate understanding of crime and incident problems.*

*ACPO Guidance on the National Intelligence Model (2005)*

- 2.4 NIM provides a framework for police forces to manage intelligence and prioritise the deployment of resources for local crime and disorder, cross border issues within a force or at county/regional level and for serious and organized crime operating on national

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<sup>26</sup> In addition, the Police National Database now gives investigating officers immediate access to data stored on IT systems by all 43 forces in England and Wales. This aims to revolutionise the way the police can access and use information; however, because it launched midway through this inspection (22 June 2011), we have not assessed it here.

and international scales. Rape can occur in any of these environments from a domestic abuse incident to an international people trafficking setting.

2.5 There are a number of analytical techniques to help forces understand problems about rape in their areas, so that they can develop plans aimed at preventing such offences.<sup>27</sup> These include:

- Crime pattern analysis (identifying critical links and associations that assist in understanding crime patterns)
- Demographic/social trends analysis (understanding how social factors, such as unemployment, homelessness, populations shifts, impact upon criminality)
- Risk analysis (assessing the scale of risk from individual or organizations to victims, the public and law enforcement agencies)
- Target profile analysis (examining a criminal's behavior, lifestyle, associations, and the risk they pose, in order to focus the investigation targeting them)

2.6 These techniques are available to forces to analyse the incidence of rape and if appropriate design strategies to manage identifiable issues arising from that analysis. Whatever technique or combination of techniques are used, the results can be incorporated in what are called intelligence products (usually reports).<sup>28</sup> We have looked more closely at **Strategic Assessments** - in effect the strategic assessment sets the operational basis for managing crime and incidents and **Problem Profiles** that examine specific areas of concern. These are important intelligence products that can be used to obtain a better understanding of rape.

2.7 We asked forces to supply a copy of force priorities from their most recent **Strategic Assessments** prepared in compliance with the NIM:

- **13** forces have recorded Serious Sexual Offences<sup>29</sup> as a force priority;

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<sup>27</sup> The role of the police in terms of support in educating individuals and communities about rape and responsible behaviour is discussed in several other recent reports, and so is not covered in detail here. See, for instance, the cross-Government strategy, Ending Gang and Youth Violence (available from [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)), and local authority joint strategic assessments.

<sup>28</sup> The National Intelligence Model identifies four intelligence products: Strategic Assessments (designed to give an accurate overview of the current and long term issues affecting the police force so that a control strategy and intelligence requirement can be set); Tactical Assessments (used to identify shorter term issues), Target Profiles (used to obtain a better understanding of a person, either suspect or victim), and Problem Profiles (aimed at securing a greater understanding of established and emerging crime or incident series, priority locations and other identified high risk issues).

<sup>29</sup> The (most) serious sexual crime group includes: all rapes offences (male and female); all sexual assaults (male and female); sexual activity involving children under 16 or persons with a mental

- **21** include the protection of vulnerable<sup>30</sup> people as a force priority (where serious sexual offences are not specified as a priority)
- **7** forces have not included Serious Sexual Offences or the Protection of Vulnerable people as Force priorities

2.8 We would not necessarily expect to see rape as a stand alone priority within a strategic assessment in all forces. We would expect forces to understand the nature and extent of the problem in their locality. We have therefore looked at the currency and quality of rape **problem profiles** designed to capture that information.

2.9 A rape problem profile is an important means of establishing threats and risks to the public. Intelligence opportunities must be routinely considered and effective intelligence gathered from a wide range of agencies and sources, including the community. Once gathered, intelligence needs to be kept and analysed to understand where existing and future harm may lie. This should be recorded in the problem profile to inform the local response and enable officers to implement tactical solutions to reduce the risk to the public. Agency partners, such as the CPS or Social Services, can contribute to and benefit from such a problem profile.

2.10 Whilst we accept that a rape problem profile is not the only pre-requisite to good investigation and prevention we believe it is a strong indicator as to how well intelligence relating to rape is processed within the force. We found that 13 forces (31%) have a current (defined as published within the last 12 months) rape problem profile. The oldest problem profile dated back to June 2008.

2.11 In those cases where a rape problem profile had been completed, the quality varied markedly. For instance one force had a problem profile that was highly detailed and included a full analysis of intelligence, identification of intelligence gaps and recommendations relating to prevention, intelligence and enforcement opportunities. Another consisted of a one-page document that provided a statistical summary. We assessed that only three forces (7%) had a rape problem profile that was current, met NIM minimum standards, and considered serial/linked offences.

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disorder; causing sexual activity without consent; abuse of children through prostitution and pornography; and, trafficking for sexual exploitation.

<sup>30</sup> A 'vulnerable' adult was defined by the Law Commission in 1997 as a person aged 18 or over, "who is or may be in need of community care services by reason of mental or other disability, age or illness and who is, or maybe unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation." Subsequent Home office and Department of Health guidance (*No Secrets*) published in March 2000 used the same definition.

2.12 The more useful problem profiles were topical and up to date, and not only looked at crime data but considered wider issues such as: the ‘no criming’ rate; intelligence derived from cases where no further action was taken; inputs from Sexual Assault Referral Centres (SARCs); information derived from DASH;<sup>31</sup> risks relating to victims and offenders; and issues that are particular to specific communities. These problem profiles also distinguished between ‘stranger’ and ‘non-stranger’ rape.

2.13 While most forces prepared problem profiles containing a statistical analysis of the trends in rape, only three problem profiles contained evidence of any consideration of linked or serial offending. This is surprising because research<sup>32</sup> shows that some sexual offence characteristics may indicate a serial offender and that the individual responsible will continue to offend until caught: and their crimes may escalate.

2.14 Nevertheless, we did find examples of good practice in the forces we visited in relation to specific local problems focusing on dangerous offenders. We have highlighted these below:

**Practice Example**

On one Basic Command Unit (BCU) in one force, a Risk Management Officer reviews all persons arrested for sexual offending and undertakes pro-active research to identify potential serial perpetrators. Any information gained is fed into NIM to inform priorities and into their Multi-Agency Public Protection Arrangements (MAPPAs) and Potentially Dangerous Person (PDP) processes as appropriate.

**Practice Example**

One force captures detail of ‘modus operandi’ (MO) within a robustly maintained sexual offence descriptive page on its crime recording system. This was not only effective at comparative analysis but also when analysing individual offending behaviour.

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<sup>31</sup> Domestic Abuse, Stalking and Harassment risk identification, assessment and management model.

<sup>32</sup> Beek, M., van den Eshof, P. and Mali, B. (2010), ‘Statistical modelling in the investigation of stranger rape.’ *Journal of Investigative Psychology and Offender Profiling*, 7: 31–42, doi/10.1002/jip.103; Greenall, P. V. & West, A. G. (2007). ‘A Study of Stranger Rapists from the English High Security Hospitals.’ *Journal of Sexual Aggression*, 13(2), 151–67.

2.15 Rape problem profiles are informed by local intelligence material. We examined intelligence gathering across 12 forces with particular regard to serial and linked offences. We found examples of good detective work but overall intelligence was not managed in a systematic way as the following two examples illustrate:

- the potential links between a number of sex attacks, including rape, which had repeatedly occurred in the same general location on the same day of the week, were identified through detectives talking to each other, rather than by careful analysis.
- a long series of offences, which started with the inappropriate touching of women in the street progressed, with ever increasing severity, towards attempted rape. The offences were allocated to different officers for investigation and were only pulled together when a detective spotted the similarities.

2.16 It is therefore vitally important that local intelligence systems capture the modus operandi in rape cases and sexual attacks. Victims, locations and offenders lie at the heart of intelligence gathering. Without these ingredients, intelligence-led investigation may falter or at best take longer, as police resources cannot be focused quickly enough.

2.17 The rape problem profile is an intelligence tool that, whilst prescriptive, provides a method of ensuring that intelligence relating to rape is drawn down from all available sources (including third parties and charitable organisations such as rape crisis centres), and becomes embedded in the force and local area tasking and coordinating process. Its usefulness, however, is dependant upon the quality and currency of the intelligence provided.

**Recommendation 1: We recommend that forces should initially consider every ‘stranger’ rape to be part of a pattern of serial offending, so that investigating officers consider the wider links to other crimes.**

**Recommendation 2: We recommend that forces ensure that their rape problem profiles are relevant and up to date.**

## Repeat and serial offending

2.18 There was also a lack of clarity about what is meant by the terms ‘repeat’ and ‘serial’ offender. These are terms correctly used to differentiate between repeat offenders who may abuse the same victim more than once, such as in a domestic setting, and a perpetrator who commits a series of offences targeting different victims. Without a clear understanding of such terms, local analytical tasking is likely to be inadequate, and a national picture of potential risk by known or suspected perpetrators will not be available.

2.19 Some forces have introduced ‘stranger’ and ‘acquaintance’ categories of rape, in accordance with recent NPIA guidance<sup>33</sup>. ‘Stranger’ offences are those where victims have no previous knowledge of the offender, had not knowingly met them before and would, therefore, be unable to name them or provide information about their identity. They would also include cases in which there had been a brief, or single, encounter within a short period, but only to such an extent that a victim might be able to identify the offender but would not describe him as an acquaintance. ‘Acquaintance’ rapes occur when the victim knows the offender, perhaps as a neighbour, friend or social acquaintance.

2.20 Introducing different categories of rape is not intended to suggest a priority to the offences, but is instead recognises the different challenges there are when investigating a ‘stranger’ rape and consequently puts a premium on identifying intelligence material that may go beyond DNA.

2.21 We contacted all forces to identify the levels of ‘stranger’ rapes and found that these statistics are not readily available. Many forces did not use the NPIA definition and their crime recording systems did not distinguish between different types of offences of rape. Forces which did record the relationship between the offender and the victim on their crime recording system were reliant on the officer understanding the different definitions and then ticking the correct box on the form.

2.22 Forces that were able to provide data on ‘stranger’ rapes indicated that the number of offences varied between 5% and 25% of all rape offences. Due to the issues identified above, forces themselves acknowledge that this data is not robust and should not be used to assess the level of offending.

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<sup>33</sup> NPIA on behalf of ACPO and CPS (2010) *Guidance on Investigating and Prosecuting Rape*.

**Recommendation 3: We recommend that clear definitions of ‘repeat’ and ‘serial’ offenders are promulgated by forces (supported by ACPO) to ensure consistent approaches across forces in relation to intelligence gathering and crime recording.**

## The national response

### The Serious Crime Analysis Section (SCAS)

2.23 The Serious Crime Analysis Section (SCAS) was founded in 1998 following the Byford report on the ‘Yorkshire Ripper’ murders. It is one of the operational units of the National Policing Improvement Agency (NPIA) and is based at Bramshill.<sup>34</sup> The aim of SCAS is to identify potentially linked crimes that fit the SCAS criteria and assist in the apprehension and prosecution of cases. Beyond this SCAS provides assistance with a range of investigative approaches<sup>35</sup> and is involved with research into offending behaviour. It is also closely linked to the Missing Persons Bureau co-located at Bramshill.

2.24 Forces are required to notify SCAS within 20 working days of a relevant crime being reported to police, in accordance with the following criteria:<sup>36</sup>

- Where the relationship between the offender and victim is unknown or ‘stranger’ **and** the offence is: murder with a sexual or unknown motive, all rapes and attempted rapes, all sexual assaults with aggravating factors,<sup>37</sup> or abductions with a sexual element.
- Where the offender and victim are known to each other but have not had a previous sexual relationship **and** the offence is murder with a sexual element.

2.25 Following notification, forces are also required to submit **full case papers** to SCAS for every offence meeting the above criteria. The following figure on the next page shows the number of notifications and those meeting SCAS criteria. In 2010/11, of the 4,422 cases notified to SCAS, 64% (2,836 cases) were deemed by SCAS to meet the criteria.

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<sup>34</sup> For more information, go to [www.npia.police.uk](http://www.npia.police.uk)

<sup>35</sup> Services offered have included ‘timelining’ of some murder and rape cases, interview assistance in cooperation with national interview adviser, provision of bad character evidence and assistance in analysis/filtering of familial DNA results.

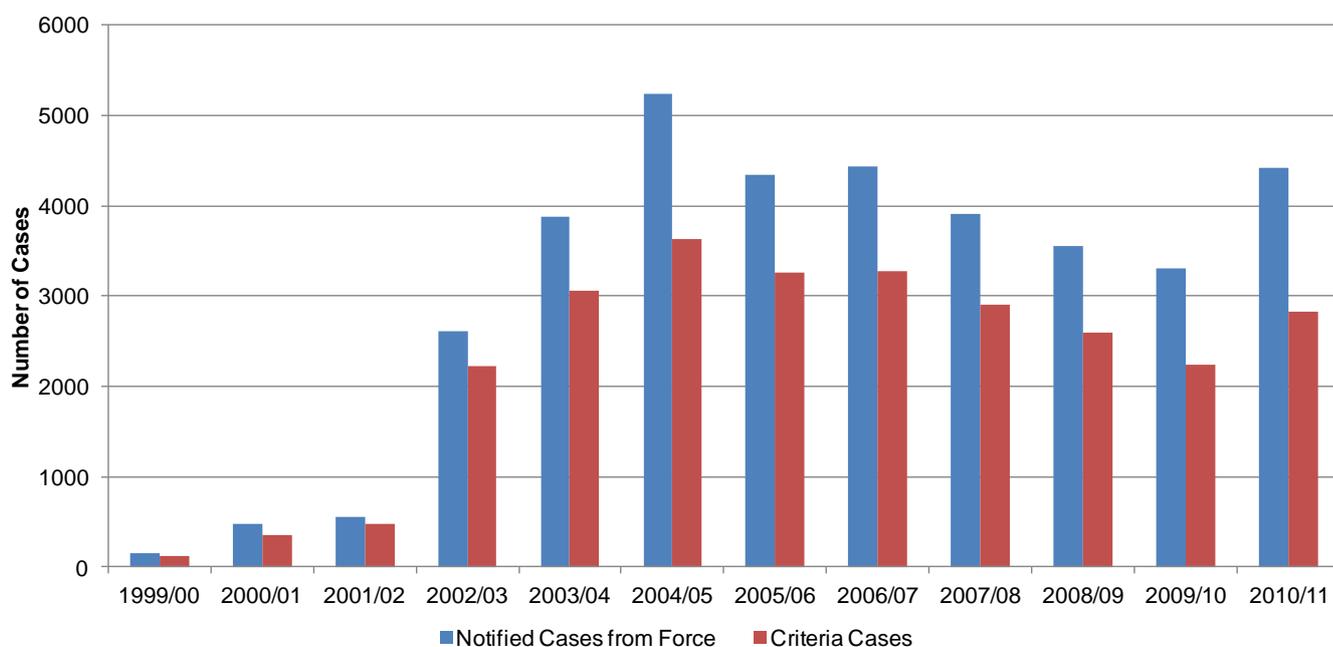
<sup>36</sup> This criteria was amended from the original Codes of Practice on 01 April 2011. It has yet to be ratified by parliament, but is the current working criteria used by SCAS.

<sup>37</sup> Aggravating factors are: presence of a weapon, excessive violence, burglary.

2.26 SCAS operates on a £2.05 million annual budget and a headcount of 62 staff (38 of these have specific operational analytical roles at different levels of qualification<sup>38</sup>). The current staffing level is 48 and a further 15 staff work in the Missing Persons Bureau.

2.27 The core activities of SCAS depend on computer-based gathering and analysis of information regarding crimes and individuals, often in large volume. This makes IT and system issues critical and SCAS currently employs a development of the Violent Crime Linkage Analysis System, which is used across North America and Europe. This has proven effective and reliable, and there was evidence of a proactive approach in maintaining and developing the technical capacity of the unit, and working cooperatively at an international level.

**Figure 6: Cases notified to SCAS by forces and those SCAS indicate meet the criteria**<sup>39</sup>



2.28 The effective application of behavioural and geographic analysis tools to identify and link serial crime within and across force areas depends upon all relevant information being captured from forces, and other sources of information. At present this is

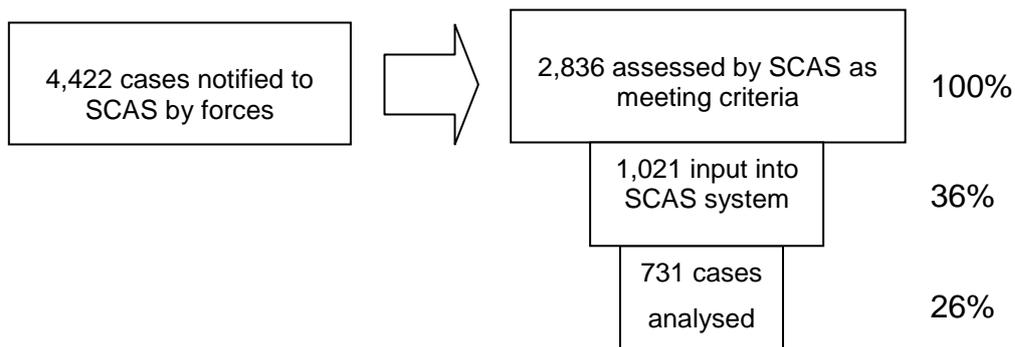
<sup>38</sup> Analytical staff comprise two principal analysts, six senior analysts, 16 analysts and 14 assistant analysts.

<sup>39</sup> Source: SCAS performance data, 1999 – 2011.

governed by Section 39 of the Police Act 1996<sup>40</sup> and came into effect from January 2006.

2.29 Figure 7 illustrates the performance of SCAS in relation to the number of cases notified to them in 2010/11 by forces, through to the number of cases where a complete analysis was undertaken.

**Figure 7: Throughput of cases from Forces to final SCAS Analysis (2010/11)**<sup>41</sup>



2.30 Once cases enter the SCAS system they are examined against SCAS Criteria and then met with a 'Triage' system that prioritises cases against a scoring system. This system has been subject to development, and includes both 'loading' of critical factors and also discretionary elements,<sup>42</sup> to ensure potentially significant cases are not overlooked.

2.31 Triage then places cases into one of three 'pools.' The highest pool receives immediate attention by an analyst (approximately 5% of all cases). Approximately 45% of cases are placed in the middle pool to wait for analysis. Cases assessed with the lowest score (50% of all cases) are again pooled by SCAS and the case papers are scanned into the system but are not subject to proactive analysis. That analysis will not usually take place unless further evidence is provided by the force that then moves the case into a different pool.

<sup>40</sup> This legislation provides a statutory basis for the Home Secretary to issue Codes of Practice.

<sup>41</sup> Source: SCAS performance data for 2010/11.

<sup>42</sup> Factors considered include: stranger or unknown suspect, use of weapons, multiple offenders, multiple cases.

2.32 Cases placed in the middle pool may be pushed back repeatedly, due to receipt of higher priority cases or a lack of resources within SCAS available to continue the analysis. There is not presently a system to track the number of these cases or the period they wait for analysis.

2.33 Although we understand it may be necessary to prioritise cases through a triage system, we are concerned that in doing so SCAS has created in effect a backlog, which under current systems cannot be cleared. This creates two important risks:

- The first is that some cases, meeting the criteria set for SCAS, may never be proactively analysed; and
- The second is that any completed analysis may not be available to detectives in real time investigations.

2.34 The Codes of Practice require ACPO to monitor force compliance with the level of submissions to SCAS and also require SCAS to produce performance reports for Chief Officers. Currently SCAS provides quarterly feedback to the ACPO lead in each force.

2.35 A system of quarterly feedback to forces should, in our view include, as a minimum:

- Timeliness of notification;
- Status of individual cases;
- A breakdown of the progress by SCAS on submitted cases (e.g. analysed or not); and
- Any specific issues arising from individual cases.

2.36 The current system for quarterly feedback to a Chief Officer in each force area does not fulfil these minimum requirements and focuses on force compliance with Codes of Practice timescale requirements for notification. The feedback does include detail on the number of 'outstanding' cases, however, this relates to the number of cases where SCAS are still awaiting the force submission of case papers. There is no detail relating to how many cases, already received by SCAS, are awaiting completion of the analysis, how long these cases have been in their allocated 'pool', nor when they can be expected to be completed.

2.37 SCAS is currently implementing a revitalised engagement process to improve awareness of the services SCAS can provide forces. This presents a good opportunity to reconfigure the feedback and make sure it meets the requirements of practitioners

and victims. At the time of inspection, 21 forces had been visited, and work was ongoing to promote awareness of SCAS with Detective Inspectors.

2.38 The review team found that SCAS provided the elements of a useful service but tended to operate in isolation from their police force customers, and there is limited evidence of the unit being directly responsible for solving crimes. More therefore needs to be done to ensure that SCAS is able to provide an effective service in an environment where the number of reported rapes has increased significantly over the last five years. In our view, the relationship between SCAS and forces needs to be reviewed.

**Recommendation 4: We note that the Codes of Practice for SCAS sets out how the current monitoring arrangements should operate and may need to be amended if SCAS is to fulfill the responsibilities as we have suggested. We therefore invite the Home Office to consider revising the Codes of Practice in line with the commentary in this report, so that they are more focused on securing outcomes.**

**Recommendation 5: We recommend that SCAS, in consultation with users, conduct a review of its services and functions, including backlogs and prioritisation processes, to ensure that cases meeting the criteria are analysed in a timely manner and that robust qualitative feedback on all submissions is provided.**

## The international dimension

2.39 The involvement of foreign nationals in rape offending poses a challenge to effective identification and investigation of suspects. The potential impact is demonstrated in the case study below.

### **Case Study**

A male EU national first came to notice of UK police after it was alleged that he had committed an assault. No further action was taken on that occasion.

During the same year, he was accused of a 'stranger rape' and was arrested and charged. He was acquitted at court.

A little over 12 months later, he was arrested for an unprovoked attack upon a woman in the street, having punched her in the face. No further action was taken because of identification issues.

A month later, he was involved in a fight and charged with affray. Shortly afterwards again, he attempted to rape another woman but was not identified as a suspect at the time.

A few weeks later, he broke into a house, where he raped an 89-year-old woman. He was identified through DNA and eventually sentenced to a substantial term of imprisonment.

At the time of the further offences in England he was under investigation for sexual offences in his home country, and by the time of his arrest in England he had been convicted of his offences in the EU and was the subject of a European police arrest warrant.

At no stage were foreign intelligence checks carried out.

2.40 A key issue in addressing this international dimension is awareness and employment of available foreign intelligence and conviction information. This intelligence is available worldwide from the 190 Interpol<sup>43</sup> member states and within Europe from the 27 Europol<sup>44</sup> Member States.

2.41 The principal resource for international intelligence information is the Interpol database in Lyon known as the 'i24/7 Automated Search Facility' (i24/7 ASF). This holds a range of 'Intelligence Notices' published to warn of an individual's criminal activity as illustrated in Figure 8 on the next page. In 2010 there were 5,317 of these notices available, on offenders of all types, offering a valuable intelligence resource.<sup>45</sup>

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<sup>43</sup> Interpol is the world's largest international police organization, established since 1923 and working with the aim of preventing and fighting crime through enhanced international police cooperation.

<sup>44</sup> Europol is the European Union's criminal intelligence agency. It became fully operational on 01 July 1999 and on 06 April 2009 became a formal EU agency. Its role is to assist Member States of the European Union in their fight against serious international crime, more details are available at <https://www.europol.europa.eu/>

<sup>45</sup> Data provided by Interpol UK.

2.42 Access to this international resource for UK forces is primarily through the UK Mobile Interpol Network Database (MIND). This is not currently searchable by UK forces, creating a risk that relevant information on foreign nationals subject to Green Notices, which cover criminal convictions and related intelligence (including sexual offenders) will not be available to investigators.

2.43 This weakness has been identified and Interpol has established a Notice Advisory Group to approach these issues. As a first step, international Green Notices linked to travel documents are now searchable on the UK MIND database from the end of December 2011. Although progress has been made, this approach fails to offer the full search facility of nominals which might aid identification and investigation of offenders.

2.44 In addition to this access to Interpol 'notice' information, forces can access Interpol international intelligence material locally using an Interpol i24/7ASF terminal *which will also identify persons who are circulated on notices*. The provision of this facility is normally through the force international liaison officer, usually situated within the force intelligence bureau. Police can also access some limited international intelligence and conviction information on foreign suspects from the Police National Computer (PNC). We found a perception that this system is complicated: however, this proved unfounded, since a phone call to the international desk at Interpol provides an easy route to the information required.

**Figure 8 – Interpol Notices**<sup>46</sup>

Notice Type	Details
<b>Red Notice</b>	This notice requests (provisional) arrest of wanted persons, with a view to extradition. An Interpol Red Notice is "the closest instrument to an international arrest warrant in use today."
<b>Yellow Notice</b>	This notice asks for help locating missing persons (usually minors) or identifying people who are unable to identify themselves.
<b>Blue Notice</b>	This notice requests additional information about a person in relation to a crime.
<b>Black Notice</b>	This notice seeks information on unidentified bodies.
<b>Green Notice</b>	This notice provides warnings and criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.

<sup>46</sup> Detail of Interpol intelligence notices is available from <http://www.interpol.int/en/INTERPOL-expertise/Notices>

<b>Orange Notice</b>	This notice warns police and other international organizations about potential threats from disguised weapons, parcel bombs, or other dangerous materials.
<b>Purple Notice</b>	This notice provides information on <i>modi operandi</i> (MO), procedures, objects, devices and hiding places used by criminals.
<b>Interpol-United Nations Security Council Special Notice<sup>47</sup></b>	This notice is issued for groups and individuals who are targets of UN sanctions against Al Qaeda and the Taliban.

2.45 Access to conviction information from 163 Non European states is through the Non European Exchange of Criminal Records system (NEU-ECR) within the ACPO Criminal Records Office (ACRO). They automatically update the Police National Computer with serious<sup>48</sup> convictions that foreign nationals acquired by foreign nationals in their home country, so these are available to all Police. They also retain details of other 'non-serious' convictions that foreign nationals have acquired in their home country, and can provide these on request. This offers a useful source of information for investigators examining potential suspects.

2.46 There are some additional opportunities for police to access intelligence and information from other sources, which should not be overlooked: the Interpol public website; SOCA Fugitives Team; and the Police Extradition Unit.

2.47 Our review suggests, however, that police do not utilise the range of facilities available for checking international notice information as fully as possible, as illustrated below:

**Practice Example**

A force recently conducted a 24-hour snapshot study of all persons arrested in one area which revealed that a large number of foreign nationals taken into custody had little or no international intelligence checks completed.

Retrospective checking of the impact of this identified a large percentage of these suspects were either wanted for offences under the European Arrest Warrant procedures or other international matters.

<sup>47</sup> This was created in 2005 at the request of the UN Security Council through the adoption of resolution 1617 and implemented through the adoption of INTERPOL resolution AG-2005-RES-05.

<sup>48</sup> In line with the current published 'Home Office Serious Offence List'.

2.48 This practice example supports the recent Home Office review<sup>49</sup> which found that there is still a significant gap between the numbers of EU nationals convicted here (approximately **35,000** in 2010) and the number on whom the UK law enforcement agencies have sought previous convictions (**7,590** in 2010).

2.49 Alongside the worldwide intelligence resources available from Interpol, European Member States have access to intelligence information from their own police organisation, Europol. As EU citizens enjoy free movement with member states the ready provision of available intelligence between states, through Europol, is a valuable resource.

2.50 Within EU Member States there are also processes for sharing EU criminal convictions through the UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) which was established in 2006. This offers a reciprocal search facility for European criminal convictions through the central ACPO criminal records office (ACRO). This facility currently operates on agreed ten-day response period, so may be limited in immediate impact, but does offer a full range of information.

2.51 UKCA-ECR also receives notifications of convictions for UK nationals in other EU Member States and notifies relevant States of any convictions of EU nationals in the UK. Since 2006, there have been 20,000 notifications inputted onto the PNC by the ACPO Criminal Records office, of these 450 were British citizens convicted of serious violent or sexual offences in the EU. Only 37 of these individuals were already known to UK law enforcement and 276 had committed offences against children.<sup>50</sup>

2.52 The same Home Office review of criminal records concluded that “while the UK has a good record of notifying other states of their nationals’ offending behaviour here in the UK, more effort is required to ensure that other countries provide the same information to us about British citizens overseas”.<sup>51</sup>

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<sup>49</sup> Mason, S. (2011) *A common sense approach: Phase 2*. Available from [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

## Practice Examples

We were encouraged to note that some action is being taken:

- ACRO is currently conducting a 'three force initiative' pilot over 12 weeks with North Yorkshire, South Wales and Wiltshire police forces to trial improvements in checking of foreign national convictions from foreign national arrestees and in reducing the burden involved in this.<sup>52</sup> Data from this initiative will influence processes and procedures for acquisition and use of foreign conviction data for both Police Forces and Non police Prosecuting Agencies.
- ACRO is currently working with UKBA to reduce the risk that foreign nationals extradited from the UK for serious offences on European and International arrest warrants for criminal proceedings may later re-enter the country. Conviction data relating to these proceedings is being entered onto PNC and made available to UKBA staff so a decision can be made at the border as to whether to allow or refuse entry to these persons.
- A new 'NCALT'<sup>53</sup> E-Learning package is being developed with ACRO and NPIA to assist officers in acquiring and using foreign conviction data in criminal proceedings and for public protection purposes. This is scheduled to go live in April 2012 and provision of information material and briefings for officers is underway.
- The Inspection saw evidence that, in anticipation of what can be substantial growth in foreign conviction checking, ACRO has contacted all EU partners regarding capacity to maintain continuity in servicing increased volumes of requests. ACRO is also examining their own internal staffing and IT capacities to assess impact of an increased volume of requests.
- The ACPO Travelling Sex Offender Sub Group is considering the introduction of Single Points of Contact (SPOCs) to promote the utilisation of these investigative resources. While this is a helpful development, more direction is needed to improve awareness of investigators working on rape cases to use these resources on a more routine basis.

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<sup>52</sup> At time of writing, this work was due to report in April 2012.

<sup>53</sup> NCALT is a computer-based e-learning system provided to police officers in all forces across England and Wales.

**Recommendation 6: We recommend that ACPO should support an urgent and all force review of the awareness and use of existing processes for identifying foreign intelligence to ensure that risks to the public are mitigated and that available intelligence information that may assist in the identification of suspects is captured and for use in current investigations.**

## 3. Investigations

3.1 Rape is a challenging offence to prove, both in legal and evidential terms. This review examined the quality of investigations and assessed the effectiveness of supporting structures and activities aimed at improving police and prosecutors' responses to rape.<sup>54</sup>

### Structures

3.2 We found forces manage rape investigations in different ways, both within and across forces. Although there were some variations, their investigative structures fell into four broad categories: a dedicated rape team investigating all allegations of rape; a major crime team/SOIT<sup>55</sup> (or similar) investigating all allegations of rape; a split investigation structure where stranger rape is investigated by a major crime team (or similar) and non-stranger rape is investigated by local area detectives; or local area detectives investigating all rape offences.

3.3 The ACPO Rape Support Programme<sup>56</sup> published its report into the use of dedicated teams earlier this year. The findings of this report are broadly in line with those found by this review. The use of dedicated rape teams provides increased opportunity to improve the service to victims and brings consistency to the management of investigations. At the time of inspection, forces told us that there were 11 dedicated rape teams in England and Wales.

### Policies

3.4 All forces visited during the review had issued policy or guidance for responding to, and investigating allegations of rape. The majority made reference to 'Guidance on Investigating and Prosecuting Rape', published by NPIA in 2009 on behalf of ACPO.

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<sup>54</sup> Interviewing the suspect and the assistance the CPS can give (including early investigative advice) is covered in the next chapter.

<sup>55</sup> Sexual Offences Investigation Team.

<sup>56</sup> This ACPO review examined the use of dedicated rape investigation teams in eight police force areas between September 2010 and January 2011.

3.5 There was little reference in force policies, however, to the identification and investigation of linked offences. One force stated that it aimed *‘to use existing national systems to record information and intelligence that will assist in the identification of linked offences’* and made reference to the Serious Crime Analysis Section.

3.6 Other forces made no reference to the identification of linked offences and during force visits the review found that the majority relied upon SCAS for the identification of cross-border and national offenders. There was no consideration of international offenders within any policy documents.

## **The impact of Sexual Assault Referral Centres**

3.7 The number of Sexual Assault Referral Centres (SARCs) has increased significantly in recent years. We found that all victims throughout England and Wales either already have access to a SARC (with some forces having multiple centres), or will have when new centres open within the next 6–9 months.

3.8 It is widely agreed that SARCs provide a safe and secure environment where victims receive the help and support they need at the same time as evidence from them is being gathered. SARCs provide services to victims while also providing high-quality care and specialist means to obtain the witness’ evidence. They are multi-agency, and require joint local resourcing and management to be effective. They provide a highly skilled, one-stop destination in the aftermath of a rape or sexual assault and deliver services that are tailored to the needs of victims. The minimum requirements for SARCs are outlined in the joint ACPO, Department of Health and Home Office revised national service guide: *A Resource for Developing SARCs* (2009).<sup>57</sup>

3.9 The public need information to be reassured that suitable facilities are available to them as victims and encourage their decision to report offences of rape. We therefore conducted a review of force websites and found: three forces had direct links to the website for their force SARC from the homepage, five force websites had information for victims on rape or serious sexual offences that could be accessed within one click from the homepage, with better websites including links to related groups such as rape crisis and victim support. On 18 force websites, however, it was not possible to directly access information on rape or serious sexual assault from their homepage.

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<sup>57</sup> Available from [www.dh.gov.uk](http://www.dh.gov.uk).

3.10 We also conducted a search on the word 'rape' on force websites. We found that for the majority of forces this search resulted in a list of historical press articles relating to issues such as the arrest or charge of offenders or requests for information to assist investigations. On seven force websites the key word search resulted in direct links to their SARC or their information pages as specified above.

## **Initial response**

3.11 Once an allegation of rape is reported, an early police response is key to launching an effective investigation. Recognising that the victim themselves are a 'crime scene' presents potential difficulties and challenges in dealing with the incident.

3.12 Advice and guidance for staff taking an initial report, acting as a first responder or a Specially Trained Officer (STO), are set out in the joint CPS and ACPO guidance and supported by ACPO briefing notes 'Initial Contact in Rape Cases' (2009) and 'First Response to Rape'.

3.13 In the forces we visited we found that call handlers understood what was required of them and there was evidence that immediate victim safety measures were taken. Some of the forces visited had provided check-list templates to call handlers. These were used to ensure that all appropriate actions were considered at an early stage.

3.14 Initial supervision of call handlers in the control room varied across the forces visited. In some forces, there was evidence of consistent and effective supervision with control room supervisors quick to record initial actions and ensure that they were carried out. In others, variable recording practices made it difficult to gauge the quality of supervision.

## **Investigative progress**

3.15 The interview of a victim by the police is the first stage of the investigative process. However, we did not specifically examine the issue of video-recorded interviews here, as this was covered in detail in Baroness Stern's review.

3.16 The ways in which investigations are documented vary considerably. One force demonstrated exceptional recording processes, with clear strategies and actions recorded on their Crime Report Information System. This ensures consistent,

searchable and safely recorded information. The majority of Investigating Officers (IOs), however, stated that they documented actions and plans in a notebook.

3.17 We also looked at how rape investigations are supervised and whether a Senior Investigating Officer (SIO) was appointed to oversee the enquiry. Where an SIO is appointed, a policy book should be created for each investigation which sets out clearly the investigative aims, objectives and strategy to be used. There was little evidence, other than in one of the forces visited, that supervisors reviewed and recorded investigative decisions, or scrutinised and followed up required actions. The review also found little evidence that SIOs used policy files for recording strategy, decisions and rationales, as we would expect when investigating serious criminality and this highlights a potential risk in identifying serial/linked offences. Only one force was able to evidence sound supervision involving well-structured investigation plans and oversight, including meaningful and timely reviews.

3.18 We found a number of examples where investigations were not always conducted expeditiously. In one example where a decision had been taken to charge the suspect, a seven-week delay then ensued waiting for the suspect to return to the police station to answer his bail. In other examples, there had been delays in progressing key witness evidence and CCTV material while investigators waited for the results of forensic evidence and technological analysis.

## **Review of rape investigations**

3.19 The concept of reviewing major crime investigations was developed from the Byford Report in 1981, which looked at issues arising from the Yorkshire Ripper murders and our 2007 report also recommended that police forces ensure that review processes are established for the investigation of rape and that the quality of reviews is monitored.<sup>58</sup>

3.20 While we found that some forces had review policies in place, little had changed since our 2007 report in terms of clearly defined review periods being used. In addition, when reviews had been undertaken, it was not always evident that the resultant recommendations had been pursued or considered by the SIO. In one series of

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<sup>58</sup> Recommendation 5 in HMIC/HMCPSP (2007) *Without Consent: A joint review of the investigation and prosecution of rape offences*. Available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

offences, action suggested by a reviewing officer had not been progressed by the time of a further review, several months later.

3.21 In addition, with the exception of one of the forces visited, there was no evidence of supervisors reviewing the risk posed by suspects, or risk being recorded throughout investigations or in investigative closing reports. Whilst not all the forces visited during this review had a dedicated review team, a review policy had been introduced. The available records, however, did not disclose sufficient evidence of a progress appraisal.

## **Forensic evidence**

3.22 Forensic evidence is essential in any investigation because it can identify a suspect or a crime scene, or provide corroborative evidence of the victim's or other evidence. The Investigating Officer must set a forensic strategy to ensure all opportunities are taken to obtain such potentially important evidence at an early stage.

3.23 Early Evidence Kits are bespoke kits that enable the early gathering of forensic evidence from the victim, in advance of a full forensic medical examination. They are designed to capture evidence that might otherwise be quickly lost, such as finger nail swabs, mouth swabs or evidence of toxins that may be in urine. They can be used with minimal training and therefore can be used routinely by non-specialist police staff.

3.24 DNA evidence is an important forensic tool in the investigation of rape offences. It can be used to link suspects to crime scenes by matching DNA profiles that are stored in the National DNA Database (NDNAD) with profiles from DNA samples taken from crime scenes or suspects or to eliminate suspects from enquiries.<sup>59</sup> For stranger rapes the NDNAD can be a very powerful tool to help identify the perpetrator. However, the success of the system relies on the quality of the samples secured by the police and failure to follow agreed and published procedures, in terms of how, when and where samples are collected, managed and administered, undermines the value of DNA samples.

3.25 The review team found that forensic issues were routinely considered and that opportunities to secure forensic evidence were taken at every stage from first report in

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<sup>59</sup> The UK National DNA Database (NDNAD) was set up in 1995 under the auspices of the Forensic Science Service.

all the forces visited. It was clear that each of the forces had a process for prioritising the submission of forensic samples for analysis, although there was little evidence that forces made use of a forensic strategy.

3.26 Early forensic awareness was evident at the moment of initial report and, where a potential crime scene was identified, officers were deployed and scene preservation was evident. For early arrests, issues of cross-contamination were considered and recorded on incident logs.

3.27 Early Evidence Kits were immediately available to front-line staff, routinely used, and their use recorded. They were available at all victim suite facilities or SARCs, and, in some areas, at the Accident and Emergency Departments of local hospitals.

3.28 Following arrest, officers used a dry cell to preserve forensic evidence, or, where one was not available, supervised the suspect prior to examination. Suspect examination kits were available as were medical examination facilities within custody suites.

3.29 The recovery of forensic evidence and in particular DNA samples is only part of the story. As it stands, only full crime scene profiles, or partial profiles that contain sufficient detail to pass a threshold test, are loaded onto the National DNA Database (NDNAD), which is administered by NPIA. Only profiles loaded onto the database will be continually searched against any new profiles that are submitted.

3.30 The minimum criteria for loading a partial profile onto the NDNAD are the designation of eight alleles<sup>60</sup>, and a match probability of at least one in a million. (A full DNA profile will contain 20 allele values and have a match probability of at least one in a billion.) DNA profiles that do not meet the load criteria are not loaded onto the NDNAD because of the high risk of an adventitious match. Non-routine speculative searches against profiles on the NDNAD of below threshold partial DNA profiles may be undertaken but all results require both the detailed interpretation and validation by a forensic scientist before they are made available to the investigation or criminal justice system, and a detailed assessment alongside other information gathered during an investigation and should not be used in isolation.

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<sup>60</sup> An 'allele' is a different form of a gene at a particular locus, the characteristics of a single copy of a specific gene, or of a single copy of a specific location on a chromosome. For example, one copy of a specific short tandem repeat (STR) region might have 10 repeats, while the other copy might have 11 repeats. These would represent two alleles of that STR region. The STR locus consists of two alleles, one inherited from the mother and one from the father, and the number of repeats for each allele can vary independently of each other. Each allele has a name that reflects the number of repeats.

- 3.31 Partial profiles which do not meet the threshold may be of little **evidential** value but they have the potential to provide at least a tentative link between offences, indicating the involvement of a serial offender or to target escalating offending, or help to eliminate a suspect.
- 3.32 While we recognise that use of partial profiles is a complex area, this review found a lack of understanding of the potential value, to identify or exclude suspects, through the analysis of partial DNA profiles that do not meet the threshold test and are not therefore loaded onto the NDNAD. It is important that the intelligence value of non-routine speculative searching including sub-threshold partial DNA profiles and the retention of such profiles in rape and sexually motivated crime is recognised and exploited. This emphasises the need to ensure that there is a forensic strategy at the early stages of an investigation so that decisions to conduct searches using partial profiles that do not pass the threshold test are informed by a forensic scientist who can advise on the potential value of such a profile in a particular case and of repeated non-routine speculative searching.
- 3.33 Any sub-threshold partial profile can be subjected to an initial one-off speculative search. Should that prove unsuccessful, it would need to be 're-run', at a cost to the force, at intervals to be decided by the Senior Investigating Officer (SIO) in consultation with the forensic provider concerned. This would determine whether any potentially matching profiles had been added in the interim.
- 3.34 Different approaches to the non-routine speculative searching of sub-threshold partial DNA profiles in rape investigations has led to the evolution of inconsistent practices. We found one force that seeks to address this inconsistency by requiring forensic science providers to notify the force of non-routine speculative searches with a central record of these being kept by the force. The NPIA NDNAD Delivery Unit provides the force with a monthly report of non-routine, speculative searches commissioned by the force. The decision to request such a search of a below threshold partial DNA profile is taken in the first instance by the forensic scientist who will consult the investigator. Rather than relying on the investigator to ensure that the non-routine speculative search is instigated, the requirement on both the forensic science providers and the NPIA NDNAD Delivery Unit to notify the force centrally of non-routine speculative searches provides a double check that the non-routine speculative searches are being undertaken. The force can also set default periods within the force for repeat non-routine, speculative searching.

3.35 Understanding the relevance of DNA material and its use is a complex but important area. While it may be understandable that the potential value of sub-threshold partial profiles is not fully appreciated, failure to make full use of their potential contribution to rape investigations could unnecessarily hamper them.

**Recommendation 7: We recommend that ACPO should consider national guidelines, in consultation with the National DNA Database Strategy Board, the Forensic Science Regulator, the Custodian of the National DNA Database, and forensic service providers, to ensure that information from sub-threshold partial profiles is managed consistently by forces and is available across force borders and between jurisdictions.**

## 4. The prosecution case

4.1 The phase between a rape being recorded as a crime and the decision being made to prosecute is where an effective joint approach between the police and prosecutor is essential in order to ensure that a robust case is prepared against the suspect. We therefore looked initially at whether training arrangements across police forces and prosecutors contributed to a mutual understanding of how best to build strong cases.

### Multi agency training and guidance

4.2 A clear commitment from the leaders of the police service and the CPS has led to the publication of comprehensive guidance to help those who deal with allegations of rape on a daily basis.

4.3 The Association of Chief Police Officers (ACPO) and the CPS jointly published *Guidance on Investigating and Prosecuting Rape* in 2009 and an appropriately abridged version appears on the National Policing Improvement Agency's (NPIA's) website.<sup>61</sup> The Guidance was praised by the Stern Review as the very best of practice and as a benchmark for standards.<sup>62</sup> the joint review team agrees. Whilst there are minor improvements that can be made to its structure that have been identified as a result of working with it on a daily basis, the joint guidance provides all appropriate practitioners in the police and the CPS with the information and guidance that they need in order to conduct and prepare strong cases.

4.4 At a practical level, in 2008, a national protocol framework was agreed between the CPS and the police to develop a partnership approach to rape cases.<sup>63</sup> Joint workshops were held across the country for CPS Area rape co-ordinators and police rape specialists to launch the national protocol and to encourage Areas<sup>64</sup> and forces to adopt the protocol locally.

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<sup>61</sup> <http://www.npia.police.uk/en/16980.html>. This Guidance also sets out the legal requirements to prove rape and other sexual offences: see chapter 1.

<sup>62</sup> The Stern Review, page 20. See Annex A.

<sup>63</sup> [http://www.cps.gov.uk/publications/agencies/rape\\_protocol.html](http://www.cps.gov.uk/publications/agencies/rape_protocol.html).

<sup>64</sup> There are 13 CPS Areas and we use the term 'Areas' to refer to CPS Areas across England and Wales.

- 4.5 All the Areas visited had a joint protocol based on the national model, with some having been recently agreed and signed, and others having been updated. It was clear that all CPS staff were aware of the protocol and what was expected of them.
- 4.6 Rape workshops were held for all Chief Crown Prosecutors (CCPs) during 2009 with the aim of enabling them to improve performance in rape cases in their Area. The CPS is committed to improving performance by ensuring prosecutors understand the nature of rape prosecutions through its Rape and Serious Sexual Offences training programme, which all specialist rape lawyers must attend. In addition, all rape specialist lawyers must attend a rape trial as part of their training.
- 4.7 Counsel instructed by the CPS to prosecute rape cases must attend an accredited rape training course that includes an understanding of the effect of rape on victims. The ACPO Rape Support Programme has provided specialist training, where requested, for all staff involved in rape investigations which is aimed at “myth busting”<sup>65</sup> and enhancing knowledge of Rape Trauma Syndrome<sup>66</sup> and how this affects victims.
- 4.8 First response officers’ training varied. One of the forces visited provided regular inputs to frontline officers from Specially Trained Officers (STOs),<sup>67</sup> and could demonstrate knowledge of the NPIA first response leaflet.<sup>68</sup> Others did not undertake training because the force always deployed an STO in the first instance who directed and supervised the work of other officers who were instructed to undertake specific tasks, such as scene preservation and the early arrest of suspects.
- 4.9 All STOs in all the forces visited had received specialist training but access to refresher training varied. Where there was not any refresher training, officers expressed concern over the infrequency of being deployed and the effect that had on their confidence.
- 4.10 Investigation Officer (IO) training varied considerably. All the IOs in the forces visited had completed, or were in the process of completing, their Professionalising

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<sup>65</sup> See the Stern Review, page 33 et seq.

<sup>66</sup> A syndrome first identified by Burgess and Holmstrom in 1974 of disruptions to normal physical, emotional, cognitive, behavioural, and interpersonal characteristics suffered by victims of rape. See *American Journal of Psychiatry* 131:981-986, September 1974.

<sup>67</sup> STOs are specialist police officers who have been trained to understand the specific needs of a victim and to provide support and guidance from initial report through to final outcome.

<sup>68</sup> ACPO (2009) *Briefing note – First response to rape*.

Investigation Programme<sup>69</sup> level 2 accreditation but they had received differing levels of interview training. Very few of those IOs had received bespoke sexual offender training through the Child Exploitation and On-line Protection Agency.<sup>70</sup> As such, knowledge and understanding of how sexual perpetrators offend were very limited among those non-specialist detectives who investigated rape allegations. This element is particularly important when interviewing rape suspects because of the challenging nature of rape cases and the element of consent, especially when the consumption of alcohol by the parties concerned is a feature. There was more understanding among dedicated IOs and this was reflected by the files reviewed by HMCPsI: there was a notable variation in the standard and quality of the handling of rape cases which seemed generally, though not always, to be linked to the degree of specialism of the IO. While recognising that all training comes at a cost, forces must not lose their focus on ensuring that specialist expertise is maintained.

## Consultation and early investigative advice

4.11 Seeking early investigative advice from the prosecutor has clear benefits for the investigator: the prosecutor is able to ensure that evidence is being sought to address all the relevant legal issues; early consideration can be given to the possible use of bad character or hearsay evidence; and the prosecutor can help the investigator to construct the case with knowledge of the way in which juries tend to regard certain issues. Such close cooperation helps to ensure that continuing investigations are focused and efficiently and effectively undertaken. Jointly agreed action plans also enable the police to undertake effective and efficient investigations.

4.12 The review team found limited evidence that the police were regularly seeking early investigative advice from prosecutors in relation to rape investigations despite the recommendation in our joint thematic report in 2007.<sup>71</sup>

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<sup>69</sup> The Professionalising Investigation Programme (PIP) is intended to lead to increased professionalism of investigators, and establish a structured, professional approach to investigation. The programme aims to introduce a registration process for investigators who demonstrate that they meet competence-based standards as described in the National Occupational Standards for investigation.

<sup>70</sup> Specialists in managing sexual offenders who provide training to forces on a cost-per-head basis at their head office or on request, at a local venue.

<sup>71</sup> Recommendation 8 from HMIC/HMCPsI (2007) *Without Consent: A joint review of the investigation and prosecution of rape offences*. Available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

4.13 Early investigative advice was given in 13 of the 36 cases in the HMCPST file sample, although it had only been sought by the police in seven cases. It was provided in writing in 12 of the 13 cases. In one of the 13 cases, it was apparent from the file that there had been a conversation between the prosecutor and the police, but that it had not been recorded in writing (although it was referred to in the subsequent written advice). Of the 13 cases, the police had requested a charging decision rather than early investigative advice in five; however, the investigation was not sufficiently progressed for a charging decision to be made and so the prosecutor provided early investigative advice and an action plan to obtain further evidence.

4.14 Of the 12 cases where early investigative advice was recorded, the prosecutor added value in 11 by applying his or her legal knowledge and expertise, exploring legal issues and then pointing out suggested lines of further enquiry. The outcome of those enquiries did not always lead to a prosecution but, by identifying the relevant issues, prosecutors ensured that cases where there was not a realistic prospect of conviction charges were not brought.<sup>72</sup> In addition, there was clear evidence that prosecutors assisted the police by advising on complex evidential areas, such as Bad Character, which enabled the latter to gather evidence to support possible later applications.

4.15 It appears that the opportunity for the police to seek advice and guidance over complicated legal or evidential issues before the suspect is interviewed is not taken up on any regular basis. Twelve of the 13 recorded early investigative advices were sought and given after the suspect's interview had taken place. In four of the 13 cases, the prosecutor advised re-interviewing the suspect, mainly in relation to a specific issue, such as in two cases where new forensic evidence had been received since the original interview. Of the four cases, a re-interview took place in only two. In one of those two cases, the suspect changed his version of events completely as a result of the forensic evidence and, in the other, the suspect did not make any comment to questions over phone calls and texts that were found to have been made from his mobile phone. The lack of a further interview in one of the nine cases where the prosecutor did not advise a re-interview was a lost opportunity to put to the suspect new forensic evidence which would have contradicted the account he gave in his first interview.

4.16 The recent changes to the way in which prosecutors provide early investigative advice and charging decisions appear to have given rise to the perception in some

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<sup>72</sup> The test for prosecution is set out in the *Code for Crown Prosecutors*, the sixth edition of which was published on 22 February, 2010. Available from [www.cps.gov.uk](http://www.cps.gov.uk)

police officers that specialist rape prosecutors are no longer available to provide early investigative advice. The review team was advised that this is not the case but it is clear that better lines of communication between the CPS and the police are required to reduce such misconceptions.<sup>73</sup>

## Charging decisions

4.17 In the files reviewed, both the charging decisions and the conduct of the cases were handled by CPS rape-trained specialist prosecutors, although not always the same prosecutor throughout<sup>74</sup>. Most of the rape charging decisions reviewed were well considered and very detailed. Whilst the analysis of the evidence was often strong, there was less evidence of detailed case strategies being considered. The decision to authorise a charge complied with the test in the Code for Crown Prosecutors in every case in the file sample. The right charges were selected in 17 of the 18 cases.

4.18 The decision to advise no further action was reasonable in the 18 relevant cases in the file sample. However, in two of those cases, the decision was premature, in that further enquiries could have been undertaken before a final decision was taken.

4.19 Prosecutors always considered the potential defence case when advising on rape cases, but there was limited evidence to show that it was considered after charge and when preparing cases for court. This was seen and reflected in the file sample where the issues emerging from the suspect/defendant's version of events were usually addressed in the charging case analysis. Of the 36 cases in the file sample, only two were too brief and lacking in the detail that would be expected in a rape charging decision.

4.20 Whilst there was undoubtedly general consideration of the defence case, there was not always the same detailed focus given to suspect/defendant issues as was given to any issues relating to the victim. If an issue emerged that touched on the victim's credibility, there was ample evidence of requests for further background enquiries to be made, for example, the obtaining of medical records if there was any suggestion that the

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<sup>73</sup> This is echoed in ACPO (2010) *Guidance on Investigating and Prosecuting Rape* (available from [www.acpo.police.uk](http://www.acpo.police.uk)), which highlights the issue of early consultation with the CPS and the benefits of the collocation of the CPS and the police rape team.

<sup>74</sup> There have been repeated recommendations for rape cases to be allocated to specialist lawyers responsible for the entire case from advice to conclusion. See for example HMIC/HMCPSI (2007) *Without Consent*; and the Stern Review (2010).

victim may have had an episode of depression or issues with alcohol. However, the same consideration was rarely given if similar issues were raised in relation to the suspect/defendant. Such a focus could be very useful in building a stronger case. This was reflected in the review team's interviews with police officers who invariably expressed their perceptions that prosecutors focused more on the reliability of the victim than on the credibility of the suspect.

4.21 In addition it was clear that, in a number of the cases in the sample involving young suspects/defendants, there may well have been relevant information in social service records. Again, third party disclosure applications for such records for victims are not uncommon but they are rarely made for suspects/defendants.

4.22 Prosecutors generally considered the use of expert evidence well. In the file sample, forensic and medical reports were analysed in detail and considered in case strategies. It was also apparent that lawyers considered the benefits of obtaining other kinds of expert reports that may help to build difficult cases.

## **Action plans**

4.23 The review team found that action plans were not always proportionate, most notably when prosecutors were supervising the minutiae of an investigation in the absence of appropriate police supervision. In those circumstances, prosecutors set out detailed and lengthy action plans including, for example, basic information about what is required when preparing cases for the Crown Court (such as unused material schedules or continuity statements). These are not complex legal issues and the police should be able to prepare a case without guidance of this nature. Some good action plans were seen that identified lines of enquiry or covered more complicated evidential issues which helped to build stronger cases. In our file sample, action plans were agreed in 18 of the 36 cases.

4.24 Police monitoring of compliance with action plans varied in different forces from being very good to poor. These poor instances seem to occur where cases were handled by general officers rather than specialists, whether or not the specialists worked within a specialist unit.

## Prosecution applications

- 4.25 There are a number of ways that a prosecutor can build a strong case, with the assistance of the police, once a defendant has been charged. One of the most important ways is to make an application to court in rape cases to introduce evidence of bad character.<sup>75</sup>
- 4.26 Obtaining supporting evidence for a bad character application was found to be time consuming for both the police and the CPS. Introducing bad character evidence can be effective but obtaining supporting evidence can be problematic if the previous history of the defendant lies outside the force area, or is abroad or historic. It is therefore vitally important that the intelligence material has been captured and analysed to support applications of this kind.
- 4.27 In the absence of readily available intelligence material to be converted into evidence, prosecutors make provisional applications at the appropriate time but then re-visit them and often amend the applications when the supporting evidence is obtained: this is a duplication of time, and results in increased costs. A particular issue is the lack of detail currently being recorded about the circumstances of convictions (ie whether it was as a result of a guilty plea or after trial, or if there was a basis of plea) which results in the police having to trawl previous case files to obtain the detail necessary to prepare a draft application.
- 4.28 It was found that applications were being made in relation to bad character in rape cases but that there was no data collected and analysed about their frequency of success or the usefulness of being able to adduce such evidence at trial. Consequently, the police and CPS are not able to assess whether applications under the Criminal Justice Act 2003 are successful and, if so, their value and impact on a case.
- 4.29 Hearsay evidence was considered and dealt with appropriately in all relevant cases in the sample. Applications were generally appropriately made but once again without data to support their usage and effect it is difficult to gauge their benefit or impact.

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<sup>75</sup> "Bad character" in criminal proceedings means "evidence of or a disposition towards misconduct" (section 99 Criminal Justice Act 2003). This definition applies to both defendants and non-defendants and can apply to conduct arising out of a conviction, or conduct where there has been an acquittal (*R v Z* [2000] 2 AC 483) and a person who has been charged with another offence, and a trial is pending, the use of the evidence relating to that charge in current proceedings.

4.30 One way to obtain supporting evidence for bad character applications is through the information contained in the 'Modus Operandi' (MO) used in previous convictions. In order to screen MOs in a more efficient way both forces and SCAS should be able to use the information available on the PNC. MOs are attached to a person's 'name' record on the PNC when they are arrested. In most cases it would be anticipated that the force in which the arrest took place would initially add a skeleton MO. Upon conviction this initial MO is updated and should be modified to ensure compliance with agreed 'keywords'. This then provides sufficient information for analysts to search MOs using Quest,<sup>76</sup> and potentially make links between offenders and offences.

4.31 The method by which the MO is added to the 'names' index varies from force to force. It is not a mandatory requirement. This had led to variations in forces' methodologies in this regard. Some forces have reduced resources in this area and no longer place MOs on the system. Other forces continue to place detailed MOs on the record.

4.32 The PNC previously managed a database called Crimelink. This contained MOs of the most serious offences. It had some significant success in identifying serial offenders but was considered cumbersome by some forces and, not being a mandatory requirement, fell into disuse and has recently been withdrawn.

4.33 The use of an MO search capability would be of significant benefit to intelligence gathering and prosecution. Clearly a balance must be struck, weighing up the benefits against potential cost, but it is clear the current use of the PNC in this regard needs to be reviewed.

**Recommendation 8: We recommend the NPIA, in liaison with ACPO, should consider introducing the mandatory requirement to record 'modus operandi' on the Police National Computer.**

**Recommendation 9: We recommend that the CPS and ACPO review the use of Bad Character and hearsay evidence in rape cases to find a more efficient way of ascertaining the existence of material that would support these applications.**

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<sup>76</sup> QUEST (Querying Using Enhanced Search Techniques) enables the search of the names database to identify suspects through the use of gathered information such as physical description and personal features.

4.34 Prosecutors made appropriate use of serving statements for agreement under section 9 Criminal Justice Act 1967, but the provisions of section 10 of the Act (by which prosecutors can seek admissions from the defendant, thereby possibly obviating the need for a witness to be present at court to give evidence) appeared to be underused.

4.35 Prosecutors can make a number of other applications to manage defendants convicted of rape. For example, Sexual Offender Prevention Orders (SOPOs), restraining orders, sex offender registration, or disqualification orders, and we found these were prepared more thoroughly in some Areas than in others. Instructions to the prosecuting advocate in the file sample were rarely explicit in reminding the advocate to make any appropriate applications if the defendant were convicted, although it appeared that appropriate applications were being made.

## Unused material and defence statements

4.36 Performance in relation to the handling of unused material was variable from both police and CPS perspectives. In some areas, particularly where the judiciary was very proactive in their governance of the disclosure regime in accordance with the Criminal Procedure and Investigations Act (CPIA), disclosure was handled well, and the defence submitted detailed defence statements which enabled continuing disclosure to take place.

4.37 In other Areas, disclosure was a contentious issue and compliance with the CPIA did not always occur. In some Areas, a practice had arisen whereby defence statements were submitted which stated that they reflected the position of the defendant, at that moment. The defence then submitted amended statements as the case progressed and sought to rely on Human Rights legislation and case law to prevent the prosecution drawing attention to what were in effect the defendant's inconsistent statements.

4.38 The CPIA makes both prosecution and defence roles clear and, in the case of *R v Rochford*,<sup>77</sup> the Court of Appeal reiterated the ability of the court and the prosecution to make adverse comment in the light of the defence's failure to comply with its obligations under the Act.

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<sup>77</sup> [2010] WLR (D) 220.

4.39 Frequently in rape cases, third party material is sought from Social Services. Obtaining this material was problematic in some Areas. It was clear that third party disclosure was more easily secured in those Areas where a protocol was in place with the relevant Social Services. A lack of a joint protocol in some Areas meant that the prosecutor needed to obtain a witness summons to obtain third party material and to go through a far longer and more complicated process, which built in delay and increased costs for both the CPS and Social Services.

**Recommendation 10: We recommend that protocols between the police, the CPS and Social Services are obtained across all areas to facilitate the handling of third party material in accordance with previous recommendations.<sup>78</sup>**

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<sup>78</sup> This recommendation was also included in previous reports: it was Recommendation 12 of our joint thematic review of the investigation and prosecution of rape, published in April 2002; and Recommendation 3.4 of the Stern Review, published in March 2010. We acknowledge however the ongoing CPS work around obtaining protocols across services.

## Recommendations

1. We recommend that forces should initially consider every 'stranger' rape to be part of a pattern of serial offending, so that investigating officers consider the wider links to other crimes.
2. We recommend that forces ensure that their rape problem profiles are relevant and up to date.
3. We recommend that clear definitions of 'repeat' and 'serial' offenders are promulgated by forces (supported by ACPO) to ensure consistent approaches across forces in relation to intelligence gathering and crime recording.
4. We note that the Codes of Practice for SCAS sets out how the current monitoring arrangements should operate and may need to be amended if SCAS is to fulfil the responsibilities as we have suggested. We therefore invite the Home Office to consider revising the Codes of Practice in line with the commentary in this report, so that they are more focused on securing outcomes.
5. We recommend that SCAS, in consultation with users, conduct a review of its services and functions, including backlogs and prioritisation processes, to ensure that cases meeting the criteria are analysed in a timely manner and that robust qualitative feedback on all submissions is provided.
6. We recommend that ACPO should support an urgent and all force review of the awareness and use of existing processes for identifying foreign intelligence to ensure the risks to the public are mitigated and that available intelligence information that may assist in the identification of suspects is captured and used in current investigations.
7. We recommend that ACPO should consider national guidelines, in consultation with the National DNA Database Strategy Board, the Forensic Science Regulator, the Custodian of the National DNA Database, and forensic service providers, to ensure that information from sub-threshold partial profiles is managed consistently by forces and is available across force borders and between jurisdictions.

8. We recommend that the NPIA, in liaison with ACPO, should consider introducing the mandatory requirement to record 'modus operandi' on the Police National Computer.
9. We recommend that the CPS and ACPO review the use of Bad Character and hearsay evidence in rape cases to find a more efficient way of ascertaining the existence of material that would support these applications.
10. We recommend that protocols between the police, the CPS and Social Services are obtained across all areas to facilitate the handling of third party material in accordance with previous recommendations.<sup>79</sup>

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## Annex A. Methodology

### Background research of publications

The early development of methodology involved a literature review of significant material.

The range of current legislation and guidance was examined, along with supporting material used by the Police and CPS, material from the Association of Chief Police Officers (ACPO) and National Policing Improvement Agency (NPIA) and force training material, sample instructions, policies and procedures.

The 2007 report *Without Consent* is the most recent HMIC and HMCPSI inspection work on the subject area. It examined the response to rape offences and highlighted areas for development for agencies. This report informed the joint ACPO/CPS Guidance on the area published in 2009 and work being completed by the ACPO Support Team and the CPS on rape issues.

The 2009 Sara Payne report '*Redefining Justice*' was aimed towards '*Addressing the individual needs of victims and witnesses*'. Subsequently, the 2010 '*Stern Review*' looked at the handling of rape complaints by public authorities. This most recent work is a further examination of the handling of victim/witness issues.

### Focus, task and approach

We applied a joint inspection methodology focussed on how suspect/defendant issues are managed within rape investigation/prosecution. This involved joint inspection with colleagues of HMCPSI working alongside inspectors of HMIC.

### Inspection process

The inspection applied an established methodology developed in the criminal justice joint inspection work, albeit that only some aspects of activity involved joint inspection. The methodology involved:

- *Preparation and research* gathering and reviewing relevant publications, data gathering and consultation with stakeholders including NPIA, FSS, SCAS, ACPO

- *Identification of potential inspection sites/activities* offering the required opportunities for evidence gathering across the range of relevant environments and inspected activity
- *Development, testing and review of pilot* involving production of pilot inspection, field-testing and modifying the evidence gathering approaches to ensure relevance and effectiveness
- *Inspection fieldwork* involving visiting inspection sites, observation of activity, targeted and random sample file reading, interviews with key participants and stakeholders, examination of crime records and systems of forces and CPS CMS (where appropriate)
- *Collation of results* by gathering and moderation of findings across the inspection areas to ensure quality of evidence and identify and address deficits in evidence
- *Evaluation of findings* to identify themes and develop conclusions

### **Selection of inspection sites**

Twelve police areas were selected for the inspection activity following discussion with ACPO, CPS and the Rape Monitoring Group to identify a sample representing a range of both challenges and practice.

Selection also took account of:

- Existing inspection and research activity in police forces/CPS Areas;
- No crime levels for reported sexual offences 2009/2010;
- SCAS case referral activity July-Sept 2010;
- SCAS linked offence identification Nov 2009-Oct 2010;
- Variety of dedicated team approaches; and
- Previous Rape Monitoring Group (RMG) information.

During the inspection activity the inspection team visited 12 police force areas and also associated CPS areas. The inspection conducted 60 structured interviews and 240 individuals were involved in this process including police officers, police staff, CPS staff and the judiciary, and questionnaires were completed by prosecution counsel and defence solicitors.

## **Inspection activity**

Inspection activity was conducted in three phases:

- In 2010 an inspection of 6 forces and CPS areas;
- In 2011 a more focussed look at serial and linked offending across force areas; and
- In late 2011 an examination of crime recording aspects and intelligence and forensic aspects.

During the course of this activity the inspection gathered information on 3,227 reported rapes in 2010 including those subsequently dealt with as 'no crime' or receiving other disposals.

From this broad case sample the inspection identified 334 cases for further evaluation to determine the case sample for detailed examination.

Ultimately HMIC undertook a specific and detailed examination took place of 98 sample Police cases of reported rape. These cases were subjected to a detailed file read, with further supporting interviews, to examine the actions taken.

Inspectors from HMCPSI identified 36 sample CPS cases of rape and conducted a detailed examination of these.

## **Reference group**

As part of methodology the inspection referred to a Reference Group and this function was performed by the Rape Monitoring Group through specific agenda items in its meetings. Beyond this reference was available from additional agencies as required.