

**From Report to Court:
Rape cases and the criminal justice system in the North East
Professor Marianne Hester OBE**

Introduction

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

The research is situated in an ongoing process of review, policy and debate regarding criminal justice approaches to sexual offences and sentencing taking place both nationally and regionally. A series of government reports and reviews have highlighted the large attrition ('drop-out') in rape cases, and there have been considerable attempts by the police, the Crown Prosecution Service (CPS) and the courts to improve their responses to the investigation, prosecution and conviction of rape offences by better recording and provision of information, support and anonymity for victims.

Method

Data on 87 rape cases reported to the police during the months of May and November 2010 were accessed in the three police headquarters, and anonymised by removing all names and other identifiers. Crown Prosecution Service files on the 17 cases that proceeded to court were made available in the CPS headquarters in the North East, and anonymised data was compiled. To provide further context for the progression of cases, interviews were carried out with 16 professionals from criminal justice and non-criminal justice agencies (police officers, CPS prosecutor, ISVAs, rape crisis counsellors and other sexual violence support staff).

Eighty-three of victims were female and four were male. As would be expected in rape cases, the perpetrators were all male, although one grandmother was seen as colluding in historical child sexual abuse. At the time of reporting to the police, ages of victims ranged from 16 to 57 and ages of perpetrators ranged from 17 to 85. Some historical cases, involving child sexual abuse, took place more than 30 years ago and this is reflected in the wide age range for the perpetrators. The perpetrators also appeared to be largely white and probably British, with only two cases where the perpetrators were described as a group of 'Asian men', or involved perpetrators described as black French and Nigerian.

Rape case progression and attrition

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

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

Cases may 'drop-out' (result in attrition) at any point during these stages. Kelly et al. (2005)¹ suggest that institutional rules, previous and predicted experience and gendered expectations of behaviour interact to provide the contexts for such attrition. In the current research, operational issues and decisions within the

¹ Kelly, L., Lovett, J. and Regan, L. (2005) *A gap or a chasm? Attrition in reported Rape cases*. Home Office Research Study 293. London: Home Office

criminal justice system about different types of cases, as well as decisions by victims to withdraw, meant that cases were not deemed to be crimes or did not result in arrest, or failed to progress from arrest through charges and to conviction. Gendered expectations played a part to different extents in these decisions, and were evident in victim and perpetrator accounts. The cases that progressed furthest through the criminal justice system were likely to be those McMillan (2010)² calls 'good cases', characterised by a combination of particular victim features (e.g. mental health, articulation, compliance) and incident features (corroborating evidence, socio-sexual/alcohol consuming situation, injury consistent with account, even if no injury). There was less onus on perceptions of stereotypical 'real rape' (stranger, assault, public places, resistance, force), although the latter may have played a more important role in the court stage³.

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

1. **Acquaintance** – this constituted the biggest group, and was where the perpetrator was known to the victim longer than 24 hours, or less than 24 hours, but was not a partner or family member. (N=32, 36.8%).
2. **Historical** – where the rape took place in the past, usually more than one year ago. Most involved child sexual abuse although there were also two historical domestic violence cases (N =28, 32.2%).
3. **Domestic violence** – where perpetrators were current partners or ex-partners (N=25, 28.7%).
4. In addition, two cases involved **recent** rapes by perpetrators who were **family members** (cousin and brother).

The general pattern of progression of the 87 rape cases is set out in diagram 1. Half (44/87, 50.6%) of the cases reported to the police were deemed to be crimes, and resulted in arrest. The perpetrators in domestic violence rape cases were more likely to be arrested (cases were very serious and high risk), and those in historical cases least so. However, cases involving rape as part of domestic violence were also the most likely to be withdrawn in the early stages due to fear and threats faced by the victims. Just over half the cases deemed to be crimes (23/44, 52.3%) were referred to the CPS for charging. Three quarters of the cases thus dropped out at the police stage. This is a larger drop out at the police stage than identified in other UK or international comparative research, but may be the result of the sample omitting current under 16s (which are more likely to lead to prosecution). More than a third of cases deemed to be crimes resulted in CPS charges and proceeded to court (17/87, 38.6%), and a little over half of these resulted in conviction of any sexual or other offence (10/17, 58.8%). Historical cases were most likely to result in conviction, and tended to have corroboration via more than one victim and multiple disclosures. The rate from charge to conviction is the same as the national figures reported in the Stern Review (2010)⁴, and higher than the three year average reported by the Ministry of Justice et al. (2013)⁵.

Cases involving very vulnerable victims, such as those with extensive mental health problems, were also those least likely to progress through the criminal justice system or to be seen as crimes in the first place. One in five victims (17/87, 19.5%) had a mental health problem according to the police record.

To varying degrees the police could be seen to be adopting the victim-focused approach recommended in the Rape Experience Review (Payne 2009)⁶ with an emphasis on believing victims from when they reported and supporting them to remain in the criminal justice system. One force area in particular had made a considerable effort to adopt such an approach, alongside a concerted effort to develop multi-agency links,

² McMillan, L. (2010) Understanding Attrition in Rape Cases, End of Award Report to ESRC. Swindon: ESRC

³ No court observation was carried out in the current study.

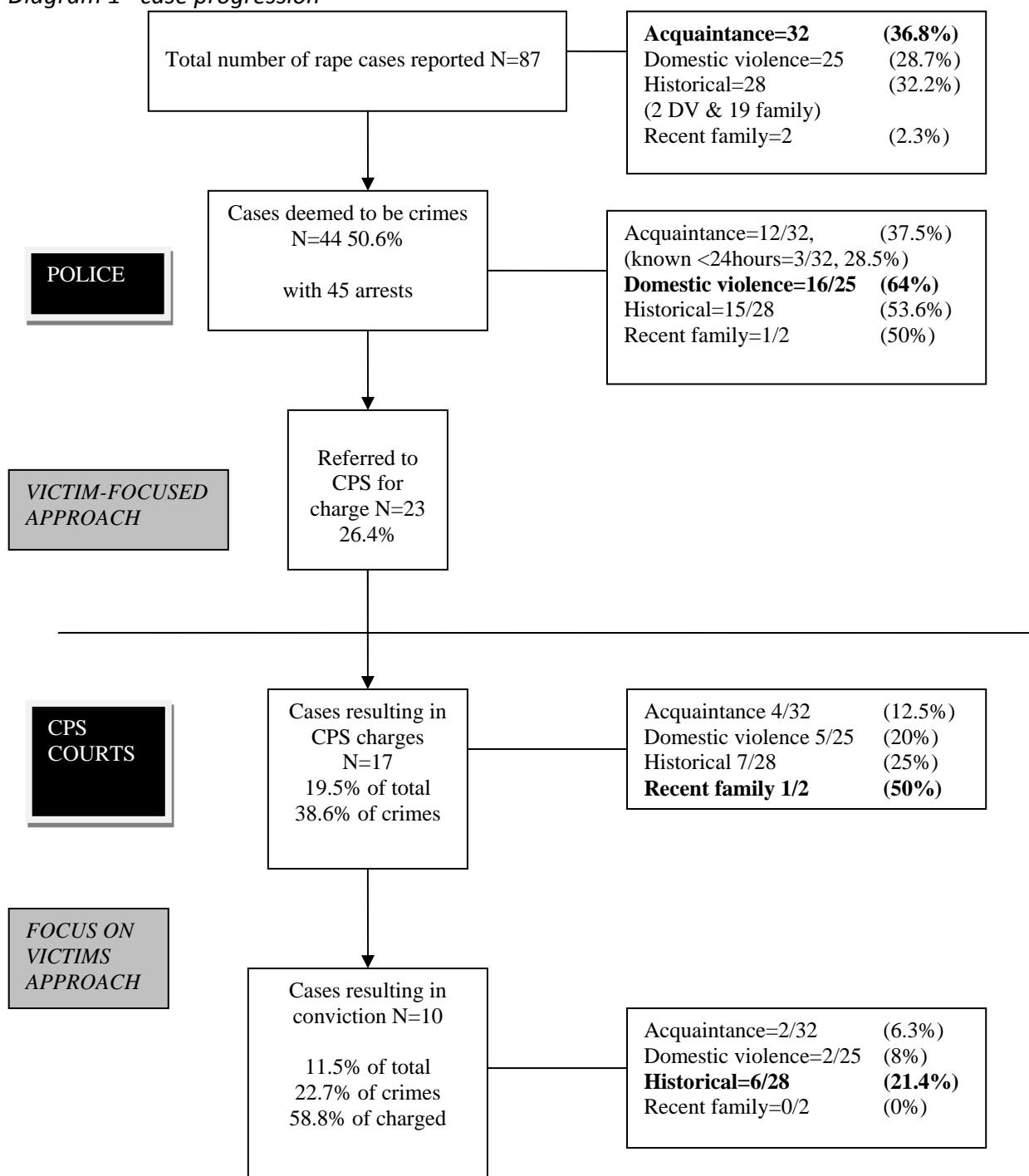
⁴ Stern, V. (2010) 'The Stern Review: A report by Baroness Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales' London: Home Office

⁵ Ministry of Justice, Home Office and Office for National Statistics (2013) An Overview of Sexual Offending in England and Wales, Statistical bulletin.

⁶ Payne, S. (2009) 'Redefining Justice: Addressing the individual needs of victims and witnesses' London: Home Office

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

Diagram 1 –case progression



Work across agencies

Police forces and CPS in the North East of England have introduced Police Rape Champions and police officers trained in sexual offence investigation techniques, CPS Area Rape Coordinators, and have developed co-ordination between criminal justice and other agencies. In the current research both police and CPS saw these shifts as positive in enhancing the criminal justice approach in rape cases. The force area with a well developed 'steering group' involving a wide range of criminal and non-criminal justice agencies was also the most effective in achieving progression of cases through the criminal justice system. Non-criminal justice agency staff also highlighted that different ways of organising links across agencies had led to differential degrees of information exchange and access to support for victims.

Conclusions

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

Report of a research project commissioned by the Northern Rock Foundation

A copy of the full report will be available on the Foundation from July 2013

www.nr-foundation.org.uk/resources/domestic-abuse-research-reports/

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