

Legal Research Report for Somerset & Avon Rape and Sexual Abuse Support (SARSAS)

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1. Introduction

This document was written by a group of Bristol Law School, UWE undergraduate law and joint degree students. They volunteered to answer a series of questions posed by staff and volunteers who work at Somerset & Avon Rape and Sexual Abuse Support (SARSAS). While law school staff members supervised the work and edited some of content, this document represents the hard work of a group of talented and committed student authors. We are extremely grateful for their dedication to this project.

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2. What is the evidence on specialist sexual violence courts – how do they work? Are they successful?

This section seeks to examine the workings of specialist sexual violence courts, in respect of how they affect the court process and outcome of sexual offence cases. These courts do not currently exist in the United Kingdom, which means research from other jurisdictions will be examined to ascertain the success of this criminal justice initiative.

Specialist sexual violence courts take different forms. 'A general definition of a specialty court is a court that focuses on a similar class of offender or on a narrow class of offenses'.¹ In South Africa, the offences generally designated to these types of courts consist of things such as rape, attempted rape, sexual assault, incest, grooming and female genital mutilation amongst others.² 'The aim of the specialization is to provide a consistent response to sex offenses'.³ The difference from the usual court procedure is that the 'pre-trial case management by the judge will be more intensive and pro-active', this reduces the incidence of delays in the case thus reducing the distressing nature of these types of cases.⁴ The judge will have 'specialised training in sexual violence offending', which is aimed to educate the judges and increase their understanding of issues faced by complainants.⁵ 'The specialized courts for sexual offences are said to aim to improve the conviction rate in sexual assault cases',⁶ though the evidence on this specific impact is not robust.

One of the 'key principles of the sex offense court model, and a primary goal of its adoption in Pittsburgh (USA), is encouraging a strong degree of community collaboration'.⁷ Eliciting input from court staff, lawyers as well as many victim

¹ Stephen P. Walker and Dap A. Louw, 'The South African court for Sexual Offences' (2003) 26(1) International Journal of Law and Psychiatry 73

² Sexual Violence Pilot Court, 'Designated offenses list' <<http://www.districtcourts.govt.nz/assets/Uploads/Publications/List-of-offences-for-SVC-pilot-as-of-March-29-2017.pdf>> accessed 13 February 2018

³ Rebecca Thomforde Hauser, 'The Allegheny County Sex Offense Court Using Evidence-Based Practices to Increase Accountability and Safety' (*Centre for Court Innovation*, 2017) 2 <https://www.courtinnovation.org/sites/default/files/documents/Monograph_August2017_AlleghenySexOffenderCourt_0.pdf> accessed 7 February 2018

⁴ Sexual Violence Court Pilot: Frequently Asked Questions <<http://www.districtcourts.govt.nz/assets/Uploads/FAQS-Sexual-Violence-Court-Pilot.pdf>> accessed 17 October 2017

⁵ Sexual Violence Court Pilot: Frequently Asked Questions <<http://www.districtcourts.govt.nz/assets/Uploads/FAQS-Sexual-Violence-Court-Pilot.pdf>> accessed 17 October 2017

⁶ Stephen P. Walker, and Dap A. Louw, 'The Court for Sexual Offences: Perceptions of the victims of Sexual Offences' (2005) 28(3) International Journal of Law and Psychiatry 231

⁷ Rebecca Thomforde Hauser, 'The Allegheny County Sex Offense Court Using Evidence-Based Practices to Increase Accountability and Safety' (*Centre for Court Innovation*, 2017) 2

services and other programs to help victims and prevent sexual violence.⁸ Research has shown that this type of cooperation is effective in reducing recidivism.⁹

South Africa is one of the few places so far to have implemented specialist sex courts and 'identified sex crimes as an area for judicial specialization'.¹⁰ It must be noted that 'a lack of adequate literature on specialized sex courts poses specific challenges to the evaluation of these courts'.¹¹ Very little research has been done on these courts,¹² which means that it will be very difficult to come to a fully informed conclusion. Some of the methods that the South African specialized court uses include 'prior meetings with the prosecutor where the victim is briefed on court procedures and the course the trial will most probably take', the 'environment has also been adapted from the impersonal and imposing atmosphere usually associated with the judicial system'.¹³ Precautions are taken to ensure the privacy of the victims and protection from intimidation through the use of special waiting rooms,¹⁴ and 'minors and other susceptible victims are able to give their testimony via a closed circuit television system' reducing the distress often caused by giving information.¹⁵ The court is also 'inclined to go to greater lengths to protect the victims from further trauma when setting bail conditions and restricting contact between the offender and victim before and during the trial'.¹⁶

In Pennsylvania, sex offence cases are assigned to two experienced sex offence court judges.¹⁷ If the defendant is convicted and sentenced they are 'immediately assigned a specialized probation officer and referred to a treatment provider approved by the sex offender assessment board'.¹⁸ This defendant-focused approach is aimed at reducing the length of time these trials take to prevent re-traumatizing victims as well as removing dangerous individuals from the streets.¹⁹ Since 2010,

<https://www.courtinnovation.org/sites/default/files/documents/Monograph_August2017_AlleghenySexOffenderCourt_0.pdf> accessed 7 February 2018

⁸ Rebecca Thomforde Hauser, 'The Allegheny County Sex Offense Court Using Evidence-Based Practices to Increase Accountability and Safety' (*Centre for Court Innovation*, 2017) 2 <https://www.courtinnovation.org/sites/default/files/documents/Monograph_August2017_AlleghenySexOffenderCourt_0.pdf> accessed 7 February 2018

⁹ Shannon M. Carey, Juliette R. Macklin and Michael W. Finigan, 'What Works? The Ten Key Components of Drug Court: Research-Based Best Practices' (2012) 8(1) *Drug Court Review* 6

¹⁰ Stephen P Walker, Dap Louw (n 10) Stephen P Walker, Dap Louw, 'The Court for Sexual Offences: Perceptions of the victims of Sexual Offences' (2005) 231-245 <<https://www.sciencedirect.com/science/article/pii/S0160252705000518#aep-section-id9>> accessed 29 October 2017

¹¹ Stephen P Walker, Dap Louw (n 5)

¹² Stephen P Walker, Dap Louw (n 10)

¹³ Stephen P Walker, Dap Louw (n 10)

¹⁴ Stephen P Walker, Dap Louw (n 10)

¹⁵ Stephen P Walker, Dap Louw (n 10)

¹⁶ Stephen P Walker, Dap Louw (n 10)

¹⁷ Rebecca Thomforde Hauser (n 7) 4

¹⁸ Rebecca Thomforde Hauser (n 7) 4-5

¹⁹ Rebecca Thomforde Hauser (n 7) 4-5

there has been a 37% reduction in the length of time it takes for cases to be completed.²⁰

Two of the assigned judges in the specialized courts in Pennsylvania, Judge Jill Rangos and Judge McDaniel, proceed on the basis that 'each defendant is different, but they have similar issues ... What tools do we have to keep them in the community safely and what tools do we have to sanction them swiftly if non-compliant?'²¹ This focuses on rehabilitation of the offender and reducing the risk of reoffending. Attaching special conditions to each individual defendant's probation, such as mandated sex offender treatment, no contact with minors, and no alcohol use is part of the method created by these judges.²² The Special Services Unit Supervisor, Jasmine Rivera explains that 'we have to be swift and we have to be fair in our sanction. The sex offense court allows us to do that. We can detect and respond quickly.'²³ When a violation of the terms of the probation conditions occurs, the defendant is brought immediately before the sex offender court judge, the staff use what they call a 'template of progressive sanctions' to 'respond to the non-compliance'.²⁴ The judge addresses the violation and then 'imposes appropriate sanctions, which may include the imposition of additional conditions, placement on house arrest, or a short jail stay'.²⁵ The Allegheny County Adult Probation service provides the defendants with employment assistance, adult education ... cognitive behavioural therapy, intervention programs for abusive partners, and drug and alcohol testing and evaluation.²⁶ This helps to integrate them back into society to prevent reoffending. Judge McDaniel explains that this procedure gives the offenders 'something to work for' as well as sanctioning those whom are non-compliant,²⁷ which subsequently 'has the effect of making the court's expectations clear, along with its willingness to impose consequences'.²⁸

The specialist courts have also recognized the unique trauma that is connected to these cases and have included victim services to help with this, such as 'victim advocacy, counselling, and support with the goal of promoting the rights, safety, and recovery of victims in the aftermath of trauma and throughout the court process'.²⁹ This development has been described as a 'judicial response that enhances both victim safety and the offender accountability'.³⁰ Alison Hall from *Pittsburgh Action*

²⁰ Rebecca Thomforde Hauser (n 7) 5

²¹ Rebecca Thomforde Hauser (n 7) 9

²² Rebecca Thomforde Hauser (n 7) 9

²³ Rebecca Thomforde Hauser (n 7) 9

²⁴ Rebecca Thomforde Hauser (n 7) 9-10

²⁵ Rebecca Thomforde Hauser (n 7) 9-10

²⁶ Rebecca Thomforde Hauser (n 7) 8

²⁷ Rebecca Thomforde Hauser (n 7) 10

²⁸ Rebecca Thomforde Hauser (n 7) 10

²⁹ Rebecca Thomforde Hauser (n 7) 6

³⁰ Rebecca Thomforde Hauser (n 7) 12

Against Rape comments that 'judges are aware of the complexities of these cases and the impact on victims'.³¹

In 2016, New Zealand's district court piloted a specialist sexual violence court.³² Jan-Maria Doogie, the Chief District Court judge explains that the pilot was aimed at improving the length of time these cases take to prevent the delay in recovery of the victims that may stem from having to keep the trauma fresh in their minds for a prolonged time.³³ A vital part of this initiative was an education programme for trial judges on sexual violence, as well as the 'Best Practice Guidelines' to improve pre-trial case management.³⁴ 'The guidelines are designed to reduce pre-trial delay and to ensure flexible, workable trial managements'.³⁵ Only designated judges are able to preside over any of these cases, Jan-Maria Doogie has the responsibility to designate judges based on their experience and relevant training.³⁶

After six months of this pilot it was too early to make any clear conclusions, however 'as of mid-May, charges involving 19 defendants were scheduled to reach jury trial during June, July and August' indicating a 'reduction in the average time from first appearance to jury trial'.³⁷ This proves to be a promising factor in the effectiveness of this pilot. A year in and it has already shown that 'cases in the pilot courts are proceeding to trial faster than sexual violence trials were in the previous year, and also faster than jury trials not in the pilot'.³⁸ It was also found that having case managers has 'contributed to better case management',³⁹ as well as the pilot 'enriching judicial knowledge and understanding of sexual complaints and witnesses through enhanced education'.⁴⁰ 'Judges also report that the quality of witness evidence has improved across both pilot and non-pilot courts as a result. This augurs well for the pilot to drive improvements right across the entire District Court'.⁴¹

Research done into the perceptions of the victims in these cases offers useful insight into how effective these courts are. It shows that 94.9% of the sample approved of

³¹ Rebecca Thomforde Hauser (n 7) 12

³² Judge Jan-Marie Doogie, Chief District Court Judge for New Zealand, 'District Courts to Pilot Sexual Violence Court' (20 October 2016) < <http://www.districtcourts.govt.nz/assets/Uploads/Statement-from-the-Chief-District-Court-Judge-Pilot-SV-Court-.pdf>> accessed 15 February 2018

³³ Judge Jan-Marie Doogie (n 39)

³⁴ Judge Jan-Marie Doogie (n 39)

³⁵ Sexual Offence Court Pilot: Guidelines for Best Practice (NZ) < <http://www.districtcourts.govt.nz/assets/Uploads/Publications/Best-Practice-Guidelines.pdf>> accessed 15 February 2018

³⁶ Sexual Offence Court Pilot: Guidelines for Best Practice (NZ) (n 42)

³⁷ Judge Jan-Marie Doogie, Chief District Court Judge for New Zealand, 'Milestone for Sexual Violence Court Pilot' (23 May 2017) < <http://www.districtcourts.govt.nz/assets/Uploads/Six-month-milestone-2.pdf>> accessed 15 February 2018

³⁸ Judge Jan-Marie Doogie, Chief District Court Judge for New Zealand, 'Sexual Court Pilot at 12-Month Milestone' (15 December 2017) < <http://www.districtcourts.govt.nz/assets/Uploads/SVCP-First-12-months-milestone-28129-1.pdf>> accessed 15 February 2018

³⁹ Judge Jan-Marie Doogie (n 45)

⁴⁰ Judge Jan-Marie Doogie (n 45)

⁴¹ Judge Jan-Marie Doogie (n 45)

the manner the prosecutor undertook the preparatory interview,⁴² which shows that greater attention to the needs of the victim in respect of the type of case does improve the process for them. In instances where an intermediary was used 96.9% of the victims stated that 'communication was better facilitated'.⁴³ In specialist courts the measures intended to assist victims to give evidence e.g. live links and intermediaries are sought in all sexual violence cases.⁴⁴ 37.5% of the sample victims stated that their experience in the court was largely successful, 27.5% viewed it as totally successful.⁴⁵

The court was viewed to have reduced trauma to a large extent in 46.3% of the cases, with 9.8% of the cases showing trauma was removed totally.⁴⁶ Conversely, 4.9% of the victims said they would not recommend the court to others in a similar situation.⁴⁷ In the grand scheme of this research this is very low, but the reasons behind it must be considered. The main issues highlighted in this research was that many of the sample were unaware of the outcome of the case suggesting that more direction is required to keep them updated.⁴⁸ This issue is said to 'shed therapeutic doubt' on the court as 'therapeutic jurisprudence is based on the tenet that the victim's emotional recovery is benefited by seeing the offender found guilty and sentenced for the crime'.⁴⁹

Areas for improvement were highlighted by the research, for example use of more female officers to assist female victims.⁵⁰ The research shows that the process is still 'slow and drawn out' as '78.2% of the family members report having to wait more than 6 months for the victim's first court date',⁵¹ suggesting that there is still a long way to go to make the process easier for the victims. The majority of the family members noted that intimidation from the offender was an active issue and that removal of the offender from the courtroom whilst the victim and their relatives were giving evidence may resolve this.⁵² It is said that the professionals in these cases 'become more familiar with the procedures and statutes involved with that specific area of jurisprudence' and they develop 'extra-legal knowledge in the field concerned' resulting in a 'greater degree of coherence and consistency'.⁵³ However

⁴² Stephen P Walker, Dap Louw (n 10)

⁴³ Stephen P Walker, Dap Louw (n 10)

⁴⁴ Stephen P Walker, Dap Louw (n 10)

⁴⁵ Stephen P Walker, Dap Louw (n 10)

⁴⁶ Stephen P Walker, Dap Louw (n 10)

⁴⁷ Stephen P Walker, Dap Louw (n 10)

⁴⁸ Stephen P Walker, Dap Louw (n 10)

⁴⁹ Stephen P Walker, Dap Louw (n 10)

⁵⁰ Stephen P Walker, Dap Louw, 'The Court for Sexual Offences: Perceptions of the Families of the Victims of Sexual Offences' (2005) 418-429 <https://www.sciencedirect.com/science/article/pii/S016025270500052X#bbib8> accessed 29 October 2017

⁵¹ Stephen P Walker (n 68)

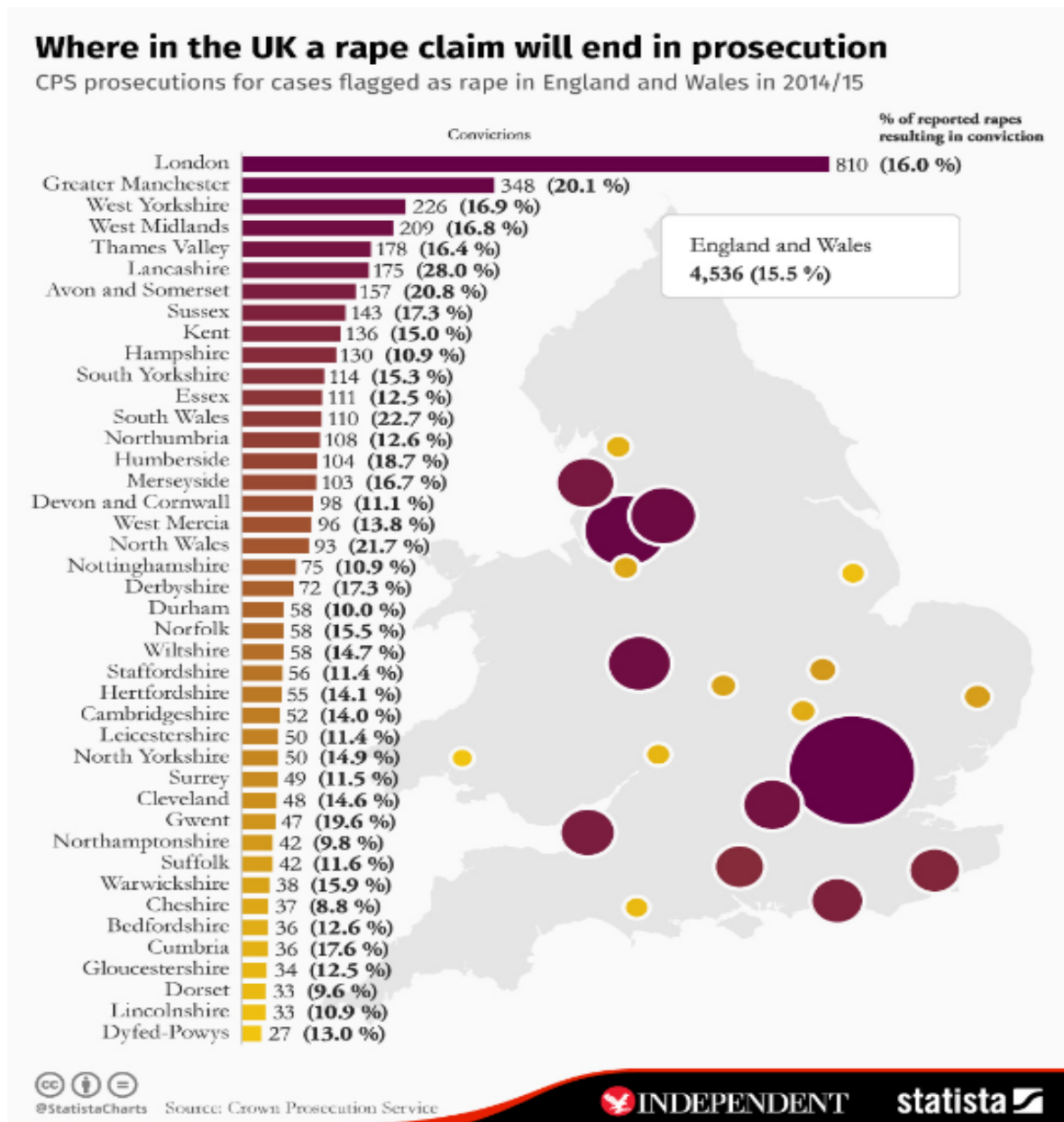
⁵² Stephen P Walker (n 68)

⁵³ Stephen P Walker, Dap Louw (n 5) 75

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this comes with its own drawback as judges may become hardened to the issues at hand which may change the way they view them.

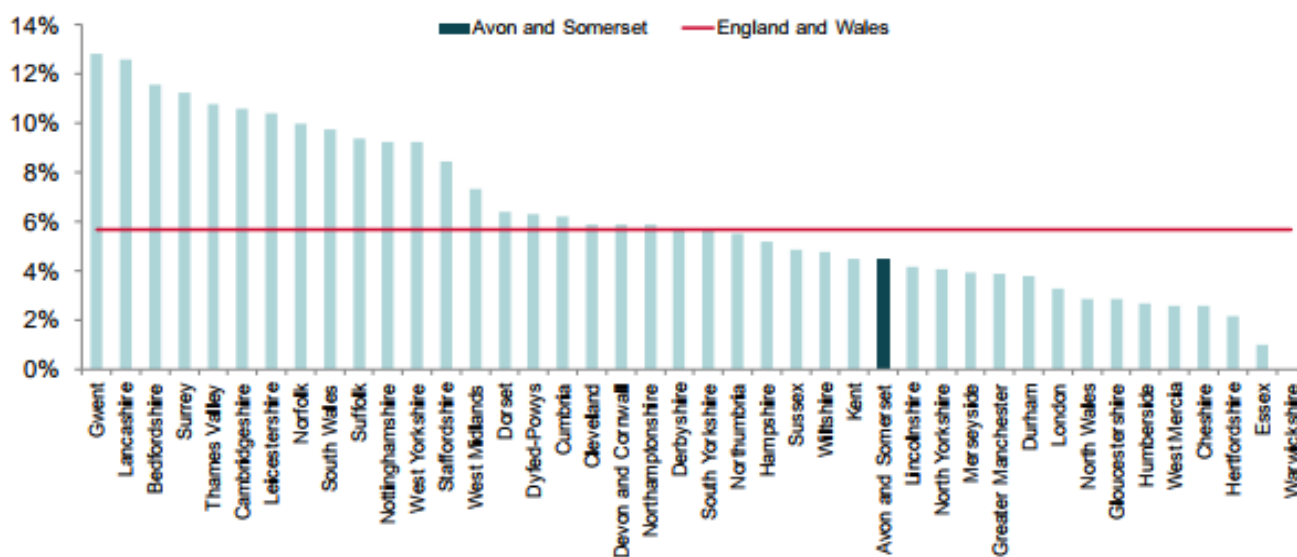
3. Why are there variations between police force/CPS areas in terms of rape conviction rates?



Conviction rates in rape cases have been the subjects of extensive study.⁵⁴ What is particularly apparent is how different areas of the England and Wales have differing conviction rates. The above map shows the variation of conviction rates throughout different police areas.⁵⁵

In 2013-2014, police across England and Wales recorded 12,952 reports of adult rape and 7,775 child rape allegations, involving someone under 16.⁵⁶ 28% of all recorded rape was referred to the CPS for a charging decision.⁵⁷ Across England and Wales 9% of rapes – both adult and child reports were cancelled or transferred (formerly known as ‘no-criming’ prior to April 2015).⁵⁸ The data indicate wide variations between police forces e.g. in Leicestershire the cancel and transfer rate was 20%, while in the West Midlands the figure was 6%.⁵⁹ Research shows that there has been a decline in the national average rate of recorded offences that are subsequently cancelled or transferred. However, there is variation between police forces as shown in national rape monitoring data shown below⁶⁰ which sets out the

Figure 3.5: Transferred or cancelled crimes ratio for adult rape for the financial year 2014/15:²⁶ a comparison of local areas in England and Wales



⁵⁴ Home Office, ‘A report by Baroness Vivien Stern CBE of an Independent Review into how rape complaints are handled by public authorities in England and Wales’ (2010) at p.9.

⁵⁵ N. McCarthy, ‘Where in the UK a rape claim will end in prosecution’(2015) <<https://www.statista.com/chart/4003/where-in-the-uk-a-rape-a-claim-will-end-in-prosecution/>> accessed 29/10/2017.

⁵⁶ ‘Only 28% of recorded rapes are referred to CPS, says police inspectorate’ *The Guardian* (2015)

⁵⁷ ‘Only 28% of recorded rapes are referred to CPS, says police inspectorate’ *The Guardian* (2015)

⁵⁸ Since April 2015, the reference to ‘no-criming’ has been replaced with the use of ‘transfer’ and ‘cancel’. Transferred cases are those that took place in another force area. Cancelled cases are those where the crime was recorded in error, constitutes part of an already recorded crime, or where there is ‘additional verifiable information’ (AVI) that no crime occurred.

⁵⁹ Sandra Laville, ‘Only 28% of recorded rapes are referred to CPS, says police inspectorate’ *The Guardian* (2015)

⁶⁰ HMICFRS, *Rape and monitoring group Local Area Data for 2014/15* (2015) 27.

variation in the transferred or cancelled rape cases across police forces.

A 2014 report found a variety of reasons for recording errors in serious criminal cases including rape. These reasons included poor understanding of the Home Office crime counting rules, poor training, supervision and in some cases, disbelief of the victim.⁶¹ All of these factors will have some impact on variations between police forces and many forces have work to do in terms of specific improvements. In a recent report, it was found that Cheshire constabulary failed to record over 280 reports of sex offences a year, which is 15.2% of those reported.⁶² By comparison, it was estimated that Avon and Somerset constabulary did not record over 270 reports of sexual offences a year, which is 8.1% of those reported to them.⁶³ Other force areas show better rates of recording.⁶⁴

Feist and colleagues explored the reasons behind the distinct variations existing in different police forces and found a number of variables.⁶⁵ One such variable that influenced the detection of offences and conviction rates was 'rapid reporting and responding':⁶⁶ 'considerable effort was made to collect accurate information when the offence took place and the time or date it was reported to the police.'⁶⁷ Around '46% of all crimed rapes were reported on the day they occurred; although 14% were reported more than 6 months after they took place.'⁶⁸ The report found that: 'Forensic or physical evidence is much more likely to be collected in crimes when the time between offence and report is short.'⁶⁹ This highlights the importance of a good relationship between the police and public so victims of rape can know they are safe and come forward as soon as possible to garner as much evidence as possible. However, some have argued that there are disparities between police forces in the support they offer to victims of rape, with charities such as Rape Crisis calling it a 'post code lottery'⁷⁰ in terms of victim care.

A study of the Metropolitan Police in 2015 showed that 'the vast majority of cases did not make it beyond the investigative stage'.⁷¹ Research points to the value of specialist support referrals in reducing rape case attrition and has also found variations in support referral rates between policing areas.⁷² Also, the use of Sexual

⁶¹ HMICFRS, *Crime-recording: making the victim count* (2014) 121.

⁶² HMICFRS, *Cheshire Constabulary: crime data integrity inspection 2017* (2017).

⁶³ HMICFRS, *Avon and Somerset constabulary: crime data integrity inspection* (2017).

⁶⁴ HMICFRS, *Sussex Police: Crime Data Integrity inspection 2016* (2017); HMICFRS, *Durham Constabulary: Crime Data Integrity inspection 2017* (2018).

⁶⁵ A. Feist *et al*, *Investigating and detecting recorded offences of rape* (2007) 9.

⁶⁶ A. Feist *et al*, *Investigating and detecting recorded offences of rape* (2007) 24.

⁶⁷ A. Feist *et al*, *Investigating and detecting recorded offences of rape* (2007) 24.

⁶⁸ A. Feist *et al*, *Investigating and detecting recorded offences of rape* (2007) 24

⁶⁹ A. Feist *et al*, *Investigating and detecting recorded offences of rape* (2007) 74.

⁷⁰ C. Mortimer, 'The Map that shows Huge regional variation in Rape convictions across England and Wales', *The Independent* (05/11/2015).

⁷¹ E. Angiolini, *Report of the independent review into the investigation and prosecution of rape in London* (2015) 20.

⁷² P. Rumney *et al*, *Comparative analysis of Operation Bluestone: A specialist rape investigation unit - summary report* (2016) 5-6.

Assault Referral Centres (SARC) has been found to be associated with a lower [victim] withdrawal rate.⁷³ Kelly, Lovett and Regan⁷⁴ found victims 'were more likely to complete the initial investigative process in SARC areas compared with non-SARC areas, and also that the conviction rates were slightly higher in the SARC areas than the national average.'⁷⁵ However, it is impossible to state 'with certainty that the existence of SARCs increased conviction rates.'⁷⁶

Another reason for disparities in conviction rates across England and Wales is that policies are implemented differently in individual police force and CPS areas.⁷⁷ For example, in 2010 it was found that 'there are still prosecutors who do not make the effort to communicate properly with victims' and in some areas specialist prosecutors were not being used.⁷⁸ In a 2016 report it was found that 'early investigative advice' (EIA) which has shown to assist in the prosecution of rape defendants is not being used consistently across all CPS areas. In some areas 'prosecutors are too busy' to provide an EIA. While in other areas, there are daily rostered lawyer to provide EIA.⁷⁹ This, it stated in the review, could be due to lack of understanding of what EIA is and some may confuse it with police supervision.⁸⁰

Another variable that highlights the disparities in conviction rates across England and Wales is how lawyers apply the 'merits based approach' to prosecuting - where it is decided whether there is enough evidence to allow a prosecution.⁸¹ However, a review suggests that sometimes this approach is applied 'far too vigorously' which leads to cases being brought against a defendant that have 'no chance of conviction' meaning areas that incorrectly apply this approach could cause declining conviction rates compared to other areas.⁸²

It has also been found that there are inconsistencies in communication between the CPS's Rape and Serious Sexual Offences (RASSO) units and police forces. This partly resulted from differing internal organizational structures within police forces.⁸³ Further, the CPS was found not to have a single operating model in its handling of rape cases which gave rise 'to a "postcode lottery" in terms of the service provided

⁷³ A. Feist et al, *Investigating and detecting recorded offences of rape* (2007) 91.

⁷⁴ Government Equalities Office, 'Connections and Disconnections: Assessing evidence, knowledge and practice in responses to rape' (2010) 34.

⁷⁵ Government Equalities Office, 'Connections and Disconnections: Assessing evidence, knowledge and practice in responses to rape' (2010) 34.

⁷⁶ Government Equalities Office, 'Connections and Disconnections: Assessing evidence, knowledge and practice in responses to rape' (2010) 34.

⁷⁷ Government Equalities Office, *The Stern Review* (2010).

⁷⁸ Government Equalities Office, *The Stern Review* (2010).

⁷⁹ HMCPSI, *Thematic review of the CPS RASSO units* (2016) 14.

⁸⁰ HMCPSI, *Thematic review of the CPS RASSO units* (2016) 15.

⁸¹ HMCPSI, *Thematic review of the CPS RASSO units* (2016) 17.

⁸² HMCPSI, *Thematic review of the CPS RASSO units* (2016) 18.

⁸³ HMCPSI, *Thematic review of the CPS RASSO units* (2016) 50.

to victims, even across a single CPS Area'.⁸⁴ In other areas, there was found to be no specialist unit at all or a reduction in specialist teams.⁸⁵

As a result, we see that there is not one single reason for the difference in conviction rates across both CPS and Police areas in England and Wales, but a multitude of reasons – making the problem harder to address.

⁸⁴ HMCPsi, *Thematic review of the CPS RASSO units* (2016) 53.

⁸⁵ HMCPsi, *Thematic review of the CPS RASSO units* (2016) 53.

4. The police, charging referrals and the Victims' Right to Review scheme

When a crime is reported, the police will investigate to find out what has happened.⁸⁶ A police investigation may involve: talking to all the parties involved (including victims, suspects and witnesses), gathering statements, gathering any crime scene evidence or CCTV, and following up on leads. When officers believe that they know who committed the crime and possess enough evidence to prove it, they will send the file to the Crown Prosecution Service (CPS) for a charging decision. The police must ensure the appropriate test is met before proceeding to charge or referring the case to the CPS.⁸⁷ The police will take no further action if this test is not met and the case cannot be supported by further investigation, unless the decision itself 'requires the assessment of complicated evidence or legal issues'.⁸⁸ In accordance with the Director for Public Prosecution's *Guidance on Charging* (2013),⁸⁹ the police will assess the given case to determine:

- The evidence which supports the charge
- The justification for treating the case as an anticipated guilty plea suitable for sentence in a magistrate's court (where that is a requirement)
- The reason why the public interest requires prosecution rather than any other disposal

Guidance states that where the police proceed with charging an offence, in which the suspect has provided a specific defence or denied the offence in interview, the police will 'record the reason for doing so ... and provide a copy to the CPS with the file for the first hearing in the case'.⁹⁰

⁸⁶ CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 29 October 2017

⁸⁷ CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 30 October 2017

⁸⁸ CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 30 October 2017

⁸⁹ CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 1 November 2017

⁹⁰ CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 1 November 2017

The requirement for the police to refer cases to the CPS

If after this assessment, the police decision maker considers that there is adequate evidence to charge a suspect then a referral should be made to the CPS to decide if the suspect should be charged.⁹¹ The same police decision maker will then record the allegation on a form and give a short overview of the reasons why there is sufficient evidence to charge.⁹² This must be done in accordance with the 'Code for Crown Prosecutors' and the application of the 'full code test or the threshold test'.⁹³ These will be discussed later in this document. The custody officer will then decide whether the suspect should be kept in custody or released on bail.⁹⁴

The Victims' Right to Review (VRR)

The VRR has existed within Avon and Somerset Constabulary (and nationally) since April 2015. In certain circumstances victims of crime have a right to request a review of a narrow class police decision making in a case.⁹⁵ This scheme will apply to cases where the police have:

- a. Identified and interviewed a suspect; and
- b. Decided not to take the suspect to court, or to choose not to refer the case to the CPS for a charging decision.

However, a person will not have access to the scheme if:

- a. The decision was made before the 1st April 2015; or
- b. The suspect has been issued with an Out of Court Disposal; or
- c. No suspect has been identified and interviewed.

If a person falls into one of the below categories they will be able to request a review:

⁹¹ CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 1 November 2017

⁹² CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 1 November 2017

⁹³ CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 1 November 2017

⁹⁴ CPS, 'The Director's Guidance On Charging 2013' (CPS May 2013) <http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a04> accessed 1 November 2017

⁹⁵ Avon and Somerset Constabulary, 'Victim Right to Review' (Avon and Somerset Constabulary, April 2015) <<https://www.avonandsomerset.police.uk/services/victims/victim-right-to-review/>> Accessed 30 October 2017

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- a. Victim
- b. Close relative of a person whose death was directly caused by criminal conduct
- c. Parent or guardian where the main victim is under the age of 18
- d. Police officer victim of crime
- e. Family spokesperson of a victim with a disability or who are so badly injured they cannot communicate
- f. Business, providing they gave a named point of contact

In order to request a review of the police's decision not to prosecute, the request must be made within three months of the decision. Further details of how to apply are on the Avon and Somerset Constabulary website page.⁹⁶ The CPS has also implemented a scheme to provide victims with the right to request a review on a decision taken by the CPS not to prosecute.⁹⁷ This is discussed below.

⁹⁶ Avon and Somerset Constabulary, 'Victim Right to Review' (Avon and Somerset Constabulary, April 2015) <<https://www.avonandsomerset.police.uk/services/victims/victim-right-to-review/>> Accessed 30 October 2017

⁹⁷ CPS, 'Victims' Right to Review Scheme' (CPS, July 2016) <http://www.cps.gov.uk/victims_witnesses/victims_right_to_review/> accessed 25 October 2017

5. The CPS decision to charge and the Victims' Right to Review scheme

The police are responsible for investigating allegations of rape and, where they consider that there is sufficient evidence to charge the offence of rape, they refer the case to the Crown Prosecution Service (CPS) who will make the charging decision.⁹⁸ A network of specialist prosecutors in the CPS has been established to improve the number of rape cases that result in a prosecution.⁹⁹ Their role is to ensure that 'all possible avenues of evidence are explored and that the correct charge are identified'.¹⁰⁰ Prosecutors have many responsibilities, but none can be considered 'more critical than the initial decision to prosecute or not to prosecute'.¹⁰¹ The Code for Crown Prosecutors sets out how the CPS makes the decision whether to prosecute.

The Code for Crown Prosecutors: The Full Code Test

The CPS must apply the 'Full Code Test', which has two parts: the evidential stage and the public interest stage.¹⁰²

1. The Evidential Stage

In order to charge a suspect with rape, the CPS must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction'.¹⁰³ Research indicates that prosecutors attempt to avoid uncertainty by only charging in cases in which the odds of conviction are good, and reject those where conviction is unlikely.¹⁰⁴ The likelihood for conviction is based on the prosecutor's assessment of the evidence, including any defences or other information put forward by the suspect. Prosecutors must contemplate several factors. Notably, 'evidentiary and credibility factors' are

⁹⁸ CPS, 'CPS Policy for Prosecuting Cases of Rape' (*CPS*, September 2012) <<https://www.cps.gov.uk/publications/prosecution/rape.html>> accessed 15 October 2017.

⁹⁹ CPS, 'CPS Policy for Prosecuting Cases of Rape' (*CPS*, September 2012) <<https://www.cps.gov.uk/publications/prosecution/rape.html>> accessed 15 October 2017.

¹⁰⁰ CPS, 'CPS Policy for Prosecuting Cases of Rape' (*CPS*, September 2012) <<https://www.cps.gov.uk/publications/prosecution/rape.html>> accessed 15 October 2017.

¹⁰¹ Cassia Spohn and David Holleran, 'Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases involving Strangers, Acquaintances, and Intimate Partners' (2001) 18(3) *Justice Quarterly* 651

¹⁰² CPS, 'CPS Policy for Prosecuting Cases of Rape' (*CPS*, September 2012) <<https://www.cps.gov.uk/publications/prosecution/rape.html>> accessed 15 October 2017.

¹⁰³ CPS, 'CPS Policy for Prosecuting Cases of Rape' (*CPS*, September 2012) <<https://www.cps.gov.uk/publications/prosecution/rape.html>> accessed 15 October 2017.

¹⁰⁴ Cassia Spohn and David Holleran, 'Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases involving Strangers, Acquaintances, and Intimate Partners' (2001) 18(3) *Justice Quarterly* 651

centrally deliberated when deciding which cases proceed.¹⁰⁵ The CPS must consider:¹⁰⁶

- (a) If the evidence would be admissible in court
- (b) The importance of the evidence in relation to the other evidence
- (c) If the evidence is reliable and accurate
- (d) If the evidence is credible

The CPS must consider that an objective, impartial and reasonable jury or judge hearing a case is more likely than not to convict the defendant of the alleged charge, when properly directed in accordance with the law.¹⁰⁷ The case must pass this evidential stage to progress.

a. The Public Interest Stage

If the case does pass the evidential stage, the CPS must decide if a prosecution is in the public interest. A prosecution will generally take place 'unless the factors that are against prosecution ... outweigh those tending in favour'.¹⁰⁸ While in some cases the public interest can be properly served with an out-of-court disposal, rather than a prosecution, if a rape case passes the evidential case, it is believed that the rape is 'so serious that a prosecution is almost certainly required in the public interest'.¹⁰⁹ The CPS must consider various factors when deciding whether a prosecution is in the public interest, including but not limited to:¹¹⁰

- (a) The severity of the offence
- (b) The level of the suspect's culpability, including their level of involvement, if the offending was premeditated, any previous convictions, and the need to safeguard the public

¹⁰⁵ Patricia A. Frazier and Beth Haney, 'Sexual assault cases in the legal system: Police, prosecutor and victim perspectives' (1996) 20 *Law and Human Behaviour* 619

¹⁰⁶ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹⁰⁷ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹⁰⁸ CPS, 'CPS Policy for Prosecuting Cases of Rape' (*CPS*, September 2012) 4.8
<<https://www.cps.gov.uk/publications/prosecution/rape.html>> accessed 15 October 2017.

¹⁰⁹ CPS, 'CPS Policy for Prosecuting Cases of Rape' (*CPS*, September 2012) 4.5
<<https://www.cps.gov.uk/publications/prosecution/rape.html>> accessed 15 October 2017.

¹¹⁰ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

- (c) The circumstances and harm caused to the victim, including how vulnerable the victim was and if the offence was motivated by discrimination against gender/ethnicity/sexual orientation
- (d) If the suspect is under the age of 18 at the time of the alleged offence
- (e) The impact a prosecution would have on the community
- (f) If a prosecution is a proportionate response in terms of costs

b. The Threshold Test

The CPS will apply the Full Code Test (set out above) wherever possible. Sometimes a suspect will be considered unsuitable to be granted bail and not all the evidence will be available at the time.¹¹¹ Nevertheless, a charging decision must be made and, if the investigation is incomplete, the CPS may apply the Threshold Test.¹¹² This test can only be applied when all the following conditions are met:¹¹³

- (a) There is insufficient evidence to apply the Full Code Test;
- (b) There are reasonable grounds for believing better evidence will be available in a reasonable time;
- (c) The seriousness of the circumstances justifies the making of an immediate charging decision; and
- (d) There are continuing substantial grounds to object to bail.

If a suspect is charged under the Threshold Test, the Full Code Test must be applied to the case as soon as is 'reasonably practicable'.¹¹⁴

The Views of the Victim

The CPS also takes into account the consequences for the victim when deciding whether or not to prosecute, and should consider 'any views expressed by the victim

¹¹¹ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹¹² CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹¹³ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹¹⁴ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

or the victim's family'.¹¹⁵ The CPS view the decision to prosecute as a 'serious step that affects suspects, victims, witnesses and the public at large', and believe it must be undertaken with the 'utmost care'.¹¹⁶ However, the CPS prosecutes cases on behalf of the public and, whilst the views and interests of the victim are important, cases cannot be decided solely in the interests of any individual.¹¹⁷

The Victims' Right to Review (VRR)

In June 2013, the then Director of Public Prosecutions launched the Victims' Right to Review scheme; a new policy that enshrines a victim's right to request a review of any decision taken by the Crown Prosecution Service to not charge a suspect or to stop a prosecution.¹¹⁸ The introduction of this scheme follows the case of *Killick*,¹¹⁹ in which the Court of Appeal considered whether victims of crime have a right to pursue a review of a CPS decision not to prosecute. The court concluded that as a decision not to prosecute is effectively a final decision. As such, there must be a right to seek a review of such a decision. The case of *Chaudhry*¹²⁰ highlights that the VRR is effectively limited to circumstances where no prosecution has been brought at all. Thus, if other charges are brought then this is not a matter for the VRR. The right to request a review is set out in *The Code for Crown Prosecutors*.¹²¹ A review can arise where the CPS:

- (a) Makes the decision not to bring proceedings,¹²² or
- (b) Decides to discontinue or withdraw all charges involving the victim,¹²³ or
- (c) Offers no evidence in all proceedings relating to the victim,¹²⁴ or

¹¹⁵ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹¹⁶ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹¹⁷ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹¹⁸ CPS, 'DPP enshrines victims' right to review of prosecution decisions' (2013)
<http://www.cps.gov.uk/news/latest_news/victims_right_to_review/> accessed 30 October 2017.

¹¹⁹ *R v Christopher Killick* [2011] EWCA Crim 1608

¹²⁰ *R (Chaudhry) v DPP* [2016] EWHC 2447

¹²¹ CPS, 'The Code for Crown Prosecutors' (January 2013)
<https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 1st November 2017.

¹²² CPS, 'The Code for Crown Prosecutors' (January 2013) 10.2A
https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf accessed 1st November 2017.

¹²³ CPS, 'The Code for Crown Prosecutors' (January 2013) 10.2B
https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf accessed 1st November 2017.

(d) Decides to leave all charges in the proceedings to 'lie on file'¹²⁵

What does the CPS do with the request for review?

Victims will be informed of the prosecution decision not to bring proceedings or to bring proceedings to an end and notified of their right to review.¹²⁶ The victim can communicate their request for a review to the CPS, their local CPS office contact details will be provided. This first stage of this process is called local resolution, whereby the CPS will arrange for an immediate review of the case to be carried out to determine whether the matter can be resolved quickly. This gives the CPS area responsible for the case, the opportunity to check the decision to ensure that the victim has been given a sufficiently clear and detailed explanation of the decision. A prosecutor who has not dealt with this case will carry out this procedure. Proceedings at the local resolution stage will normally be completed within 10 days of receipt of the request for review.¹²⁷ There are three possible outcomes to local resolution proceedings, which include:¹²⁸

- (1) It is decided that the CPS decision not to bring charges or discontinue the investigation was wrong. The CPS will then recommence proceedings, and if they are unable to they will explain why and provide an apology.
- (2) It is decided that the decision was right and the victim will be provided with more information about the decision. The CPS will ask the victim if they would like to undertake an independent review of the decision. A victim seeking an independent review will be provided with details of the office to contact, which the victim must do within ten working days.
- (3) It is decided that the CPS decision was right and that there is no further information to provide. In these circumstances they will proceed directly to independent review.

¹²⁴ CPS, 'The Code for Crown Prosecutors' (January 2013) 10.2C
https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf accessed 1st November 2017.

¹²⁵ CPS, 'The Code for Crown Prosecutors' (January 2013) 10.2D
https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf accessed 1st November 2017.

¹²⁶ CPS, 'Reconsidering a Prosecution Decision' (CPS, June 2013)
<http://www.cps.gov.uk/legal/p_to_r/reconsidering_a_prosecution_decision/#victim> accessed 31 October 2017

¹²⁷ CPS, 'Victims' Right to Review Scheme' (CPS, July 2016)
https://www.cps.gov.uk/victims_witnesses/victims_right_to_review/index.html accessed 1 November 2017

¹²⁸ CPS, 'Victims' Right to Review Scheme' (CPS, July 2016)
https://www.cps.gov.uk/victims_witnesses/victims_right_to_review/index.html accessed 1 November 2017

Independent Review

When a victim is unhappy with the result of local resolution, they can seek an independent review. Depending on the circumstances, either the Appeals and Review Unit or a Chief Crown Prosecutor will carry out the independent review. The reviewing prosecutors will approach the case 'afresh' to determine whether the original decision was correct. The review will reconsider the evidence and look at the public interest of the case.¹²⁹

The Independent Review Outcomes

In cases where the qualifying decision was 'not to charge' or to 'discontinue or withdraw' proceedings, it could be possible to bring proceedings if the review finds the original decision to be incorrect.¹³⁰ The victim will then be contacted with the outcome of the review. In cases where the qualifying decision was 'to offer no evidence', it is not possible to recommence the criminal proceedings.¹³¹ If a victim is still unhappy following the conclusion of the VRR process, there is no scope for any further review by the CPS.¹³² However, the victim's remaining option to review the case further, is to apply for judicial review. A judicial review will be successful on several grounds, for example, that the decision not to prosecute is so unreasonable that no reasonable prosecutor would reach the decision made.¹³³ This is costly and could be difficult, given that at this stage the initial decision not to prosecute will have been reviewed three times, at the initial decision, local resolution and independent review stages.

¹²⁹ CPS, 'Victims' Right to Review Scheme' (CPS, July 2016) https://www.cps.gov.uk/victims_witnesses/victims_right_to_review/index.html accessed 1 November 2017.

¹³⁰ CPS, 'Victims' Right to Review' (CPS, July 2016) <https://www.cps.gov.uk/publications/docs/VRR_leaflet.pdf> accessed 1 November 2017.

¹³¹ CPS, 'Victims' Right to Review' (CPS, July 2016) <https://www.cps.gov.uk/publications/docs/VRR_leaflet.pdf> accessed 1 November 2017.

¹³² CPS, 'Victims' Right to Review' (CPS, July 2016) <https://www.cps.gov.uk/publications/docs/VRR_leaflet.pdf> accessed 1 November 2017.

¹³³ *R v DPP*, ex p. C [1995] 1 Cr App R 136; CPS, 'Appeals: Judicial Review of Prosecutorial Decisions' (CPS, May 2009) <<https://www.cps.gov.uk/legal-guidance/appeals-judicial-review-prosecutorial-decisions>> accessed: 12 March 2018