



Hester, M. (2015). Reflections on criminal (in)justice in cases of rape. *Papers from the British Criminology Conference, 15*, 26-42.
<http://www.britsoccrim.org/volume-15/>

Peer reviewed version

[Link to publication record in Explore Bristol Research](#)
PDF-document

"This is a version of the following article: Marianne Hester, "Reflections on criminal (in)justice in cases of rape", *Papers from the British Criminology Conference 2015* (2015), pp. 26-42, which has been published in final form at <http://www.britsoccrim.org/volume-15>.

University of Bristol - Explore Bristol Research

General rights

This document is made available in accordance with publisher policies. Please cite only the published version using the reference above. Full terms of use are available:
<http://www.bristol.ac.uk/red/research-policy/pure/user-guides/ebr-terms/>

Panel paper presented at the British Criminology Conference 2015

Title of paper: Reflections on criminal (in)justice in cases of rape

Word count: 5,828 (6,084 following revisions)

Authors full name: Marianne Hester

Affiliation: University of Bristol

Email: Marianne.hester@bristol.ac.uk

Tel/ fax: 0117 9546755/ 0117 9546754

Abstract

There has in recent years been much discussion and concern with attrition in sexual offences cases and attempts to increase victim participation. None the less, many questions remain regarding the (in)justice faced by victims/survivors where cases are taken up by the criminal justice system, as well as what a more 'victim focused approach' might look like. The article examines these issues by a detailed analysis of the progression of 87 rape cases (from reporting to police to conviction) going through the criminal justice system in three separate police force areas across the North East of England. The article explores the need to consider the vulnerabilities of victims/survivors, the different trajectories involved in 'acquaintance rape', 'intimate partner violence rape' and 'historical rape', as well as the interplay between the CJS and other services, if we are to see victim focused criminal justice experiences and outcomes.

Key words: rape, criminal justice system, victim focus

Biographical note: Marianne Hester is Professor of Gender, Violence and International Policy and heads the Centre for Gender and Violence Research at the University of Bristol.

Panel paper presented at the British Criminology Conference 2015

Reflections on criminal (in)justice in cases of rape

Introduction

The article is based on research examining the progression of rape cases 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. Only a few studies have previously examined progression of individual cases: one was prior to implementation of the Sexual Offences Act 2003 (Kelly et al., 2005), and none were concerned with the North East (Metropolitan Police, 2007; McMillan, 2010)ⁱ. The current research thus provides a unique picture of the nature of rape cases reported to the police in the North East of England and adds considerably to our understanding of the progression of individual cases through the criminal justice system. During the same period another study in the North East included women's perceptions about accessing the criminal justice system in cases of rape (Westmarland and Brown, 2012). Also, a study for the Sentencing Council during the same period, included victim/survivors' views on conviction and sentencing of sexual offenders (McNaughton Nicholls et al., 2012).

The 2003 *Sexual Offences Act* defines rape as a gendered offence involving intentional penetration of the vagina, mouth or anus of another person by a man with his penis; where that person does not consent to the penetration; and where the alleged perpetrator does not reasonably believe that the person consented. The

notion of consent is important, defined as where 'a person consents if he agrees by choice, and has the freedom and capacity to consent'. Absence of consent can be assumed in certain situations such as violence or threat of violence, where the victim is unconscious (for instance through being drunk), or has a disability that limits capacity to consent. For guilt to be proven the alleged perpetrator must have been found to have committed an act that meets the legal definition of rape, and must not have reasonably believed that the victim/survivor consented.

Policy context and background

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. Since the 1980s feminists, academics, government committees and agencies have all highlighted problems in criminal justice approaches to rape and sexual assault, and indicated that there is a 'justice gap' for victims (e.g. Chambers and Millar, 1983; Kelly et al., 2005; HMIC/HMPCSI, 2012). It has been questioned whether the criminal justice system can in any case deal with gendered crimes such as rape and pointing to unintended consequences of pursuing such an approach (Walklate, 2008). A series of government reports and reviews have highlighted the large attrition ('drop-out') in rape cases, and there have been 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 through training, better recording and provision of information, support and anonymity for victims, and monitoring of files. A Victims' Code of Practice was issued in relation to the *Domestic Violence, Crime and Victims Act 2004* in 2006, and there have been attempts to improve victim treatment via Sexual Assault Referral Centres

(SARCs) and Independent Sexual Violence Advisor (ISVAs) to support victims through the criminal justice process. This has included ISVAs based in a number of voluntary sector organisations and attached to Sexual Assault Referral Centres in the three police force areas within the current research (Hester and Lilley, 2015).

Home Office figures have, since 2003, shown an increase nationally in the number of rapes recorded as crimes, and an increase in the actual number of convictions. In the three years to the beginning of 2012 there was a 26% increase in the number of rapes recorded by the police (HMIC/ HMCPSI, 2012). Fifty-eight per cent of rape prosecutions in 2008 and 2009 resulted in a conviction for rape or another offence (Stern 2010), increasing to 63% in 2012-2013 (CPS communication). None the less, there has been a continual decrease in the overall proportion of such crimes reported to the police resulting in conviction, leading a succession of inspections, including *Without Consent* (HMIC/HMPCSI, 2007) and *Forging the Links* (HMIC/HMPCSI, 2012), to conclude that the justice gap for victims of rape has been widening. While policy has generally been viewed as positive and adequate, the justice gap and high attrition rate have been seen to result from failures 'in the implementation', with possible shortcomings in the working of police and Crown Prosecution Service (Stern, 2010: 9). Even improvements in implementation may not, however, overcome the social, and gendered, context for implementation (Walklate, 2008).

The issue of false allegation has also been an ongoing concern. The Stern Review (2010) highlighted that perceptions that women often make false allegations of rape are strongly held by sections of the public, and may affect the way rape complaints

are dealt with by police, prosecutors and juries. Sexual offences, and rape in particular, are often perceived in terms of 'myths' linked to ideas about appropriate female behaviour, drinking and clothing. This includes the myth that 'real rape' is carried out by a stranger, involves force and active resistance. Following a small number of controversial cases, where victims of rape were prosecuted after withdrawal of allegations (in particular in contexts of domestic violence), the CPS (2011) issued guidance on how prosecutors might deal with cases that appear to be 'false allegations' of rape. Moreover, a report to the Director of Public Prosecution (Levitt and CPSEDU, 2013), covering a 17 month period where all CPS areas were required to refer relevant cases, indicates that of 5,651 prosecutions for rape only 38 (less than 1%) were for making false allegations of rape or rape and domestic violence.

Method

The research is what Daly and Bouhours (2009) describe as a 'flow' study, that is looking at individual cases from report to police through prosecution and trial, rather than merely a 'snapshot' at a particular time. The research involved accessing criminal justice data held on the police and CPS databases to track a set of rape cases initially reported to the police during May or November 2010 in three police force areas. For ethical reasons the research looked only at closed cases, although as the research progressed it was possible to include cases where outcomes had initially been pending. Only cases where the victim was 16 or over at the time of reporting were accessed, thus excluding by default a number of teen rapes and child sexual abuse cases. Individual cases took up to 23 months to progress through the

criminal justice system, and were tracked over that period of time (i.e. between 2010 and 2012).

Data on 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. In two of the police force areas, access was provided to the police data base, working alongside a police staff member, and it was possible to examine all cases from when they were recorded on the initial police log, through crime reports and information on outcomes held on the police national computer. In the third area only police summaries of cases were made available, some were not readily available and it was deemed too costly by the police for the files to be recalled, although a member of staff was available to answer more detailed questions about cases. Where cases had proceeded to prosecution, the CPS nationally gave permission for case files to be accessed. CPS files were made available in the CPS headquarters in the North East, and anonymised data was compiled. This resulted in police data on 87 rape cases (involving 98 victims and 97 alleged perpetrators), and CPS and court-related data on a further 17 cases that proceeded to court. While court observation was not carried out in the current study, some court related information was available in the CPS files for relevant cases (see also Smith and Skinner, 2012). The tracking methods and analysis of the data built on those previously developed by the author (Hester, 2006; 2013). Where possible, logistic regressions were carried out to test associations

To provide further context for the progression of cases, interviews were carried out with a range of 16 professionals from criminal justice and non-criminal justice

agencies (3 police officers, 1 CPS prosecutor, 4 ISVAs, 1 ISVA manager, 3 rape crisis counsellors, and 4 other sexual violence support staff). They were asked about the rape cases and range of victims worked with, victim/survivor expectations and experiences of the criminal justice system, attrition points, and what they considered to work well/or not so well. Interviews were transcribed and analysed thematically.

The research was given ethical approval from the University of Bristol Ethics Committee and CPS nationally. The research was funded by the Northern Rock Foundation, grant number 201104.

FINDINGS

Who was involved – the alleged victims and perpetrators

In the 87 cases of rape reported to the police all but four of the 98 victims were female. As would be expected in rape cases, all of the 97 alleged perpetrators were male, although one grandmother was seen as colluding in historical child sexual abuse. The ages of victims at the time of reporting to the police ranged from 16 to 57 and for perpetrators at the time of reporting from 17 to 85. Some of the 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.

While information available regarding ethnicity was incomplete, none of the victims were described as anything other than white British. The perpetrators also appeared to be largely white and probably British, with only two cases where the perpetrators

were described in police records as a group of 'Asian men', or involved perpetrators described as black French and Nigerian.

Echoing the national data on serious sexual offences (MoJ et al., 2013), the perpetrators were nearly all known to the victims in some way. Most were partners or ex-partners (27, 31% of cases), or were people who had known the victim more than 24 hours often via friends and family (25, 28.7% of cases), or were family or step family (21, 24.1% of cases). A small number had known the victim/survivor less than 24 hours (12, 13.8% of cases), perhaps meeting in a bar or at a party, but few could be classified as absolute 'strangers'. At least 15 (17%) of the perpetrators had previously been arrested or possibly convicted for criminal offences, although not necessarily for sexual offences, including at least 4 of the 10 who were convicted (see Metropolitan Police, 2007 for similar figures).

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) 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 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) calls 'good cases', characterised by a combination of particular victim features, suggesting a well-functioning and rational woman (e.g. mental health, articulation, compliance) and incident features (supporting evidence, socio-sexual/alcohol consuming situation, injury consistent with account, even if no injury). The experiences of the small number of male victims were minimised, thus also feeding into a gendered approach. 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 stage.

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. It included the two 'stranger rapes'. (N=32, 36.8%).
2. Historical – where the rape took place in the past. The term 'historic' may sometimes be used by the police for cases reported seven or more days after the

incident. In the current research it made sense for analytical purposes to categorise cases that took place further in the past, usually more than one year ago, as historical. 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).

Since the late 1990s there has been increasing reporting of acquaintance rape seemingly as emphasis on ‘stranger rape’ as the real rape has decreased (Flowe et al., 2009). In the current research acquaintance rapes were not only the largest category reported to the police, but there were only a couple of rapes by actual strangers reported – one of which the police decided was a fabrication, and another which resulted in conviction.

The general pattern of progression of the 87 rape was as follows: half (44/87, 50.6%) of the cases reported to the police were deemed to be crimes, and resulted in arrest (One further case resulted in arrest, where the police decided to ‘leave open’ the option of criming). The perpetrators in domestic violence rape cases were more likely to be arrested, 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; for instance, McMillan (2010) and Daly & Bouhours (2009) found that 65% of cases dropped out at the policing stage. However this may be the result of the sample omitting current under 16s as cases involving under 16s are more likely to proceed to prosecution (Temkin and Krahé, 2008). 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%) – similar to the conviction rate from charge as across five countries as found by Daly & Bouhours (2009).

Historical cases were most likely to result in conviction, and tended to have supporting evidence 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), and higher than the three year average reported by the Ministry of Justice et al. (2013), although none the national studies reflected individual case progression.

Mental health and learning disabilities

Previous studies have shown that cases involving victims with mental health problems or learning disabilities rarely result in prosecution of the offender (Harris and Grace, 1999; Lea et al., 2003; Kelly et al., 2005). This pattern was repeated in the current research. Kelly et al. (2005) also point out that 'This is especially concerning given the accumulation of data that women in these groups are targeted for sexual assault'. In the current study police records similarly describe the particular vulnerability of such women, with further instances of abuse by parents, siblings, partners and/or others recorded.

In a fifth of cases victims were recorded as having a mental health problem (17/87, 19.5%), mostly historical child abuse cases where the abuse probably contributed to the mental health problems. Only about a third (35.2%) of these cases resulted in arrest, compared to half of the cases where no such problems were recorded (54.9%), and they were significantly less likely to result in conviction ($p < .05$).

In cases where victims had mental health problems someone other than the victim, often a mental health or other social care professional, often reported the rape to the police, sometimes without the victim's agreement. One social worker felt she was obliged to report her client's disclosure of historical child abuse to the police although her client did not want police involvement and the worker would have preferred some other report mechanism. Some victims with mental health problems were described as difficult to understand, confused or even delusional. The police saw their stories as inconsistent and did not take the cases further.

Five victims were reported to have learning difficulties. One case resulted in arrest, where the victim told the police that she had had sex with a neighbour 'but did not like it', but no further action was consequently taken. None of the cases where victims had learning disabilities were referred on to the CPS for charge or advice, and none resulted in conviction.

Alcohol

Alcohol was a feature in at least a third of cases, and victims were recorded as drunk in about one in five cases (19/87, 21%). The police talked in interviews about major

changes in their approach where victims had been drinking following changes to the notion of consent since the 2003 *Sexual Offences Act*. In particular, a victim who is so drunk that they are unaware what has happened cannot have consented to the sexual activity. This approach appeared to be echoed by the research data. Most cases involving a drunk victim were initially recorded by the police as crimes (13/19, 68.4%) although three of these were later changed to 'no crime'. Cases with a drunk victim were highly likely to result in arrest or charges ($p < .05$). However, while four of the 16 cases that proceeded to trial had a victim who was very drunk at the time of the rape, only one of these resulted in conviction, indicating the difficulties in getting juries to provide guilty verdicts in such cases.

Three-quarters of instances with a drunk victim were acquaintance cases (14/19, 73.7%). Half were with perpetrators known less than 24 hours and these were slightly less likely to be seen as a crime although more were initially arrested. The police appeared careful to investigate (via CCTV, forensics, interviews) whether an incident where the victim was too drunk to know what had taken place had actually been consensual.

Police involvement

Echoing developments nationally, police forces in the North East of England had installed Police Rape Champions and police officers trained in sexual offence investigation techniques (see Westmarland et al, 2012). The CPS (see CPS 2012) set a standard for the role of rape specialist prosecutor as well as enhancing the role of Area Rape Coordinators (now with wider remit regarding domestic and sexual violence) to monitor case files for quality. Greater co-ordination was developed

between criminal justice and other agencies, for instance a Sexual Violence Strategy Group in one of the areas. Interviews with both police and CPS highlighted these shifts as positive in enhancing the criminal justice approach in rape cases.

Analysis of police records and interviews indicated that the police were to varying degrees adopting the 'victim-focused' approach recommended in the *Rape Experience Review* (Payne 2009) with an emphasis on believing victims from when they report 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 (with SARC, specialist sexual violence services, and health sector), and also had the highest proportion of cases proceeding through to charges, more cases going to court and a significantly higher rate of convictions ($p < .05$).

From report to crime

Two aspects (potentially contradictory but often intertwined) appeared to underpin decisions by the police as to whether a case could be seen as a crime: the victim-focused approach, where a report would automatically be deemed a crime until investigation showed otherwise; and that a crime would require a 'rational victim' with a consistent story. Cases deemed not to be crimes tended to be those:

- where someone other than the victim reported the incident
- where the victim had mental health problems or learning disabilities, or was in the care of social services
- where the victim had reported previous incidents to the police that did not progress

- where the incident appeared to have been fabricated for a variety of reasons including fear of reprisal from partners or parents
- where individuals (victim/survivors and others) appeared to be contacting the police for advice and to 'talk' and did not expect, or did not want, cases to proceed.

Echoing the national picture (MoJ et al. 2013) the largest proportion of cases not considered to be crimes were where individuals other than the victim/survivor had reported the rape allegation to the police. Less than a third of cases (13/44, 29.5%) where the parent, partner, other family, friends, perpetrator, or professionals had contacted the police in the first instance were deemed crimes. In one instance the victim's mother reported that her daughter had been raped by a male acquaintance at their house. The police decided as a result of their investigation that this incident was not a rape and that 'consensual sexual activity appears to have taken place'. The daughter appeared to be trying to hide a relationship between her and the male acquaintance from her mother. 'On the balance of probabilities' the police deemed that no offences had been disclosed and no crime had been committed. In another instance a friend had contacted the police after a woman said a man had followed and attacked her. After discussion with the police the woman agreed that she had not been raped, but was angry that the alleged perpetrator had asked her if she wanted sex as it made her look, and to get a name of being, 'easy'. She made a retraction statement to this effect. In different ways these cases indicate how women may be negotiating gendered sexual norms and expectations (as 'good daughter' and 'not easy') and consequently end up engaging with the criminal justice system to accommodate those expectations.

In one case, recorded as a 'false allegation', two young women said that six Asian men had taken them to a flat and that they had been raped. The police began their investigation, obtained medical evidence from both women and interviews. However the women had placed information on Facebook and in emails that indicated that the sex had been consensual and no crime had occurred. As the case involved very young women (aged 17) and sex with multiple partners, questions may perhaps be asked as to whether the women were subject to a wider context of exploitation and sexual grooming. Following the current research the police carried out further checks to ensure that the case was indeed a fabrication.

In some cases the police took into consideration previous criminal justice system involvement, as indication both of vulnerability and of potential credibility as a witness if the case was to proceed. For instance, in a domestic violence case the victim had reported a number of rapes, and also by an ex-partner where she had withdrawn her complaint. The police discussed the case with the CPS 'due to history of victim' and the fact that she was vulnerable to further abuse. The case was not recorded as a crime.

From crime to 'no crime'

Getting on for two thirds of the cases recorded by the police (53/87, 60.9%) were initially deemed to be crimes. However, following further investigation by the police, nine of these cases were reclassified as 'no crime' (9/53, 17%). Three were changed to 'no crime' following retraction of the complaint by the victim, and, following the

pattern outlined earlier, in four cases someone other than the victim/survivor (a parent, other family member, friend or professional) reported the case to the police.

This group of cases included the only other acquaintance case labelled specifically by the police as a false allegation. This involved a report of 'classic' attempted rape, where a woman says she has been approached from behind and a stranger pulls her into an alley, tries to force open her legs, and she struggles at which the attacker ran off. The woman was taken by the police to the SARC for interview and examination, and the police arrested the alleged perpetrator. When told that an arrest had been made 'she broke down and confirmed that she had not been attacked and that she was drunk and when trying to tell her partner about what really happened the whole thing was taken out of context resulting in the Police being notified and a rape allegation being made'. The police, **showing awareness of the dynamics of gender based violence**, were concerned that she might be frightened of her boyfriend and checked if she was in a domestically abusive relationship.

The HMIC/HMCPSI (2012) outline the 'no crime' rates for rape as 11.8% for 2010/11, and 10.8% for 2011/12. The figure from the current research, that nearly one in five cases was reclassified as 'no crime' thus appears high. The reason can possibly be attributed to the victim-focused approach of the police, and the force area that placed most emphasis on this approach also had a high rate of 'no crime' cases.

From police involvement to prosecution

'Victim-focus' and 'focus on victims'

As indicated earlier, the police were developing an increasingly 'victim-focused' approach that aims to support and believe victims. In contrast, analysis of CPS files indicated that the CPS could be characterised as having a '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); supporting evidence (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.

Prosecution

The police considered that 23 cases should be referred to the CPS for charging decisions. The CPS consequently decided to apply charges in three-quarters of these cases (17/23, 73.9%). Whereas most cases reported to the police had involved acquaintance rape, many of these dropped out by this stage, and only 12% of acquaintance cases resulted in charges. Many of the domestic violence rape cases had been deemed crimes and resulted in arrest due to the very serious nature of the incidents. However, often due to withdrawals by the victims, only 20% of domestic violence cases resulted in charges. Historical cases were most likely to

result in charges (25% of all historical cases), often because there was more than one victim, because victims had disclosed similar accounts to a variety of people at different times, and because medical or social services records provided supporting evidence.

It was apparent from case files that the police did not always agree with the CPS decisions. In one instance, where a male victim reported child sexual abuse the CPS said that there was not enough evidence to proceed. However, the police queried this decision and the file was resubmitted. None the less the case resulted in no further action and the police subsequently recorded that it was undetected.

Only four cases involving mental health problems were referred by the police to the CPS for charges, and of these only one resulted in CPS charges. Another was left on file as a rape that was undetected. In one case resulting in no further action, an acquaintance was reported to have raped a woman when she was asleep. The CPS highlighted the large amount of psychiatric intervention that the victim had had over time and that she was very vulnerable, but also emphasised that cases involving people with psychiatric problems are always very difficult to take forward.

Trial

In all of the 16 cases proceeding to trial, the perpetrators initially denied and pleaded not guilty to carrying out any sexual or other offence, and most continued to deny that they had done anything wrong. Ten cases resulted in conviction. One further case, involving historical domestic violence rape, appeared to drop out at the pre-trial stage when a victim said she did not want to attend court.

In two instances perpetrators inadvertently admitted during statements to the police that they had raped the victim, although they did not see this as expression of guilt. One of the men appeared not to understand the legal meaning of penetration. He said his penis did enter the woman's vagina, but was not inserted all the way in, he just moved it a little bit but not in the manner of 'having sex'. The CPS decided that within the legal definition he thus did penetrate the woman. In the other case, the perpetrator argued that the woman had consented. He described the sexual activity that had taken place, including penetration, to highlight the woman's consent and that she was 'up for it', despite her being extremely drunk and probably asleep and thus incapable of making decisions. The CPS wanted analysis of forensic samples to determine whether the rape was vaginal and/or anal, however the file records that in the interests of saving public money this was not carried out. The jury appeared to accept that the victim consented because she seemed to make assenting noises despite being asleep, possibly because she thought that it was her boyfriend in the bed rather than the perpetrator. Neither case resulted in conviction.

In five cases the jury decided the perpetrator was not guilty. Of these, the judge ordered that an acquaintance rape should 'lie on file', and applied a restraining order 'for life' on a domestic violence perpetrator.

The cases resulting in conviction were, perhaps unsurprisingly, where there was possibility of supporting evidence via other witnesses, strong forensic evidence such as DNA (in two cases), and the victim was not drunk or unduly under the influence of alcohol. In total, ten cases resulted in conviction, of which most (6/10) were

historical, two involved an acquaintance (one a stranger) and two were in the context of domestic violence. Two of the cases had two or more victims who provided similar accounts. One of the acquaintance cases involved a stranger at a party and his DNA was found in the victim's clothes. Another acquaintance rape was corroborated by a friend who was present and also DNA evidence. The historical cases also tended to have evidence in medical, social services or personal records that supported the victims' accounts.

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 that the justice gap is a chasm (Kelly et al., 2005), 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. Three quarters of the cases dropped out at the police stage, and many involved very vulnerable victims. Further research is required to look at these issues regarding vulnerable victims in greater depth and with larger samples. **Gendered expectations were in different ways woven through the criminal justice processes, from decisions of victims to report a rape through police and court approaches.** The research provided some evidence that a victim-focused approach, coupled with wide ranging multi-agency links, may lead to more cases proceeding through the criminal justice system, potentially more justice and better experience for victim/survivors.

References

Chambers G and Millar A (1983) *Investigating Sexual Assault*. Scottish Office Social Research Study. Edinburgh: HMSO

CPS (2012) *CPS Policy for Prosecuting Cases of Rape*.

<https://www.cps.gov.uk/publications/prosecution/rape.html> (accessed 3.11.2015)

Daly K and Bouhours B (2009) Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries, *Crime and Justice: An Annual Review of Research*, 39.

Flowe HD, Shaw SE, Nye E and Jamel J (2009) Rape stereotyping and public delusion, *British Journalism Review* 2009 20(4): 21-25.

HMIC/HMCPSI (2007) *Without Consent*. London: HMIC & HMCPSI.

HMIC/HMCPSI (2012) *Forging the links: Rape investigation and prosecution. A joint review by HMIC and HMCPSI*. London: HMIC & HMCPSI.

Harris J and Grace S (1999) *A Question of Evidence? Investigating and Prosecuting Rape in the 1990s*. London: Home Office.

Hester M (2006) Making it through the Criminal Justice System: Attrition and Domestic Violence, *Social Policy and Society* 5 (1): 79–90

Hester M (2013) Who does what to whom? Gender and domestic violence in English police records, *European Journal of Criminology*, online April 2013.

Hester M and Lilley S-J (2015) *More than Support to Court: ISVAs in Teesside*. Bristol: University of Bristol and northern Rock Foundation.

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

Lea S, Lanvers U and Shaw S (2003) Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors, *British Journal of Criminology* 43:583-99.

Levitt QC A and Crown Prosecution Service Equality and Diversity Unit (2013) *Charging Perverting the Course of Justice and Wasting Police Time In Cases Involving Allegedly False Rape and Domestic Violence Allegations. Joint report to the Director of Public Prosecutions.* London: CPS

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

McMillan L and Thomas M (2009) Police interviews of rape victims, in Horvarth, M. & Brown J (eds) *Rape: Challenging contemporary thinking.* Cullompton: Willan Publishing.

McNaughton Nicholls, C., Mitchell, M., Simpson, I., Webster, S. & Hester, M. (2012) *Attitudes to Sentencing Sexual Offences.* London: Sentencing Council

Metropolitan Police (2007) *The Attrition of Rape Cases in London: A Review.* London: Metropolitan Police.

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

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

Smith, O. & Skinner, T. (2012) Observing court responses to victims of rape case and sexual assault, *Feminist Criminology* 7(4): 298-326.

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

Temkin, J., & Krahé, B. (2008). *Sexual assault and the justice gap: A question of attitude.* Oxford: Hart.

Walklate S (2008) What is to be done about Violence Against Women? Gender, Violence, Cosmopolitanism and the Law, *British Journal of Criminology* 48 (1): 39-54.

Westmarland, N. & Brown, J. (2012) *Women's views on the reporting of rape, domestic violence and stalking within the Cumbria/Durham, Cleveland/Northumbria Constabulary area*. Durham: Durham University & Northern Rock Foundation.

Westmarland N, Aznarez M, Brown J and Kirkham L (2012) *The Benefits of Police Specialist Rape Teams*. Durham: Durham university and London School of Economics

Endnote

¹ The Northumbria force area was, however, included in a rape thematic inspection that led to *Without Consent* (HMIC/HMPCSI 2007).