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Providing anonymity to those accused of rape: An assessment of evidence

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Providing anonymity to those accused of rape: An assessment of evidence

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Foreword

This report draws on Home Office and Ministry of Justice statistics, findings from previous evidence reviews and primary research studies in order to present a summary of evidence relevant to discussions about anonymity for those accused of rape. Given the time available to prepare this report, it is not an exhaustive account of the literature on rape. Instead, it provides an analysis of Government surveys and administrative data on the incidence of rape and related offences and their progression through the Criminal Justice System, and considers media reporting of serious criminal cases. Some of these analyses were created specifically for this report and have not been previously released in this format (although all the underlying data are in the public domain). In addition, the report has considered the balance of wider research evidence with respect to the key issues of relevance to the debate.

I am extremely grateful to members of my analytical team – Siân Bradford, Jenny Cann, John Marais, Mike Morgan-Rowe, Dominic Smith, Kim Tyler and Rachel Walmsley – and to Richard Mason and Stephen Jones in the Better Trials Unit, for producing this report on my behalf. Their work has been internally quality assured by my Chief Statistician, Iain Bell, and Chief Social Researcher, Teresa Williams. It has been formally peer reviewed by Professor Jennifer Temkin and Professor Cheryl Thomas. Professor Thomas has also generously provided additional information to the analytical team. Finally, I would like to thank Baroness Vivien Stern who has generously and freely given both her time and expertise in an advisory capacity.

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Summary

The Criminal Justice System (CJS) must ensure that the right to a fair trial is protected for those accused of rape. This report brings together and considers the evidence the authors could locate relevant to the issue of providing anonymity to defendants in rape cases. It has considered a number of key areas, including:

- the legal position on anonymity in criminal cases;
- reporting and investigating rape;
- false allegations;
- securing a conviction;
- offending histories;
- the impact of media coverage.

Overall, little or no direct empirical evidence of the impact of providing anonymity to those accused of rape could be identified. But the report draws attention to particular factors that make this issue difficult to assess, and highlights key areas where further reliable information is needed.

Context

Rape is one of the most serious offences and is committed when:

the perpetrator intentionally penetrates the vagina, anus or mouth of another person with his penis, the victim does not consent to the penetration, and he [the perpetrator] does not reasonably believe that the victim consents. A person consents if they agree by choice, and have the freedom and capacity to make that choice
(Sexual Offences Act 2003).

In ensuring that justice is achieved, the CJS faces a number of challenges.

- Victims of rape can be reluctant to report the crime and many choose not to.
- Some of those who do make a complaint later withdraw it.
- Other cases drop out of the justice system due to complexities in investigating and prosecuting rape.
- Most rape is perpetrated by someone known to the victim, when conclusive evidence about motive and consent can be particularly difficult to prove.
- Some alleged rapes reported to police are false, although the nature and extent of such allegations is difficult to identify accurately.
- A minority of offences prosecuted as rape result in a conviction for another offence.

History of anonymity for defendants in rape cases

The Sexual Offences (Amendment) Act 1976 introduced anonymity for both complainants and defendants in rape cases in England and Wales. The legislative intent in providing anonymity for defendants was to protect them from damaging consequences of false allegations. In 1988 this entitlement was repealed, on the grounds that being accused of rape was no different from being accused of other serious crimes and did not warrant special treatment. No systematic evaluation of the impact of these legislative changes has been conducted, although to do so would have been very difficult given the complex interplay of factors. Under current legislation, lifetime anonymity remains in place for complainants of rape and other sexual offences.

Anonymity in the justice system

The CJS operates under the 'open justice' principle, where legal proceedings should be held in public with the media free to report on them. There are various statutory and discretionary rules that can restrict media reporting of criminal cases, which sometimes include restrictions on identifying defendants (for instance, in youth courts and some defendants aged under 18 who are tried in criminal courts). But any restriction must be necessary, proportionate and convincingly established. The media have also established a self-regulatory system which provides general guidance in relation to the reporting of all crime in the *Editors' Code of Practice*, and the Press Complaints Commission has issued specific guidance in support of this on the reporting of 'sex cases'. The internet, however, poses new challenges to ensuring anonymity for anyone involved in the CJS.

Reporting, investigation and false allegations in rape cases

Under-reporting

- Evidence suggests that a minority of rape cases are reported to the police (fewer than one in six) and that this is lower than for other offences. It further suggests a range of reasons why some victims do not pursue criminal charges, including concern over the possible adverse impact from public disclosure.
- In most cases (up to nine in ten) the alleged perpetrator and the complainant are known to one another, sometimes intimately.
- Pre-existing relationships between alleged perpetrator and victim can mean both parties are vulnerable. Research with victims suggests that where vulnerabilities exist, (e.g. mental ill-health, ingesting alcohol before the alleged rape) they can compound any confusion about what has happened and add to fears about what will happen to them within the CJS.
- It is possible that providing anonymity for those accused of rape might encourage victims and witnesses to come forward to report the crime because it would ensure both sides of the case remained free from publicity. However, it is currently not known

whether anonymity would actually have such an effect, to what extent or under what circumstances. It is also possible that anonymity could have the opposite effect and lead to a decrease in reporting rates, but there is no reliable evidence for this either.

False allegations of rape

- Some allegations of rape are false, but their precise extent and nature are difficult to identify.
- Estimates suggest around 8-10% of all rape complaints are false, but there is no evidence to suggest there is a greater prevalence of false rape allegations than false allegations of other offences.
- There is no consistent definition of a false rape allegation and not all are made maliciously. Some may result from mistaken identity, others from, for example, mental ill-health and false memories.
- There is some evidence that those who make a false allegation are more likely to be vulnerable in some way than those who make genuine allegations of rape.
- This report found no research that examined the extent to which proven cases of false rape allegations were reported in the media in comparison to rape cases that end in acquittal for other reasons, or end in conviction. It also found no research on the proportion of false rape allegations which result from wilful misreporting as opposed to, for example, genuine mistaken identity.
- Research planned by the Ministry of Justice to examine criminal justice disposals for a range of sexual and violent offences, including rape, will look further at the extent and nature of false allegations. This work will help further knowledge about the circumstances under which false allegations of rape are made, and how these compare to false allegations made of other sexual and violent crime. It will also help shed light on what happens to those proven to have made false allegations.

Attrition in rape cases

- Many rape cases reported to the police drop out of the justice system, sometimes because complainants withdraw and often because of a lack of clear evidence.
- Research suggests that evidence which establishes a link between one rape and another can increase the likelihood of a conviction.
- Concerns have been expressed, which are supported by anecdotal evidence, that allowing those accused of rape to remain anonymous for all or part of the investigation and justice process could make it more difficult for police to gather any information about multiple offending. However, there is no systematic evidence of the extent to which rape suspects' identities are released by police, and how often further evidence has resulted in these cases.

Taking a rape charge through the Criminal Justice System

Conviction rates: a question of definition

This report identified at least four different methods of calculating conviction rates for rape (including attempted rape). Rates vary depending on the method used, and compare differently with conviction rates for other serious offences. This report explains the different approaches and sets out how the MoJ will address the issue in future.

Convictions as a proportion of all reported rapes

One method is to show the number of defendants convicted of rape as a proportion of all rapes recorded by the police.

- A comparison of rapes recorded in 2008/09 and offenders convicted in that period produced a conviction to crime ratio of 7.3%. This is often incorrectly reported as the 'rape conviction rate'.
- This can be misleading because no other criminal offences have conviction rates routinely calculated in this way. There is, therefore, no way to compare this figure with convictions for other crimes, using this method.
- The MoJ will continue to make available the necessary data to allow users to construct this measure if they wish, but advise that results are referred to as a "conviction to crime ratio" to avoid confusion.

Rape convictions as a proportion of all rape prosecutions

This is the standard method used by the MoJ to present official conviction rates and focuses on the point at which a defendant is formally charged/prosecuted in court of rape. The method calculates rape convictions as the proportion of defendants convicted of rape compared to all defendants prosecuted for rape in one year.

- In 2009, defendants convicted of rape made up 36% of the number of defendants prosecuted for rape in that year.

Any convictions secured as a proportion of all rape prosecutions

An alternative method also starts with formal rape charges in court, but assesses how many defendants charged with rape were subsequently convicted of any offence. This approach incorporates all those defendants prosecuted for rape who were convicted of rape or an alternative lesser offence (sexual or non-sexual). This process is referred to as downgrading.

- Bespoke analysis for this report, undertaken by the MoJ, found that 58% of rape prosecutions in 2008 resulted in a conviction for rape or another offence. The Stern Review (2010) found that the same proportion of rape prosecutions in 2008-09 also resulted in a conviction (58%) for rape or for another offence.

Rape convictions decided by a jury verdict

Much discussion on convictions in rape cases focuses on the role of juries. Official conviction rates do not distinguish between convictions that result from guilty pleas and those that result from a full trial where the jury reaches a verdict, but a recent study (Thomas, 2010) specifically calculated conviction rates for juries.

- For all rape charges decided by jury deliberation over an 18-month period in 2006-08 in all Crown Courts in England and Wales (4,312 verdicts), juries convicted defendants of rape 55% of the time.

As recommended by the Stern Review (2010), the MoJ have been working with the National Statistician to explore fully the issue of conviction rates in rape cases. As part of the consultation on improvements to Ministry of Justice statistics, a wide consultation on full proposals for the measurement of conviction rates in statistical bulletins across all offences is planned.

Offending histories

There is evidence that some of those convicted of rape have a prior history of rape and other offending.

- Evidence of previous offending against another victim can help strengthen a case for prosecution and anecdotal reports suggest the police have, in some cases, released information about a rape suspect to aid an investigation.
- However, robust data are not routinely collected on the extent to which the police release information about suspects and this report has not been able to identify research on the impact of the practice in assisting rape investigations or on those accused of rape who are later found to be innocent.

Impact of media coverage of criminal cases

Media reporting of active criminal cases must not create a risk of serious prejudice by unduly influencing jurors. Providing anonymity for rape defendants could help prevent this, but only if jurors are actually swayed by media coverage.

- Recent research showed that in high-profile cases almost three-quarters of jurors were aware of media coverage of their case. A small proportion found it difficult to ignore.
- It would be helpful to determine whether jurors in rape cases were more likely to recall media coverage of their cases than jurors in cases involving other serious offences, and whether jurors in rape cases were more likely to find media reports difficult to put out of their minds.

- Twenty-six per cent of jurors in high profile cases also saw information about their case on the internet during the trial. Some internet sites may be beyond the reach of domestic media reporting restrictions, which raises important issues about the ability to ensure anonymity in the CJS process.
- It would be helpful to determine if jurors in rape cases are more likely to look for information about their cases on the internet during trial than jurors in cases where a defendant is charged with other offences.

Conclusions

Overall, this review found insufficient reliable empirical evidence on which to base an informed decision on the value of strengthening anonymity for rape defendants. Evidence is lacking in a number of key areas and this report highlighted a range of issues on which clarity and/or more robust evidence is needed.

- How anonymity affects the reporting of rape.
- The true extent of false rape allegations.
- The relationship between no-criming of rape and false allegations.
- Media coverage of false rape allegations.
- Statistics on rape convictions, including consistency in reporting and assessment of downgrading.
- The impact of media coverage of jury rape trials.

1 Introduction and approach

This report brings together and summarises available evidence pertinent to the debate about extending anonymity to those accused of rape. It draws on official statistics and findings from primary research studies conducted within the United Kingdom (and in some cases, North America), as well as other evidence reviews.

1.1 History of anonymity in rape cases

Current law provides anonymity for rape complainants, ensuring that their names cannot be made public from the time they make an allegation through the rest of their lives. This policy was recommended by the Heilbron Committee in 1975, on grounds that the potential harm and distress caused by publicity could discourage complainants from reporting rape and that anonymity could help ensure perpetrators did not escape prosecution (Home Office, 1975). The Committee did not recommend anonymity for rape defendants because it felt complainants and defendants were not comparable in principle, and that in cases of other serious crimes where the complainant was often anonymous (such as blackmail) defendants were not granted anonymity. However, during the subsequent passage of the Sexual Offences (Amendment) Act in 1976, which introduced anonymity for rape complainants, a concessionary amendment was adopted providing anonymity for rape defendants as well. The Parliamentary record shows that this amendment was intended to guard against the possibility of reputation damage for those acquitted of rape and to provide equality between complainants and defendants in rape cases (Almandras, 2010).

In 1984, the Criminal Law Revision Committee (CLRC) revisited the issue of anonymity in rape cases. It endorsed the reasoning of the Heilbron Committee that underpinned the granting of anonymity to rape complainants and agreed with its original arguments against extending it to defendants (CLRC, 1984). The CLRC felt the equality between complainant and defendant argument was not valid and that rape was one of many offences where defendants who are acquitted may nevertheless suffer damage to their reputation. There was also concern over unintended, adverse effects of media reporting restrictions relating to rape defendants.¹ Anonymity provisions for rape defendants were subsequently repealed under the Criminal Justice Act 1988.

The issue of rape defendant anonymity arose in Parliament again in 2003, when the Home Affairs Select Committee supported an amendment to the Sexual Offences Act 2003 reinstating anonymity for those accused of rape up to the point of charge. However, this amendment was not accepted in the final passage of the Act.

1 For example, if a rape defendant escaped custody before conviction, the police could not automatically warn the public he was a suspected rapist; a judge had to lift the reporting restrictions. Also, defendants acquitted of rape but convicted of a lesser offence benefited from reporting restrictions as they could not be named as people charged but acquitted of rape (see Temkin, 2002).

The current position is that anonymity is legally granted to all rape complainants but not to defendants.² The media are therefore free to make public the names of those accused of rape, as they are free to identify anyone charged with other crimes. This reflects the fundamental principle of open justice in operation in England and Wales that justice in the courts should be administered in public (Judicial Studies Board (JSB) *et al.*, 2009). The media do, however, operate under voluntary rules of conduct in relation to the reporting of crime in general (including rape). In the case of the print media this is through the *Editors' Code of Practice* which is drafted and revised by the Editors' Code of Practice Committee. The Code is enforced by the Press Complaints Commission (PCC) which has issued specific guidance on the reporting of 'sex cases' (discussed in more detail in Chapter 2). Both the Editors' Code of Practice Committee and the Press Complaints Commission are independent of the Government.

Anonymity is not granted for rape defendants in any other common law country, with the exception of the Republic of Ireland. There, a rape defendant's identity can be made public only if they are convicted of rape. The background to the adoption of the policy is described by the Law Reform Commission in the *Report on Rape and Allied Offences* (1988) and the *Consultation Paper on Rape* (December 1987). Evidence about the impact of the policy on rape complainants, on those accused of rape or on the Irish criminal justice system in general could not be found.

1.2 Focus of the report

This report focuses on what is currently known about the following:

- anonymity within the criminal justice system, including media reporting restrictions;
- reporting and investigating rape;
- false allegations of rape;
- prosecution and conviction of rape and other serious sexual and violent offences;
- impact of media coverage of criminal cases on juries.

Due to time constraints, a systematic search and appraisal of all relevant information from all jurisdictions was not possible. This report is, therefore, not a comprehensive review of all literature and evidence, but has attempted to highlight gaps relevant to issues related to anonymity in rape cases. The report has not examined evidence regarding the physical and psychological effects of rape on victims, or documented myths and stereotypes surrounding rape, except where these are relevant to anonymity for those accused of rape. Both the effects of rape and rape myths are well covered within the wider literature.

² Although defendants in some cases, often involving family members, may be granted anonymity to avoid possible identification of the complainant through Jigsaw identification.

2. Anonymity in the Criminal Justice System

Formal court proceedings in all criminal cases begin with defendants being charged in the magistrates' court. More serious offences, including rape, are 'indictable only' which means all further proceedings take place in the Crown Court and, if they progress to a full trial, defendants must be tried before a jury. The media play a key role in reporting information to the public about cases at each stage of the Criminal Justice System (CJS) process. This chapter summarises the current position on public identification of those suspected, charged and on trial, as well as of victims and others giving evidence. In 2009 the judiciary and media representatives agreed a new set of guidelines on reporting in the criminal courts (Judicial Studies Board (JSB) *et al.*, 2009), and the information in this Chapter is drawn from these.

2.1 General presumption against anonymity in the CJS

The 'open justice' principle operates in England and Wales. This generally means that the administration of justice must be done in public, the public and the media have a right to attend all court hearings and the media can report proceedings fully and contemporaneously. Guidance from the JSB *et al.* (2009) stipulates that the open justice principle is central to the rule of law for several reasons. It:

- helps ensure that trials are properly conducted;
- puts pressure on witnesses to tell the truth;
- can result in new witnesses coming forward;
- provides public scrutiny of the trial process;
- maintains public confidence in the administration of justice;
- reduces the likelihood of inaccurate and uninformed comment about proceedings.

Finally, open court proceedings and the publicity given to criminal trials are considered vital to the deterrent purpose behind criminal justice. Therefore, any restriction on the public's right to attend court proceedings and the media's ability to report them must be necessary, proportionate and convincingly established (JSB *et al.*, 2009).

2.2 Exceptions to open justice

There are several reporting restrictions which act as exceptions to the open justice principle. These can be statutory or discretionary in nature, and are generally designed to do one of two things: (1) protect children and vulnerable witnesses and (2) ensure that media coverage does not create a risk of serious prejudice to a case by unduly influencing jurors.

Statutory reporting restrictions, even when automatic, provide for lawful publication of names and addresses of defendants and others appearing before the courts. Common law also restricts the circumstances in which names and addresses can be withheld from the public, or when reporting restrictions can be imposed to prevent or postpone their publication (see

R v Evesham Justices ex parte McDonagh (1988). The following section outlines the main reporting restrictions which currently operate in the criminal courts in England and Wales and highlights those with particular application to sexual offence cases.³

Statutory exceptions

Victims of sexual offences: The Sexual Offences (Amendment) Act 1992 imposed a lifetime ban on reporting anything likely to identify the alleged victim of a sexual offence. The naming of a defendant or witness (other than an alleged victim) in a sexual offence case is not prohibited unless doing so would be likely to identify the victim (referred to as 'jigsaw identification'). The ban can be lifted if the alleged victim consents in writing, if the court feels it is in the interests of justice to do so, or if the alleged victim is party to any subsequent proceedings involving the original allegation.

General restrictions on reporting court proceedings in progress: Reports of pre-trial hearings and court orders cannot be published until the trial(s) of all defendants are over, unless the court orders otherwise. Court orders include 'special measures' that often apply in sexual offence cases, such as rape complainants being screened from the defendant when giving evidence or giving evidence remotely, and directions prohibiting the accused from conducting cross-examination.

Reporting restrictions on proceedings in the youth court: Under Section 49 of the Children and Young Persons Act 1933, the media are prohibited from publishing the name, address or school or any matter likely to identify a child or young person involved in the youth court proceedings whether as a victim, witness or defendant. This is one instance when defendants are provided with anonymity, along with alleged victims and other witnesses.

Discretionary exceptions: judicial imposition of media reporting restrictions

Identification of victims, defendants or witnesses aged under 18: Section 39 of the Children and Young Person's Act 1933 permits a court to prohibit media publication of any information, including pictures, calculated to lead to the identification of any living child or young person aged under 18 concerned in criminal proceedings before that court (i.e. as a victim, defendant or witness).⁴ This is another instance where defendants can be provided with anonymity, along with alleged victims and other witnesses.

Adult witnesses: Under Section 46 of the Youth Justice and Criminal Evidence Act 1999 a court may prohibit publication of matters likely to identify an adult witness, but not a defendant, in criminal proceedings during the witness's lifetime.

³ Further details of these reporting restrictions are provided in Annex A.

⁴ Section 39 will cease to apply to criminal proceedings if and when s45 of the Youth Justice and Criminal Evidence Act 1999 is brought into force.

Withholding personal details from open court under s11 of the Contempt of Court Act:

Where a court exercises its powers to allow information to be withheld from the public in criminal proceedings, it can prohibit the publication of that information under Section 11 of the Contempt of Court Act 1981.

Reporting restrictions during trial: Postponement of fair and accurate reports: Under Section 4(2) of the Contempt of Court Act, the court may postpone publication of a fair, accurate and contemporaneous report of proceedings where this is deemed necessary to avoid a substantial risk of prejudice to the administration of justice in those or other proceedings.

Government guidance

In addition to the rules outlined above, the Government has issued specific guidance on how the courts and the media should approach the identification of those involved in court proceedings. Home Office Circular No 78 (1967) was issued in response to press concerns about accurate identification of those involved in court proceedings. In addition to recommending that courts supply the press with advance copies of case lists, the circular encouraged courts to ensure the announcement in open court of both the names and addresses of defendants. This was to distinguish a defendant from someone in the locality who bears the same name and to avoid inadvertent defamation, based on the view that there is a strong public interest in facilitating press reports that correctly describe persons involved.

2.3 Media self-regulation

The print media and broadcasters also operate under self-regulatory bodies which provide guidance on reporting criminal cases in various codes of practice. *The Editors' Code of Practice* provides self-regulatory guidance for newspapers and periodicals, while the Office of Communications (OFCOM) Code and the BBC's *Editorial Guidelines* provide self-regulatory guidance for broadcasters.

In 2004 the Press Complaints Commission issued a Guidance Note to editors which gave general guidance about the reporting of people accused of crime (PCC, 2004). This applies to all crime but includes specific guidance on 'sex cases'. The guidance brings together provisions of the *Editors' Code of Practice* deemed relevant for reporting criminal allegations whether they originate from a third party, police sources or a formal police procedure such as arrest. It addresses four issues: accuracy (including false allegations); privacy; sex cases and innocent relatives, and is quoted below:

Accuracy

“Given that there will be occasions where allegations turn out to be ill-founded, particular care must be taken to ensure that they are presented accurately and the conjecture is distinguished from fact.... There may be times when it is difficult to substantiate allegations made by third parties, but which ought to be reported in the public interest if true. If editors wish to publish material in these circumstances, they should give serious consideration to doing so without identifying the accused as a way of meeting the requirements of the Code.”

Privacy

“Editors must bear in mind that the Code affords everyone – including those who have been accused or convicted of crime – the right to respect for his or her private life, home, health and correspondence. Editors should not rely on the fact that someone has been accused of a criminal offence as justification for publishing material that would otherwise be held to be intrusive, unless the material ought to be published in the public interest or is in some way relevant.”

Sex cases

“Clauses 7 [children in sex cases] and 11 [victims of sexual assault] of the Code are relevant when publishing articles about people accused of sexual offences. Care must be taken to ensure that the identification of someone accused of a sexual offence does not lead to the identification of the victim. If it is likely to do so, editors should err on the side of caution and report anonymously any allegations which occur prior to charges being made.”

Innocent relatives

“Editors should bear in mind at all times that the innocent relatives of people who have been accused of crime have special protection under the Code. They should not be identified – unless it is in the public interest or the relationship is in the public domain – without their consent.”

2.4 The internet

The regulations and guidance outlined above also apply to internet sites run by news organisations (or others) in England and Wales. However, the internet has made foreign news outlets readily available to the British public and these may be beyond the reach of the British courts. This raises issues about the ability to ensure anonymity for defendants (as well as complainants and other witnesses) and is explored further in Chapter 5.

3 Rape and the Criminal Justice System: reporting, investigation and false allegations

This chapter highlights what is currently known about the reporting and investigation of rape, including false allegations.

3.1 Reporting rape

The prevalence of rape

Information on the prevalence of rape in England and Wales can be obtained from the number of crimes recorded by the police and information reported by members of the public in the British Crime Survey (BCS). The first source relies on the victim coming forward to report the crime to police; the second relies on them reporting their experiences accurately in the self-completion module on intimate violence in the BCS.

The most recent Home Office figures of crime recorded by the police (see Flatley *et al.*, 2010, for detailed breakdown of the most recent figures) show the following.

- Rape is reported by both men and women, but the overwhelming majority of complainants are female. Over 90% of the 15,165 reports of rape recorded by the police in 2009/10 were rapes of a female.
- Overall there has been a 15-16% increase in recorded rapes from 2008/09 (with a 22% increase for male complainants and a 15% increase for females).
- Over the past five years, the total number of rapes recorded by the police has increased by just over 8% (14,013 rapes were recorded in 2004/05, Flatley *et al.*, 2010).

The increase in recorded numbers of rapes does not necessarily mean the prevalence of rape has increased. In recent years attempts have been made to encourage greater reporting of rape to the police, and these are likely to have contributed to the increases observed. Indeed, figures from the BCS suggest the likelihood of being a victim of rape has remained relatively stable for the past five years (Flatley *et al.*, 2010). Victimization statistics confirm that women are much more likely to have been a victim of rape than men; in the 2009/10 BCS, 0.4% of women aged from 16 to 59 reported being raped in the year prior to interview compared to less than 0.05% of men.

Under-reporting of rape

The BCS provides useful evidence of under-reporting of crime to the police.⁵ For a number of specific crimes (the 'comparable subset') the BCS asks those respondents who said they were a victim of such crime whether they reported the incident to the police (or if the police

⁵ Although BCS samples do not include children aged under 16. Thus BCS figures for rape will not compare directly to rapes recorded by the police as police figures include rapes perpetrated against children as well as adults.

came to know about it in another way). In 2009/10, 43% of incidents in this subset were reported to the police (or the police came to know about them in another way) although the likelihood of reporting varied considerably by the type of offence (Flatley *et al.*, 2010):

- thefts of vehicles were most likely to be reported (90%);
- followed by burglaries in which something was stolen (84%);
- reporting rates were lower for crimes such as assault with minor or no injury, vandalism and theft from the person, where only about one-third of incidents were reported to the police (39, 35 and 33% respectively).

In comparison with these sorts of non-sexual offences, reporting rates for sexual offences were lower still. Figures from the 2007/08 BCS (Povey *et al.*, 2009) indicated that only 11% of victims of serious sexual assault, which included rape and attempted rape (and which took place since they reached the age of 16) had reported the most recent assault to police.

While the reporting figure for rape is not separated from serious sexual crime overall in recent BCS findings, previous studies indicated it is under-reported to a similar extent (see Myhill & Allen, 2002; Walby & Allen, 2004). For example:

- the police became aware of 20% of (last experienced) rapes reported in the 1998 and 2000 BCS by female respondents (Myhill & Allen, 2002);
- but only around half of these were reported by the victim themselves;
- overall, the police became aware of around one in five (18%) experiences of sexual victimisation reported to the 1998 and 2000 BCS.

Why is rape under-reported?

Research has suggested a number of reasons why many rape victims choose not to report what has happened to them. First is a perception among victims that what happened was not rape. For example, Walby and Allen (2004) found that less than half (43%) of women who had been, since the age of 16, subject to an act that met the 1994 legal definition of rape thought of it as rape (see also Kelly *et al.*, 2005). They were more likely to describe the event as rape if they sustained a physical injury. This corresponds to research from North America which found that when a rape results in physical injuries to the victim, and/or a weapon is used, the victim is more likely to report the crime (Bachman, 1998 and Estrich, 1987 both cited in Lisak & Miller, 2002). Most rapes, however, do not involve a weapon. For example, in over 90% of 5,100 rapes reported to the Metropolitan Police Service (MPS) over the two years 2001/02 and 2002/03, no weapon was used or implied (Ruparel, 2004).

In research based in England and Wales, Kelly *et al.* (2005) identified a number of additional reasons why some victims of rape choose not to report the crime to police, including:

- not thinking the police will see what happened as rape;
- a general distrust of the police and Criminal Justice System (CJS) agencies;
- language or other communication difficulties;
- a fear that public disclosure will lead to further attacks or a negative judgment from friends and family.

Under-reporting and the relationship between victims and perpetrators

Research also suggests that the closer the relationship between victim and perpetrator in rape cases, the longer a victim is likely to take to report the offence (e.g. Feist *et al.*, 2007; Lea *et al.*, 2003), and that rapes perpetrated by strangers are more likely to be reported to police than those perpetrated by someone known to a victim (e.g. Myhill & Allen, 2002; Feldman-Summers & Norris, 1984). In sexual offences cases in general, the relationship between victims and perpetrators of sex offences varies considerably with the seriousness of the offence and the gender of the victim.

Table 3.1 Relationship between (alleged) victim and (alleged) perpetrator in incidents of sexual assault experienced since the age of 16 (2007/08)

	Less serious sexual assault*		Serious sexual assault**	
	Men (%)	Women (%)	Men*** (%)	Women (%)
Partner (current or former)	16	19	32	53
Family member	2	5	7	5
Other known	47	34	58	41
Stranger	44	61	9	12
Unweighted base (n)	311	2,982	66	779

Source: Table 3.11, Povey *et al.* (2009).

Note: Percentages will sum to more than 100 due to victimisation from more than one offender.

* Indecent exposure; sexual threats and unwanted touching.

** Rape or assault by penetration, including attempts.

*** Base is small therefore sampling error will be large.

Table 3.1, which draws on data from the 2007/08 BCS, indicates the following.

- For serious sexual assault (i.e. rape and attempted rape), it was more likely that the victim (of either gender) had an association with the alleged perpetrator, although the nature of this association differed for male and female victims.
 - More than half of female victims (53%) reported the perpetrator to be a current or former partner, compared to just under one-third of male victims (32%).

- ❑ For male victims, the most common perpetrator was someone else known to them; 58% had been a date, friend, acquaintance or colleague.
 - ❑ Strangers and family members are much less likely to be reported as perpetrating serious sexual assault against males or females.
- In comparison, perpetrators of less serious sexual assaults against females are most likely to be strangers (61%), who also make up almost half (44%) of perpetrators of the same offences against males.

Research suggests that, once an allegation has been made to the police, persuasion from friends and family can result in a complainant withdrawing their complaint from the justice process (see section 3.2). One question which further research could usefully address is whether this is more likely in cases where a victim is, or has been, close to the alleged perpetrator in some way.

Some victims do not report rape to the police due to fear of public disclosure (see Kelly *et al.*, 2005). It is possible that providing anonymity for those accused might encourage reporting through ensuring both sides of the case remain free from publicity. However, it is currently not known whether anonymity would have such an effect, to what extent or under what circumstances. It is also possible that anonymity could have the opposite effect and lead to a decrease in reporting rates, but again there is no reliable evidence for this. While it would be extremely useful to determine exactly what the effect of providing defendant anonymity in rape cases would have on victim reporting and witness co-operation, reliable empirical research in this area would be difficult to conduct.

3.2 Investigating rape: attrition

Cases of rape ‘fall out’ of the criminal justice process at all stages, and research suggests a significant number are dropped early on in investigation, before any suspect is arrested and long before a prosecution is brought (Kelly *et al.*, 2005). In some instances, the Crown Prosecution Service (CPS) decides not to proceed and drops the case before it reaches court, most often because there is insufficient evidence to provide a realistic prospect of conviction (Feist *et al.*, 2007).⁶ Research from the United States found that a lack of ‘visual’ evidence stemming from physical injuries is likely to play a key role in decisions to prosecute. When a rape results in physical injuries to the victim, and/or a weapon is used, prosecutors are likely to look more favourably on charging the case (Bachmann, 1998 and Estrich, 1987, in Lisak & Miller, 2002), presumably because the evidence is clearer. Most rapes, however, do not involve a weapon (e.g. Lovett & Kelly, 2009; Ruparel, 2004) and a study tracking outcomes of rape cases in a number of European countries, including England,

⁶ A CPS decision to proceed is based on two tests: whether there is sufficient evidence to provide a realistic prospect of conviction at trial, and whether prosecution is in the public interest. If the case fails the evidential test, it cannot proceed (CPS, 2004).

reported similar findings regarding evidence (Lovett & Kelly, 2009). When this supported a complainant's account of events, especially where it constituted documented injuries, the case was more likely to proceed through the justice system.

Complainants themselves can decide to withdraw a rape allegation for a variety of reasons (Kelly et al., 2005; Metropolitan Police Service (MPS), 2007; Williams *et al.*, 2009), including:

- fear of being disbelieved;
- fear of court, the Criminal Justice System and the investigative process which may necessitate interviews with friends/family/work colleagues;
- perceptions of likely outcome of the case following information from the police about the likelihood of securing a conviction;
- involvement of alcohol and/or drugs which can exacerbate uncertainty about what happened;
- a desire for instant closure;
- a fear of further violence;
- being persuaded to withdraw following consultation with friends and family;
- uncertainty about whether what happened constituted rape;
- a lack of emotional strength to continue.

Harris & Grace (1999) suggest that a prior relationship of some sort between complainant and offender (which exists in approximately nine out of ten cases, Povey *et al.*, 2009) can test the former's willingness to give evidence. If they choose not to, and withdraw, the prosecution is effectively left without a case.

The range of factors which can lead to complainant withdrawal suggest that many of those who do report rape to the police are vulnerable in some way. The extent of such vulnerability was highlighted by the MPS (2007): out of a sample of 677 complainants who reported rape over a two-month period, 87% showed one or more of the following vulnerabilities:

- aged under 18;
- having mental health issues;
- having ingested alcohol prior to the rape;
- previously been or currently in an intimate domestic relationship with the perpetrator.

3.3 False allegations of rape

There is a concern that defendants falsely accused of rape (or any other serious crime) could suffer trauma, worsened by negative publicity, which can continue to have significant adverse consequences long after such an accusation has been proven false. This report found some evidence that being wrongfully convicted of an offence can result in severe psychological and social adjustment problems (e.g. Grounds, 2004) although robust research focusing on the

impact of being falsely accused specifically of rape is limited. Much evidence is anecdotal, or based on a small number of case studies. The literature indicates that systematic evidence tends to focus on factors which contribute to false allegations and wrongful convictions rather than on the consequences for those falsely accused (e.g. Campbell & Denov, 2004).

How many reported allegations of rape are false?

Various studies have estimated that 8–11% of rape allegations in England and Wales are false (e.g. Feist *et al.*, 2007; HM Crown Prosecution Service Inspectorate (HMCPSI) & HM Inspectorate of Constabulary (HMIC), 2007; Lea *et al.*, 2003; MPS, 2007; Rumney, 2006; Stern, 2010). It is not known, however, how this compares to the prevalence of false allegations of other offences (Stern, 2010). The lack of a consistent definition of what constitutes a false rape allegation, as well as variations in recording practices by police and others in the CJS, make accurate assessment of the true extent of such allegations very difficult.

Available evidence is based on the perceptions of practitioners and research involving relatively small samples. Over-estimation by police and prosecutors, poor communication with complainants and limited understanding of relevant law have all contributed to misconceptions about levels of false allegations (e.g. Kelly *et al.*, 2005; Lea *et al.*, 2003). However, without robust comparable figures for other serious crimes, firm conclusions regarding whether false allegations of rape are particularly problematic cannot be drawn. It is also not possible to draw firm conclusions about the motivations behind false allegations. This means the view that false allegations of rape are common and/or are made by vengeful or desperate women (see Rumney, 2006) cannot robustly be supported or denied.

Existing prosecution and conviction statistics do not clarify the issue. Those prosecuted for malicious allegations of any offence are, if convicted, found guilty of offences including perverting the course of justice, wasting police time and perjury. It is not possible to identify from these data those offences which have arisen solely from complainants making false accusations of rape. This would require a detailed case analysis of all convictions for these general offences.

Research currently underway by the Ministry of Justice to examine criminal justice disposals more widely will involve in-depth analysis of a sample of police and Crown Prosecution Service case files. These will include a range of sexual and violent offences, including rape. Among other things, the extent and nature of false allegations of these offences, and what happened to the perpetrators, will be examined. This will help update existing information on the subject and provide some comparative information with which to consider false allegations of rape.

Criming and no-criming: identifying false allegations

The police record incidents reported to them according to Home Office National Crime Recording standards. These standards help the police classify incidents as crimes or 'no-crimes'. A reported incident should be classified as a 'no-crime' when (1) following a report, additional verifiable information becomes available to indicate that no offence took place, (2) an incident was previously erroneously recorded as a crime, (3) it took place in another force area or (4) it constituted part of a crime already recorded.

Evidence has suggested that cases exist where the police have failed to adhere to Home Office guidance and have wrongly classified alleged rapes as no-crimes. A joint HMCP/ HMIC investigation (2007) examined 752 rape reports made in 2005 to seven police forces and Crown Prosecution Service areas (split into eight review sites). It found that of the 179 reports that had been no-crimes (see HMCP, p.43-44).

- Thirty-two per cent (57) were incorrectly no-crimes and should have been investigated as rape.
- In some of these incorrectly no-crimes cases, the classification was due to a complainant declining to complete the initial process or withdrawing their complaint (still maintaining that the rape had taken place). In others it followed a judgment that there was insufficient evidence a crime had taken place (although there was no verifiable information that it had not).
- In 18 of the 57 incorrectly no-crimes cases, the allegation was incorrectly treated as false. This was primarily a result of complainant credibility being called into question.
- Overall, false allegations (recorded under 'no verifiable information that a crime took place') were estimated to account for 10% of the sample. Removal of one review site from the analysis which had reported higher than average numbers of complainant withdrawals reduced this to just over 8% (8.1%).

The investigation concluded that such failure to adhere to guidelines meant:

- police perceptions of the scale of false allegations were inflated;
- information about potential perpetrators was lost;
- the victim's credibility risked being undermined if she made a later report of rape.

In an earlier examination of a sample of 676 rape reports from eight forces in England and Wales in 2003/04, Feist *et al.* (2007) found a similar level of false allegations.

- In 51% of the 83 reports appropriately no-crimes (n=42) the complainant admitted that no rape had happened.

- In a further ten cases, evidence came to light which contested the victim's account of events.
- The study calculated that the overall proportion of false rape allegations was 8% (n=52) of the entire sample.

A separate study by the Metropolitan Police Service (2007) reported that:

- a third of rape allegations recorded over a two-month period were no-crimes;
- false allegations accounted for 30% of these, or approximately 10% of all rape allegations in the sample.

The nature of the relationship between no-criming and false allegations is thus unclear and the following factors contribute to the lack of clarity:

- lack of a clear definition of false allegation;
- a misunderstanding that no-criming or acquittal means an allegation was false;
- variation in interpretation of the no-crime category 'additional verifiable information becomes available to indicate that no offence took place';
- general inconsistent practice in no-criming.

In addition, convictions for rape that are the result of a false allegation will only emerge as such much later (or may never publicly emerge at all). At present there are no reliable data on numbers of these cases, and they are not considered in the above studies estimating the proportion of false rape allegations.

What constitutes a false allegation? The problem of definition

Various studies have indicated that deciding a rape allegation is false can be subjective and based on police judgment, the complainant's credibility, motivation and whether they had willingly been in the perpetrator's home prior to the alleged rape (Feist *et al.*, 2007; HMCPSI, 2007; Lea *et al.*, 2003; MPS, 2007; Rumney, 2006). While this report does not examine evidence regarding the role of existing myths and stereotypes surrounding rape,⁷ they can play a part in perceptions about what constitutes a 'real' and a 'false' rape and influence estimates of false allegations.

⁷ These remain powerful and are discussed by Stern (2010).

Hazlewood & Burgess, (2001) have noted that the term 'false allegation' makes no distinction between complainants who wilfully misreport rape and those who have been raped but who mistakenly identify an innocent individual as the perpetrator. It fails to acknowledge the possible motivations behind false allegations and this report found no research on the proportion of false allegations which result from, for example, wilful misreporting versus mistaken identity.

Research by the MPS (2007) found complainants proven to have made false allegations of rape were more likely to present with at least one vulnerability (e.g. mental health issues) than those who made genuine accusations. Overall, the nature of perceptions about false rape allegations and a lack of robust evidence regarding their nature, prevalence and motivation support the view that false allegations "...provide a poor basis upon which to develop appropriate policy responses to rape" (Rumney, 2006 p. 129).

False allegations in the media

Consideration of false allegations of rape in England and Wales is incomplete without at least a brief examination of media coverage. Cases of alleged rape that receive publicity are important in shaping and maintaining public perceptions (Franiuk *et al.*, 2008), including those cases resulting from a false allegation.

As noted by Grover and Soothill (1998) a huge body of literature exists on the representation of crime, including rape, in the media. In their study based on historical news reports, they examined rape cases covered in six newspapers in England and Wales in selected years from 1951 to 1992. It found the following.

- Cases resulting in conviction were more likely to be reported than those ending in acquittal;
- The pattern of reporting changed over the 40 years examined. As the number of cases coming to trial increased over this period, the proportion receiving newspaper coverage declined, particularly those which ended in acquittal.
- Of 933 rape trials in 1992, 7.5% (70 trials) were reported on in the newspapers examined. Ten per cent of those which ended in conviction were covered compared to 2% of those ending in acquittal.

This work has not been updated so it remains unknown whether, today, proportionately more convictions are reported in the press than acquittals. Moreover, Grover and Soothill's research did not consider reasons for acquittal. It is therefore unknown whether acquittals following allegations admitted to be, or exposed as, false (whether malicious in nature or not) were more likely to be reported than those resulting from other factors (for instance, complainant withdrawal, lack of evidence).

More recently, research by Wolchover and Heaton-Armstrong (2010) on press reports of proven false allegations suggested there are a range of motivations. Some can be considered malicious in nature ('revenge or reaction to rejection', 'naked malice') but others may have resulted from vulnerabilities of a complainant (such as mental ill-health or disorder, confabulation and false memories). Wolchover and Heaton-Armstrong also claim that cases of false allegations of rape are "...reported in the national press every few days" (p.246). It is not clear, however, how this conclusion was arrived at because it is not apparent:

- whether their citations reflected all press coverage over the (unspecified) time frame or whether they were a sample, and if they were a sample, how it was derived;
- whether each report referred to a separate false allegation or if there was multiple coverage of the same case (which would inflate the extent of false allegations reported);
- whether citations were from England and Wales only or further afield.

4. Taking a charge of rape through the Criminal Justice System

This chapter considers evidence about the way in which rape cases proceed through the justice system once the CPS makes a decision to prosecute. Rape⁸ is an 'indictable only' offence, meaning that once the decision to prosecute is made, the case can only be heard in a Crown Court and must be tried by a jury. It is therefore relevant to examine what is known about juries in rape trials. Before this is considered, the report discusses the variety of ways in which outcomes in rape cases are presented in statistics. The chapter ends with a presentation of some official statistics about the prosecution and conviction of rape in comparison to murder and other serious sexual and violent offences.

4.1 Convictions for rape: a question of definition

In official statistics, the Ministry of Justice presents convictions for all crimes on the basis of the principal offence, which is usually defined as the most serious offence for which a conviction is secured. The decision to charge defendants with a crime or crimes is made by the police and the CPS. For those crimes involving multiple defendants and multiple offences, the CPS decides whether to put all crimes and defendants into a single case or to separate them into individual cases. The CPS and the police can also decide whether the evidence better warrants prosecution for an alternative or less serious offence than the offence originally investigated. For instance, a reported rape may result in a charge of serious sexual assault instead if the CPS believed the evidence was insufficient to have a reasonable prospect of achieving a conviction for rape. This process is known as 'downgrading' (and can also apply to offences other than rape).

Methods of measuring convictions

Public perception of conviction rates for rape is that they are low, which is likely to contribute to a belief that justice is often not achieved for rape victims. Interpreting and understanding rape conviction rates, however, is not straightforward as there are different ways of presenting figures and this can cause confusion. Perceptions of the success of the CJS in addressing rape (and other offences) are likely to depend, at least in part, on what sort of data are considered. Below are four methods which result in a different 'conviction rate' for rape. The main reason for the differences is that each method assesses convictions at different stages of the criminal justice process.

8 Defined in the Sexual Offences Act 2003 as when a perpetrator intentionally penetrates the vagina, anus or mouth of another person with his penis, the victim does not consent to the penetration, and he [the perpetrator] does not reasonably believe that the victim consents. A person consents if they agree by choice, and have the freedom and capacity to make that choice.

Approach 1: Convictions as a proportion of recorded rape allegations

This method, used commonly in public discussions of the CJS response to rape, calculates the number of people convicted of rape as a proportion of all rape allegations recorded. This results in citations of about a 6% conviction rate for rape (see Stern, 2010). For example, in 2008/09, the police recorded 13,104 allegations of rape (Flatley *et al.*, 2010). An estimated 2,492 people were formally charged with rape in the magistrates' court during this period (MoJ, 2010a), and an estimated 953 people were convicted of rape in 2008/09. This equates to a ratio of convictions to recorded rapes of 7.3 (i.e. out of every 100 offences recorded by the police as a rape, around seven will lead to a suspect being convicted of rape; Stern 2010). While this can be useful in understanding the small number of reported rapes that end in conviction, it is often incorrectly referred to as a 'rape conviction rate' and is a misleading method of presenting evidence on rape prosecutions and convictions. One of the main difficulties with the method is that it is unique for rape. No other convictions are calculated in the Criminal Justice System in this way, so it is difficult to compare the figure for rape with the same for any other offence (Stern 2010). Even if such convictions were to be calculated, comparisons would remain difficult due to differences in reporting rates for different types of crime. The MoJ will continue to make available the necessary data to allow users to construct this measure if they wish, but advise that results be referred to as a 'conviction to recorded crime ratio'.

Approach 2: Convictions as a proportion of people prosecuted

Official convictions for all offence types produced by the MoJ are, strictly speaking, also not rates but ratios.⁹ They are ratios of convictions to prosecutions for a principal offence over one year. This is because offenders convicted in a reporting year are not always the same people who were prosecuted in that year as investigations and trials can span more than one reporting year. So in calculating a conviction ratio for rape, official statistics:

- consider how many convictions for rape were secured in a year in comparison to the number of prosecutions for rape in the same year;
- do not encompass rape prosecutions that end in a conviction for another offence;
- include guilty pleas as well as guilty verdicts returned by a jury;
- include all cases where the prosecution withdrew the case after a defendant pleaded not guilty.

⁹ Common terminology refers to the ratio as a rate, but the MoJ has begun presenting conviction statistics using the accurate definition of ratio. The 2009 figures are referred to as conviction ratios.

The most recent official ratios for rape using this approach show that:

- Over one-third (36%) of defendants proceeded against for rape were convicted of rape in 2009.
- While this continues a broadly upward trend over the last decade, it is still one of the lowest conviction ratios for serious sexual and violent offences. Only offences of 'wounding or other acts endangering life' resulted in a lower proportion of convictions (27%) in 2009. (See section 4.3 for further details).

Approach 3: Convictions for any offence as a proportion of all rape prosecutions

An alternative method to the approach used by the MoJ counts the number of defendants convicted of any offence as a proportion of those prosecuted for rape, i.e. convictions for rape and for alternative, lesser offences. The Stern Review (2010) highlighted the importance of understanding this method of presenting conviction data, as it encompasses instances of downgrading. Crown Prosecution Service statistics (2009) provide a conviction rate for rape of 58% (for 2008-09) using this approach. What is not clear, however, is how many convictions originally charged as rape were ultimately secured for alternative offences and what those alternative offences were. Bespoke analysis conducted by the MoJ for the purposes of this report examined all outcome data for rape prosecutions in 2008 and found that inclusion of convictions for any offence increased the conviction rate for rape from 36% in 2009 to 58%.

Approach 4: Convictions as a proportion of rape charges decided by a jury

Thomas's (2010) study of jury decision-making used a different method of calculating conviction rates. This calculated the proportion of guilty rape verdicts juries returned on rape charges put to them. The reason for this approach was twofold.

- Official statistics combine defendant guilty pleas with guilty verdicts by juries, so it is not possible to determine how often juries convict in rape cases (or any other case) from these figures.
- Juries return verdicts on individual charges not on individual defendants unless there is only one defendant and one charge. Most jury trials involve multiple charges and/or multiple defendants.

In order to understand how often juries convict (for any offence, including rape), this method looks only at verdicts reached by jury deliberation, and bases its analysis on the individual charges put to juries but controls for clustering of verdicts by defendant or case.

Table 4.1 Key aspects of four main approaches to rape conviction rates/ratios

	Stages of CJS covered	Conviction rate/ratio	Key aspects of approach
Approach 1 (see Stern, 2010)	From original police complaint to final case outcome.	7.3% (2008/09)	Emphasises a large proportion of rape complaints that do not result in a formal charge. Compares crimes to offenders.
Approach 2 (MoJ, 2010)	From formal prosecution at court to final case outcome.	36% (2009)	Confined to formal prosecutions for rape and convictions for rape. May under-represent convictions as excludes cases when defendant charged with rape but convicted of alternative/lesser offence.
Approach 3 (CPS, 2009 and used for bespoke MoJ analysis presented in this report)	From formal prosecution at court to final case outcome.	58% (2008/09)	Encompasses formal prosecutions for rape that result both in convictions for alternative/lesser offences and in convictions for rape. May over-represent convictions due to inclusion of convictions for any offence however minor.
Approach 4 (Thomas, 2010)	From charge put to a jury to final jury verdict.	55% (2006-2008)	Confined to cases where juries deliberate on a charge of rape and return a verdict of guilty or not guilty of rape.

4.2 Rape and juries

Rape is widely perceived and claimed to have a low jury conviction rate (Temkin & Krahe, 2008). Thomas (2010) conducted the first comprehensive analysis of jury conviction rates for rape and all other offences tried in the Crown Court in England and Wales and found that, contrary to popular belief, juries returned guilty rape verdicts more often than they returned not guilty rape verdicts.

- Using the methodology outlined in Approach 4 above, 55% of all charges of rape (involving both male and female complainants) decided by jury deliberation between October 2006 and March 2008 ended in a conviction for rape.
- Most cases involved female complainants, and juries convicted on 54% of all charges of rape of a female.

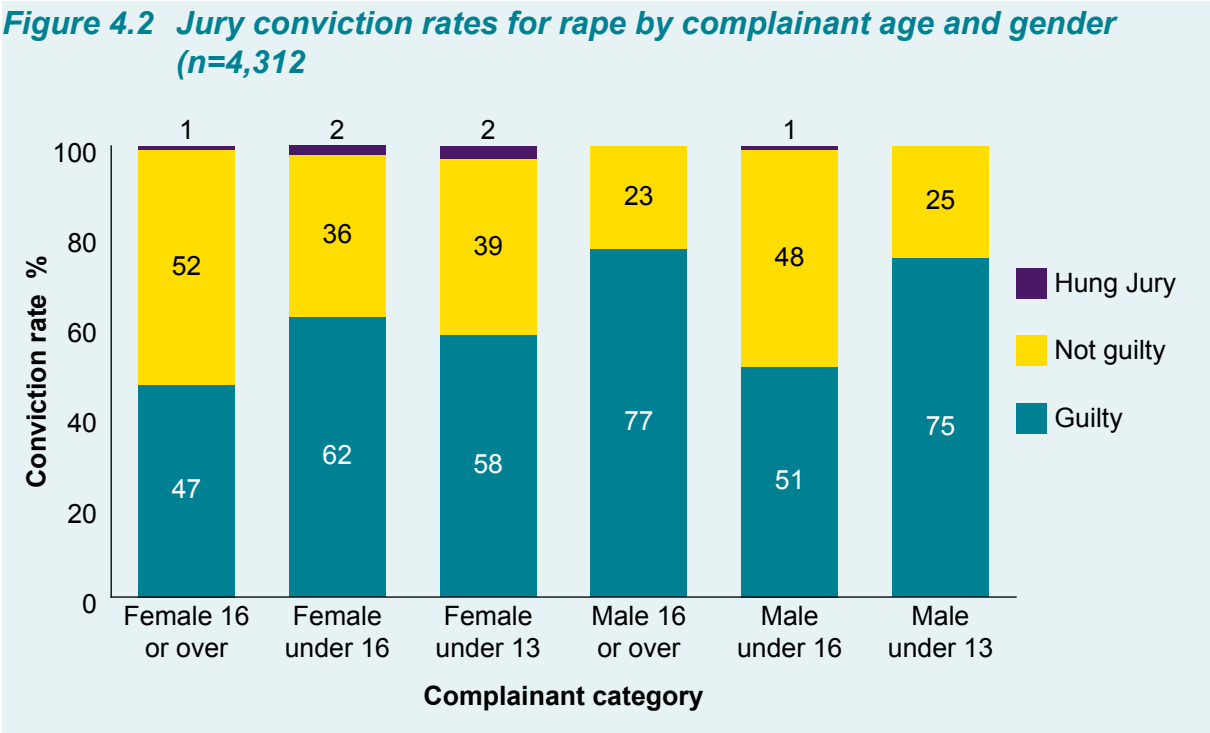
These findings differ from research conducted for the Home Office by Kelly *et al.* (2005), which found that where a full rape trial took place an acquittal was more likely than a conviction. That study was based, however, on a small number of verdicts (n=181) across a small number of courts. Thomas's (2010) findings were based on the most recent data available at the time of the 2010 report, which covered all 4,312 jury verdicts for rape in 2006-08 across all courts in England and Wales.

The jury conviction rate (Thomas, 2010) of 55% also differs from the official MoJ conviction ratio for rape (2009) of 36% because it includes different elements of the court process. Official statistics reflect all prosecutions for rape and all outcomes. The jury conviction rate, however, considers only those cases where a defendant pleads not guilty and the case proceeds to trial.

Jury convictions for rape

The most serious criticism of juries in rape cases is that they fail to convict because of jurors’ prejudicial attitudes towards female complainants, not because of the difficulty in proving allegations which hinge on juries believing one person’s version of events over another’s (Temkin & Krahe, 2008). However, Thomas’s (2010) analysis of jury conviction rates in rape cases by both age and gender of the complainant (Figure 4.2) raises questions about the suggestion of a general jury bias against female complainants.

Figure 4.2 Jury conviction rates for rape by complainant age and gender (n=4,312)



Source: Thomas (2010) *Are Juries Fair?* MOJ Research Series 1/10. Figure 3.13, p. 32.

Figure 4.2 highlights that:

- In cases involving complainants aged under 16, the conviction rate was highest when the case involved a female complainant (62%). When cases involved complainants aged under 13, however, a guilty verdict was more likely in cases involving male victims.
- A conviction was more likely than an acquittal for all complainants (male or female) below the age of 16.

- In cases involving complainants aged over 16, a guilty verdict was more likely when the complainant was a male (77%) than when the complainant was female (47%).

These findings suggest a jury's propensity to convict or acquit in rape cases is not necessarily due to juror attitudes to female complainants. Thomas (2010) concluded that while there is no doubt that the proportion of rape allegations reported to police which end in conviction is extremely low, it is also clear this is not due to any widespread jury failure to convict in rape cases.

The number of jury convictions for sexual offences more generally also varied depending on the specific offence, age and gender of the complainant, as shown in Table 4.2a.

Table 4.2a Jury conviction rates for sexual offences 1 October 2006 – 31 March 2008

Specific Sexual Offences (by gender and age of complainant)		Jury verdicts (charges heard) (n)	Jury convictions (%)
Rape (of a Female)	16 or older	2,136	47
	under 16	1,674	62
	under 13	224	58
Rape (of a Male)	16 or older	86	77
	under 16	111	51
	under 13	81	75
Sexual Assault (of a Female)	13+	1,667	46
	13+ with penetration	556	43
	under 13	1,020	59
	under 13 with penetration	220	70
Sexual Activity (with a Female)	under 16 with penetration	690	56
	under 16 no penetration	289	48
Indecent Assault (on a Female)	16 or older	376	62
	under 16	1,419	66
	under 14	2,920	65
Indecent Assault (on a Male)	16 or older	49	76
	under 16	314	69
	under 14	442	62
Total number of charges heard		14,274	

Source: The figures in the table represent all jury verdicts for these offences in all Crown Courts in England and Wales in the period stated as contained in CREST (the Crown Court Electronic Support System). The figures were kindly provided by the author of the Ministry of Justice report *Are Juries Fair?* (2010) to the Stern Review (2010) and represent a further breakdown of the jury conviction rates in sexual offences cases contained in the original report.

Key points from Table 4.2a include the following.

- More offences of Indecent Assault on a Female aged under 14 were tried by a jury than any other sexual offence (2,920 charges heard). Juries convicted 65% of the time on these charges.
- The most common offence against males was also Indecent Assault on those aged under 14, and juries convicted at a similar rate (62%).
- Juries tried almost as many rape charges where the complainant was a female aged under 16 (1,898) as they did rape charges where the complainant was aged 16 or over (2,136).

Comparing jury convictions for rape with jury convictions for other serious offences

Thomas (2010) also reported that a number of serious offences had lower jury conviction rates than rape, as shown in Table 4.2b:

Table 4.2b Jury conviction rates for serious offences 1 October 2006 – 31 March 2008

Offence	Jury convictions (%)
Threatening to kill	36
Attempted Murder	47
Grievous Bodily Harm	48
Manslaughter	48
Unlawful wounding	49
Rape	55
Murder	76
Drug possession with intent to supply	84
Death by dangerous driving	85
Making indecent images of children	89

Source: Thomas (2010) *Are Juries Fair?* MOJ Research Series 1/10. Selected offences from Technical Annex 9.

Thomas (2010) suggested these variations indicate that jury conviction rates are associated with the nature of the legal questions a jury must answer in order to convict a defendant on specific offences, and the nature of the evidence likely to be presented in those cases. Juries appear to try cases on the evidence and the law; offences where the strongest direct evidence is likely to exist against a defendant appear to have the highest jury conviction rates while cases where juries must be sure of the state of mind of a defendant or complainant appear to have the lowest.

4.3 Measuring and reporting convictions in England and Wales

Moving forward in presenting conviction data

The official measure used by the MoJ to represent conviction rates does not include those defendants where a conviction for rape was sought but secured instead for a lesser offence (sexual or non-sexual offence). This measure therefore under-reports the actual conviction rate.

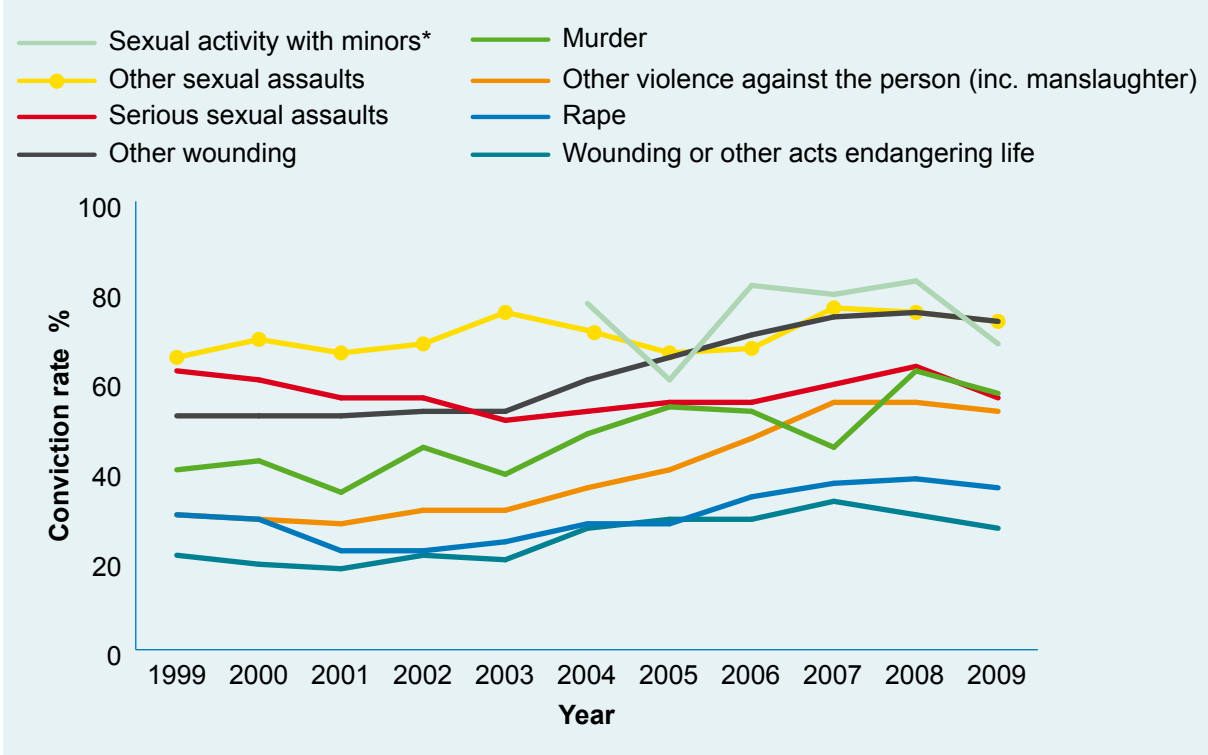
As recommended by the Stern Review, the MoJ have been working with the National Statistician to explore fully the issue of conviction rates in rape cases. As part of the consultation on improvements to Ministry of Justice statistics, a wide consultation on full proposals for the measurement of conviction rates in statistical bulletins across all offences is planned. The initial view is that no single measure will ever be able to fully reflect the complexity of the issue. In measuring rape convictions, the different possible measures answer important but different questions.

- How many people prosecuted for rape are convicted of rape and what percentage of all prosecutions for rape is this?
- How many people prosecuted for rape are convicted of any criminal offence and what percentage of all prosecutions for rape is this?

MoJ conviction data for sexual and violent crime: how does rape compare?

Figure 4.3a shows how convictions for rape and other sexual and violent offences have changed over the past ten years, using the standard MoJ method for calculating convictions (i.e. as a proportion of people prosecuted for a particular crime). (See <http://www.justice.gov.uk/publications/docs/rape-anonymity-data-tables-2010.xls> for MoJ data underlying all figures presented in this chapter.)

Figure 4.3a Conviction rates for sexual and violence against the person offences 1999-2009*



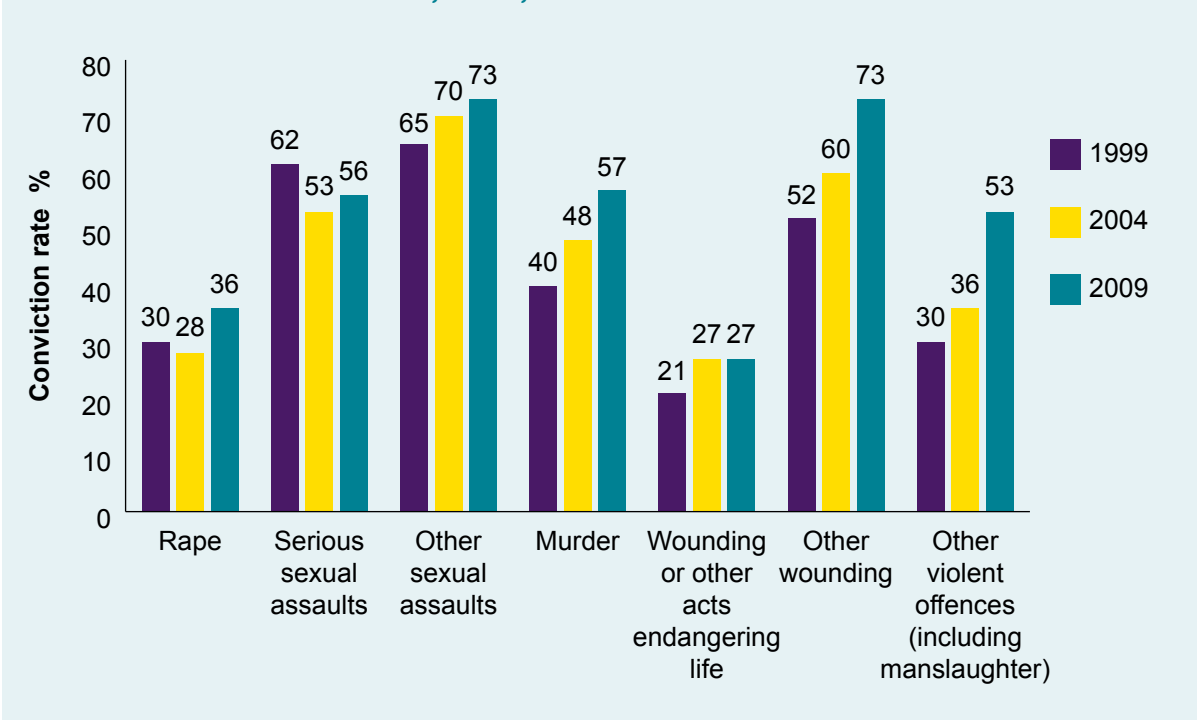
* The changes introduced by the Sexual Offences Act 2003 means direct comparisons with previous legislation are difficult. Many new offences created by the Act such as 'sexual activity with minors' do not have a direct equivalent in previous legislation. The Sexual Offences Act 2003 came into force on 1 May 2004.

As Figure 4.3a shows, the downward trend of rape convictions at the end of the last century was reversed in 2002, from which point it has been slowly but broadly rising. While rape convictions remain lower than those secured for most other sexual and violent crimes, establishing guilt in rape cases to the legal standard required to convict, where there is often little or no physical evidence, and (with cases where the complainant is aged over 16), the issue turns on consent - his word against hers (Harris & Grace - 1999), is very difficult.

Figure 4.3b shows conviction rates for sexual and violent offences in 1999, 2004 and 2009. It highlights that:

- the conviction rate for rape has increased by eight percentage points between 2004 and 2009;
- the rate for serious sexual assaults has risen between 2004 and 2009 but remains below the 1999 rate;
- there has been little change in the conviction rate for other sexual assaults (although it remains among the highest conviction levels);
- conviction rates for violent offences have also risen from 2004 to 2009 with the exception of offences of wounding or other acts endangering life where it remained the same (with some fluctuation between 2004 and 2009, see Figure 4.3a).

Figure 4.3b Conviction rates for sexual and violence against the person offences in 1999, 2004, and 2009



‘All’ convictions following a prosecution for rape: a comparison with murder

As discussed, an alternative to presenting the ratio of convictions secured for the offence originally prosecuted (e.g. rape) is to examine the number of convictions secured for any offence against that original prosecution, i.e. to consider and include cases of downgrading.

To do this it is necessary to go back to 2008 data. Most cases prosecuted in 2008 were completed by 2010, so most outcomes are recorded in published conviction statistics. The Ministry of Justice has been examining the feasibility of linking prosecutions at the magistrates’ courts to outcomes at the Crown Court for statistical purposes. The validity and veracity of the methodology to match information across court systems has been verified and the method has been applied to prosecution data from 2008 to track case outcomes.

Data for both rape and murder have been matched, as these represent the most serious sexual and violent offences. Even though the types of evidence presented in these cases are inevitably different, they are both serious offences so downgrading to less serious offences is possible. It is therefore important to understand how rape compares to murder in terms of the extent of this process.

It was possible to match 78% of rape prosecutions in 2008 (1,871 prosecutions) to an outcome at the Crown Court in 2008 or 2009 (based on latest available data) and 79% (555) of murder prosecutions (this reflects the recording of the data available to the authors, rather than a lack of outcome). Findings are presented below.

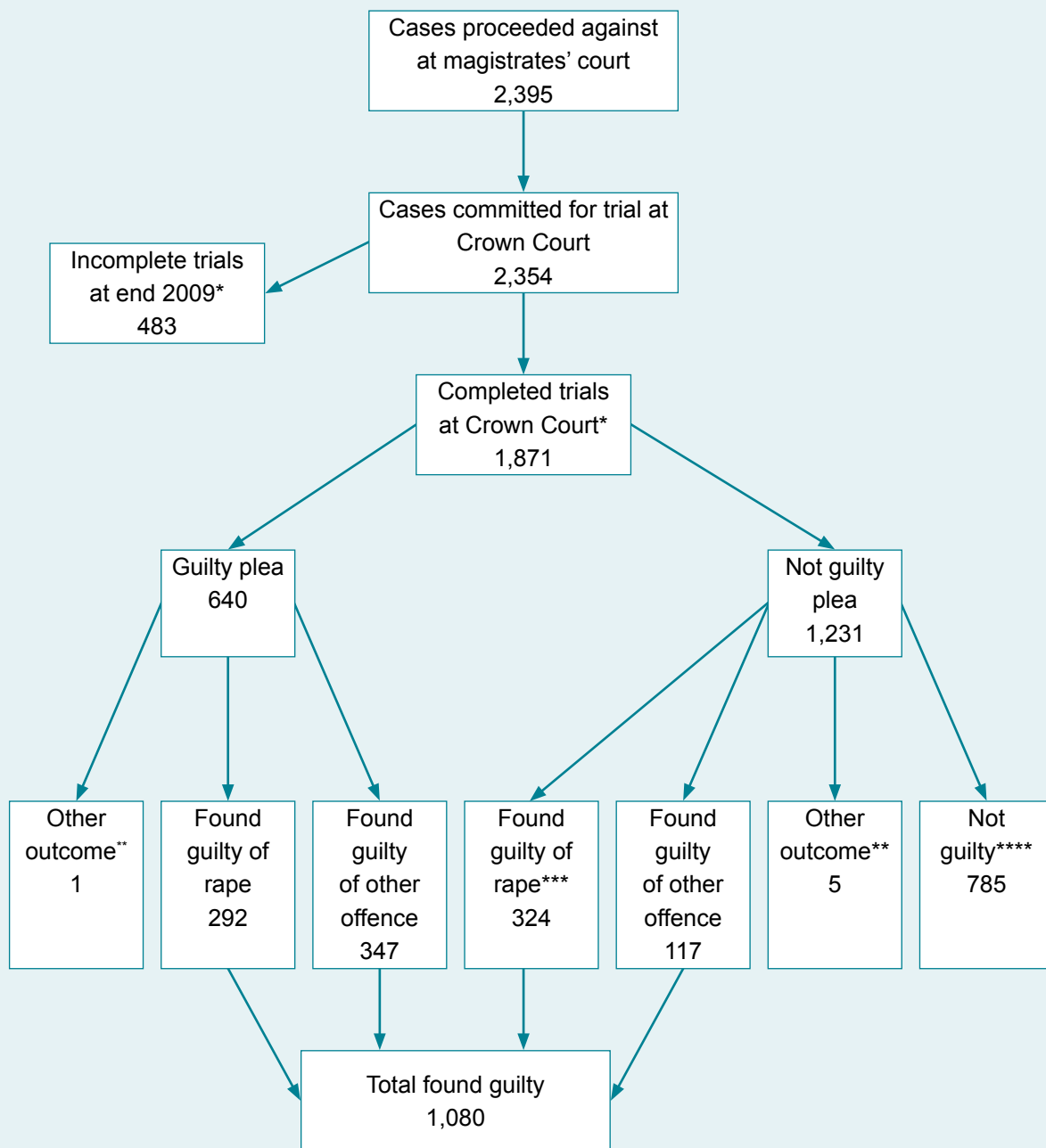
Outcomes of prosecutions for rape in 2008

Of the rape cases heard at Crown Court in 2008 and matched to an outcome in 2008 or 2009 (i.e. completed trials):

- 58% were convicted of an offence (42% were not guilty);
- of which 33% were convicted of rape;
- a further 14% were convicted of another sexual offence;
- 5% were convicted of a violent offence, a further 5% of another indictable offence and 1% of a summary offence.

Figure 4.3c shows the flow of these matched cases through the Criminal Justice System. A total of 1,080 defendants prosecuted for rape in 2008, whose case was complete by the end of 2009, were convicted. Of these, a total of 616 were found guilty of rape; the remaining 464 were convicted of another offence.

Figure 4.3c Outcomes of prosecutions for rape in 2008



* Those cases where an outcome could be identified at Crown Court in 2008 or 2009.

** Defendants who died before sentence was passed.

*** Includes those found guilty by a jury and those who pleaded guilty during the trial process.

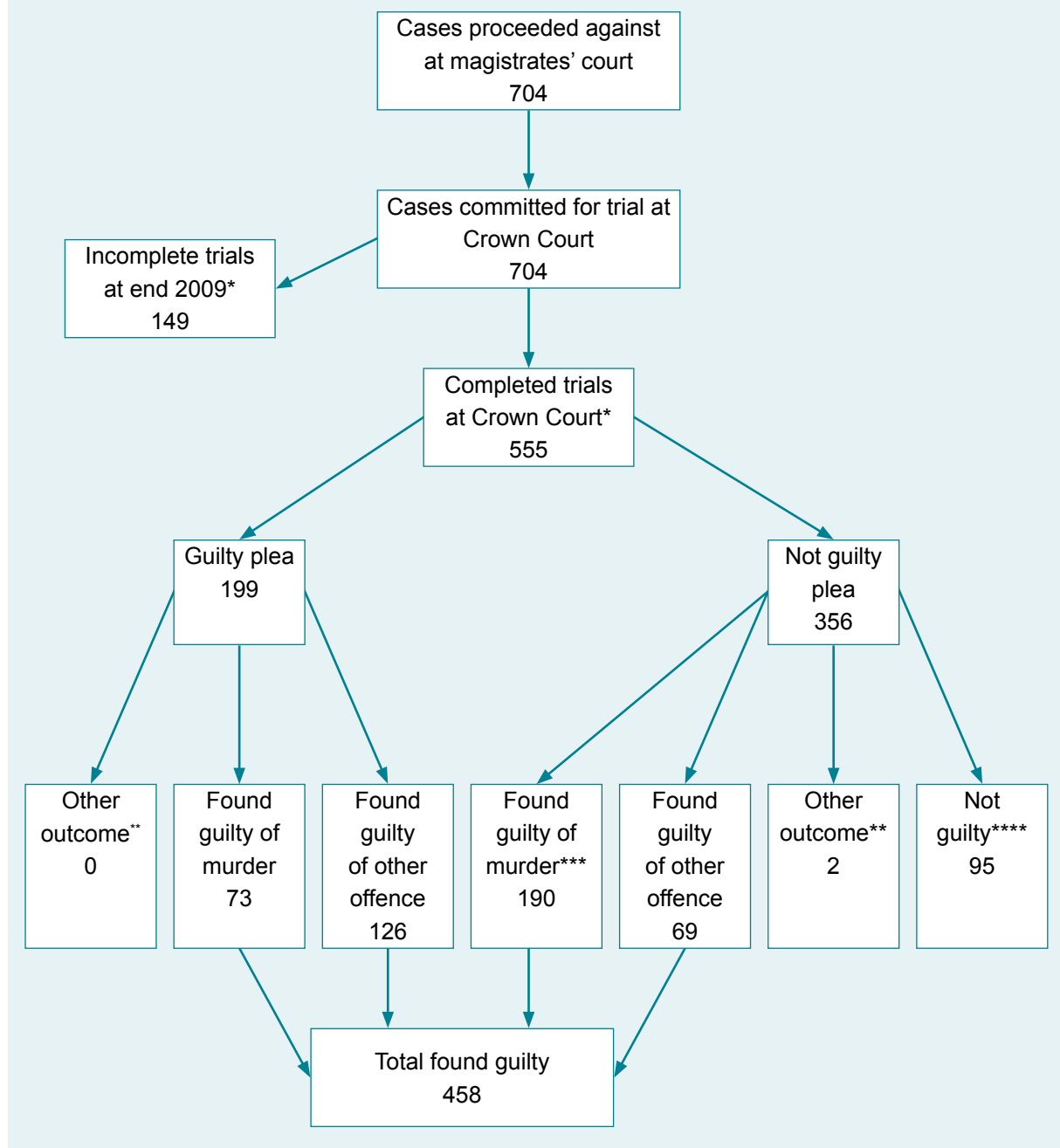
**** Includes all cases where the CPS offered no evidence after a not guilty plea so the case was completed before a full trial took place.

Outcomes of prosecutions for murder in 2008

Of the murder cases heard at Crown Court in 2008 and matched to an outcome in 2008 or 2009 (i.e. completed trials):

- 83% were convicted of an offence (17% were not guilty);
- of which 47% were convicted of murder;
- a further 27% were convicted of another homicide related offence;
- 3% were convicted of another violent offence and 5% of another indictable offence.

Figure 4.3d Outcomes of prosecutions for murder in 2008



* Those cases where an outcome could be identified at Crown Court in 2008 or 2009.

** Defendants who died before sentence was passed.

*** Includes those found guilty by a jury and those who pleaded guilty during the trial process.

**** Includes all cases where the CPS offered no evidence after a not guilty plea so the case was completed before a full trial took place.

As Figure 4.3d shows, a total of 458 defendants prosecuted for murder in 2008, whose case was complete by the end of 2009, were convicted. Of these, a total of 263 were found guilty of murder; the remaining 195 were convicted of another offence.

These data support findings elsewhere in relation to sexual offending statistics more generally (e.g. Friendship *et al.*, 2001), namely that official figures may not fully reflect the extent of particular types of convictions due to downgrading. For example:

- 3% of a sample of 104 sexual offenders were charged with a sexual re-offence but convicted of a violent re-offence (Corbett *et al.*, 2003);
- 5% of a sample of 379 cases of rape/attempted rape were downgraded and the defendant convicted of a lesser crime (Lea *et al.*, 2003).

While such findings are not representative (they have relatively small samples and in the case of Lea *et al.* refer to only one police force in England and Wales) they highlight the need for development of the official statistics to better allow interpretation of downgrading. At present, however, there is no statistical data on how often downgrading takes place, and to what types of offence.

Unpicking the specific offences for which defendants prosecuted for rape and murder were actually convicted of has highlighted the complex relationship that can sometimes exist between prosecutions and outcomes at the Crown Court. For example, a defendant may be prosecuted for both rape and murder and the charges heard under the same indictment at the Crown Court. Following conviction for the murder charge, it is possible for the rape charges to be ordered to remain on file.¹⁰

4.4 The extent of offending by those accused of rape

Multiple offending

Statistics suggest that offending histories of sexual offenders can contain a number of previous offences. In one sample of offenders convicted of serious sexual offences, 64% had a previous conviction for any offence (Soothill, 2002). Of these, 7% had a previous conviction for at least one sexual offence, and 50% had at least one conviction for a violent offence. More recently, further analysis of MoJ Criminal Statistics (2010) reported that almost half (48%) of those defendants found guilty of rape offences in 2009 (including attempts and aiding and abetting) were sentenced for two or more (rape) offences (although this does not necessarily mean there was more than one victim). Of those found guilty, 3% had at least one previous conviction for rape and 10% at least one previous conviction for any sexual offence.

¹⁰ This means the charges stay on file and cannot be reopened without leave of the Court of Appeal.

The notion of multiple offending is borne out by a number of studies of self-reported offending conducted in North America. These suggest that sexual offenders, including those convicted of rape, may have more prolific offending histories than official records suggest. When guaranteed immunity from punishment, convicted sexual offenders have confessed to extensive levels of offending that would not have been known to criminal justice agencies. In North American samples, both convicted offenders and perpetrators without official convictions have admitted to committing approximately 5–12 offences of rape against multiple victims. (Abel *et al.*, 1987; Lisak & Miller, 2002; Weinrott & Saylor, 1991). However, self-reported offences of rape are hard to verify, and findings from North American research should not automatically be extrapolated to England and Wales as the legal definition of rape can differ between jurisdictions (although in all American States it involves a serious sexual assault).

Possible impact of anonymity

If those under investigation for rape were provided with anonymity, the police would not be able to name anyone they are investigating. This could potentially hinder the identification of a suspect who had committed rape previously by any previous victims who had not reported the crime. Publicly identifying a suspect through the course of the investigation may encourage such victims to come forward. The identification, for example, might suggest to any previous victims that they are not alone and this might encourage them to overcome their previous reluctance to come forward, "...thereby transforming difficult-to-prosecute cases into potential multiple-victim cases" (Lisak & Miller, 2002, p.81). Additional evidence gathered in this way may enable the police to link a sexual assault to another such assault against another victim, thereby helping to strengthen the prosecution case (Feist *et al.*, 2007).

Anecdotal evidence suggests the police have, in some cases, released information about a suspect to assist in locating them or if it is otherwise considered to be in the public interest (see for example HC Deb 7 June 2010, vol 511, cc149-158). However, it is unclear whether it is the name of the suspect or the release of other details (such as modus operandi) which encourages previous victims to come forward. It should be noted that guidance from the Association of Chief Police Officers (ACPO) advises that suspect identities should generally not be disclosed before charge.

Robust data are not routinely collected on the extent to which the police release identities of, or other relevant information about, suspects prior to formally charging them. Moreover, this report has been unable to identify research on the impact of this practice in terms of police investigations or in relation to those accused of a crime who are later found to be innocent.

5 Impact of media coverage of criminal cases

As anonymity for those accused of rape has implications for media reporting, what is known about the impact of media coverage of criminal cases and its possible impact on trials is relevant. Under Section 2(3) of the Contempt of Court Act 1981, media coverage of active proceedings must not create a substantial risk of serious prejudice to the case by unduly influencing jurors, and concerns are often raised about such influence in high-profile cases. Legal judgments about whether media coverage amounts to such (strict liability) contempt are usually based on the 'fade factor' – the idea that media reporting is less likely to affect jurors the further away it is from the trial.

Availability of 24-hour news on demand presents new challenges to media coverage of criminal cases. When a jury is sworn in, the judge will tell jurors not to look for information about their case. While they are deliberating, the judge will usually tell jurors at the end of each day not to make any enquiries into the case. Thomas (2010) suggests, however, that the internet could affect the extent to which jurors can reasonably be expected to heed these directions. Anonymity for rape defendants could help prevent risk of serious prejudice to the trial, but this would only be the case if most jurors are actually affected by media coverage.

5.1 Juror awareness of media coverage of cases

Research in other common law jurisdictions has concluded that jury verdicts are not likely to be influenced by media reporting (Chesterman *et al.*, 2000). Thomas (2010) conducted the first study of this issue with juries in England and Wales, and found that jurors serving on high-profile cases (serious offences with longer trials) were almost seven times more likely to recall media coverage (70%) than jurors serving on standard cases (11%) (less serious offences with trials lasting a few days). Most of those who recalled media reports of their case saw or heard information only during the time their trial was going on, providing the first empirical evidence in this country of the 'fade factor'. One-third (35%) of those serving on high profile cases remembered some pre-trial coverage but most were unable to recall the content.

The level of media coverage of a case was a key factor in where jurors saw information and the extent to which it affected them. In high profile cases, jurors recalled media reports from a range of outlets, with television (66%) and national newspapers (53%) the main sources. This contrasts with jurors' recall of media reports in standard cases (lasting only a few days), where local newspapers accounted for almost all (77%) coverage recalled. Most jurors (66%) in high profile cases who recalled media coverage did not remember it having any particular slant, but 20% of these said they found it difficult to put the reports out of their mind while serving as a juror.

In high profile cases, then, almost three-quarters of jurors were aware of media coverage of their case and some of them found it difficult to ignore. To help understand the implications of providing anonymity for those accused of rape, it would be helpful to determine whether jurors in rape cases were any more likely to recall media coverage of their cases than jurors in cases involving other offences, and whether jurors in rape cases were more likely to find media reports difficult to put out of their minds.

5.2 Juror use of the internet during trial

Thomas (2010) also looked for the first time in this country at the extent to which jurors ignored judicial prohibitions about looking for information about their case during the trial. In recent years, a number of juries have had to be discharged, trials abandoned or conviction ruled unsafe due to jurors' inappropriate use of the internet during trial (including at least one rape trial).¹¹ This is a growing area of concern in the Criminal Justice System, and is an issue that also has an impact on the question of whether to grant anonymity to defendants in rape cases.

Thomas (2010) found that all jurors who admitted looking for information about their case during the trial looked on the internet. This raises questions that there are currently no answers to about the potential impact of the internet on the outcome of rape cases, and the value of granting anonymity. For instance, it would be important to determine if jurors in rape cases are more likely to look for information about their cases than jurors in cases where a defendant is charged with other offences.

The internet has made foreign news reports readily available to the British public. To the extent that these internet sites are effectively beyond the reach of our domestic media reporting restrictions, this raises important issues about the ability to ensure anonymity in the criminal justice process even when anonymity for defendants, victims or witnesses is legally granted.

¹¹ *R v Karakaya* [2005] 2 Cr App R 5 (77).

6 Conclusion

Overall, this review of evidence on providing anonymity for rape defendants found insufficient reliable empirical findings on which to base an informed decision on the value of providing anonymity to rape defendants.

6.1 Areas requiring reliable empirical evidence

Evidence is lacking in a number of key areas, and the report has highlighted specific questions where robust empirical evidence could greatly assist in understanding the implications of providing anonymity to rape defendants.

Understanding how anonymity affects reporting of rape

Most victims and perpetrators of rape are known to each other and research suggests that some victims do not report rapes to the police out of fear that public disclosure will cause problems with family and friends.

- Providing anonymity for those accused of rape might encourage victims and witnesses to come forward to report the crime because it would ensure both sides of the case remain free from publicity. However, it is currently not known whether anonymity would actually have such an effect, to what extent or under what circumstances.
- It is also possible that defendant anonymity could have the opposite effect and lead to a decrease in reporting rates, but again there is no reliable evidence for this.
- While it would be extremely useful to determine exactly what the effect of providing defendant anonymity in rape cases would have on victim reporting and witness co-operation, reliable empirical research in this area would be difficult to conduct.

Lack of clarity over the true extent of false rape allegations

Concrete evidence about the extent of false rape allegations is limited and confused, and what exists is based on perceptions of practitioners and research involving small samples.

- Without robust comparable figures for other serious crimes, firm conclusions regarding whether false allegations of rape are particularly problematic cannot be drawn.
- It is also not possible to draw firm conclusions about the motivations behind false allegations. This means the view that false allegations of rape are common and/or are made by vengeful or desperate women cannot robustly be supported or denied.
- Existing prosecution and conviction statistics do not clarify the issue. Those prosecuted for making false allegations of any offence are almost always charged with perverting the course of justice, wasting police time or perjury. It is not possible to identify in existing statistics those cases that have arisen solely from complainants making false accusations of rape. This would require detailed case analysis of all prosecutions for these offences.

- Case file analysis planned by the MoJ aims to shed some light on the nature of false allegations of rape and other sexual and violent offences, and to update existing estimates of prevalence.

Understanding the difference between no-criming of rape and false allegations

The nature of the relationship between police “no-criming” rape and false rape allegations is unclear and the following factors contribute to the lack of clarity:

- lack of a clear definition of false allegation;
- misbelief that no-criming or an acquittal necessarily means the allegation was false;
- variation in interpretation of the no-crime category “additional verifiable information becomes available to indicate that no offence took place”;
- general inconsistent police practice in no-criming.

Understanding media coverage of false rape allegations

It remains unknown whether today proportionately more rape convictions are reported in the press than acquittals. It is also unknown whether acquittals following an admitted, or otherwise exposed, false allegation are more likely to be reported than those resulting from other factors (for instance, complainant withdrawal, lack of evidence).

Need for clarity in statistics on rape convictions

Public perception of conviction rates for rape is that they are low, which is likely to contribute to a belief that justice is often not achieved for rape victims. Interpreting and understanding rape conviction rates, however, is not straightforward as the different ways of presenting figures can cause confusion. Perceptions of the success of the CJS in addressing rape (and other offences) are likely to depend, at least in part, on what sort of data is considered.

Consistency in reporting conviction rates

Understanding conviction rates in detail requires ongoing linking of data from the magistrates’ courts and Crown Court systems, and MoJ statisticians have begun work on this.

- As recommended by the Stern Review, the MoJ have been working with the National Statistician to explore fully the issue of conviction rates in rape cases.
- As part of the consultation on improvements to Ministry of Justice statistics, a wide consultation on full proposals for the measurement of conviction rates in statistical bulletins across all offences is planned. The initial view is that no single measure will ever be able to fully reflect the complexity of the issue.

Downgrading

- The current official measure used by the MoJ to represent conviction rates (36% for rape in 2009) does not include those defendants where a conviction for rape (or attempted rape) was sought but was secured instead for another offence (sexual or non-sexual). The measure therefore under-reports the actual conviction rate.
- Conversely, the more inclusive approach which counts all convictions originally charged as rape (58%) could overstate the situation as some offences prosecuted alongside rape might be extremely minor. It might also include cases where the defendant was found not guilty of rape but guilty of a completely different crime, unrelated to the rape.
- Data linking between magistrates' courts and Crown Court systems will shed light on both the nature and extent of downgrading for rape and other offences.

Understanding the impact of media coverage of jury rape trials

Juror awareness of media reporting of their case and use of the internet to look for information about their cases during a trial raises questions that there are currently no answers to about the potential impact of media coverage and the internet on the outcome of rape cases, and the value of granting anonymity.

- It would be helpful to determine whether jurors in rape cases were any more likely to recall media coverage of their cases than jurors in other cases, and whether they were more likely to find media reports difficult to put out of their minds.
- It would be helpful to determine if jurors in rape cases are more likely to look for information about their cases than jurors in cases where a defendant is charged with other offences.
- To the extent that foreign-based internet sites are effectively beyond the reach of domestic media reporting restrictions, this raises important issues about the ability to ensure anonymity in the criminal justice process even when anonymity is legally granted.

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Annex A: Exceptions to open justice: statutory and discretionary arrangements¹²

Statutory exceptions to open justice

There are several automatic reporting restrictions which are statutory exceptions to the open justice principle.

Victims of sexual offences

Victims of a wide range of sexual offences are given lifetime anonymity (in relation to the specified sexual offences) under the Sexual Offences (Amendment) Act 1992. This imposed a lifetime ban on reporting any matter likely to identify the victim of a sexual offence, from the time that an allegation was made and continuing after a person has been charged with the offence. A defendant accused of a sexual offence may apply for the restriction to be lifted if that is required to induce potential witnesses to come forward and the conduct of the defence is likely to be substantially prejudiced if no such direction is given.

The 1992 Act does not prohibit the naming of a defendant or a witness (other than a victim) in a sexual offence case unless doing so would be likely to identify the victim, referred to as 'Jigsaw identification'. For example, where one report refers to an unnamed defendant convicted of raping his daughter and another refers to the name of the defendant, the daughter will be identifiable to the public in breach of the automatic prohibition protecting victims of sexual offences.

There are three main exceptions to the victim anonymity rule.

- 1) A complainant may waive entitlement to anonymity by giving written consent to being identified (if he or she is aged over 15).
- 2) The media are free to report the victim's identity as the complainant of offences alleged in any report of subsequent criminal proceedings, other than the actual trial or appeal in relation to the sexual offence, e.g. if the complainant were to be prosecuted for perjury in separate proceedings.
- 3) The court may lift the restriction to persuade defence witnesses to come forward, or where the court is satisfied it is a substantial and unreasonable restriction on the reporting of the trial and that it is in the public interest for it to be lifted. This last condition cannot be satisfied simply because the trial has ended.

¹² The information in this Annex is drawn from Judicial Studies Board *et al.* (2009). *Reporting Restrictions in the Criminal Courts*.

General restrictions on reporting court proceedings in progress

Reports of pre-trial hearings in the Crown Court cannot generally be published until a trial is over. Reports of preparatory hearings in long, complex or serious cases and unsuccessful dismissal applications must be limited to a specified range of factual matters, with reporting of all other matters prohibited until the trial is over. Similar restrictions apply in respect of committal proceedings in the magistrates' courts. These restrictions on pre-trial proceedings lapse at the conclusion of the trial and may be lifted earlier where the court is satisfied that it is in the interests of justice.

Reports of special measures (e.g. rape complainants being screened from the defendant when giving evidence, or giving evidence remotely) and directions prohibiting the accused from conducting cross-examination cannot be published until the trial(s) of all the accused are over, unless the court orders otherwise. Other reports that cannot be published until this time include prosecution notices of appeal against rulings. A court's decision on whether to expedite an appeal, to adjourn proceedings, or discharge the jury equally cannot be published.

Reporting restrictions on proceedings in the youth court

The media are also prohibited from publishing the name, address or school or any matter likely to identify a child or young person involved in youth court proceedings whether as a victim, witness or defendant. Here, defendants have the same anonymity as victims and other witnesses. The youth court may lift the restriction in specified circumstances including where the child or young person is convicted of an offence and the court considers that it is in the interests of justice.

Discretionary exceptions: judicial imposition of media reporting restrictions

Where a discretionary restriction is potentially available, courts must apply it with care, ensuring relevant statutory conditions have been met. Where they are, the court must make a judgment, balancing the need for the proposed restriction against the public interest in open justice and freedom of expression. In all cases, courts must be satisfied the need for the restriction has been convincingly established and that terms of the order go no further than is necessary to meet the statutory objective.

Under-18s

Section 39 of the Children and Young Person's Act 1933 (CYPA) permits a court to prohibit media publication of any information, including pictures, calculated to lead to identification of any living child or young person aged under 18 concerned in criminal proceedings before that court (i.e. as a victim, defendant or witness). The order only applies to proceedings in the court by which it was made. Criminal proceedings commence when an accused is charged: there is no power to impose a s39 order to protect the identity of a person who has been arrested but not charged.

Adult witnesses

Under s46 of the Youth Justice and Criminal Evidence Act 1999 a court may prohibit publication of matters likely to identify an adult witness, but not a defendant, in criminal proceedings during the witness's lifetime. The court must be satisfied that the quality of the witness's evidence or co-operation with the preparation of the case is likely to be diminished by reason of fear or distress in connection with identification by the public as a witness. In exercising its discretion, the court must balance the interests of justice against the public interest in not imposing a substantial and unreasonable restriction on reporting of the proceedings.

Withholding personal details from open court – s.11 Contempt of Court

Where a court exercises its powers to allow information to be withheld from the public in criminal proceedings, it may make such directions as are necessary under s11 of the Contempt of Court Act 1981 prohibiting publication of that information. Section 11 can only be invoked where the court allows a name or matter to be withheld from being mentioned in open court. Courts should only make an order under s11 where the nature or circumstances of the proceedings are such that hearing all evidence in open court would frustrate or render impracticable the administration of justice. It is not appropriate therefore to invoke the s11 power to withhold matters for the benefit of a defendant's feelings or comfort or to prevent financial damage or damage to reputation resulting from proceedings concerning a person's business. Nor can the power be invoked to prevent identification and embarrassment of the defendant's children, because of the defendant's public profile. Where the ground for seeking an s11 order is that the identification of a witness will expose that person to a risk to life, engaging the state's duty to protect life under Article 2 European Court of Human Rights, (ECHR), the court will take into consideration that person's subjective fears and the extent to which they are objectively justified. In rare circumstances, the right to private and family life under Article 8 ECHR may mean that normal media reporting has to be curtailed, and injunctions in these cases are dealt with by the high court.

Reporting restrictions during trial: postponement of fair and accurate reports

Under s4(2) of the Contempt of Court Act 1981 the court may postpone publication of a fair, accurate and contemporaneous report of proceedings where necessary to avoid a substantial risk of prejudice to the administration of justice in those or other proceedings. These restrictions are specifically designed to ensure juries are not unduly influenced by media coverage, and the power is strictly limited to fair, accurate and contemporaneous reports of proceedings. If the concern is potential prejudice to a future trial, the court will bear in mind the tendency for news reports to fade from public consciousness and the conscientiousness with which it can normally be expected that the jury in the subsequent case will follow the trial judge's directions to reach their decision exclusively on the basis of evidence given in that case.

Ministry of Justice Research Series 20/10

Providing anonymity to those accused of rape: An assessment of evidence

This report brings together findings from previous reviews and primary research studies as well as Home Office and Ministry of Justice statistics to present a summary of evidence relevant to the issue of whether or not to provide anonymity to those accused of rape.

A number of areas have been examined to determine whether the likely impact of anonymity can be identified. These include: the legal position on anonymity; reporting and investigation of rape; false allegations; convictions and offending histories, and media coverage of criminal cases.

Overall, the report found insufficient reliable empirical findings on which to base an informed decision on the issue of whether or not to provide anonymity to those accused of rape.

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