

Home Affairs Committee

Oral evidence: [Investigation and Prosecution of Rape, HC 193](#)

Wednesday 20 October 2021

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Members present: Yvette Cooper (Chair); Laura Farris; Dame Diana Johnson; Tim Loughton.

Questions 81 - 138

Witnesses

I: Rt Hon Lady Dorrian, Lord Justice Clerk, Lead, Review into Improving the Management of Sexual Offence Cases (2020-21); Rt Hon Sir John Gillen, Leader, Independent Review into the Law and Procedures in Serious Sexual Offences in Northern Ireland (2018-19); Baroness Stern CBE, Chair, Independent Review into How Rape Complaints are Handled by Public Authorities in England and Wales (2010).

II: Sarah Crew, Temporary Chief Constable for Avon and Somerset Police, Lead for Rape and Adult Sexual Offences, National Police Chiefs Council; Donna Jones, Police and Crime Commissioner for Hampshire and Isle of Wight, Joint Lead for Supporting Victims, Association of Police and Crime Commissioners; David Tucker, Faculty Lead on Crime and Criminal Justice, College of Policing.

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Examination of witnesses

Witnesses: Rt Hon Lady Dorrian, Rt Hon Sir John Gillen and Baroness Stern.

Q81 **Chair:** Welcome to this evidence session for the Home Affairs Select Committee, an evidence session we are taking as part of our inquiry into rape prosecutions and the significant drop in rape prosecutions. We are very grateful to our panel for joining us today. We have the right hon. Lady Dorrian, the Lord Justice Clerk and the leader of the Review into Improving the Management of Sexual Offence Cases in Scotland. We have the right hon. Sir John Gillen, leader of the Independent Review into the Law and Procedures in Serious Sexual Offences in Northern Ireland. We have Baroness Stern, the Chair of the Independent Review into How Rape Complaints are Handled by Public Authorities in England and Wales (2010). We are grateful to all of you for your time this morning.

I want to begin by asking you how much you think that the problems we are now facing with the low rate of prosecutions are very much the same as those in your reports and how much progress there has been. Can I begin with Baroness Stern?

Baroness Stern: Thank you very much. Thank you for inviting me to this meeting. I am very glad that among the many things you have to worry about you have chosen to look into the rape situation.

I read the oral evidence you have received so far and the Government report, the End-to-End Rape Review, and I found it all very interesting in the light of the report I produced 11 years ago. I would like to say a few words about that report and how I relate it to the current situation, which I think is what you asked me to do. You must be a mind reader.

A quick reminder—and of course not everybody will know about it—it was commissioned in August 2009 specifically by Jacqui Smith, who was the Home Secretary, and Harriet Harman, who was the Minister for Women and Equalities at that time. It was published on 15 March 2010. It had taken a few months altogether to produce the whole thing. Parliament prorogued on 8 April and there was a general election. The outcome was a coalition Government of Conservatives and Liberal Democrats. At that point, I feared that the report could have sunk without trace but fortunately the new Home Office Ministers were Theresa May and Lynne Featherstone and the response from them was more than positive.

They set up a unit in the Home Office to work on rape and sexual assault. It was staffed with some excellent people and they produced a Government response to the report agreeing with most of the recommendations. I remained involved with it all for about four years after that. It was impossible not to. My memory is that there was, in many places, a large amount of activity aimed at improving how victims are dealt with and improving the legal process. I spent a lot of time with people who wanted rape victims to be better treated and justice to be done. I remember, for example, a woman in the middle ranks of the



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Metropolitan Police who decided to find a way to reach out to marginalised women and men, minorities and LGBT+ people. She formed groups and started working with them. I attended some of them.

There were many dedicated people working as independent sexual violence advisers. NHS staff were working to create safe and welcoming sexual assault referral centres; the CPS had specialist rape prosecutors in all 42 CPS areas; and many, many police forces had trained rape specialists. Certainly, there was still a long way to go, much more needed to be done, but a structure was being built that was very promising.

As your earlier witnesses have all made clear, a lot of that work is now struggling. Cuts because of austerity have reduced the capacity to do much of this work; specialist police have seemingly gone back to general duties, the numbers convicted in court are very low, the number of independent sexual advisers is low, I assume, because another 700 are to be employed, and of course the pandemic has made all of this more difficult.

Looking back on those years, of all the areas in which I have worked, my experience of being alongside people caring for rape victims, helping them recover and helping them to get justice, was the most admirable and the most rewarding. These people were not highly paid. They had to work all the hours. They had to cope with many people's unhappiness and fear. They did it because they cared and wanted the system to be better.

I very much welcome your inquiry. I very much welcome the publication of the End-to-End Rape Review report and I am grateful to Priti Patel, Robert Buckland and Michael Ellis for apologising and admitting that they are deeply ashamed of the downward trends in bringing sexual offenders to justice. Thank you.

Q82 Chair: Thank you. In light of your report, what would be the top thing on your list of concerns that the Government or police or prosecutors and so on, should be focusing on now to turn things around?

Baroness Stern: I would like to give a clear and simple answer, but I fear that is not possible because it is not what we normally regard as the justice system, where it is almost clear what you have to do and you know when you have done it. This is a very different state of affairs with, first, the problem that the act takes place and then the question is whether it was consensual or not. That brings in a huge difficulty. Then there is the effect on the victims, which is dramatic, can be very long-lasting, and may need a great deal of support.

I would also say there is a very important area, which is totally neglected, of trying to make it clear, educationally, why rape is absolutely unacceptable and totally not to be even thought of, and to try to ensure that some of the things that go on in social media that encourage that could be stopped. I would like to give a simple answer, but it is not like



that because it is all about things that happen to people and the very different things they need when this has happened.

Q83 Chair: Thank you. Sir John, the focus of our questions to the Home Office is around England and Wales but we are interested in how far you think the challenges in England and Wales also reflect some of the issues that you looked at as part of your inquiry and also what we can learn from what has happened in Northern Ireland.

Sir John Gillen: Yes, they do; the problems that you have in England and Wales are very often reflected in Northern Ireland. We also have a low prosecution rate. It is higher than yours and one of the reasons might be because in Northern Ireland—as I think in Scotland—all cases go to the prosecution service. The police do not decide what cases are going to be prosecuted or what cases will go. All cases go to the prosecution service and hence we have a prosecution rate of about 10.8% of people who report rape, but that is very low. It is far too low.

There can be a mistake in concentrating on the low prosecution rate because that is a factor, there is no doubt about that, but it is a much wider issue. You have to appreciate that possibly—and this is a figure from the Office for National Statistics in 2018 in England and Wales—only one sixth of rapes are reported to the police. They may be reported to other people but only one sixth are reported to the police. Of those who do report, 40% drop out of the system.

During my review, I spoke to just under 40 complainants in face-to-face meetings. Some had dropped out. Some had not gone to the police. Some had taken the case through the process and there had been an acquittal. Some had seen convictions. Without exception, they all gave reasons why the criminal justice system was inadequate and these were reasons that were perfectly logical. I do not agree with them. I make it clear. Everybody, male and female, who is subject to sexual assault should go to the police, but I can fully understand the reasons why only one sixth do go to the police and why 40% drop out.

If I might respectfully say so, those are the wider issues that have to be looked at. This is a holistic problem. Although I made 250 proposals for reform, one of the dangerous questions that I keep being asked is, “But what are the main ones here?” There are no main ones. It is a holistic approach. Picking the low-hanging fruit is not going to work. You have to approach this matter holistically, even though great steps are being taken in Northern Ireland to address individual problems.

Q84 Chair: Is there a risk that because there are so many different aspects, you therefore get incremental progress in a lot of areas and it is then hard to see substantial change because it is just harder to manage the process?

Sir John Gillen: I respectfully say so. You are absolutely right. That is the difficulty. You can get a few things done and people say, “That is



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great” but you will not see material change unless there is a cultural change across the board. One of the main areas, dare I say it, is outside the criminal justice system; in education and public awareness. Education is crucial. Children in primary school—I have four grandchildren aged 10 and younger—should be introduced to concepts dealing with the problems we have from primary school upwards, and there should be a public awareness programme. In Northern Ireland we have just launched one dealing with rape myths. Documents are going out across the public, asking for views on them. That is a good idea. It is called “Bust the Myths”. That is a crucial area but let me not get away from it; the criminal justice system also needs radical reappraisal and that is what my 250 reforms were about.

Q85 Chair: Thank you. Lady Dorrian, we have seen an increase in rape prosecutions in Scotland whereas in England we have seen a drop over the same period. Let me ask you how far you think some of the challenges in England are similar to those that you identified in your report and what you think England should learn from what is happening in Scotland.

Lady Dorrian: It is not always easy to make comparisons between one system that is quite different from another system. We did find that a lot of the issues that we were facing, the difficulties that complainers felt that there were in their ability to come forward and then what happened to them once they were in the system, were ones that were replicated across not just the UK but across the world. Many other jurisdictions had had similar kinds of experiences.

In our review, we did not even look particularly at prosecution rates; we were not particularly aware of a problem there in any event. I know this Committee has been looking at conviction rates but we did not look at them. Our drivers were other than that, it was to make the system better; to take the holistic approach that Sir John has referred to, and try to deliver the whole package.

Picking up on what you raised with Sir John about the risk of little reforms here and there, one of the things we found was that despite reforms stretching back 40 years, complainers were still reporting the same experience because these reforms had taken place in a piecemeal fashion and without a look at how they fitted in overall to the prosecution of serious sexual offences and whether there were other things that needed to be done to assist those reforms. That is where the real challenge lies.

Q86 Chair: If you want to change the culture in a holistic way, the challenge you can always find—for us in terms of scrutiny—is Ministers could use those words. They could say, “We are taking a holistic approach”. Senior police officers or prosecutors could say to us, “We are taking a holistic approach; there are lots of changes”, but it then becomes very difficult to see where the real progress is and whether it adds up to substantial enough change. If we need to make a huge step-change in this, where do



you think the greatest progress would be made?

Lady Dorrian: In the pre-recording of evidence. There was no doubt in our minds in the review that very many of the problems that are encountered would be, if not resolved, at least ameliorated to a significant degree, if the evidence of complainers was pre-recorded at the earliest stage possible. The objective is to have the evidence-in-chief effectively recorded, a statement taken by the police, and any cross-examination taken in the form of a commission as soon as possible as the prosecution is started; possibly even before the indictment is served.

Our experience of this was that, to a large extent, many of the problems that complainers experienced would be resolved if that were done. Not only because their evidence is done and dusted at a very early stage of the proceedings, so the concern that they are waiting to give their evidence and it is going to be months down the line would be removed. The concern about when am I going to be asked about this, or that, or the next thing, would also be removed. Communications about the medical records or other things would all have been done at an early stage and the nature of the questioning would be less intrusive.

I have to emphasise that I agree entirely with Sir John that an overall holistic approach is necessary but if you are looking for one quick, strong gain, pre-recording of evidence is it.

Q87 **Chair:** What is the obstacle? Why are we not just doing that, pushing that widely, across the whole country?

Lady Dorrian: There are a number of resource implications for that. It effectively involves a degree of frontloading of the case. It involves the right kind of facilities being available to the police in order to be able to get the statements pre-recorded. At the moment, for example, evidence of children and other particularly vulnerable witnesses may be visually recorded at an early stage by the police but it is not done as a matter of routine for other witnesses. It would be necessary to make sure that there was consistent provision of equipment and training and everything else in the police. You need to make sure that there is early disclosure so that the cross-examination could take place at an early stage by being pre-recorded. It cannot be done if there is not early disclosure, so that requires steps to be taken by the Crown in order to make sure that that can be done.

Chair: The obstacles are not insurmountable.

Lady Dorrian: They are interlinked, but they are not insurmountable.

Q88 **Tim Loughton:** This is exasperating. We have three of the pre-eminent experts on this problem, which everybody acknowledges is a problem, which has been a problem for an awfully long time, and is a worsening problem in terms of the stats, it would seem. Yet, Lady Dorrian, you are the only one who has come up with a particular solution, notwithstanding the points that Sir John made about there needing to be a holistic



approach.

Let's just try to unpick this, what has happened over the last 10 or more years. Belatedly there is better education going on. It needs to be more widespread. Concerning encouraging people to come forward, and those victims and survivors who were reluctant to come forward because they did not want to have to relive the trauma because they were afraid that they would be accused of bringing it on themselves and all those problems that we have heard; the Jimmy Savile revelations completely changed that. If one good came of that, it did encourage historical sex victims and survivors to come forward and to be taken seriously. They see a change in the mindset of the police. Rather than the police saying, "We are not taking this seriously", they were saying, "We are going to listen to you and we are going to take your case seriously and we will pursue it if we possibly can". It was not ideal but a lot has changed over that time and once in court, a lot of court procedures have been changed as well, in terms of being able to give evidence behind screens and written evidence being accepted. A lot has happened, but the situation has not improved.

What I and the Committee are most concerned to drill down to is why is the conviction rate so low. Why is it when those people, those victims—mostly women—and survivors, who are now encouraged to come forward and take that very brave step, do not end up with a successful conclusion to their case, with the offender being properly prosecuted?

Everything I have read seems to suggest we do not need to change the law; we need better enforcement and better practices. You are shaking your heads so I will be glad for your comments on that. What specifically is it that means that when a case does come on the radar of the police, it still has a woefully low chance of ending up with the perpetrator having a criminal conviction against him or her?

Sir John, you were shaking your head the most vehemently.

Sir John Gillen: Well, I am not sure it was vehemently. Once we get the alleged perpetrators into court, the conviction rate in Northern Ireland is that 29.9% are convicted of rape and very often those who are accused are convicted of other offences, with a conviction rate of 53.7%. The rate for getting to court is not as high as for other offences but it is not the worst, once we get a person into court. The problem is before that; before that stage is reached.

There are a number of things that can be done and that we are doing in Northern Ireland. We are not very progressive in Northern Ireland in most things but we are in this. For example, we have sex offence legal advisers now, so as soon as you go into the police station to make your complaint, you are advised that you will have the right to a lawyer. We have already appointed some lawyers who do that. They will advise you on your rights about disclosure. No longer will there be digital strip-searching, your phone taken away without good reason, your medical reports looked at without good reason. Delay will be dealt with by this



legal adviser. If you are concerned about being questioned about previous sexual experience, that lawyer will advise you about it. We have not yet reached the stage where that sex offence legal adviser will go directly to court, but we are going to do that and that will be a change in legislation, which is needed. That is a vital factor. It is vital for a number of reasons.

First, it is symbolism woven into the texture of realism. No longer will complainants feel alone, there will now be an equality of arms, and they feel that the state is hearing them. When I met these 40 complainants, one of the main complaints was, "We were totally alone". I used to prosecute rape cases and I would say to the complainant on the first day, "I have to make it clear to you that I do not represent you. I represent the state". But the accused is represented and if there are a number of them, as in a recent trial we had, there were 12 lawyers. That is one thing.

Q89 Tim Loughton: Can you explain how that works? It is a very important point. Why does it require a change in the legislation?

Sir John Gillen: The only people who can appear in court as a legal representative are those who are barristers, solicitors and so on. But the main reason is there are only two parties in criminal trials. There is the state and there is the accused. Nobody else can participate. The legislation would change that. It would have the complainant having someone representing them, someone appearing. That is quite a change in our law in Ireland, to have another party appearing directly.

Q90 Tim Loughton: Forgive me; I am not a lawyer. There are much better qualified people around me. The law does not allow an additional solicitor, as such, appearing on behalf of the complainant?

Sir John Gillen: That is right, and there are good reasons for that. The jury gets confused about why there are two people appearing, as they see it, for the complainant. This is not without reason but it should be changed in this case.

Tim Loughton: Understood.

Sir John Gillen: We are halfway towards that. I think we are the first. We have people who are lawyers advising complainants. Indeed, it should be now a disciplinary matter for the police if they do not tell complainants immediately when they come in, "Can I tell you ma'am, or young man, you have a right to a lawyer to advise you?".

Secondly, we have introduced, or are introducing, as Lady Dorrian has mentioned, pre-recorded cross-examination. That is vital. That cuts down delay. It can be done within nine months, maybe even sooner, provided we deal with disclosure. Remote evidence centres are important. You do not have to go to the big court in Belfast. Northern Ireland is a small place, but I had clients who had never been to Belfast. These are small courts—they are not even courts; they can be the town buildings,



whatever—where the complainant has her case dealt with within about nine months. The trial process might take longer but that is her bit finished. No longer is she waking up every morning for month after month after month with this cloud over her head. We have introduced some of those and you have them already here in England. It is a good thing. You do not have all the pressures of going to court and meeting the accused in the main hallway and having his family eyeballing you and so on. That has all changed.

Something we are doing that I have to say there is opposition to here in England and Wales, but you will be the only jurisdiction in these islands where it does not happen, and that is to exclude the public from the hearing, at least when the complainant is giving evidence. I think in Scotland the public is excluded when the complainant is giving evidence. In the Republic of Ireland the public is completely excluded. The press is allowed in—of course the press must be there at all times—but the public is taken away.

We had a very large trial recently. It got some notoriety. A young woman was in the witness box. Some sports players were accused—all acquitted—but she faced 132 people every day. There were busloads coming up from Dublin—these were well-known sports players—and 132 people, busloads, coming up to see this. Why should she have to go through that? We are going to change that. Legislation is going to change that. You will be the only jurisdiction where women and men will be forced to go through this in the public eye.

The final thing I want to mention is training: training not only for the judges and the lawyers but for the police too, and training not by the judges themselves, not by the barristers themselves, not by the solicitors, but by external parties such as Victim Support. We already have a committee set up, chaired by the CEO of Victim Support.

There are a number of things that can be done. They do involve, to some extent, changes in the law and that will have a significant effect.

Q91 Tim Loughton: That is helpful. Having said there are no easy answers, you have come up with some good ones, albeit part of a bigger, holistic approach; I understand that. On the subject of delay and the 40% drop-out rate, and no doubt the prospect of, “Am I prepared to spend the next six, nine, 12, 18 months of my life of my life constantly—”

Sir John Gillen: Over two years in Northern Ireland.

Tim Loughton: “—or even more, constantly being interrogated and having to relive this whole process? I don’t want that”. I absolutely understand that. Could we—and the Government have done this in introducing time limits on certain family court proceedings—legislate to have time limits for rape proceedings to go through courts, other than in exceptional circumstances? I am thinking of a comparison with adoption proceedings, which are now subject to time recommendations.



Sir John Gillen: As a judge, I am never that keen on mandatory time limits because there are always exceptions; always. I am a firm believer in the discretion being vested in the courts, provided the courts are using that discretion reasonably and properly. If you have a sexual offence legal adviser the way I think it will go, they will go to the court and appear before the court and say, "This case is going on. Why has this case been adjourned three times or four times?" So you will have steps being taken to arrest delay, particularly when disclosure is improved and that is done more quickly, and there will be fast-tracking of, particularly, children's cases. I am not a strong advocate of mandatory parliamentary fixed dates for things because there are so many exceptions and they get broken more often than they are adhered to, but delay is a crucial factor and judges have to take responsibility for eschewing delay. I agree with you entirely. Delay is a major factor in people dropping out.

Q92 **Tim Loughton:** Can I ask the other witnesses if they would favour time limits? I was responsible for steering through the changes to adoption timescales. The legal profession was always absolutely against that. Why?

Lady Dorrian: We have time limits in Scotland for all cases. We have relatively strict time limits in some respects. But, as Sir John points out, there are often exceptions and reasons why they cannot be adhered to, to do with disclosure and for other reasons.

Tim Loughton: You could have get-out clauses within the legislation to do that.

Lady Dorrian: Sure, but then it just becomes routine and that tends to be what happens. The better approach, perhaps, is one of rigorous case management and training to make sure that judges are very thorough in examining the reasons that have been put forward for a case to be put off and to be delayed and for the hearing not to go ahead on a particular date. Time limits may assist to a certain degree but they are not the answer.

Tim Loughton: Baroness Stern, do you have a view?

Baroness Stern: Yes. I would like to add something very briefly in relation to what was said about victims having access to a lawyer. I remember, going right back, that that was one of the arguments that almost everyone made at some point, "Why can't we? It would make all the difference; we are so alone and we have nobody". To have a lawyer would make an enormous difference to the sense of thinking, "We will go through with this because somebody who knows is going to be able to help us". It was the sort of thing that one had meetings about and people really argued about. Some people went to France to find out how they did it. It was felt very strongly, "Why can't we have our lawyer?" That is worth noting.

Q93 **Dame Diana Johnson:** What you have had to say has been very interesting. I agree with Tim Loughton about the practical



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recommendations that you have just put forward. That is very helpful to us. Sir John, when I was reading the papers today, I thought that you were not very keen on having independent legal advice. Am I wrong about that?

Sir John Gillen: Sorry? I am a strong advocate of it.

Dame Diana Johnson: You are?

Sir John Gillen: I am a strong advocate. I hope there was nothing you read that countered that.

Dame Diana Johnson: No. I just want to be clear.

Sir John Gillen: I am totally in favour.

Dame Diana Johnson: You are totally in favour; that is fine.

Sir John Gillen: I have to say that one member of our committee who was a judge said that she thought that it was the most important reform I had mentioned.

Q94 **Dame Diana Johnson:** Right, okay. That is very helpful. Thank you.

Can I ask Baroness Stern about RASSO units, which I know featured heavily in the report that you produced? You were very keen to see those rolled out. *The Guardian* recently submitted an FOI request and found that at least two-fifths of police forces in England and Wales do not have specialist RASSO units. What do you think about that, in light of what has already been said about how important it is to get things right from the beginning and the need for specialist officers?

Baroness Stern: There is absolutely no doubt that you need specialist officers. You only have to think for a minute to realise that somebody who has not been trained, who does not know anything about the things that we all know about, will maybe do his or her best but really it is completely impractical to put people who have not been trained to deal with them.

Two fifths, did you say? That is one of the major reasons why the system is, I would say, failing, that the police either will not or cannot train people and that is the work that they do. Obviously, there is a big question about who does it. A lot of people feel they would rather have a female police officer to deal with them and somebody has to be available when it has happened, and so on. It does require a bit of reorganisation in the police but without it I can see no prospect whatsoever that we shall make much progress. This is the sort of work that can only be done by someone who is trained and for whom that is their first job to do.

Q95 **Dame Diana Johnson:** What about Scotland and Northern Ireland? Does Police Scotland have specialist units dealing with this; do you know?

Lady Dorrian: Yes, as far as I am aware there are some specialist units. I know that further work is being done on that. That is one of the main



recommendations in our report, is that there should be increased specialism and that there should be a specialist court to deal with these cases.

Dame Diana Johnson: There was some criticism about whether a specialist court was the way to go, wasn't there?

Lady Dorrian: The matter is under debate at the moment. The review group as a whole had no doubt that a specialist court was the way to go because, picking up on the point that Mr Loughton made earlier about the number of reforms that there have been over the years, we list in our report at paragraph 3.1 many of the improvements that have been put in place over the years, including the opportunity to give evidence from behind a screen and, of course, as Sir John said, in Scotland it has always been the case that complainers do not give their evidence in public—only the press is present—and there have been many other changes, but they have not had the desired effect in making complainers feel that they are part of the system and that they are integral to it. To enable that to be done, we felt the whole thing had to be embedded in a kind of specialist court where everyone had proper and adequate training on all the relevant issues.

Dame Diana Johnson: And in Northern Ireland?

Sir John Gillen: We do have it but they are not specialist enough; that is the truth of it. We do need better training. I know, Chair, that you are not dealing with children—as I understand it, this is merely about adults—but for children it was a matter that captured my attention a good deal and you do need specialist treatment for children in sexual offences, particularly the Barnahus system whereby children, from the moment that they come forward to make sexual complaints, are all under one roof. They are dealt with in a child-friendly atmosphere, a child-friendly environment; children giving their account to the police when sitting on a riding horse. One little girl gave her account while sitting inside a tent. Another little boy, who had ADHD, gave his evidence when wheeling a cleaner, and so on. You need specialists for that. In that Barnahus house, the child is interviewed by the police, dealt with by the doctors, the court comes and sits there in that child-friendly place, and also—and this is something that perhaps is a bit down the line but it should be done—you talk about specialist police interviewing children—they should be assisted by child psychologists. That is what they do in Iceland. There is a child psychologist feeding into the police officer the questions to be asked or maybe the child psychologist does it. Specialism is vital, I agree with you.

Q96 **Laura Farris:** Thank you so much for your very interesting insights. Can I pick up on a couple of the points that have been raised about the pre-recorded evidence and the idea that the complainant would come forward and within a short period would give their evidence? I have two practical questions about that.



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First, in the exercise of cross-examination, that would be happening not in the presence of a jury. As a matter of practicality, if more evidence was to come to light in the lead-up to the trial, would the victim be required to attend trial for further cross-examination or not? How does that work? Cases can evolve.

Lady Dorrian: We did discuss, in the course of our review, that it could be possible that something might come to light that would require further questioning of the complainer. We felt that it was rarely that that would be the case, and I will come back to some of the reasons for that conclusion in a moment.

If it did arise, there might need to be a second commission to ask these additional questions, but the matter should go to the judge to explain why it was felt that an additional commission was necessary, what was to be asked of the witness, and why that evidence had to be obtained in that way and could not be obtained by other means. If it is simply a matter of putting something to the complainer, it might not be necessary for that to be done.

We already have quite a number of occasions where the evidence of a witness is captured wholly in advance of the trial. In other words, the cross-examination is captured by a commission. I am not aware of us ever having had to have a second commission—ever—and that is with an increasing number of commissions taking place. So, yes; provision has to be made for the possibility, under the control of the court, but—

Laura Farris: I do not recognise the word “commission”; sorry.

Lady Dorrian: The way in which we take the evidence in advance is by a commission, which is simply a hearing presided over by a judge and that is held essentially in private, where the evidence of the complainer is taken and pre-recorded.

Q97 **Laura Farris:** Part of the essence of the criminal justice process is the exercise of giving live evidence before a jury and, as a matter of experience, the jury will judge body language and what the person does not say and how they say it can be as important. Have you made any assessment of whether pre-recorded evidence, pre-recorded cross-examination, can be less powerful or can affect conviction rates, where you think if the person had said something in the room it would be different from how it appeared in a recording? I would like to know your view about that.

Lady Dorrian: The first point to make is that there is a steady amount of research to suggest that we kid ourselves in thinking that traditional means of assessing credibility and reliability are successful; that is in relation to body language and other things of the kind that are behind the argument that it is better to see people in person rather than on a pre-recording.



There is also evidence, which we have referred to in our report, that pre-recording does not appear to have any adverse effect on the way in which the evidence is assessed by a jury. Of course in Scotland, since July of last year, all criminal trials have been dealt with in circumstances where although the witness is giving evidence live, they are giving the evidence live in a courtroom, a set-up such as this here, but the jury are remote and viewing it all through a screen. They view everything through a screen. Evaluations, such as there have been, do not suggest that that has caused a problem.

Q98 Laura Farris: My questions are all follow-up questions. I want to ask about the dedicated lawyer for the victim. You will be aware that one of the core recommendations—I do not think it is novel but it is still important—of the rape review was more independent sexual violence advisers being present and being able to accompany the complainant. To what extent do you think that is an adequate substitute for having their own solicitor or barrister or somebody dedicated to them?

Lady Dorrian: Perhaps I could start on this one because, unlike the others, our review has not recommended independent legal advice throughout the process. Our view was that there were two particularly critical points at which independent legal advice might be necessary. One was where there was an attempt to recover the medical records of a complainer, and that is already the subject of independent legal representation in Scotland. The other was when there was an application being made to ask questions about their sexual history or similar kind of intimate matters. We have recommended that there should be independent legal representation at that stage so that the position of the complainers can be made clear, they can fully understand what the questions that the defence, or indeed the Crown, are seeking to be able to ask and to argue whether they should be allowed or not. Apart from that, we felt that it was important for there to be much better communication for complainers from the outset. Our experience was that where there had been third-sector advocacy services available to complainers from the outset, the outcome for them was much better.

Laura Farris: They are more likely to stay engaged?

Lady Dorrian: Yes, and they had a better understanding, but it could be improved. We felt that it was important to improve the communications from the outset to provide better information, to provide information to complainers about some aspects of the process so that they had a better understanding of, for example, the role of the prosecutor and what could or could not be done by the prosecutor. That they had a better understanding of the whole system within which their case was being heard and that a single point of contact, properly informed to be able to provide that information, was the way forward. But of course there are data issues that would need to be addressed to make sure that that point of contact had all the necessary information to be able to pass it on. We felt that although improved communication was central to improving the



experience of complainers, independent legal advice was only necessary at certain stages.

Q99 Laura Farris: My final question is for any of you. I listened carefully to what you said about specialist courts. It is something that I have raised with the Home Office before. In the absence of specialist courts, first, is there any practical change that you think could be made within the context of serious sexual violence hearings—I am talking about that part of the process—that would improve matters? Secondly, what do you think about the idea of juries having to produce written reasons for their decisions?

Sir John Gillen: If I could briefly mention the two points you dealt with before because both of them gripped me during my review. One was the question of pre-recorded cross-examination because something might emerge even during the trial. My own experience is that something out of the blue can happen, particularly involving children, something is said that requires the complainer. In truth, it very rarely happens. I spoke to the recorder of Liverpool, who has been conducting a pilot scheme with pre-recorded cross-examination and he said there were maybe one or two instances among hundreds. It so rarely happens and it can be accommodated. All trials can take turns that are not anticipated and if the complainant has to be called back the complainant has to be called back, but it is a rarity.

Secondly—and I was concerned about this—the effect of a jury seeing someone just on screen and not seeing the person there; there is a raft of literature, research into this, which shows that nowadays it has no effect. Indeed, ma'am, if you wondered, I could certainly let you have a copy of the literature that is available, or give you the references to it, if you want to do that. There is very firm literature that has looked into this and has found it has absolutely no effect at all, the jury seeing on a screen rather than the person there.

Turning to the independent legal adviser, I have to say I am pretty firm on this. It has to be a lawyer. Time and time and time again, I had complainants saying to me, "We did not have any lawyer to help us. We did not know what the law was". That is different from an independent adviser. You have to have an independent legal adviser. I am not saying it should happen actually in court itself, but leading up to the court you need someone who is there, not only to advise you on the law but who will be able to go before the judge and say, "Here are the legal authorities; this woman is not being treated properly". You need a lawyer.

Thirdly, is about juries. I am a strong advocate of juries. There are great arguments against them. I understand that and I dealt with them in some detail in my review, but I am a firm advocate of juries for three brief reasons. First, because it is important, in my view, that the community, members of the public, are involved in the criminal justice



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system, particularly in Northern Ireland, but it is beyond Northern Ireland; it applies to England and Wales as well.

Secondly, most of these offences, if not all of them—but most of them—are a one on one. It is one word against another. You do not have forensic evidence in rape cases, by and large, because the defendants are alleging consent and so DNA does not come up, and there are not witnesses to it. It is your word against my word and I have to say that 12 people—12 people from the community—deciding that rather than one case-hardened judge is infinitely preferable.

Thirdly, a huge proportion of the cases in the Crown Court are sex cases and if you take juries away from them I feel that is the end of the jury system. You will then have people saying, “Well, what about fraud cases? Should they not get rid of juries in that? Oh, very well; we will get rid of them”. You will find that juries will go. A very experienced judge, many years ago, said about juries that they are the lamp that shows that freedom lives, and I agree with that. They are a crucial part of our democracy; the involvement of you and me and everybody else in the jury system. I am in favour of juries in the system.

Lady Dorrian: On the question of reasons, we looked into the question of whether we should ask jurors to give reasons. We decided it was impracticable. We looked at other systems where juries are required to give reasons. Belgium, for example, was one. The trouble was that the reasons are given by means of answer to a series of questions that are posed. That already imposes a straitjacket on a jury’s deliberations because it focuses on certain material points or issues in the evidence. Also, of course, it was in a system where evidence is not given in court in the way that we are used to it happening.

Essentially we reached the conclusion that a body of 15 people in our case—12 it would be in your case—is not ideally suited to providing reasons for their decisions and that there were risks that trials could last longer and that there would be confusion arising, and so on. That does not mean to say that in the absence of a specialist court there are no other things that could be done, apart from pre-recording of evidence, which is a key one. Independent legal representation at the time of asking about sexual history is another key one.

We came up with a raft of suggestions also about assisting the jury to do their task and helping them better understand the task facing them; the idea that jurors should be given some information about the most persistent rape myths, for example, in advance of starting the trial. Those are the myths that a person, and perhaps in particular a woman, who is sexually assaulted, will always fight back, scream or shout for help; that a sexual assault would be reported immediately; that genuine rape victims always show emotion in the aftermath of giving evidence; and that false accusations are commonly made. These are matters that juries could be given information about before the trial starts.



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We also thought it would be helpful if jurors had written directions—pre-instruction of jurors—at the outset of the case about some of the key concepts that they would be required to address. Jurors tend not to be told, for example, what rape means until after they have heard all the evidence. That is nuts, because they need to know in advance so that they can assess the evidence as it goes through. We thought that pre-instruction on critical key concepts was important.

We need to encourage jurors to take notes. At the moment we say, “Paper has been provided for you, and pens or pencils, and you are free to take notes as the evidence goes by, and it might help you to do so”. We need to encourage jurors to do that, not only to take the notes but, at the start of their deliberations, to review their notes before they start discussing the case. These are all things that are quite straightforward that could be done.

We need to emphasise the need for using plain language in the communication to the juries and things of that kind. There are a number of suggestions of that kind that we made on the assumption that we would be continuing to use juries in these cases, although we have suggested a pilot exercise of non-jury courts for that. On the assumption that they are involved, these are a number of things that could take place.

Sir John Gillen: Could I add that in Northern Ireland we are on the cusp of introducing, on this question of rape myths, a video to juries at the start of every sex case, in which rape myths will be dealt with? Right from the kick-off, this issue of rape myths—why victims do not scream and fight back, how they are dressed or were they drinking, have nothing to do with the case—all of these rape myths are addressed. The jury are told that right at the start.

Q100 **Chair:** Thank you very much. Thank you for your evidence. We need to move to our second panel, but is there anything else that we should have asked you about or any other final point that you think we should be focusing on as part of our inquiry?

Sir John Gillen: There are three things that, briefly, you should be looking at. First, marginalised groups. I understand fully why the newspapers grip into young women being attacked, and so on. What I think the papers perhaps do not look at—and what the public is unaware of—are the marginalised groups, BAME, migrant women, travelling communities, those with learning disabilities, the elderly, the visually impaired, the deaf. The attacks and sexual assaults on these people are absolutely huge, much bigger than the normal community. We need research into that. Something has to be done. These people have rights that we are ignoring at the moment.

Secondly, social media needs to be looked at. It is a menace in terms of criminal trials. We need to have a close look at that. It has to be a cross-jurisdictional thing.



Thirdly—and it is a drum I have banged for a long time—I recognise that a huge number of people, particularly women, will not go to the police about these matters. I understand that. Hopefully the reforms that I have indicated will change that, but it is ever going to be the situation that you are going to get a large number of people who do not go to the police. What are we to do? Are we to say, “Well I am sorry, if you will not come within the criminal justice system, we as a state can do nothing for you”? That is wrong. Restorative justice should be introduced, concepts of restorative justice for those who will not come within the criminal justice system, so that there is at least a reference for them to be able to deal with this.

One small example: I had a number of women who were regularly raped by their husbands. Their husbands, or their partners, are working, they have jobs, they are providing for their children and these women do not want the publicity of the whole thing, they do not want their husbands put in prison, but they will not, they cannot, and should not, be tolerating this every evening. What are they to do? They are not going to go to the police. What are they to do? There should be restorative justice for them.

Chair: Lady Dorrian, do you have anything to add?

Lady Dorrian: I do not have anything to add, thank you very much.

Chair: Baroness Stern, anything to add?

Baroness Stern: I would like to support what has been said, but also to say that we have talked a lot about the courts, and so on, but not to forget the large number of people who in the end are not going to go to court but are still suffering for months and years, and therefore the rest of the work to deal with helping people who have been raped should not be forgotten in trying to get a larger number of convictions. There is a lot more going on and needs to be done than the convictions. People’s lives need to be rebuilt. That is quite an important part of all of this. That is all, thank you.

Chair: Thank you for your evidence. We appreciate your time this morning. Thank you very much. I will now ask our second panel to join us.

Examination of witnesses

Witnesses: Sarah Crew, Donna Jones and David Tucker.

Q101 **Chair:** Welcome to our second panel. Thank you very much for joining us. We have Sarah Crew, Temporary Chief Constable for Avon and Somerset Police, and the NPCC Lead for Rape and Adult Sexual Offences; Donna Jones, the Police and Crime Commissioner for Hampshire and Isle of Wight, leading on Supporting Victims for the APCC; and David Tucker, Faculty Lead on Crime and Criminal Justice for the College of Policing.

We want to ask you about rape and sexual offences and also the



prosecution issues. Can I start by asking about spiking—I particularly want to raise this with Sarah Crew—both people having their drinks spiked, particularly young women, and also some of the recent reports about injection spiking. These are obviously vile crimes. Can you tell us your assessment of the scale of the problem?

Sarah Crew: I only became aware of injection spiking this morning. I know about the reports. From the reports that I have seen, I can see that a number of police forces are investigating them. They have not been raised with me. It is a fair assumption that there may be a sexual motive in those but there is no indication. What I have been able to do this morning is speak to the National Crime Agency, which does look at trends moving across the system so that we can pick up on it very quickly. After today, I will go into those forces. I have rape leads in each force to find out what is going on and offer any support that we can. It is difficult to make an assessment on that particular trend at the moment.

More generally on drink spiking, we know it is a problem. In the NPCC, we are finalising a Violence Against Women and Girls strategy to complement the Government's strategy. Supporting safety in public is a big strand of that and drink spiking is a big strand of that work as well, working with the night-time economy in a partnership way. Our focus, from an enforcement point of view, is to work with those partners, to focus on the perpetrator and to work out who the predators are who are using that MO to target and act on it very proactively.

Q102 **Chair:** Is that happening in practice; is there work being done in every force to identify perpetrators?

Sarah Crew: This is a movement. This is absolutely the direction of travel we are trying to take on broader adult sexual offences. The rape review recognised some work we have been doing in Avon and Somerset, called Project Bluestone. That has been adopted and rolled out, and it is in the process of being rolled out to four other pathfinder forces.

Q103 **Chair:** We want to come back to that because that is really important. More widely in terms of the drink spiking taking place, what will forces across the country be doing about spiking taking place in nightclubs?

Sarah Crew: They will be working with the night-time economy—the owners of those nightclubs—and they will be working with the security arrangements around those premises. Where there is a specific problem they will have a range of different tactics. Speaking of my own force, when those reports are coming in those security personnel will be contacting the police with a trigger plan of actions that we take to secure and preserve evidence. If we proactively think there are perpetrators—we have had this recently—using that MO we will be targeting them. That might be plainclothes police in those premises looking for those perpetrators and that behaviour to be able to apprehend them and to capture evidence. All of those things will be happening, and more,



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because of the focus we have on trying to improve people's feelings of safety in public.

Chair: For your force, for example, how many prosecutions would there have been for drink spiking?

Sarah Crew: I do not have those figures; I can come back to you. I can talk to you about a case within the last two weeks where two perpetrators have been charged.

Chair: Within your force?

Sarah Crew: Within my force.

Q104 **Chair:** In terms of getting the evidence, do you think all of the cases are being reported to you? Is there work with A&E? The reason I ask is, I was given a report from someone who was at an A&E last night as a result of a possible injection spiking and who also referred to there being three other people who were in the A&E at the same time for spiking more widely, who were unable to walk as a result of drink spiking. That seems to be a pretty significant problem at one A&E in the country on one night. Is there work with A&Es in terms of the scale of the problem?

Sarah Crew: I am not aware of work specifically with A&Es on the scale of the problem. There is more general work with A&Es to identify when the police should be contacted and that may form part of those arrangements on a local level, but I am not aware of that.

Q105 **Chair:** These are vile criminal acts. What people are doing is incredibly dangerous. This is poisoning someone, potentially sexually assaulting someone and potentially putting people's lives at risk with this. There is obviously huge concern from young people that this is not being taken seriously. They are talking about boycotting nightclubs and so on as a protest. Do you think police forces are taking this seriously enough?

Sarah Crew: Police forces are absolutely taking it seriously in terms of sexual violence, of which this is part; one example and one manifestation of. I have recently addressed the Chief Constables Council so every chief constable takes this violence against women in general as top priority. There is a gold group operating across policing at the NPCC. The only other gold group I am aware of is for the Covid response. That is an indication of how seriously these issues are being taken.

Drink spiking and injections now as a trend, speaking of my own force, is taken incredibly seriously for all the reasons you have said. There are health concerns. There is assault. What is the motivation of the perpetrators? What might those perpetrators also be doing? So, absolutely.

Q106 **Chair:** Given these are potentially very dangerous people who are doing this, is monitoring of the scale of the problem—either within forces or nationally—happening? Are there figures somewhere you could send us afterwards about the scale of the problem, the number of cases reported



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right across the country?

Sarah Crew: Each force will be able to provide figures. As I said, I have been speaking to the National Crime Agency, which monitors across. We will endeavour to write to you with those figures.

Chair: There is a process for drawing together what the scale of the problem is around spiking?

Sarah Crew: Absolutely. Forces have different crime-recording systems but from those crime-recording systems, different though they may be, they should be able to extract this information, the modus operandi, for instance, of this offence.

Q107 **Chair:** It has been reported that the Home Secretary has asked for a report from the police on this. If you were not aware of it until this morning—the report is in the media this morning and she has asked for a report on this—do you know who that request would have gone to if it has not gone to you?

Sarah Crew: It will have gone probably into the National Police Chiefs Council, which has a central office, and they will have identified who the right person for that to be. As I am the lead for adult sexual offences, and it is unclear to me from those reports whether there is a sexual offence connected, it may not have come to me.

Q108 **Chair:** Then, yes, we would like some further information on this quite urgently, given the concerns that are being raised. We would like to look at the specific issue around injection spiking and how far that is happening. Also, more widely, the reports and concerns about spiking and what action is taken within each force, and also particularly about numbers of prosecutions.

Sarah Crew: Yes.

Chair: Can I ask Donna Jones or David Tucker if you would like to add anything on this issue around spiking?

Donna Jones: Very briefly, if I may. I was sent a book called “Diary of a Date Rape”. It is a true story. I have been in contact with the author. It occurred 15 to 20 years ago. I specifically asked why she did not feel she could report that to the police. She said she was in a bar in London and was dating this particular person, not for very long. When she went to the toilet another man said to her, “You should not be with him. He is not a good guy, he put something in your drink.” She did not take a lot of notice, having a nice evening and felt perfectly fine, and then does not remember much after that. She woke up in a hotel room, with her underwear off, on her own the next morning feeling like she had been involved in sexual intercourse. Had that stranger not said that to her she said, “I may have just thought that I drunk so much that I just did not recall what had happened”. The guilt and shame that she felt, that maybe she had not acted responsibly enough, but now she has researched it and looked into it she is pretty sure she was date-raped.



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These things have been going on for a number of years. One of the barriers to victims coming forward and reporting is because there is this blackout sensation and they cannot piece together the whole story, whereas if you are raped by somebody you know or are raped by a stranger in a park you have your faculties about you and can recall what has happened. When you are drugged it is a very different scenario. That is probably all I can add on that, is the personal involvement I have had with a victim.

Q109 Chair: Do you know what is happening within Hampshire, have you had reports from your chief constable or from within your force about the scale of spiking taking place in nightclubs or in pubs within your area?

Donna Jones: I was elected in May. I am aware of two cases so far this year in Hampshire; there could well be many more that predate my term of office. I do think the scale of the problem is more significant than we realise because of the nature of the vulnerability of the victims it is done to; often it is people who are engaging in alcohol anyway so they are sketchy about what is happening. Yes, I am aware there have been a couple of incidents, I believe, in the Hampshire constabulary. Not that it has been raised with me as a specific bigger issue but, it is like anything, if there were national campaigns around awareness you would get a huge spike—excuse the word—in reporting; an increase.

David Tucker: To pick up on what the chief constable said. The injection spiking is something new and I was not aware of it until very recently. We have been asked by the Home Office to produce a document setting out what offences can be used to look at misogyny more generally. We already have spiking of drinks in there and we will obviously need to review now whether we need to include this new type of offending. The legislation is there and can be used. It is going to require us to work with operational policing to get the lessons out and make sure we pass that out more generally across policing so there is greater awareness and to see what we can do around improving practice. We run knowledge-sharing events quite regularly and this could be a focus for one of those.

Q110 Chair: If spiking was identified and you had a case taken to court, what would be the normal offence that it would be charged under?

Sarah Crew: It could be an assault but there are offences around administering substances with a particular intention, of which a sexual motive could be one of those.

Chair: Is the law strong enough on this? It feels like this is a vile crime.

David Tucker: The sentence for that is very high; I think it is 14 years or life. It is a very significant sentence. The law is there and it is a question of using the existing law and making sure that police forces know that this is happening and are taking all the steps they can, working with partners to make sure that as things come to light we develop the best tactics, make those available to all forces and take very robust action against people who are identified for any offences.



Sarah Crew: Clearly they may be accompanied by a sexual offence as well, where the sentencing is significant. If that is the primary motive, rape is often thought of as an offence that focuses on consent and that is where some of the difficulty for the criminal justice system comes. The mindset shift that we need to take, and we are trying to take, is to say, “Let’s not focus on consent, let’s focus on the mindset of a perpetrator who has identified a vulnerability in someone, or created a vulnerability in this case, and use that as very positive evidence to portray how they have behaved”. In those cases it could be used to support a strong case of a serious sexual offence.

Chair: The concern from young people, particularly from young women, that I have had raised with me is, first, there is not a proper assessment being done by the police about what the scale is of this. There may be a reactive approach taken when individual cases do get reported but—as you have said, Donna—a lot of cases do not get reported. There is not a proactive assessment happening about what the scale is of the problem. Secondly, it is still seen as the victim’s responsibility to protect themselves. There is talk about what kind of lids you should have on your drinks and so on, making it the problem for the victim rather than figuring there are some very dangerous perpetrators—we do not know how many—who are poisoning people and who are trying to spike people’s drinks.

What would be very helpful is if you were able to write to us further about this and provide us with some more information about your assessment of the scale of the problem or the assessment being done, and also what action is being taken by police forces to measure this further.

We need to move on, obviously, to wider issues.

Q111 **Dame Diana Johnson:** I would like to ask about inconsistency between different police forces. I am wanting to reference the recent joint inspections that highlighted, for example, in the forces inspected the average time to a police decision around violence against women and girls to take no further action ranged from 28 days to 114 days. Why is there that range of inconsistency within the police forces? I do not know who would like to start.

Sarah Crew: I work through a network of RASSO leads in forces, so I have good communication with them. Each police force will have different conditions, different problem profiles and they will have different set-ups into how they resource. In the previous session you talked about specialist teams; some forces do, some forces do not.

I was one of those chief inspectors Baroness Stern interviewed some time ago. What has changed in that time has been the growth in the number of cases, which is a function of both confidence and crime recording. At the same time, there were fewer investigators, and a lot of experience among investigators and also the supervisors who make some of the assessments and set direction on some of these cases, and the scale and



extent of that in different police forces has happened differently. That drives inconsistency. One of the rationales between choosing different pathfinder forces for a new approach is to choose forces where the conditions are very different—urban, rural, specialist team, non-specialist team—to try to understand why these inconsistencies are happening and drive them out.

Q112 Dame Diana Johnson: Are you able to say whether the forces that have crossovers in place—from 28 days to 114 days—are at the lower end in terms of making decisions; is it clear there is a pattern there?

Sarah Crew: No. The inspection—and I was part of the expert reference group on that inspection—would say where there is a specialist team, and it is properly resourced, there tends to be better performance, more timely performance, fewer victims who leave the process, and higher rates both of referral of cases to the Crown Prosecution Service and charges as a result of that referral. There are different conditions in each force area. It is also a function of the relationship between the police and the CPS. It is not that we will do a piece of work, we hand it to the CPS, and it is excellent working; this is working together almost from the beginning of the case. That is inconsistent in different police forces and different Crown Prosecution Service areas.

Q113 Dame Diana Johnson: It is not very helpful, is it, if you are coming forward with a complaint and you are seeing that range of approach from different police forces? You also said it is about whether these units were properly financed, resourced. You are saying in some police forces there is not proper resourcing of the work that is going on around ending violence against women and girls and sexual offences.

Sarah Crew: There is an absolute will to do that. In police forces—and this is a national problem—we are finding it very difficult to attract people who want to be investigators. There is growth going into policing and we are very grateful for that, but to rebuild specialism and to attract people into this work is very challenging. It is, again, one of the aspects of the work we are trying to do through Operation Soteria. It is to give some value and support to the people who do this work, to make it attractive but also rebuild that experience, confidence and specialism in this area to work alongside specialist prosecutors who—while they focus on RASSO—my colleagues in the CPS will say there is a lot of inexperience there too. We are under a real time urgency to attract people into this area, to develop their specialism, to look after them and keep them there as well.

Q114 Dame Diana Johnson: The inspection was also recommending that there should be an “immediate upwards shift in the prioritisation” of violence against women and girls offences in policing, including by adding the policing of VAWG to the Strategic Policing Requirement, as has been done with counter-terrorism and serious organised crime. Is that the way to go; is that what should happen?



Sarah Crew: Personally, that would be helpful because it would be very clear, notwithstanding, as I have said before, that this is top priority for policing and that is why a gold group has been put in place.

I feel, as the lead for adult sexual offences, where most of this debate is around, there is huge support from policing to do differently. There are, I think, 17 police force areas that do not have those teams. Avon and Somerset, my own force, was one of them until very recently. Speaking to the chief constables, they absolutely want to rebuild that specialism. It is not a deliberate choice not to have it. It is, "We want to rebuild it. How do we rebuild it? Can you share your learning and the information with us so we can rebuild that specialism?" That is the level of desire to do this properly that is being felt in policing.

Q115 **Dame Diana Johnson:** When do you think all police forces will have this specialism again?

Sarah Crew: The aim with Operation Soteria is to treat the five forces as pathfinders but to share learning as we go. Even as we speak here today, a conference for all our practitioners and leads, jointly with the College of Policing, is taking place in Birmingham to start to share the emerging learning. The first national learning event for all police forces is on 17 November. By the time Operation Soteria comes to its conclusion in 24 months my ambition is that the whole of policing in England and Wales is upskilled in the best way of doing things, not just informed by what policing thinks is the right thing to do but by the wisdom of the academics who have delved deeply into this, including into the reports we heard about in the first hearing.

Q116 **Dame Diana Johnson:** Two years: I wondered whether any of the other panel members might want to comment on this.

Donna Jones: I would not mind, if you do not mind, briefly. The points you have made about the joint inspection and the RASSO teams you put to the previous panel are absolutely key. I sit on the Operation Soteria board with the Policing Minister. It is gaining traction and it is getting to where it needs to get to now. But it is very sad that from *The Guardian* FOI—we have had reference from Chief Constable Crew about 17 of the 43 forces—there were five that did not respond. Even if you took them all at their highest and said there are 22 forces potentially that have dedicated RASSO teams, it is really not adequate when you look at the significance of the drop in rape charges over the last four to five years.

Moving on from where we are, in my force—the Hampshire constabulary—we have three dedicated RASSO teams; one in the north of Hampshire and two in the south covering the two big cities of Portsmouth and Southampton that also scoop up anything on the Isle of Wight as well. You asked a question around the challenges of why some cases are taken to charge within 28 days and some take a hundred-and-something days. There is now an ability within some Crown prosecutors in their areas to get early charging advice. Where you do not have that, of



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course, you are then going to get bigger delays with the amount of time; the police are under so much pressure to investigate these rape cases without even being able to have meaningful conversations with the Crown Prosecution Service. Where they are being NFA'd quite quickly it is probably in a force where they have, in their Crown prosecution area, the opportunity to get early charging advice. The Crown Prosecution Service may say, "We are NFA'ing that, it does not have legs".

I want to give you some figures, if I can. From my perspective, the reason we have had such a significant drop is because it has almost been a perfect storm over the last five or six years. We have had crime data integrity—as we all know—that has come in; quite rightly. I understand the Home Office and the Government want to know what offences are going on out there, but you therefore had a huge increase in workload for the recording of historical rape and sexual offences, and many of those cases the victim does not want to take it any further or evidentially it is very difficult to do so. That is one thing.

Then you had the R v. Allan case around disclosure issues, which then led to the director general's direction, DG6, around enhanced disclosure. So you have more cases being reported that would not necessarily have been reported previously, right or wrong. I spoke to one DC in Hampshire who was going to spend eight days redacting a triple-hand; a rape and serious sexual offences case. Eight days sat purely doing nothing else other than redaction. The redaction needs to be done—I appreciate that—but the impact and the timing of that coming in, coupled with CDI in 2014 and the shortage, as we have heard, of investigators across the country is significant.

From my perspective, on solutions, as Mr Loughton mentioned earlier, we should be thinking about how these things can be improved. There needs to be a different approach. The police are judged on their rape prosecutions. The CPS is judged on its rape convictions. There you have the problem. The Crown Prosecution Services across the country do not necessarily want to take cases unless they are "belt and braces". My force is one of the top nationally for CDI compliance and one of the top forces nationally for file quality to the Crown Prosecution Service around the DG6. You would think, "Fantastic, we should be getting loads of charges going forward". No, we are the fourth lowest nationally for charges, but our conviction rates, if they are lucky enough to get to court, are very high. In fact, in July this year we had 100% rape-case conviction success. That is all very well and good, but I think the measures the CPS is being judged on nationally versus the police are at sixes and sevens with each other, and it is creating an issue.

The things that are coming out of the joint inspections are great. The joint action plans are okay but they are not going far enough. Essentially, the Government probably need to give some direction through the Ministry of Justice and through the Home Office on would it be better to



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have a lower conviction rate but get more cases to court so victims have the ability to face their offender, if that is what they want to do.

A couple of quick statistics—if you do not mind because I appreciate time is getting on and you probably want to move on—in 2013 in my force there were 585 cases of rape, which led to 125 formal actions being taken. That was 21.5%; pretty good. We would like it to be better but that is not too bad. The following year, after CDI had come in, it doubled; 1,198 offences recorded and then the formal action taken dropped to 116 cases, which represented 9.7%. Take away the total number of rapes and take away the percentages, the number of actual cases that went forward to a formal charge was 125 versus 116. We are in the same ballpark for an area where the demographics have not changed that dramatically. Then we jump forward to 2016, up to 1,738 cases but we drop down to only 83 formal actions being taken, which is 4.8%. We jump right forward to 2018, 2,165 cases recorded because of CDI and only 58 cases taken forward for formal action, which represented 2.7%.

A solution is for a direction to be given by the Government to the Crown Prosecution Service around the outcomes and the expectation of outcomes through cases that go to court. Secondly, if you speak to any investigation teams in the country, if you have a Crown prosecutor in every custody suite in the country—I am not just talking about for RASSO but for everything—you will see a significant improvement I believe, from what I have been told, in the quality of charges and outcomes through court.

Q117 Laura Farris: Thank you very much, that was very powerful evidence. I had some prewritten questions but I am going to ask some follow-ups instead on that one.

One of the things you described about the CPS approach sounds quite dangerous because the 100% conviction rate on the cases they actually prosecute suggests they are prejudging whether a case meets the beyond reasonable doubt threshold without giving that opportunity to a jury. Would that be a fair statement?

Donna Jones: I think they are so worried about failing and being judged as failing that, yes, there must be an element to the point you have made. The tricky situation comes when it is one person's word against another. You heard from the previous—

Q118 Laura Farris: Is it not right to say—if you do not know the answer, do not worry because I am not sure I know the answer either—historically, rape conviction rates, once you got the cases into court, had about a 50% conviction rate because of one word against another?

Donna Jones: Yes.

Laura Farris: You are now describing a completely different picture, where you are doing a lot of work getting it to the CPS and then you are being rebuffed.



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Donna Jones: Yes. Obviously the Crown Prosecution Service needs to give you evidence themselves on its position. But certainly from somebody who is sitting here as a voice for victims nationally and as a commissioner who is very concerned about the situation in my own force, and across all the countries, and having spoken to a number of commissioners—we were all together at our AGM last week of all parts of the country—this is a consistent problem.

Q119 **Laura Farris:** That was a shared view that was expressed by PCCs across the country?

Donna Jones: We had a specific meeting about the impact of DG6 because of how concerned we all are.

Q120 **Laura Farris:** Can I ask you one other question relevant to this? You talked about the Liam Allan case. We have heard and read a lot about how the pendulum swung quite radically in the other direction. You are all nodding. Can I open it up and invite any of you to describe what you think happened then? It is allied with the moment when rape prosecution rates fell off a cliff. I would like to hear from you what you think went on and what the reaction was.

David Tucker: There was obviously a very significant concern in policing that disclosure was not happening properly. I was part of the National Disclosure Improvement Plan Board that took that forward. That was a collaboration between the NPCC, CPS and the College. We have an action plan to try to make sure that is right. Whenever you are talking about any criminal justice process we are obviously looking for balance, we do not want to overburden the system in either direction. What we were trying to do is get disclosure practice done better.

On the other side of that argument, you then get the issues around the unfair and over-zealous extraction of data from victims' phones. The College of Policing has issued guidance very recently on the rules you have to apply when you are taking information from victims' phones. You have to have a reasonable line of inquiry. You can only use the reasonable lines of inquiry; you have to be very clear about that. That is all set out in guidance now and, obviously, there is legislation coming in that is going to address that. There will be a code of practice, which will broadly build on the guidance the College has already issued on this.

What we are trying to do is make sure we get the disclosure piece right, we look after the needs of victims and that the criminal justice system is fit for purpose. It is very difficult for operational people when the focus on them is really strong in one direction. Part of the College role is to try to help maintain that objectivity and we work with our colleagues to do that.

Q121 **Laura Farris:** Is it a true statement then that following the Liam Allan case there was a significant overcompensation by police across the country to check victims' phone records, the chat and that sort of thing?

Donna Jones: Following direction.



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Sarah Crew: Both by the police and the Crown Prosecution Service I think the intent was, "We do not want to lose any other cases". In a risk-averse way, we gathered far too much material, not just from phones and digital but from third-party material as well, medical records and so on.

Q122 **Laura Farris:** That is a noticeable theme, when people do not have counselling or they do not have therapy because they are told they are going to have to reveal all of that in court.

Sarah Crew: Also previous medical history and so on. The intent was entirely from, "We do not want any other cases failing". But it becomes process driven and codified after a while, "This is what we do to investigate a case". David is absolutely right, the pendulum has needed to swing back to only when necessary, only when following a reasonable line of inquiry and in a proportionate and least intrusive way.

That had other impacts as well. It takes a long time to gather that material. It takes a long time to assess it. It can feel incredibly intrusive for victims. That length of time, plus intrusion, is likely to be—and it is picked up in numerous reports—another factor why victims do not feel they can continue with a prosecution.

Q123 **Laura Farris:** The major factor, is it not, in victim withdrawal? Thank you very much.

Q124 **Tim Loughton:** I think all of you sat in on the previous witnesses. Can I ask—and perhaps start with you, Commissioner—was there anything you disagreed with that they said? I made the point it was a bit exasperating there was no magic bullet but then they came up with a few not quite bullets but certainly some good additions to the armoury. What struck you, Commissioner, about some of the things they highlighted that you think practically could make a difference and you could be taking forward in Hampshire, for example?

Donna Jones: Something I agree with, having spent 16 years as a member of the judiciary—and resigned when I was elected to this post in May this year—is the quality of evidence via screens. It is good and bad. I was a magistrate, not a judge, and one of the last trials—in April—sitting in a magistrates court, dealing with the higher end of a domestic violence case, the victim came into court, the accused had left the room, special measures were in place with screens put around the dock. In she comes, supported by Victim Care and then gave her evidence, which was not of great quality because she was so emotional, in tears, and almost had a panic attack because she knew that her accused was in the room behind the bit of curtain. For example, when he coughed I saw her break down again because she heard his voice inadvertently through the cough.

When she had finished giving her evidence he left the room, she then left through the back door of the court and he came back in. I was chairing and wanted to continue. From what I heard, she collapsed physically on the floor outside the door. We had to adjourn momentarily while she was



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able to compose herself. That is not in a case of rape, she had had ongoing domestic abuse for a number of years. The quality of the evidence you sometimes get if the victim is in the room is not as great as if they were perhaps giving evidence from a remote evidence centre.

Coming out of the rape review—I think it was question someone asked of the previous panel—remote evidence centres, particularly when you look at the quality of the screens in this room and the quality of the cameras, as a member of the jury or a judge you could get very good-quality evidence if you had technology like this. However, HMCTS, as an organisation—again, it is not here to defend itself but as somebody who worked with HMCTS for 16 years—there are clunky old computers that junk up the benches and you are trying to look around, someone is trying to get a photograph of a knife that has been seized from somebody as evidence and it will not come onto the screen or it is really small; it is just not good enough. If we move to remote evidence centres for evidence-in-chief and cross-examination of rape victims, which I strongly support, there needs to be some investment in HMCTS.

At the moment, in my area—I chair my criminal justice board—I have said to the director of Wessex CPS, which covers Dorset, Wiltshire and Hampshire, “When are we going to be having remote evidence centres and using the evidence-in-chief?”, and I was told two years. It is just not good enough.

Q125 **Tim Loughton:** Can I bring you earlier in the process? You used the phrase “if you are lucky enough to get to court”.

Donna Jones: Yes.

Tim Loughton: Clearly we have identified problems with the process when in court, which dilutes the quality of the evidence, as you have just shown. But getting them into court and this whole business—as Sir John earlier mentioned—about a 40% drop-out once people are brave enough to come forward, particularly withdrawing from the investigation at the pre-charge phase, that is where obviously the function of the police is absolutely key. To be holding the hand—physically and metaphorically—of the survivor to make sure that survivor/victim will proceed on that journey and be able to provide the very best evidence that gives the very best prospect of a conviction happening. Where is that going wrong at the moment? Other than the resources or specialist units and things like that—we entirely buy that and we have heard from the chief constable on measures that may be coming in at some stage—where can the police do better and where are you trying to encourage your force to do better to keep the victim on that journey, and the police are on the front line of doing that?

Donna Jones: First, the judicial examination of telephones has been mentioned. Channel 4 contacted me last week about this because it has done a FOI for all forces. It ranges from some forces having 200 to 300 phones outstanding for forensic examination up to 3,000.



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A lot of forces are moving to where if you have an iPhone 11 they will give you a duplicate iPhone 11 to use while your phone is with them. But people nowadays live their lives through their phone, their banking is connected to their phone. It is a big thing, when you are already potentially a very broken person if you have been through a rape, then you lose your phone, you do not know how long until you are going to get it back, then you start having subsequent meetings, you have had your forensic examination potentially through a SARC unit. I, and all commissioners, do commission services, as you are aware. In my force that person is there with them at the SARC, if they are having a forensic extraction. Then they are told it could be up to 12 months or 18 months. They want to get on with their counselling. They want to get on with their therapeutic work to recover and to survive what has happened to them, but they know they still have to relive it potentially in 18 months' or two years' time.

From the police perspective, it is about making sure the file qualities are strong when they go over to the Crown Prosecution Service, so they do not get action plans sent back as part of DG6, which happens a lot, or there is missing evidence or something is not strong enough.

The early charge advice is absolutely essential to keeping the witness with you on the journey because the prosecution are involved as early as they possibly can be to give the victim confidence that someone is taking this seriously. It is getting their phones back to them as quickly as possible. For me, also, it would be saying to them, "You do not have to be in the courtroom and face your accused if you don't want to" and, of course, some of them want to.

Q126 Tim Loughton: You started with the silly little thing of a phone handover. When I go and get a new phone, because my contract has come to an end, I go to a shop down the road and a very clever man transfers all my data over to a new phone, gives me the new phone and that is the end of it. That takes 15 minutes, half an hour. Why can that not happen in a police station, the victim goes along with their phone, the information is downloaded and they go home with the same phone? I cannot believe that that is a thing.

Donna Jones: Resource.

Sarah Crew: It can be done. It is a strand within Operation Soteria, so it should be available to forces when the procurement is done. The technology is there. We are purchasing the equipment to do that by the new year. Either from us taking a digital lab, as it were—it sounds very glamorous but it is actually a van—to the victim to do exactly what you said, or through a laptop approach it can be done. So we never have to take the phone away from the individual; the information is taken away from the individual.

Q127 Tim Loughton: Is any force doing that now?



Sarah Crew: Yes, some forces are doing that now, it is being trialled.

Q128 **Tim Loughton:** Why is it not standard? Why can an arrangement not happen now that the man from Vodafone—other good service providers are available—comes into a station for a morning and all the victims under investigation are able to come in and you swap over phones then? It could happen tomorrow, could it not?

Sarah Crew: I am not an expert on digital forensics and how that is done through the accreditation standards that are needed to be done.

Tim Loughton: You do not need to be an expert.

Sarah Crew: All I know is that it has been raised as an issue and we are working, as hard as we possibly can, to make that real for every single victim in the country as soon as possible.

Q129 **Tim Loughton:** You can see my frustration, Chief Constable. This is a tiny issue that could be solved tomorrow because it happens for the rest of us going about our daily business. For it to be, “Technologies and we are working on that” sort of thing does not sound plausible. There are all these other much more problematic issues but we cannot even get downloading the phone while you wait sorted.

Donna Jones: There is a technological reason why, a forensic digital expert has told me. If you have your telephone and have never deleted any images, any nasty texts or any nasty anything and all of your information is on there, as you say you can plug it in, the information gets transferred and it could take five to 10 minutes and you are done, phone back, not a problem. However, if information has been recently deleted you have to use the actual handset and SIM card as opposed to a duplicate device. That is where they then have to take it for a slightly longer period of time, but that should be a small number of devices, I hope.

Sarah Crew: There is the technological issue there but what is also driving victims is that we are taking everything, what do we do with that data? There is a balance to be had.

The first question is: should we be doing it in every case? No. Is it relevant in every case? No, it is not. If it is relevant in a case it might only be a small amount that can be achieved by a screenshot. But are we trying to solve a problem, which we did with disclosure, by taking a blanket approach that takes everything from everyone, causing more problems? The technology is there for those cases where we need to do it. We need to be proportionate in what we do. We will be doing that as soon as we possibly can.

Q130 **Tim Loughton:** On another issue, Chief Constable, and perhaps Mr Tucker, the Centre for Women’s Justice has highlighted a concern in its evidence about misapplying the law on corroboration, where the police claim they cannot take cases forward because it is a matter of her word



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against his. Do you think that is an issue that is undermining the success rate on these proceedings?

Sarah Crew: I think it has been misapplied in some cases, yes. I have seen the report by the Centre for Women's Justice and, as a result, asked them to share some of their case studies with me, which I shared with the inspectorate to inform the inspectorate's joint inspection. I had a meeting with them as well. We are using those case examples to fit into our own and the joint guidance with the CPS on what is required and what is not required to meet the full code test. We have been misapplying it in some cases, yes. That needs to be stopped. It is my job to make sure that is shared across policing and that misapprehension is cleared up.

David Tucker: We know that these sorts of cases are very often going to be one word against another. So the initial approach from policing should be around looking for all the evidence that will support understanding of what has actually happened, whether there is any other evidence that would support one side of the case or another, starting in domestic abuse cases, what we refer to as using an evidence-based approach. That is what we need to do. What is really strong out of the Bluestone and Soteria work is that it is focusing on what is the allegation being made and what is the evidence around that, and not starting with the victim, which is one of the criticisms of police.

Q131 **Chair:** A few follow-up questions. When will the technology be in place so the police do not have to take people's phones?

Sarah Crew: In some forces that is already available. A process is going on now, with extra investment from policing, to make sure that is the reality for every victim. I can write to you with the exact date because I am not directly involved in that work, I am informed by it. My understanding is it will be in the new year, when all the new equipment is purchased and procured.

Q132 **Chair:** By January or February all forces should not have to take a victim's phone for nine months at a time or whatever it is?

Sarah Crew: Yes, that will be the vast majority of cases. There will be some cases, as the commissioner talked about, where very complex investigation might need to take place. In those cases people will receive a like-for-like phone with their information reapplied back in so it will feel like they have never lost their phone.

Q133 **Chair:** To clarify and follow up some of the points Diana Johnson was asking you about earlier on: when will we have a RASSO in each force?

Sarah Crew: I would like it to be as soon as possible. Chief constables are operationally independent so they will have to work within their own resources and decision making to achieve that. What I am doing, as the NPCC lead, is providing the evidence base for specialism and I am trying to provide all the tools and information for forces to be able to achieve



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that as soon as possible. I am not meeting any resistance from any chief constable in the country, but they are balancing all of the other demands they are dealing with to make those choices.

A specialist team alone is not the answer. A specialist team of people helps. What matters is the specialism of the individuals who are in that team, how they work with the Crown Prosecution Service and, critically, how they work with independent sexual violence advisers. It is the triumvirate that makes it special. Each force is trying to achieve that. I cannot give a firm date because I do not know of the conditions in every single police force.

Q134 **Chair:** What about from the PCC's point of view; do all PCCs want to have RASSOs?

Donna Jones: I do not know, I cannot answer that question. I am very happy to write to them all and come back to you, if that will help. I have spoken to others who have RASSOs who would never go back, particularly when you think about the resourcing issues of PIP1 and PIP2 investigators.

Last week I was with Lord Herbert, the chairman of the College of Policing, and Andy Marsh, the chief executive. They came to our AGM and talked to us about the fact they are opening a direct entry recruitment process to bolster the number of investigators across the country, particularly going into regional organised crime units as well. There is a real need. If you do not have a dedicated RASSO team, my concern is that if you have investigators who are working across general crime, rape and murder, they are getting pulled from pillar to post. If suddenly a stranger rape, or whatever it may be, comes in it is a top priority and people are pulled off. What happens to their other case files? They could be on that rape case for several weeks or months even. I do think it is a big issue. I will certainly write to all my colleagues, if you would like me to do that, and come back to the Committee with their thoughts and feelings.

Q135 **Chair:** That will be really helpful. It will also be helpful to have any estimate of the timescale if RASSOs are being established or re-established. Is there any information about the number of forces that used to have RASSOs that do not have them any more or that used to have several RASSOs that now only have one?

Sarah Crew: We can find out that information. It is a moving picture because they are being re-established. What is not happening is people dismantling the ones they have. It is the forces that, in the past, did not have them that are growing them or forces that did have them rebuilding them, as in my own force.

Chair: That will be very helpful to know as well. Mr Tucker, what is your perspective on the number of people who are doing the training now nationally in RASSO areas?



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David Tucker: We have a training course for serious sexual assaults. It is delivered locally so we do not have the figures.

Chair: You do not have a picture about the number of people who are going through it?

David Tucker: No, we do not know how many people are being trained.

Q136 **Chair:** Do you monitor the number of people who are going through it, either from the APCC point of view or from the NPCC point of view?

Sarah Crew: We do not monitor the number, no. We can ask. It is the standard extra course you do as an investigator to be able to investigate these things, so forces will be using that as their syllabus. It is quite exacting as well to do that. We can write to forces and ask.

Q137 **Chair:** Again, it will be helpful for us to have a sense of whether nationally we have a plan for having the scale of skills in the future. Final question from me on Operation Soteria: did you say you expect that to be rolled out to all forces within two years?

Sarah Crew: The learning from it. Soteria has two strands. One is the intense pathfinder, let's say, test bed or laboratory. The other is rolling that learning from that test bed, that laboratory, out into policing concurrently. Our aim is that we complete the pathfinders. By that time, the other 37 police forces will have already absorbed and adopted all of the learning.

Donna Jones: That is happening, definitely.

Q138 **Chair:** Is that happening now? From the outside there is a sense police forces are still focusing on investigating the victim and are not investigating the perpetrator. It feels such a frustrating thing. Surely that shift in mind-set, even if there is further evidence you can learn from, to focusing on the perpetrator is something that forces could do straightaway.

Sarah Crew: Absolutely. As I said, I work through those senior leads who are responsible for RASSO. In April there was a large event with 300 to 400 people where we had the academics showcase what they had found and the new investigation model. Each force is looking at its own way of modelling that, reinforced by the learning as it comes. As I say, the first national learning event, where we bring everything together, is 17 November.

Donna Jones: We are not a Soteria force. I am on it, as the national lead for victims, with Sophie Linden, the Deputy Mayor of London. It is a joint portfolio because of its significance. My Hampshire constabulary is already adopting the Soteria practices.

Going back to the original point, because you have crime data integrity you have had all these extra rape cases that have been reported. You then have the DG6, which has an impact on investigation teams and



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means you have had less productivity within police forces—they are working incredibly hard but less coming out the other end. The relationship between the Crown Prosecution Service and those individual RASSO or the investigation teams is absolutely crucial. For me, you cannot beat sitting next to somebody and talking to them, having them in your vicinity. If we want to put victims first, for me, yes, it needs to be a perpetrator-led investigation, absolutely. But the relationship between the Crown Prosecution Service and investigation teams across the country has improved a lot over the last year but has a long way to go.

Chair: Thank you very much for your evidence. We really appreciate your time this morning and look forward to any further information you can give us. Thank you.