

Written evidence submitted by The First Division Association FDA Union (CCB0006)

About the FDA:

The FDA is the trade union for managers and professionals in public service, with 22,000 members working across Government departments and agencies, and more than 1,400 members in the Crown Prosecution Service (CPS), including more than 200 working as Rape and Serious Sexual Offences (RASSO) lawyers.

1) Summary of evidence:

The evidence found below was compiled in a report published by the FDA earlier this year focusing on RASSO Prosecutions. FDA members in the civil service felt that RASSO provided an indicative example of many of the challenges facing the department overall.

That report was entitled [*The Crown Prosecution Service's role in increasing prosecutions of Rape and Serious Sexual Offences to reduce Violence Against Women and Girls.*](#)

This evidence focuses on just three sections in the terms of reference, where FDA members are particularly exposed to the issues:

1. Workforce issues;
2. Impact on victims, witnesses and defendants;
3. Oversight and planning across the courts system.

The evidence provided by our members suggests that a whole system approach will be needed to effectively cut waiting times.

As a part of the evidence gathered for the report, the FDA conducted a staff survey of nearly 550 CPS staff, including more than 100 RASSO lawyers found:

- 92% of staff agreed that current court backlogs inhibit the prosecution of RASSO.
- 92% of staff agreed that inadequate staffing numbers within the CPS are a barrier to fulfilling their role to the best of their abilities.
- 89% of staff believed that their workload has increased over the last three years, with 86% saying that their current workload was affecting their ability to maintain a work-life balance.
- 74% agreed that issues with technology inhibit their ability to work effectively.

These issues within the department are caused by numerous factors:

1. staff within the department are less experienced than historically - rotation policies within the department has exacerbated this issue;
2. staff turnover is increasing;
3. compensation for staff is insufficient and remains a core concern for prosecutors;

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4. CPS are involved earlier in prosecutions meaning a greater workload;
5. The courts estate is crumbling, reducing the number of sitting days and leading to delayed trials;
6. The practice of floating trials leads to greater uncertainty for victims.

Similarly across the courts system, the crumbling courts estate is causing a worsening backlog as trials are delayed, the practice of floating trials also leads to uncertainty.

The impact on victims, particularly of serious crimes like RASSO, has resulted in higher levels of dropouts as victims become uncertain that they will ever achieve justice.

This is contributing to a flatlining prosecution rate for RASSO offences, which has dropped starkly since 2016. Proper and timely prosecutions are necessary, not just for the victims of these awful offences, but also as a deterrent. Currently only 2.1% of rape offences are charged. This has led the Centre for Women's Justice to [argue](#) that "[r]ape and sexual abuse have been effectively decriminalised." Any effective strategy to reduce Violence Against Women and Girls (VAWG) or RASSO will therefore place increasing the charge rate against these most serious offences at its heart.

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2) Recommendations

There are numerous ways in which policymakers can help staff to achieve both the Government's and their own aims of increasing more RASSO perpetrators.

1) A consistent direction of policy:

There have been numerous policy interventions into RASSO policy over the last decade. In our view, many of these strategies have similar overarching goals and recommendations. **A single VAWG and RASSO prevention strategy which includes improving outcomes within the justice system for victims would be enormously beneficial.** A national prevention strategy should include **full commitment to funding the National Operating Model and [Operation Soteria Bluestone](#).**

2) Additional support for the justice system:

There are, unfortunately, no free or easy ways to improve the justice system. However, a commitment to **additional and sustained funding across the justice system** will bear fruit over the medium term. This should include **considering specialist RASSO courts to improve timeliness and support for victims** as part of a wider investment in the courts estate; **additional specialisation, training and support for RASSO lawyers and police to improve retention.**

3) Additional support for victims

One of the major causes of the low prosecution rate for RASSO cases is that victims drop out, either resulting from invasive evidence-gathering, the adversarial trial process, or because of the multi-year-long trials. As a result, it is a necessity that any attempt to increase prosecutions also aims to **accelerate and increase efforts to support victims' engagement in trial proceedings.**

4) Improve the comparability and visibility of VAWG and RASSO data

Currently, data sources rarely go beyond the aggregate national level. The Criminal Justice Data Dashboard gives data by county, however, additional granularity is essential for further research on prevalence of rape and assaults. Data are infrequently disaggregated by characteristics other than sex. Given the intersectional nature of VAWG, there is great research and policy relevance in understanding the prevalence of gender-based violence for different groups of women.

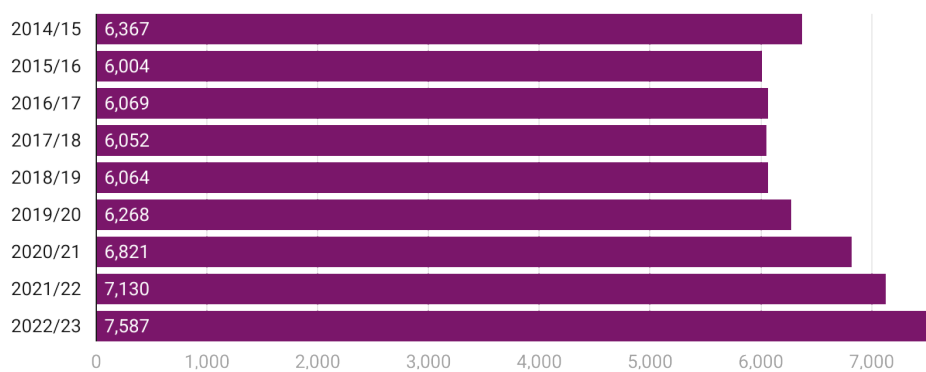
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1) Workforce Issues:

The CPS workforce has grown in overall staffing numbers

The workforce of the CPS has grown to 7,600 employees, a significant increase primarily observed during the pandemic. The number of staff rose from 6,004 in the 2018/19 period to nearly 7,600 currently.

Number of FTE staff (CPS)



Source: CPS • Created with Datawrapper

This has been a conscious departmental decision with a target to reduce case backlogs. As the 2023/2024 Annual Report states:

“Over the course of 2023-24 the CPS has delivered an ambitious supply strategy to support the reduction in case backlogs, and drive efficiency within the organisation to ensure operational effectiveness. This includes an intensive recruitment schedule for our core roles, resulting in 1162 new starters which is the highest volume on record and 42% more than 2021-22 and overall, 8.4% workforce growth in 2022-23.”

New staff are less skilled

This expansion has occurred in a tight labour market, where we have seen a decline in the number of individuals qualifying as criminal solicitors. This has meant that the CPS has found it hard to recruit the right people in the right places and has had to utilise its workforce more flexibly, reallocating prosecutors from one geographical area to another to bolster regions with the most acute shortages of legal professionals.

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CPS staff diversity metrics

The department outperforms the civil service on average across a number of diversity metrics:

- 65% of the workforce is female. The civil service average is 54.2%.
- 23% of staff state that they are from a minority background. The civil service average is 14.3%.
- 16% have declared a disability. The civil service average is 13.6%.
- 6% are LGBT+. The civil service average is 5.6%.
- The age profile of the CPS workforce has remained relatively stable, with a median age of 47.

RASSO prosecutors, in particular, lack experience

RASSO cases have always been amongst the most challenging to prosecute; having the right number of RASSO prosecutors with the right expertise, specialist training, mindset and wellbeing support is critical in ensuring cases are progressed effectively. The Rape Review progress update showed some increases in the number of RASSO lawyers, but starting from a low baseline:

- The CPS has [increased](#) its specialist RASSO resource from 360 (FTE) lawyers in April 2021 by 194 FTE staff in 2024 – a 44% increase.

Operation Soteria, the last Government's [initiative](#) to help deliver the ambition to more than double the number of adult rape cases reaching court by the end of the last Parliament, makes clear that the headline data does not account for a shift in the levels of experience of CPS lawyers:

“9 of the 13 prosecutors in [a particular] RASSO unit being relatively new and, as such, requiring extra mentoring, development, and oversight.”

The CPS is having to train many lawyers from baseline levels. Between April 2021 and March 2022, the CPS delivered more than 100 RASSO-specific legal training courses, attended by more than 1,000 delegates, in addition to 16 induction courses specifically to staff new to RASSO units, attended by 156 people.

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This helps explain why, despite an aggregate increase in the number of RASSO staff, current staff feel overworked. Our survey found that 92% of staff agreed that inadequate staffing numbers within the CPS are a barrier to fulfilling their role to the best of their abilities.

The current lack of experience within the CPS's RASSO lawyers is symptomatic of chronic under-resourcing.

Staff turnover is increasing

High levels of burnout and frustration have led to rising [staff turnover](#) and increasingly inexperienced lawyers tackling the most complex cases. It also helps to explain why a notional 44% increase in RASSO staff has yet to bear fruit on the speed of charging.

	2018-19	2019-20	2020-21	2021-22	2022-23
Staff turnover (percentage)	7.3%	6.0%	5.1%	7.6%	8.1%

Staff [turnover](#) within the CPS is rising and is now at 8.1%. While there is no data publicly available on turnover within RASSO units, anecdotal evidence suggests that turnover within RASSO units is higher than across the department as a whole.

This is backed up by qualitative evidence from Operation Soteria, which suggests that the particularly emotionally challenging nature of RASSO prosecution leads to higher staff turnover within RASSO units both in the police force and within the CPS.

Interviews conducted with RASSO staff in the CPS for the Operation Soteria report revealed a consensus that more experienced staff were better equipped to manage the emotionally intricate and challenging aspects of RASSO prosecutions. Participants highlighted that, over time and with experience in the role, they had developed effective coping mechanisms. These strategies helped them handle the demands of the job without adverse effects on their wellbeing.

The report identified that, while there is some mental health support for RASSO staff, it is generic in nature and not suited to the specific demands of RASSO work, particularly for newer staff.

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Training and rotation

One of the major changes in the department was the introduction of rotations into and out of RASSO units. This was supposed to help alleviate a shortage of staff working in RASSO units. RASSO work also takes an emotional toll on the workforce. In practice, however, the impact of rotation policies has been detrimental as it has actively contributed to a loss of experience within RASSO units.

RASSO cases require a specialised set of skills that are not immediately transferable from other criminal prosecutions. The consensus among CPS staff that we surveyed was that it was important to develop and retain expertise.

Operation Soteria also identifies that the emotional toll of RASSO work is not felt equally across the workforce. Inexperienced prosecutors often found the type of work more demanding on their emotional wellbeing, and this has led to significantly higher turnover within RASSO units.

Changing compensation and the labour market

In December 2021, the Criminal Bar Association reported that the number of junior barristers and King's Counsel (the most experienced barristers who work on the most complex cases) practising criminal law decreased between 2015/16 and 2019/20 – by 11% and 22% respectively. In addition, the number of new barristers (0 -2 years qualified) who were leaving crime-only practices increased to 86%, while the number of new barristers entering criminal practice had decreased each year for the previous three years, suggesting a crisis not only in retention but also in recruitment.

There are now also concerns regarding the availability of prosecution counsel for trials. Total levels of compensation for both defence and prosecuting counsel remain an ongoing concern. There are additional concerns about a perception of disparate pay between defence and prosecuting counsel. The view of members is that acknowledgement should be given for the additional work the prosecutor does over a defence advocate including work required to prepare opening notes, opening notes for sentence and Sexual Harm Prevention Orders. Most advocates are self-employed and take both prosecution and defence work. However, there are concerns that advocates may be less inclined to accept prosecution, and work harder for similar pay. The Justice Committee recently heard evidence from the CPS that, "it is desperately trying to find prosecutors for cases listed for trial, casting a wide net

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across an area where they are just not able to do so, meaning that there are even more delays to more trials”.

A larger and earlier role for the CPS

As HM Crown Prosecution Service Inspectorate (HMCPSI) has evidenced, one upshot of the changes to policy has been earlier intervention in case handling. The CPS and Association of Chief Police Officers (ACPO) agreed a protocol for handling rape cases, and changes to the handling of digital evidence after the Allan case in late 2017. The case saw more than 40,000 messages submitted to the CPS, at which point relevant evidence was overlooked, and not passed on to the defence. This led to the case being dropped.

As a result, the CPS undertake more work in partnership with the police pre-charge, and those cases where there is cogent undermining material are, or should be, removed from the system before they reach a court. The extra work involved in examining digital devices or obtaining third-party material has also generated more material for the officer in the case and the lawyer to evaluate, which can make the delicate balancing exercise even harder.

Staff are under-resourced and over-worked

The result of both the loss of experienced staff, the changing nature of cases, and shifts in the labour market mean that staff feel overstretched, under-resourced, and under-valued.

Our survey found that across the CPS, 89% of staff believed that their workload has increased over the last three years, with 86% saying that their current workload was affecting their ability to maintain a work-life balance.

Operation Soteria [showed](#) that a combination of increasing complexity and caseloads meant that staff were under-resourced:

“There was a shared view expressed by almost all interviewees that the criminal justice system has been, and continues to be, substantially under-resourced.”

The report was also clear that resource was felt to be the overriding thing that would change working conditions and improve the capacity of the CPS to effectively prosecute more offenders:

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“Thus, the overriding message from many participants when asked what would be most likely to make the biggest difference to working conditions, and in particular to the capacity for CPS staff to perform their jobs to the best of their ability, was increased and sustainable resourcing.”

Not only was this call backed within the department but there was also police backing for this change with one highlighted interviewer stating: “until they’ve got more lawyers, things won’t be as quick as we want them to be”.

What CPS staff say about their caseload:

In an anonymous survey one CPS staff member said: “The current caseload is too much. RASSO cases are too important to be more concerned with quantity rather than quality. Pre-charge casework takes time and care, and more mistakes will be made when staff are rushed in order to fulfil a tick-box approach. The downstream effect is that staff mental health is struggling and the quality of casework is suffering.”

Another said: “The most obvious way to improve CPS would be ensuring that lawyers have caseloads that allow them to deal properly and proactively with each case, and to have adequate time to make very difficult and sensitive decisions and to discuss those decisions with colleagues/managers where appropriate.”

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2) Impact on victims, witnesses and defendants

Increasing waiting times for victims

There has been a large increase in the amount of time to charge those who are alleged to have committed rape. In 2015 it took, on average, 210 days (or roughly seven months) between referral to the police and charge. This was, at the time, already considered to be sufficiently long that many victims were dropping out of the process.

Today, it takes on average 305 days from a report to the police for the CPS to make a charging decision against an alleged perpetrator. This is down from its peak of 395 days at the end of 2020, but still three months longer than in the mid-2010s.

It takes even longer to get to a verdict once a rape case has moved to court. A 2021 joint inspection into the police and the CPS response to rape found that cases involving sexual offences take longer to process through the Crown Court than all other types of offences. This is, in part, because defendants in sexual offence cases are more likely to plead not guilty than in other types of cases, meaning that a jury trial is required. With the suspension of jury trials for a period during 2020, and the additional time needed to conduct a jury trial, sexual violence and abuse cases are disproportionately affected by court backlogs. More recent Government data shows that the situation has worsened since that 2021 inspection. As of June 2022, an average of 378 days were passing between an adult rape case arriving at the Crown Court and its completion – a 61.5% increase in time since December 2019 and 139 days longer than criminal cases in general.

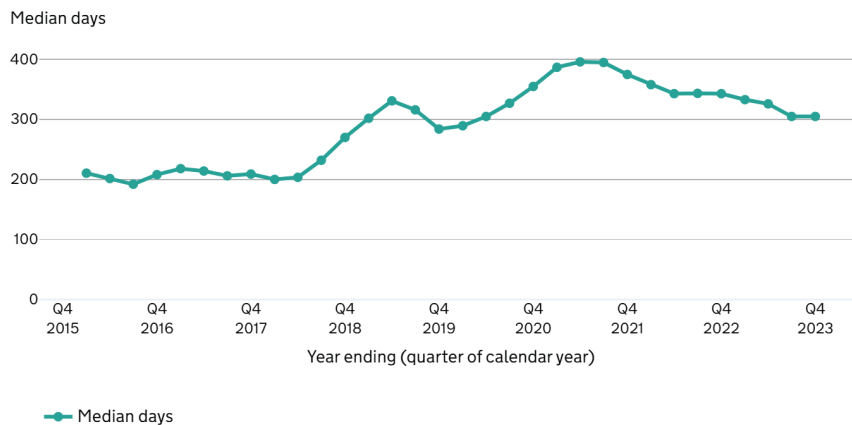
Timeliness is an essential part of prosecuting RASSO and VAWG offences. As the Government's [strategy](#) argues:

“The trauma of the crime and their subsequent experience leads many victims to disengage from the criminal justice process. Without the victim’s engagement, prosecution and conviction is very difficult. But when cases are prosecuted, and victims stay engaged with their case, we see results: in 2019-20, 27% of rape defendants pled guilty, and we had an overall 69% conviction rate.”

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Average days taken for police to record a successful outcome

Data view: Adult rape; National; Rolling annual



Source: https://criminal-justice-delivery-data-dashboards.justice.gov.uk/improving-timeliness/police?time=Rolling+annual&offence=Adult+rape&area=National&offence_type=adult_rape#time_to_charge

Within the CPS this is reflected in rising times taken to charge once a file is handed over from the police. Rape offences are among the most complex cases, so it is somewhat unsurprising that they take longer to charge than other offences. However, the amount of time from report to charging has more than tripled since 2014:

Average days from police referring a case to the CPS and the CPS authorising a charge

Data view: Adult rape; National; Quarterly



Source: <https://criminal-justice-delivery-data-dashboards.justice.gov.uk/improving-timeliness/cps>

In 2014, it took 38 days from the handing over of a police report to the CPS to charge a case. Today it takes 130 days, or more than four months.

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These timescales are not simply important for their own sake. Timeliness is widely considered to be one of the most important factors in maintaining the trust of victims of RASSO offences. Maintaining the engagement of victims is difficult. The RASSO offences that they have suffered are often highly traumatic, and the trial process itself is adversarial and intrusive. Long timeframes lead to disengagement and a sense that justice will not be done for the victims. This is why, in a report for Rape Crisis, Independent Sexual Violence Advisors (ISVAs) who work most closely with victims have [emphasised](#) that timeliness was the most important issue for them in improving the current system for victims.

As the end-to-end rape review articulated:

“A much greater proportion of victims who report rape and sexual assault now choose to disengage from the criminal justice process than in 2015, with the most significant proportion doing so before a charging decision is made. This is unacceptable. We must urgently reverse this trend and ensure that those victims who engage in the criminal justice process feel supported to do so.”

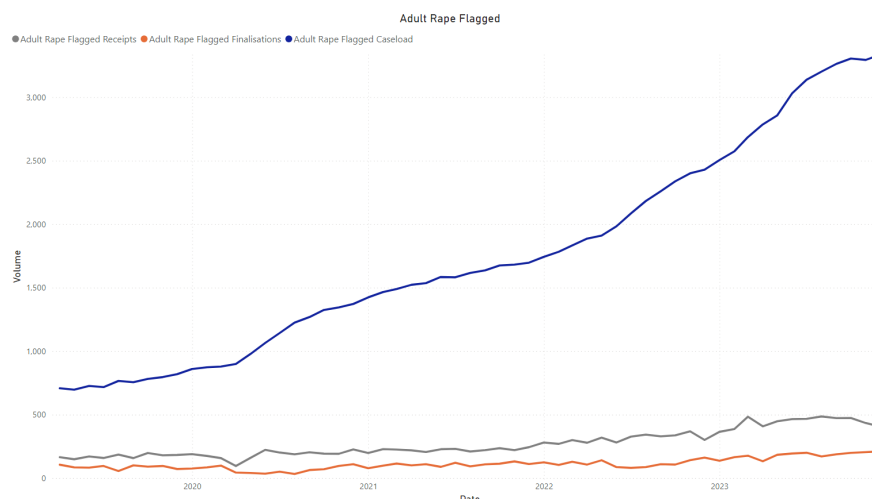
Flatlining prosecution rates:

The result of the current state of increases in reports but longer wait times is a flatlining in the number of prosecutions. The most recent data shows that rapes reported to the police are still outpacing concluded cases at a rate of 2:1.

The adult rape flagged caseload continues to increase with receipts outnumbering finalisations at a rate of over 2 to 1

CPS adult rape flagged prosecutions – live caseload, receipts and finalisations

Figure 2: Line chart to show volumes of adult rape flagged caseload, receipts and finalisations since April 2019



Source: [CPS data summary Quarter 3 2023-2024 | The Crown Prosecution Service](#)

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There are multiple causes of this flatlining prosecution rate. However, such a low rate of prosecutions has called into question the effectiveness of the justice system. Recent Rape Crisis reports and the former Victims' Commissioner have [argued](#) that rape has been "[decriminalised](#)" in England and Wales.

During the previous Parliament, the Home Affairs Committee chair argued, "From now on there must be constant review and reform of every element of the system handling rape and sexual offences. There cannot be a single step back until prosecutions and convictions are far higher than they were even in 2016."

The current Government argued in its manifesto that the current conviction rate is "shameful".

Supporting victims to go to trial

Occasionally, there has been a misconception that the CPS has become overly cautious in its prosecutions which has led to lower levels of charging of RASSO offences, bringing only those cases that it is certain that it will win. However, the HMCPSI found that this was not the case, [arguing instead](#) that in their inspection: "There were 13 cases (5.2%) where the inspector would have made a different decision to the CPS. Seven of these 13 cases were charged and six NFA [no further action], which tends to show that, rather than the CPS being risk averse, these decisions are often finely balanced, with many difficult matters to weigh up in the evidence."

One of the key drivers of why so few trials even come to court is the understandable reluctance of victims to continue with proceedings. The processes of evidence gathering, and the trial itself can be significantly traumatic for victims. In 2021, the Home Affairs Committee found that the trauma of going through investigations and lengthy delays may have contributed to 63% of adult rape investigations being closed between July and September 2021 because the victim no longer wished to continue.

The Victims and Prisoners Act 2024 does include a provision to introduce a higher threshold test for access to therapy records 'substantial probative value' test. This would be a welcome change. However, more can be done in this area.

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Victims groups have long been pushing for independent legal advice for victims for many years. The Labour manifesto committed to “[a]ppoint legal advocates to provide free legal advice and support to rape survivors across England and Wales”. This change should be made as quickly as possible.

In this regard, ISVAs have been a welcome change, but more could be done to ensure that all victims of RASSO offences are able to have access to an ISVA.

In its consultation report, the Law Commission proposed changes to special measures to make it easier for victims to give evidence, for example automatically clearing the public gallery when victims of rape give evidence. It also recommended enhanced relevance admissibility tests for sexual behaviour evidence and evidence relating to criminal compensation claims. Each of these would have an impact on making it easier for victims to participate in trials, even if they cannot fully remove the traumatic nature of an adversarial trial system.

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3) Oversight and planning across the courts system

Delays in the courts system

However, HMCPSI [showed](#) that between 2016-2019, there had been a 42.5% rise in the report of rape allegations to the police and a 22.6% decline in the number of rape cases charged by the CPS.

One of the major causes of the lower charging and conviction rates for RASSO offenders is the time taken to prosecute. During this process, victims often feel unable to move on from what is a traumatic and painful event.

A [report](#) last year for Rape Crisis found that delays in the Crown Courts has led to a record high backlog of 7859 sexual offence cases, and 1851 adult rape cases. The same report found that RASSO prosecutions were taking, on average, over two years to come to trial.

Our survey of CPS staff found that 92% agreed that current court backlogs inhibit the prosecution of Rape and Serious Sexual Offences.

HMCPSI showed that the cause of the backlog occurs even before the CPS is involved. Their report [showed](#) that an average of 237 days elapsed between the first report of the offence to the police and the police's first submission of the file to the CPS for a charging decision. They argued that the interactions between CPS making charging decisions and the police file management "is not conducive to effective case progression".

A report compiled by the London Victims' Commissioner and MOPAC, 'The London rape review: a review of cases from 2016', found that 58% of victims withdrew their allegation prior to the police submitting the case to the CPS. The report found that this was not because victims did not want to continue with the investigation, but because they did not feel that they could. Research by the London team showed that the most common reasons given for withdrawal were stress and trauma due to lack of police contact, lack of information or updates, or the sheer length of time it took for investigations to progress.

Shifting court dates

Currently, many RASSO cases are "floaters". A "floater" is a trial not allocated to a specific court or judge, but which may be taken in any court in the same court centre on a specific

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day or within a period of time. The House of Commons Home Affairs Committee made the following recommendation to the government in its report of 2022:

“We urge the Government to work with the judiciary to explore what more could be done to ensure fixtures for all rape and serious sexual offence trials are guaranteed. This would help address the severe delays many complainants and defendants are affected by.”

The practice of listing RASSO cases as “floaters” was identified as an issue in [2002](#) and then again in [2022](#) in joint CPS police reviews of RASSO practice. Little has been done to resolve the issue, which affects both the uncertainty that victims feel and the timeliness of justice for victims.

This Government committed to RASSO-specific courts as a potential way of ensuring RASSO cases come to trial more quickly. This is to be applauded and would likely end the problem of RASSO cases being listed as floaters. However, given that the courts backlog covers many different areas in addition to RASSO cases, additional resources across the entire system will be necessary to permanently end backlogs.

The crumbling courts estate

What do CPS staff say about the courts estate:

One anonymous CPS staffer said: “The biggest single issue at present is the backlog at the Crown Courts. Reducing backlogs would immediately improve our ability to prosecute and provide a good service to victims.”

Sixty-four per cent of solicitors who responded to a recent Law Society survey stated that they experienced delays in cases being heard within the last 12 months due to the state of the courts.

Anecdotal evidence from court users recalls air conditioning units falling on lawyers’ heads and water pouring through ceilings, meaning that trials have had to be adjourned at the last minute while courts sit empty. Often, these trials are rescheduled for months, sometimes years, later, to the huge detriment of those involved in the cases.

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The Lord Chief Justice's 2022 annual report stated that "[t]he allocation of funds for maintenance and repairs has continued to be well below what is needed to maintain the estate in a decent condition. This does more than increase future costs. It results in hundreds of lost sitting days each year". Whilst the Government has taken a few welcome steps to find additional monies for maintenance, the report added that "the scale of the problem is such that they amount to no more than a sticking plaster on what is a significant wound".

The courts estate can also be important in helping victims feel comfortable in giving testimony. Currently, victims enter into court using the same entrances as alleged perpetrators. Where video evidence is used, many courts cannot easily facilitate live video feeds. This makes it difficult for courts to manage special conditions required in the most sensitive cases and further reduces the likelihood of victims coming to trial.

November 2024