

Barriers and challenges to police and Crown Prosecution Service joint working on rape and serious sexual offence cases: A police perspective

Anna Gekoski^{*}, Kari Davies^{**} and Katherine Allen^{***} 

Abstract There is scant academic research on the challenges encountered by the police when working with the Crown Prosecution Service on rape and serious sexual offence cases; yet this relationship plays a crucial part in improving appropriate case outcomes. This qualitative study aims to further knowledge in this area, using interview data from 50 police officers from four forces across England and Wales, analysed using thematic analysis. Four main challenges with police/CPS working were found: (i) poor communication and relationships, exacerbated by a reliance on electronic systems; (ii) not obtaining early advice; (iii) the CPS driving victim-focused investigations; and (iv) issues with DG6 and disclosure. However, areas of good practice were also found, including: early advice clinics; enhanced early advice; joint police/CPS training/meetings; case progression trackers; and discussions regarding reasonable lines of inquiry.

Introduction

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services' (HMICFRS) recent thematic inspection documented challenges to the police and Crown Prosecution Service's (CPS) ability to mount an effective joint response to rape and serious sexual offences (RASSO). The inspection found various issues, including: inconsistent communication (with specialist teams faring better); communication being 'indirect', limited to electronic systems/email rather than direct telephone/Teams/in person communication; officers not knowing how to contact

prosecutors and vice versa; and the tone of communications being 'confrontational and unhelpful' (HMICFRS, 2021, p. 54). The report concluded that 'there needs to be an urgent, profound and fundamental shift in how rape cases are investigated and prosecuted', involving a closer and more coordinated way of working throughout the criminal justice system (Ibid, p. 4).

Crown Prosecution Service guidance on RASSO stipulates that cases should be referred to a prosecutor at the earliest opportunity, provided that a suspect has been identified, arrested and a charge is being sought (CPS, 2020). In the majority of cases,

^{*}Bournemouth University, Fern Barrow, Poole BH12 5BB, UK. E-mail: annagekoski@gmail.com

^{**}Bournemouth University, Fern Barrow, Poole BH12 5BB, UK

^{***}University of Suffolk, Waterfront Building, 19 Neptune Quay, Ipswich, IP4 1QJ, UK

Advance Access publication: 10 July 2023

Policing, Volume 17, pp. 1–12

doi: <https://doi.org/10.1093/police/paad041>

© The Author(s) 2023. Published by Oxford University Press.

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted reuse, distribution, and reproduction in any medium, provided the original work is properly cited.

where further investigation is required before a case can either be referred for a charging decision or no further actioned (NFA'd), cases can be forwarded to the CPS for early advice (EA). This is intended to promote the early formulation of a joint strategy for the prosecution, including consultation on reasonable lines of enquiry. The CPS Director's Guidance on Charging (DG6) states that investigators must consider seeking EA in relation to all 'serious, sensitive or complex' cases such as RASSO (CPS, 2020). All referrals for EA should be submitted via a specific digital interface between police and CPS and must include information needed to facilitate provision of relevant advice, for example, completed, ongoing and possible lines of inquiry, evidential material, and potentially disclosable material.

While there is no administrative data on police uptake of EA, the 2021 Rape Review found that just 18% of surveyed police investigators felt that EA was being used well or very well (George and Ferguson, 2021b). Findings elsewhere suggest that deeper issues with communication between police and CPS may be impeding take up of EA, with an austerity-hastened decline in co-location meaning that most police-CPS contact takes place via email or electronic systems, rather than face-to-face (HMICFRS, 2021). This lack of direct, routine contact was felt to have 'a negative effect on the quality of the relationships at an operational level' (HMICFRS, 2021, p. 54).

In addition to issues with communication, the literature suggests that evolving CPS guidance on disclosure—which refers to the process of providing the defence with copies of/access to any material which might be considered to undermine the case for the prosecution against the suspect, or of assisting the case for the suspect has contributed to strained relations with police, and has been linked to systemic issues with workload and morale (Elliott-Davies, 2022). The issue of disclosure was brought into sharp focus by the case of *R versus Allan*, which involved 'allegations that a woman, C, was raped and sexually assaulted by the defendant, D' on multiple occasions (CPS and Metropolitan Police, 2018, p. 1). The case was dropped by the CPS following the beginning of the trial, due to digital

evidence that had been missed during the initial disclosure process.

A joint review of *R. versus Allan* flagged serious failings in the disclosure process (MPS and CPS London South Area, 2018), with senior police officers such as Chief Constable Sarah Crew of Avon and Somerset Police arguing that this, and other high-profile 'near misses', contributed to the CPS growing more risk-averse (Parliament, House of Commons, 2021). This was perceived to exert pressure on police to collect and process excessive data from complainants (Parliament, House of Commons, 2021; Information Commissioner, 2022). This drive towards conducting more victim-focussed and front-loaded investigations, particularly in relation to processing digital and third-party material, has been characterized as a form of secondary victimization, with 'victims being treated as suspects' (Information Commissioner, 2022, p. 2). This includes requests for 'unnecessary and excessive' information that is not pertinent given the circumstances of the case; for example, requesting a full download of the victim's phone when the assailant was a stranger who the victim had never previously encountered before the assault (Information Commissioner, 2022, p. 7).

These changes have also been identified as a contributor to excessive workload among police. This increase in workload has not only been driven by increased requests for victim's digital data or personal information, but also the revised CPS Director's Guidance on Charging (DG6). For example, a recent survey conducted by the Police Federation for England and Wales (PFEW) found that 93% of police respondents felt that their workload had increased in the wake of DG6. Specifically, changing rules regarding pre-charging file preparation and the need to provide 'trial ready' files (Gloucestershire Police Federation, 2022) were associated with a heavy administrative burden (Elliott-Davies, 2022). Nearly all respondents (96%) reported that these changes had increased the number of hours needed to submit a pre-charge file to the CPS, while 87% reported that the change had increased how stressful they found their job (Elliott-Davies, 2022).

As this overview suggests, available academic, policy and grey literature indicates that a range of issues continue to impact police and CPS relationships with significant knock-on effects for victims, including: the loss of police/CPS co-location (George and Ferguson, 2021a); difficulties with obtaining EA (George and Ferguson, 2021b); perceived CPS demand for digital ‘fishing expeditions’ (ICO, 2022); and a drive to ‘frontload’ investigations (Norfolk Police Federation, 2022).

In July 2020, the CPS published their Rape and Serious Sexual Offence (RASSO) 2025 5 year strategy, which aims to ‘*narrow the disparity between the number of offences reported to the police and cases going to court*’. One of the ways in which the CPS aimed to achieve this was through a joint programme of work with the police via the Joint National Action Plan (JNAP), which was launched in January 2021 by the National Police Chiefs’ Council (NPCC) and the CPS. The JNAP set out the commitment by policing and the CPS to work together to improve how rape cases are investigated and prosecuted. The JNAP—refreshed in 2022 reiterates the pledge for police and prosecutors to work effectively together, earlier, to build strong cases taking an offender-centric approach, which can progress through the criminal justice system as quickly as possible.

In light of this renewed emphasis on fostering a cohesive working relationship between police and CPS, this study examined this relationship from the perspective of the police, including identifying barriers to effective collaboration and areas of good practice. As the academic literature regarding some of these issues is sparse, the present study furthers knowledge in this area by shedding light on some of the barriers to efficient and harmonious working

relationships between the police and CPS, as well as the early benefits of initiatives to address these barriers.

To this end, interview data from 50 police officers across four police forces in England and Wales, which was gathered as part of Pillars 1 and 2 of the larger Operation Soteria Bluestone,¹ was analysed and presented.

Research methods

Participants

Participants included 50 police officers, working across the four forces considered in the Operation Soteria Bluestone Year 1 deep-dive; these forces are referred to here as Forces A, B, C, and D. Specifically there were: 17 Force A officers; 10 Force B officers; 11 Force C officers; and 12 Force D officers. Ranks ranged from Police Constable (PC), Detective Constable (DC), Detective Sergeant (DS), Detective Inspector (DI), Detective Superintendent (Det Supt), and Senior Management (SM).² The forces were situated in four different CPS areas.

Materials

A one-page information sheet and consent form were developed for potential interview participants. These documents contained details about the project, including: the aim, background and purpose of the research, as well confidentiality/anonymity. A semi-structured interview schedule was devised to capture the challenges associated with investigating RASSO. The interview schedule

² Operation Soteria Bluestone is a UK Home Office-funded programme designed to improve the investigation of rape and other sexual offences (RAOSO) in England and Wales. It is a unique project which is underpinned by rigorous social science. With multi-disciplined academics located in multiple universities, mixed qualitative and quantitative methods are applied to a six pillared approach to organizational change with police forces, uplifting the capability of more specialist police decision-making in RAOSO cases. The research informs policing practice as well as government policy and is set to inform a national change. These research informed pillars pinpoint specific areas for improvement which will form part of the new framework for investigating RAOSO: (1) suspect-focussed investigations; (2) disrupting repeat suspects; (3) victim engagement as procedural justice; (4) promoting better learning, development, and wellbeing for police officers; (5) using data more effectively in RAOSO investigations; and (6) using digital material and technology in RAOSO investigations. The pathfinder project started in 2021, based in Avon and Somerset Constabulary. Designed by Katrin Hohl and Betsy Stanko, the pillar leads include Kari Davies, Miranda Horvath, Kelly Johnson, Jo Lovett, Tiggey May, Olivia Smith, and Emma Williams.

¹ A smaller number of CPS representatives from each area (1–2 per force) were also interviewed; these findings will be reported elsewhere.

asked about Police/CPS working, for example, (1) when input from the CPS is sought; (2) in what form that conversation takes place; (3) challenges when working with the CPS; and (4) what the police would like from the CPS to help improve RASSO investigations.

Procedure

This research was approved by the ethics committees at both the University of Suffolk and Bournemouth University. The academic leads worked alongside Operation Soteria Bluestone police leads to facilitate data collection and recruit participants. In Force A, in accordance with their DPIA requirements and to protect participants anonymity, interviews were arranged directly by police leads, who selected participants for interview.

In the remaining three forces, police leads confidentially compiled lists of officers who investigated RASSO, who were then invited for interview by the academic lead. No incentives for participation were offered and officers were told they were under no obligation to take part.

Interviews with officers from Force A were conducted via telephone; with the officer calling on a withheld number. In the other three forces, interviews took place over Microsoft Teams. Two researchers took part in each interview; one interviewing and notetaking. A total of 50 interviews (with an average duration of 1 h each) were conducted between October 2021 and June 2022.

All interviews were audio recorded. After the interviews, the recordings were uploaded to the secure online data sharing platform, Sharepoint. After the interviews were transcribed the recordings were permanently deleted.

Analysis

The data were analysed using the qualitative method of thematic analysis, which is used to organize data into thematic sets as determined by the researcher. The process of conducting a thematic analysis that was followed in this study follows the six phases articulated by [Braun and Clarke \(2006\)](#). The analysis was conducted independently by two researchers, thus providing interrater reliability. In the analysis

and write up, officers were assigned a random number to preserve their anonymity/confidentiality.

In the findings section, numbers/percentages of officers are not reported for each theme. Presenting numerical data in qualitative research is controversial. The authors argue that using numbers in qualitative work carries risks, including leading to the inference of generalisability of conclusions; reducing evidence to the *amount* of evidence; and making a report seem more 'scientific', without meaningfully contributing to its logic ([Maxwell, 2010](#)).

Results

Four main challenges with police/CPS working were found, which centred around: (1) communication and relationships; (2) obtaining EA; (3) victim-focussed investigations; and (4) issues with DG6 and disclosure.

Communication and relationships

Police across all forces generally reported poor communication and relationships with the CPS. Most officers felt that this issue was more acute due to the recent drive towards using electronic systems as the main means of contact.

The contact you have is ... done through the COPA system when we're going back and forth to build the case file and send them to the CPS ... it's never direct emails or messages (A5).

Officers across forces reported this reliance on electronic systems as leading to frustrations and misunderstandings, that would not have arisen with direct personal contact:

It's the barrier of electronic memos ... we don't have those face-to-face discussions or over the phone discussions, it's all in writing where things can be missed, or misunderstood (D2).

This officer expounded upon the problem:

Things get lost in translation with electronic stuff. There's the way things are worded: Are they having a go? We're

trying our best here. It puts the barriers up; it becomes them and us. When you speak to someone, even on Teams, it changes the way you perceive that person, how they perceive you. You can have a constructive conversation and come away with renewed vigour (D9).

This appeared particularly the case for lower ranked officers, with more senior officers often able to pick up the phone to prosecutors and/or have meetings:

[Communication] is different with the ranks ... I've got a very very good working relationship with the CPS head of RASSO; we speak daily ... But as you go down the ranks it's an absolute bugbear of mine—everything is electronic and it completely loses that personal connection (D3).

Thus, the lack of direct human contact—whether that be via email, telephone or face-to-face was felt to lose the 'personal connection' needed to communicate effectively and build relationships.

This was particularly significant when technical issues with the systems presented themselves. Although each force used a different system, officers across all forces reported similar issues, for example, files getting lost in transit or 'bounced back'; police and CPS systems not being compatible; glitches in systems; and issues with sending large files/images.

The Connect system what we've got sometimes doesn't work very well, and sometimes you're not sure whether the items have actually been sent (C2).

There's issues of the TWIF system we find a lot. So the CPS will bounce files back to us, because there's missing files there ... even though we have sent them on our system (D2).

One of the strongest, most replicated, themes across every force, was the fond recollection of 'the good old days', where prosecutors used to be embedded in police stations. This face-to-face contact was felt to be invaluable in fostering good professional working relationships and discussing cases, rather than

playing 'memo tennis'. The same sentiments were echoed time and again:

I'm going to hark back to old days now: we used to have a CPS lawyer based at the police station ... Things could just be ironed out by a two minute, corridor face to face question and answer session over a cup of coffee (A10).

The best thing would be if we had a prosecutor based at the police station like we used to do ... because then they'd be human ... we could have that face to face chatter (D6).

However, there was also resignation among officers particularly in Force A that this was unlikely to change; as one officer said, 'we all know that is never going to happen again' (A9).

In the absence of co-location being possible, other solutions have been trialled, suggesting police forces are already aware of the negative affect this issue has on the police-CPS relationship. Force C, for instance, recently ran a successful 5-week pilot of face-to-face EA clinics (which will be explored further in Theme 2 below) at a local police station. A senior officer with oversight of these clinics said:

[Face-to-face EA clinics] should be extended. We should have a CPS lawyer in our office with us whereby we can sit and talk to them ... They're the end piece of the jigsaw puzzle. They should be in our station with us ... it would build up rapport. We'd get that kind of understanding of how they work, how we work etc. (C11).

This pilot demonstrates the importance of face-to-face communication where verbal discussions with the CPS can be had. Similarly, in Force D, another initiative to foster relationships and further understanding between the police and CPS included having officers shadow prosecutors.

I mandated that our detectives would spend three days with their CPS counterparts. Now that went down like a cup of cold sick ... but bar one individual, everyone came back knowing a bit

more about each other ... understanding each other's difficulties, challenges, workloads, as well as breaking down the human element and having a little bit of human interaction (D12).

Finally, in Force B, closer working between investigators and prosecutors has recently become a priority, brought about through face-to-face joint learning and training; monthly meetings between police and prosecutors; and initiatives such as case progression trackers, which encourage ongoing engagement between officers and prosecutors throughout the case.

Obtaining early advice (EA)

A specific area of poor communication/relations between the police and CPS highlighted was the obtaining of EA. Across all forces, officers reported EA not being obtained in the majority of cases, with the first police/CPS contact sometimes being at the end of long investigations:

If it's one that's not a charge on remand, we may not get any input from the CPS for months and months and months (C11).

This seemed particularly acute in Force B, with one officer who had been investigating RASSO for several years never having received EA (B6), while another officer said: 'If it wasn't remand into custody, then the chances are that CPS wouldn't be involved until the case is at full code' (B1).

Officers throughout the four forces gave various reasons for not going to the CPS for EA, including both CPS and police issues. For example, some officers felt that the CPS were 'unreceptive' to requests, despite officers wanting to reach out for advice and guidance:

Over a number of years EA hasn't really been utilised because CPS hasn't wanted us to do that and haven't been receptive (C3).

We are forever banging on their door saying, Can we have advice on this? ... Can you do this, that and the other? And we just seem to get poor reception

every time (A9).

Other issues relating to obtaining EA included a lack of clarity around which cases EA could be used for; officers being unsure of the process; concerns over the amount of paperwork/bureaucracy; officers not finding the advice helpful; and the belief that the CPS would ask for 'everything' evidentially (an issue which is explored further in Theme 3).

The guidance and the recommendations as to when an officer can seek early advice is quite prescriptive (D3).

We are experienced investigators and can apply rational decisions (C3).

There's no point going to CPS because they'd tell us to do everything anyway (D1).

The process is just too time consuming. It doesn't actually give us anything useful that we would need (A8).

However, while many officers were sceptical of EA, there were those that acknowledged the benefits of this process in certain cases:

I think there are there are plenty of cases where actually we don't need CPS ... But there are some cases where ... we definitely do want to have that meaningful conversation with them (A9).

I could count on one hand the amount of cases I took to EA. However, in the cases that I did manage to get advice it was really useful (C3).

As referenced in the Introduction, new guidelines and recommendations suggest that RASSO investigations would benefit from more cohesive working relationships between police and CPS. It was evident from officers that EA is the focus of improvements being made, with areas of good and promising EA practice emerging across all forces. In Force A, EA is now mandatory in all RASSO cases. As one officer said: 'At the moment, [Force A] are stipulating it ... It is something that we are pushing out very, very quickly' (A7). Force A case management teams (CMTs), who act as

gatekeepers between the police and CPS, have also rolled out EA clinics for officers, to proffer advice. A CPS RASSO lawyer should then review the file and contact officers via telephone/Teams within 24–48 h.

In Force D, EA is also now being actively encouraged by both CPS and senior police officers. In order to make the process of obtaining EA more accessible, the CPS have modified the process. This includes: no longer needing to submit a full file but only a case summary; a prosecutor calling the OIC within 24 h of EA submission; and giving EA outside of the prescriptive guidelines. While, on the part of the police, supervisors are urging officers to obtain EA wherever possible:

I think we peaked last month around about seven cases that went for EA, which I was over the moon with ... but I'm a pain in the backside and it's probably just a reaction to me nagging them ... I think it will improve once we start to see some tangible benefits coming out from CPS (D3).

In Force B, the EA process has recently been 'reinvigorated' and should now always be considered in RASSO cases. Local initiatives include the rolling out of 'enhanced EA'—where police contact the CPS *before* a victim's ABE in order to help guide interview questions and EA training/meetings with the police and CPS. A senior officer commented: 'There is an openness now ... we've been doing some joint pilot work' (B9).

As referenced in Theme 1, Force C are also actively addressing the issue of EA through face-to-face EA clinics, with the initial pilot concentrating on DA cases within a 45-day time period. The scheme was considered a resounding success: not only was better communication facilitated, but out of the nine cases reviewed, it is thought that most will be charged. A senior officer said:

It's really fun, all the talking and exchanging ... It is imperative to have CPS lawyers within stations, where we can build relationships and then obtain early investigation advice (C11).

The pilot is thus set to be extended to other areas within the force and broader types of RASSO offences.

Victim-focused investigations

The majority of officers in this study thought that RASSO investigations were more victim- than suspect-focused. For example, more digital and third-party material is routinely obtained for victims; victims are challenged in interviews more than suspects; and the victim's account is scrutinized for veracity in a way that it wouldn't be in other crime types.

A minority of officers felt that this victim focus was justified and necessary, citing reasons such as police impartiality; difficulties establishing consent; the (perceived) high rate of false allegations; and other rape myths surrounding victim credibility.

It's fair to say that there is a level of scrutiny on victims that is as much, or more scrutiny, than on the suspect. And in some ways it's appropriate to have that because unfortunately ... victims come forward to report rapes when they haven't been raped (C9).

The majority of officers, however, felt that victim-focused RASSO investigations were (1) wrong, and (2) emanated from the CPS. There was a strong belief among officers across all forces that the CPS routinely ask for all third-party and digital material on victims in order to 'look for lies' and 'undermine their credibility'.

Obtaining third party material is a big stumbling block. What we're doing is trying to establish if that person's ever, ever lied anywhere and that has to be recorded as undermining ... We do more work looking to see if the victim is lying than the actual suspect ... I think the CPS might have had their fingers burnt previously, so they want everything done to make sure that nothing will come out during the trial (C5).

This allusion to the CPS having 'had their fingers burnt' seems to originate in the case of R versus

Allan, as referenced in the Introduction, which arguably led to a more victim-focussed approach in RASSO investigations. A widespread belief exists among officers that the CPS subsequently became excessively fearful of missing evidence, leading to them 'asking for everything' on victims:

The case of R versus Allen ... after that, the Crown Prosecution Service ... ultimately every investigation with them was ... literally, 'take the phone, download the phone and we're basically looking at everything' (A2).

Without referencing R versus Allan specifically, a Force B officer said:

The CPS some years ago decided we needed to ensure that nothing was going to jump out of Pandora's Box at trial ... They wanted to know everything about the victim (B3).

Officers generally felt that this victim focus was intrusive, irrelevant and unfair. Speaking of trawling through third-party material such as education and social services records, medical and mental health reports, and counselling sessions—this officer said:

I don't 100 percent agree with third party protocol; that's obviously something that we have to do from the CPS, but I'm not a big fan ... I think we often dig in a victim's past just because, I don't know, they were a little bugger as a child. And I don't see how that impacts on whether they could or couldn't be raped on that day (B5).

This speaks to officers challenging the CPS' views on obtaining material on the victim and how these requests are (or aren't) based on reasonable or relevant lines of enquiry. To this end, across all forces, there were examples of officers 'pushing back' in response to requests from the CPS for digital/third-party material on victims. This seemed particularly the case in Force B. One officer said that 'the pendulum is swinging back in the right direction' (B3), while another told how:

We've had a lot recently where the CPS say can you request third party to see if

they've been dishonest? And I'm saying absolutely not ... we're not just going to go on a fishing trip (B6).

Similar sentiments were echoed across other forces, with officers talking of having more discussions with the CPS about what were (and were not) reasonable lines of inquiry and making challenges where needed:

Sometimes we get the request that we want to see the victim's medical records and we can say, 'Well, why is this relevant? Why is it a reasonable inquiry?' And we do fight back (D8).

This shift in attitude can also be seen in some CPS areas, with Force C CPS currently working on becoming more offender-centric in their investigations, with RASSO prosecutors now being given mandatory training on rape myths, trauma and stereotypes. This offender-focus is checked through case reviews and lawyers are given additional individual training if required. The CPS have also shifted their focus to reasonable lines of enquiry on digital material rather than going on 'fishing expeditions' and conducting 'digital strip searches' of victims.

The CPS Director's Guidance on Charging (DG6) and disclosure

The new DG6 guidelines as discussed in Section 1 arose inductively as a strong theme across all forces. One officer explained the process thus:

With the new changes we now front-load our investigation. So before, we used to get the victim and the suspect, interview them, a couple of witness statements, and we would send the file off for a charging decision. And then after the charging decisions were received we would complete the file ... Now, after the changes, we have to complete the whole file essentially prior to going to CPS (D2).

The DG6 process is difficult for several reasons, which all chiefly relate to the time, effort and resources required to submit a full file. This includes

completing all actions and collating all evidence (e.g. interviews, forensics, third-party material); the disclosure process (e.g. preparing unused material schedules); and the redaction process.

Speaking of the lengthy amounts of time that it takes to apply for, collate and sift through vast quantities of digital and third-party material, for example, one officer said: ‘Obtaining of third party material can sometimes be unmanageable ... it produces boxes and boxes and boxes, forever and a day’ (D7).

Another officer noted how the DG6 process was only going to get worse, as mobile phones hold increasingly large amounts of data:

We don’t have the resources to cope with the size of the data that’s obtained in investigations now ... they’re bringing out terabyte iPhones ... That’s truckloads of documents potentially for someone to trawl through a disclosure process. And it’s just going to get harder (A10).

Officers also talked of ‘monstrous’ amounts of administration with, for example, thousands of pages of evidence to redact:

I would say DG6 and the disclosure process has really hit us hard. We’re finding that the administrative requirements that we have to go through to get the case ready for a charging decision is monstrous (D3).

Another officer from Force D also spoke of the arduous and frustrating redaction process, feeling that it was often wasted effort when no charges were brought:

Myself and another officer have just spent two weeks doing redaction on thousands of pages ... when the CPS could just come back and say it’s insufficient. It’s nonsense. It’s an administrative role, when I’m a police officer, and I’ve had enough (D9).

The sentiment was echoed by a Force A officer, who said that ‘there’s an awful lot of work to be done, and

that’s even the cases where the prosecutor will say no charge, so could be a lot of wasted effort’ (A17).

Discussion

This study aimed to address the relative paucity of research on the challenges encountered by the police when working with the CPS on RASSO cases. As part of Operation Soteria Bluestone, this research considered the main challenges and barriers involved in police/CPS RASSO working from the perspective of the police, using interview data from 50 police officers from four forces across England and Wales.

What little research there is in this area was supported by this study. As found in Themes 1 and 2, previous research has found poor communication and relationships between the police and CPS, specifically in the low uptake of EA in RASSO cases (e.g. [HM Government, 2021](#)). Communication was particularly problematic for lower ranked officers, something which is supported by the [HMICFRS report \(2021\)](#) which found that less senior officers found this lack of communication, especially in comparison to years gone by when prosecutors used to be imbedded in police stations, had a negative impact on the quality of relationships at an operational level. Furthermore, the loss of police/CPS co-location has been found to be a particular problem in terms of communication and rapport/relationship building (e.g. [Kemp, 2013](#); [George and Ferguson, 2021a](#)), with most police/CPS contact now taking place via electronic systems, negatively impacting the quality of relationships ([HMICFRS, 2021](#)). This was echoed by many officers in this study.

This research was also carried out during the COVID-19 pandemic, when some working practices were altered by the police and CPS. This particularly affects Themes 1 and 2. With direct face-to-face contact—for example, joint meetings, training, and EA becoming less feasible (or even illegal) it seems inevitable that relationships would suffer. The effect of the pandemic on communication is somewhat tempered by the idea that, often, electronic (i.e. email or secure system) contact was largely relied on before the pandemic, demonstrating

the scope of the communication issues between the two agencies. There will be merit in understanding how the COVID-19 pandemic may affect the CPS-police communication in the long-term, including whether the more routine use of remote and online meetings and the technology to facilitate communication may provide new avenues for CPS-police engagement. For instance, the combination of a push towards increased communication between these two agencies, combined with the increased flexibility afforded by remote meetings, may mean communication may be facilitated through the use of some of these more novel means of meeting.

Previous research has cited the case of *R versus Allan* as contributing to the CPS growing more risk-averse (House of Commons, 2021), leading to pressure on police to collect excessive amounts of third-party/digital material from victims (House of Commons, 2021; Information Commissioner, 2022). Theme 3 of this study lends support to these findings around blanket requests from the CPS to dig into the victim's past to look for undermining evidence, undertaking digital 'fishing expeditions' (ICO, 2022) and/or 'digital strip searches' (Information Commissioner, 2022). The fact that legal limits already exist to prevent such fishing expeditions (CPS, 2022) means these findings place important light on how these guidelines are being adhered to or interpreted by prosecutors. Certainly, from the police's perspective in this study, the inference here is that these guidelines are either being disregarded or inappropriately interpreted, such that victims are not protected from intrusive and unnecessary requests into their personal data.

Finally, research has found requirements to 'front-load' investigations in accordance with new DG6 guidelines to increase officers' workloads, administration and stress (e.g. Gloucestershire Police Federation, 2022; PFEW, 2022; Police Federation, 2022b). This is supported by the findings in Theme 4 of this study around DG6 and disclosure, where officers described the process of getting files 'trial ready' to significantly add to their workloads, and expressed frustration that the 'monstrous' administration involved could be wasted time.

This paper has concentrated largely upon the challenges encountered by the police when working

with the CPS on RASSO cases. However, areas of novel good practice were also evident, with police and CPS starting to implement changes to improve in the above areas, in accordance with national recommendations that centre around fostering better professional working relationships between the police and CPS (HMICFRS, 2021; CPS, 2022). For example, new initiatives to encourage better communication, relationships and EA, included: police shadowing their CPS counterparts; joint training and meetings; encouraging or mandating the use of EA; summary files only being required for EA; prosecutors reviewing EA within a small window; prosecutors calling officers rather than relying on electronic communication; the use of enhanced EA; case progression trackers; face-to-face EA clinics; and changes to the process (e.g. single points of contact and meaningful requests).

Many of the findings in this study are indicative of the fact that, while policy may already be in place to facilitate a good working relationship between the police and the CPS, in practice these policies and guidelines are not adhered to, which causes a breakdown in good working practice. The examples here of poor practice may be reflective of the wider institutional issues seen within the policing and prosecution of sex offences more broadly, such as a lack of training/awareness of how the policy and guidelines can be applied. For instance, when applied properly, the process of EA can assist with the agreement of reasonable lines of enquiry early in the investigative process, creating more certainty for officers and less work for both investigators and prosecutors at the end of the investigation. Currently, where a lack of awareness around the purpose of EA and the lack of capacity to both request and respond to such requests is prevalent, barriers are created which prevents policy being appropriately applied.

Headway is slowly being made within the police and CPS in respect of carrying out more suspect-focused investigations. New initiatives include: training on rape myths, trauma and stereotypes; NFA clinics; and CPS action plans around reasonable lines of inquiry being challenged by police, and complaints escalated if necessary. This last point is crucial, given that fishing expeditions are not reasonable and may seriously infringe on victims'

rights and access to justice. Thus, training around reasonable lines of inquiry should be rolled out as a matter of urgency. It is worth noting that, like the institutional issues noted above around the improper application of existing guidelines, the lack of suspect focus and the presence of rape myths and stereotypes are factors that are seen right the way through the investigative process and are not limited to CPS-police interaction (Gekoski *et al.*, 2023).

Practical implications and future research

It is clear from these results that many of the issues identified are ones of practical application, rather than a lack of existing law or guidelines. In this regard, there is scope for both the police and the CPS to improve practice without substantial policy or legal changes. The fact that existing guidance and policy is not followed demonstrates clear opportunities to upskill and train both officers and prosecutors. This includes both agencies having a better understanding of the role of the other; for instance, the purpose of EA could be better understood by officers in terms of understanding why the CPS require this type of conversation early on, and requests could be better received by the CPS in terms of demonstrating to officers the manner in which it may make their investigation more efficient. Addressing some of the institutional hurdles faced by both agencies, such as the substantial time pressures and workload both are under, and the technological barriers faced in the communication and transfer of information, will also likely assist in ameliorating communication between the CPS and the police.

It should be noted that most of the above new initiatives are yet to be evaluated and problems can be foreseen or are already evident. For example, although EA is being actively encouraged or even mandated workloads, attitudes, and police culture may still make officers reluctant to obtain it. Similarly, training on EA, in addition to regular joint police/CPS meetings to discuss cases and reasonable lines of inquiry, are still currently largely aimed at supervisors and above. Additionally, issues with face-to-face EA clinics include them being

highly resource intensive and thus possibly unsustainable for the CPS long-term.

However, despite a lack of formal evaluation, some anecdotal early benefits are already being seen, including: the encouraging and fostering of closer working relationships between officers and prosecutors; a reduction in an 'us and them' culture where it exists; more collaborative and confident decision-making; an increase in cases being referred for EA; officers and prosecutors better understanding one another's work and pressures; a better level of service to victims; a reduction in bureaucracy and administration; and faster decision-making and case progression.

Finally, any evaluation needs to consider the utility, as a whole, of these initiatives on their effect on the investigative and prosecution process. The discussions around EA, for instance, intuitively suggest that its use increases the appropriateness of investigative actions which should in turn lead to more appropriate outcomes being assigned to cases. Further work, however, is required to substantiate these assumptions.

Limitations

There are several limitations of this study to note. These include issues with sample recruitment, with police leads selecting officers for participation. Noaks and Wincup (2004) note that researchers should reflect on 'the appropriateness of allowing gatekeepers'—in this case police leads 'to become so involved in the research' (p. 58). By allowing the police leads to select participants, selection bias may have crept in, with interviewees nominated based on those who gatekeepers thought might represent the force in a more favourable light.

On the other hand, when officers on compiled lists were contacted, some officers agreed to participate, while some declined or did not respond. This in itself is worthy of reflection. It may be, for example, that the officers who chose to take part held stronger opinions than those who did not. Given the well replicated psychological phenomenon that 'bad is stronger than good', a type of 'negativity bias' (Baumeister *et al.*, 2001) may have skewed the sample.

Conclusion

Thematic analysis of interview data identified common themes regarding police and CPS relationships, including poor communication, limited use of EA, a perceived climate of risk-aversion leading to the CPS driving victim-focussed investigations, and changes to disclosure guidance resulting in increased investigative and administrative demands. However, analysis further pinpointed emerging areas of promising practice, including initiatives designed to promote better communication and relationships between police and CPS, and shift towards more suspect-focussed investigations. Current changes require evaluation to promote more widespread and embedded improvements throughout police forces in England and Wales, assisting in driving more prosecutions and convictions and giving a greater number of victims the justice that they are all too often denied.

References

- Baumeister, R. F., Bratslavsky, E., Finkenauer, C., and Vohs, K. D. (2001). 'Bad is Stronger Than Good.' *Review of General Psychology* 5(4): 323–370. doi:10.1037/1089-2680.5.4.323
- Braun, V., and Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative research in psychology* 3(2): 77–101.
- Crown Prosecution Service. (2020). Director's Guidance on Charging Sixth Edition. https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Directors-Guidance-on-Charging-6th-Edition.pdf (accessed 11 August 2022).
- Elliott-Davies, M. (2022). PFEW Detectives' Survey: Changes to the CPS Director's Guidance on Charging National Report. Police Federation for England and Wales. <https://www.polfed.org/media/17595/cps-survey-national-report-250222-v1.pdf> (accessed 11 August 2022).
- Gekoski, A., Massey, K., Allen, K. et al. (2023). 'A Lot of the Time It's Dealing with Victims Who Don't Want To Know, It's All Made Up, or They've Got Mental Health': Rape Myths in a LARGE ENGLISH POLICE FORCE.' *International Review of Victimology*. Advanced online publication. doi: 10.1177/02697580221142891.
- George, R. and Ferguson, S. (2021a). Review Into the Criminal Justice System Response to Adult Rape and Serious Sexual Offences Across England and Wales. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994817/rape-review-research-report.pdf (accessed 11 August 2022).
- George, R. and Ferguson, S. (2021b). Review Into the Criminal Justice System Response to Adult Rape and Serious Sexual Offences Across England and Wales: Appendices A–C. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994163/rape-review-research-report-appendices-a-c.pdf (accessed 11 August 2022).
- Gloucestershire Police Federation. (2022). National Detectives Survey Results Released. <https://www.polfed.org/gloucestershire/news/latest-news/national-detectives-survey-results-released/> (accessed 11 August 2022).
- Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). (2021). A Joint Thematic Inspection of the Police and Crown Prosecution Service's Response to Rape—Phase One: From Report to Police or CPS Decision to Take No Further Action. <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/joint-thematic-inspection-of-police-and-cps-response-to-rape-phase-one.pdf> (accessed 11 August 2022).
- Information Commissioner. (2022). Information Commissioner's Opinion: Who's Under Investigation? The Processing of Victims' Personal Data in Rape and Serious Sexual Offence Investigations. <https://ico.org.uk/media/about-the-ico/documents/4020539/commissioners-opinion-whos-under-investigation-20220531.pdf> (accessed 11 August 2022).
- Kemp, V. (2013). The Bridewell Legal Advice Study: Adopting a 'Whole-Systems' Approach to Police Station Legal Advice—Final Report. Available at: <https://warwick.ac.uk/fac/soc/law/research/centres/accesstojustice/usefulresources/broaderconsequences/blast-ii-report.pdf> (accessed 28 June 2023).
- Maxwell, J. A. (2010). Using numbers in qualitative research. *Qualitative inquiry* 16(6), 475–482.
- Metropolitan Police Service and Crown Prosecution Service London South Area. (2018). A Joint Review of the Disclosure Process in the Case of R v Allan: Findings and Recommendations for the Metropolitan Police Service and CPS London. <https://www.cps.gov.uk/sites/default/files/documents/publications/joint-review-disclosure-Allan.pdf> (accessed 11 August 2022).
- Noaks, L. and Wincup, E. (2004). *Criminological Research: Understanding Qualitative Methods*. London: Sage Publications.
- Norfolk Police Federation. (2022). #PFEW22: CPS Guideline Changes Causing a Crisis in Policing. <https://www.polfed.org/norfolk/news/2022/pfew22-cps-guideline-changes-causing-a-crisis-in-policing/> (accessed 11 August 2022).
- Parliament, House of Commons. (2021). Home Affairs Committee Investigation and Prosecution of Rape: Eighth Report of Session 2021–22 (HC 2021–22 193). <https://committees.parliament.uk/publications/9600/documents/166175/default/> (accessed 11 August 2022).