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“Shifting goalposts” and “fishing expeditions”": police case preparation and the application of the full code test in cases of RASSO

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Abstract

Purpose: Despite recent increases, the low level of convictions in cases of rape and serious sexual offences (RASSO), aligned with the subsequent lack of victim satisfaction with the process, has highlighted the various challenges and barriers throughout the criminal justice process. Whilst understanding the shortcomings of criminal justice processes in cases of RASSO requires a holistic approach, this paper focuses on case preparation and the application of the Full Code test. Its purpose is to explore the application of this test and preceding case preparation in police decision-making around submitting cases for charging decision, following the recommendations of the first year of Operation Soteria Bluestone.

Design/methodology/approach: This study adopted a mixed-method approach, combining both interviews and case reviews of selected RASSO cases across five forces in England and Wales.

Findings: This research found a shift towards “threshold thinking”, whereby officers arguably no longer try to predict a prosecutor’s decision and instead focus on meeting the requirements for the application of the test. In terms of case preparation, the research demonstrates a move away from “fishing expeditions”, with a preference for more focused approaches to collecting evidence.

Originality/value: To the best of the authors’ knowledge, this is one of the first studies looking at the use of full code test principles in police decision-making in RASSO cases.

Keywords

Decision-making, Threshold-thinking, Fishing expeditions, Full code test, Rape and serious sexual assault

Introduction

The poor landscape of prosecution and conviction in cases of rape and serious sexual offences (RASSO) in England and Wales has been at the forefront of academic, social and political attention. This is an auspicious time to discuss these issues. Recent figures have suggested that charge and conviction rates remain at alarmingly low levels. In particular, concerns have been raised around the threshold at which cases were being charged, with issue raised around the Crown Prosecution Service (CPS) dismissing “weak” cases to raise conviction rates (End Violence Against Women, 2019). These issues have led to the speculation that rape has, in effect, become decriminalised in England and Wales (Centre for Women’s Justice, End Violence Against Women coalition, Imkaan, and Rape Crisis England and Wales, 2020). Following the commission of the End-to-End Rape Review in 2019 which highlighted many of the issues with the policing of RASSO, promising increases have been noted. For example, recent quarterly

statistics have highlighted an increase of 134% of police referrals of rape cases to the CPS. Similarly, there has been an increase of 162% since 2019 in rape cases reaching Crown Court (HM Government, 2023). The most recent quarterly statistics from the CPS have revealed an increase in the proportion of suspects charged in the first quarter of 2024–2025 in cases of rape flagged (CPS, 2024). However, conviction rates remained static for rape flagged and decreased for adult rape flagged. Despite notable changes, previous research has consistently highlighted various challenges and barriers arising throughout the criminal justice process, from reporting to the police, the prospect of prosecution and during trials (see e.g. Gekoski et al., 2023; King et al., 2023; Stanko, 2022; Sinclair, 2022; Tong et al., 2011).

Whilst understanding the shortcomings of criminal justice processes in cases of RASSO requires a whole-system approach, focusing on specific areas of the process can help us start to unpick the complexity around these shortcomings. This paper is concerned with one such area: the application of the Full Code Test (FCT), including case preparation by the police. This is a crucial step in decision-making around prosecution. Indeed, the Code for Crown Prosecutors states that “prosecutors must only start or continue a prosecution when the case has passed [...] the Full Code Test”¹ (CPS, 2018, p. 7).

The full code test

To understand the role of FCT in cases of RASSO it is important, firstly, to provide an overview of what it entails. In England and Wales, a prosecution begins when a case is reported to the police. Following a report, evidence is gathered by the police and assessed before a decision to charge is made (College of Policing, 2013), usually by the CPS². The FCT is applied by Crown Prosecutors and police decision-makers when deciding whether a suspect is to be charged with an offence. The police play a critical role in such process, through evidence gathering and case preparation. In doing so, they must be cognisant of FCT rules, using them as principles when submitting cases to the CPS for a charging decision.

This test rests on two elements: the *evidential stage* and the *public interest stage*. The evidential stage involves an objective assessment of the evidence by prosecutors or police decision-makers, and they must be satisfied that there is enough evidence available to provide a realistic prospect of conviction against each suspect (CPS, 2018). [3] This should not be conflated with an assessment of whether the case is likely to succeed beyond reasonable doubt (which is the responsibility of the courts); rather, it is taken to mean that “an objective, impartial and reasonable

¹ Except in cases where the threshold test is applicable. This is not, however, the main focus on this paper.

² The Crown Prosecution Service (CPS) is responsible for prosecuting criminal offences in England and Wales.

jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged” (CPS, 2018, p. 7).

The second stage of the FCT concerns whether prosecution is required in the public interest. This entails a consideration and balance of public interest factors in favour and against prosecution. This includes a consideration of factors such as the seriousness of the offence, the harm caused to the victim and the suspect’s circumstances. In RASSO it is the evidential stage which poses more considerable barriers, given that the seriousness of these offences means that, where the evidential stage has been met, a prosecution will almost always go ahead (ACPO, NPIA and CPS, 2010).

Previous research

As a fundamental step in decision-making regarding prosecution, it is therefore surprising that few efforts have been made to explore the application of the FCT to RASSO where prosecution is, and has been, notoriously fraught. Nonetheless, some notable exceptions can be found. Research on police decision-making is particularly relevant here. A study by Harris and Grace (1999) found evidence of police “drawing on their experience of what the CPS will support” and thus factoring this into their decision-making (e.g., when deciding whether to “no further action” [NFA] a case).

While perhaps outdated, this research emphasises the challenges of predictive approaches. Similarly, Kelly *et al.* (2005) argued that part of the attrition problem is a “feedback loop where [...] everyone – including complainants – is second-guessing what the likely outcome at the final stage will be” (p. 80). Most recently, Sinclair (2022) evidenced a tendency of “downstream thinking” (p. 8) in which police officers second guess CPS and jury decision-making, resulting in a higher legal standard than necessary regarding case submission for charging. Finally, focusing on CPS response to rape complaints, King *et al.* (2023, p. 42) raised concerns about police use of Early Advice meetings as “prosecutorial steer” regarding predicted outcomes of the FCT, particularly the potential for this practice to be used as confirmation of initial unfavourable assessments.

Focusing specifically on the application of the FCT, a thematic review by Her Majesty’s Crown Prosecution Service Inspectorate (HCPSI, 2016, p.17) found that of 89 relevant cases, in 10.1% the FCT had not been properly applied, with one case being stopped by the police without referring back to the CPS. The review found further evidence of poor decision-making around the FCT by prosecutors, including decisions not always in line with the guidance available within the Code for Crown Prosecutors.

While rape myths and stereotypes are not the focus of this paper, it is also important to acknowledge their potential impact on charging decision-making and overall case preparation. Research has consistently demonstrated the pervasive impact of rape myth acceptance across the criminal justice system (see e.g. Gekoski *et al.*, 2023; Hohl and Stanko, 2015), arguably shaping decision-making from different actors. This “vulnerability” of RASSO cases to prejudiced or misguided conceptions of rape and victimhood raises considerable challenges throughout the decision-making process, including the application of the FCT.

With this in mind, the so-called *bookmaker’s approach* is illustrative of the formidable challenges which can arise at the evidential stage. The “bookmakers” (or predictive) approach refers to when the strength of a certain case and the evidence involved is assessed in comparison to the success rate of previous similar cases (or cases involving similar strength evidence). Put simply, this approach sees prosecutors considering what might happen based on their experience of previous cases, including attempts to second-guess potential jury prejudice and its impact on the likelihood of conviction, which may diverge from the decision which would be made based solely on the case at hand and consideration of what the legal threshold for charge is. This predictive and risk averse approach can therefore result in increased attrition rates as well as a perpetuation of narrow “real rape” stereotypes, due to the reluctance to prosecute more challenging or non-conforming rape cases (Carline and Gunby, 2016; Munro and Kelly, 2009). In contrast, a merits-based approach requires decision-makers to “ask whether, on balance, the evidence is sufficient to merit a conviction taking into account what is known about the defence case” (HMCPSI, 2016, p. 17). While references to these approaches are scarce in current guidelines, it is not to say that these are no longer relevant. Indeed, women’s organisations have previously referred to these concepts to highlight the CPS’ failure to fairly and successfully address RASSO, arguing that a move from a merits-based to a bookmakers’ approach had resulted in a steep decrease in prosecution levels (Barr, 2020). For example, as noted above, a report prepared by various organisations in response to the England and Wales Government’s “End to End” Review of the Criminal Justice System’s Response to Rape- highlighted the need for clear guidance alongside the FCT to avoid the risk of prosecutors adopting this bookmakers or predictive approach, which would similarly be more susceptible to the impact of myths and stereotypes (Centre for Women’s Justice, End Violence Against Women coalition, Imkaan, and Rape Crisis England and Wales, 2020).

The current study

As noted above, it is important to acknowledge that whilst the application of the FCT is the responsibility of the CPS, police officers follow its principles when deciding whether to submit a case for a charging decision. Therefore, the growing evidence available highlights the need to better understand police decision-making around the application of the FCT, including the

relevant steps towards case preparation and how these are carried out in day-to-day investigations of RASSO. The present study, whilst exploratory, begins to address this gap. This study was part of the larger, Operation Soteria Bluestone (OSB) project, which focused on transforming police responses to rape investigations in England and Wales³. Its collaborative approach brought together academics, policy leads, police forces, and prosecutors to provide insight into current practice and produce evidence to improve existing responses. One of the aims of OSB was to develop a National Operating Model for investigation of rape cases designed to support forces in England and Wales and provide guidance on investigating these types of offences (Casey, 2016). Findings from the first year of Operation Soteria Bluestone (OSB) highlighted challenges in decision-making around the application of FCT, particularly regarding the evidential stage. Concerns around victim credibility and perception around their believability in court also factored into decision-making around the FCT, with some officers applying this test incorrectly and on the assumption of a biased, as opposed to an unbiased, jury. The report also brought to light variations in RASSO charge rates across pathfinder forces, as well as challenges around charging decisions and communication with the CPS (Stanko, 2022). Such challenges and variations are further evidenced by lack of specialism across all forces. OSB's first year report found that most RASSO investigation teams were comprised of young and inexperienced staff associated with recruitment challenges and limited opportunities for accessing training even if available. This lack of specialist knowledge has cross-cutting consequences on the investigation of RASSO and has arguably led to an over-reliance on 'victim credibility' as the basis of investigative strategies and decision-making (Stanko, 2022).

Situated within this broad programme of work, the current study explored the initial perceived impacts, if any, of recommended OSB changes on how the application of the FCT is considered by officers in RASSO cases.

Methods

Design

This study adopted a mixed-method approach, combining both interviews and case reviews of selected RASSO cases across five police forces in England and Wales. This approach was deemed most appropriate to explore the impact of any changes occurring following the recommendations from year one of OSB (2022-2023). On the basis of these findings, it was recommended that forces consider the application of the FCT based on the assumption of a reasonable and impartial

³ This research was funded by the UK Home Office. It was designed by Katrin Hohl and Betsy Stanko, work package (pillar) leads were Kari Davies, Miranda Horvath, Kelly Johnson, Jo Lovett, Tiggey May, Olivia Smith, and Emma Williams.

jury, considering the strengths of the case and critically analysing the decision made, whilst ensuring all relevant information is shared with the CPS.

Participants

Interviews were conducted with thirty-two police officers across five police forces in England and Wales (Forces A-E). Police officers were of a mix of ranks, ranging from Police Constable to Detective Superintendent (see Barbin et al., 2024; Gekoski et al., 2023 for further detail). Additionally, interviews were also undertaken with five crown prosecutors (one from each of the five forces).

It is worth highlighting the exceptional research access facilitated by OSB's collaborative approach and the overall support for the project, particularly at higher ranks. Nonetheless, there were inevitable challenges in recruitment (e.g., low interview numbers for one force). Issues around resources (e.g., lack of availability from potential interviewees), for example, hindered data collection among some forces, particularly towards the later stages of the project (when many officers had already been interviewed).

Cases of adult rape offences were requested for review from each of the five forces. Overall, 59 cases were reviewed across the five forces. Police leads in each area identified cases based on the sampling criteria. Most forces provided researchers with secure laptops with full or partial access to their systems, with the exception of Force D which provided redacted copies of selected cases. Once relevant cases were identified, eight researchers analysed and coded them using a review tool (see below). Previous training and ongoing feedback were provided from the Case Review Method Lead to ensure quality and consistency in the process. An inter-reliability exercise was also conducted through a blind review of the same case carried out by two researchers. This was repeated for each force and overseen by the Case Review lead within the team to ensure consistency. Once coded, the case review data were content analysed. Similar to the interviews, this was reviewed to draw themes relating to the FCT.

Materials

Three semi-structured schedules were developed for interviews with police officers and one for crown prosecutors. These covered a wide range of topics, prompting participants to reflect on what (if any) changes had been made following Year 1 OSB.⁴

⁴ The design of OSB meant that recommendations were made to forces on an ongoing basis between September 2021 and September 2022, with forces introducing changes on an ad-hoc basis. There were delays to the year 1 report being published which were out of the researchers' hands which meant its publication in December 2022 does not align with changes occurring in forces.

Interview schedules for police officers revolved around general and specific changes to working practice (e.g., investigation strategy, application of the FCT, etc.), team structures, overall approach to the investigation of RASSO cases, among others. Participants were asked to discuss these in both general terms and more specifically, focusing on real or fictional scenarios. The interviews with crown prosecutors explored topics such as awareness of OSB changes, charging decisions, among others.

Regarding the case reviews, a review tool was used to conduct the analysis of the data accessed. This is a spreadsheet developed and tested by three OSB researchers in Year 1 with Force E, which was designed to individually analyse rape cases based on information found in police databases.

Procedures

This research has received ethical approval from relevant ethics boards at both Bournemouth University and the University of Suffolk. Participants were recruited via email, either directly or through OSB police leads (who acted as points of contact for each force). Those who expressed willingness to participate, were sent an information sheet and consent form before the interview.

Interviews were conducted and recorded using Microsoft Teams, in line with anonymity requirements from each force (see Barbin et al., 2024). The length of the interviews ranged from twenty-five minutes to one hour and forty-nine minutes, averaging at one hour and thirteen minutes.

Interviews with police officers were conducted between November 2022 and June 2023; whilst interviews with crown prosecutors were conducted between September 2022 and November 2022.

All interviews were audio recorded. Transcribing software (Trint) was then used to generate scripts of the interviews, which were then checked manually before the analysis.

Analysis

All interviews were analysed using thematic analysis, following the six stages described by Braun and Clarke (2006). This was deemed the most appropriate approach, due to its flexibility and independence from theoretical assumptions (Clarke & Braun, 2017). The analytical process began with a process of reading and re-reading transcripts, to allow researchers to familiarise themselves with the data. Through this process, initial general codes were developed. These were then grouped into themes (e.g., fishing expeditions, communication with CPS) which subsequently

reviewed and named, to create a thematic map. The process continued with the writing up of the main findings (Braun & Clarke, 2006).

Content analysis was also carried out for interviews using specific case scenarios. The analysis was conducted manually by the researchers who conducted the interviews. This involved particular attention to content relating to each case and the contextual meaning of the text (Hsieh & Shannon, 2005). Themes were drawn from the analysis of each interview, and a summary of each case was included for context. For the purpose of this study, transcripts were reviewed and reanalysed to draw themes relating to the understanding and application of the FCT.

To ensure anonymity, both prosecutors and police officers were assigned a participant code (e.g., A, Force; 001, random interview number). These are used in our presentation of the findings.

For the analysis of cases, using the tool described above, researchers gathered basic and contextual details of the case being reviewed (e.g. type of offence, characteristics of victim and suspect, outcome, etc.), alongside a qualitative assessment. This included eight thematic areas of particular importance for rape investigations (Suspect Focus; Repeat Offending; Investigative Strengths; Engagement with Victims; Collaboration; Decision-Making; Timeliness & Disruptions; Recordings & Write-ups). For each of these areas, there elements to assess and identify the strengths and weakness found in the case. After completing the evaluation of each case, researchers colour-coded each section in green, amber or red to indicate whether that area had improved, had an average rating or had overriding potential issues.

To ensure anonymity, case reviews have been assigned a document code (e.g., CRD, case review document; 001, random document number).

Findings

Three main themes surrounding the application of the FCT emerged from the analysis of the interviews. These concern a shift in decision-making around the submission of cases to CPS ('shifting goalposts'), a more intentional and guided approach to evidence collection ('avoiding fishing expeditions'), and a more streamlined approach to case preparation due to improved communication between the police and the CPS.

The findings from case reviews are presented at the end, focusing on recording practices around FCT decision-making.

Shifting goalposts: A threshold-focused approach to case preparation for full code test

Across multiple forces, interviewees identified an apparent change in approach to decision-making around the submission of cases to the CPS for FCT. Expressions such as ‘*shifting goalpost*’ or ‘*changing the threshold*’⁵ denote shifting mindsets around the role and responsibility of the police in assessing evidence. This did not entail a formal change of criteria around the FCT or a shift in the role of police decision-makers; rather, it seemingly involved a reframing of thinking around case preparation following OSB recommendations. For example, in Force E, three participants referred to a tendency of ‘*thinking further down the line*’ when considering submission to FCT. These participants argued that, while the application of FCT itself did not necessarily change, they were now looking at meeting the *threshold* for case submission rather than attempting to anticipate CPS decision-making and FCT outcomes. As E002 put it:

I think there was a bit of a tendency to think a stage further down the line before. So we would think, ‘Oh, CPS aren’t going to charge it, so we’re not going to submit it.’ Whereas now I think the thinking is much more, you know, we’ve met our threshold and now we can send it to CPS and then they can, you know, see if it reaches full code test, etc.

Another participant explained:

Right, we’ve got this one here, same level of early investment and input, same approaches applied. But this one, okay, we’ve got stuff here that we can actually go with, we can work with, and we have got a chance of actually getting forward to the CPS and we’ve actually got a chance of them saying, ‘Yes, okay’. And actually not making that decision ourselves, not (...) expecting or predicting their decision or even taking a step further, predicting what a court are going to say (...) (E001)

This threshold-focused approach was perceived by one participant as resulting from improvements in investigative strategies, such as ‘identifying lines of enquiry better, quicker, [and] more efficiently’ (E001), and officers becoming more discerning with regards to case investigation and preparation:

(...) we’re getting more discerning about actually recognising where we need to look, what we’re going to get, what we have got, and then actually making that decision, so that we

⁵ This should not be conflated with the threshold test. This test may be applied, in limited circumstances, when the FCT has not yet been met. Officers must always aim to complete all reasonable lines of enquiry while the suspect is detained, so that the FCT can be applied. However, if that is not possible, and release is not appropriate, the Threshold Test can be considered in circumstances where the seriousness of the case requires an immediate charging decision. In such cases, preliminary assessment of the evidence can be made, and the suspect can be charged, without the FCT being applied. However, the FCT must be applied as soon as there is sufficient evidence or material available.

can then really properly, efficiently manage the cases that we are going to get forward for Early Advice or the full code test. (...)

One participant noted, however, that in Force E this threshold-focused thinking was not widespread within the force and attributed it specifically to the guidance stemming from OSB:

I think that depends on who you're talking to. So, people outside of the [OSB] and that haven't gone through this kind of change in the last couple of years, still think about 'will the jury convict this' and that realistic prospect. But Bluestone very much driven by 'we should send it to CPS if we think it meets that lower threshold and let them decide'. And then it should be up to the jury (...). I think there are still old-fashioned ways that we don't send jobs that we should send. But OSB has definitely changed that and we're sending much more now. (E004)

Data from case reviews also seem to reveal that the threshold-focused approach is yet to be applied across the board, with officers still attempting to estimate the likelihood of conviction. For example, in one case in Force D, references can be found to proving the offence beyond reasonable doubt. While officers are required to assess available evidence and prospect of conviction, this does not involve considerations of whether the case is likely to succeed beyond reasonable doubt. Such a decision is made by the courts. This might be indicative of police officers attempting to anticipate court decisions, which appears contrary to the 'threshold-focused' approach. This is particularly evident in another reviewed case from Force D, where references were made to the potential for undermining evidence to be used by the defence to infer victim had lied. Similarly, in the review of another case from Force A, the researcher noted an attempt to anticipate the defence's approach to lack of forensic evidence, this being used as a reason to ascertain that the FCT would not be met. Nonetheless, other case reviews reveal instances of accurate application of the two stages of the FCT or threshold tests (see examples below).

The claims above were echoed by another participant in Force A who centred their thinking and decision-making around whether there is 'enough evidence' to allow for FCT application, rather than attempting to predict the likelihood of conviction:

For me, it's if you've got enough evidence to take it further. I don't ever sort of look into it. Oh, there's no chance of conviction, so I won't bother, I think, because that's not for me to decide. (...) I think I think you've got a go of evidence based. I think you can't go off thinking, "what are my chances of a conviction here?". I think it's got to be 'I've got enough evidence for a charge'. (A006)

A similar mindset shift was identified by a participant in Force B, who described a change in ‘goalposts’ around charging aligned with the *threshold-focused* approach mentioned above:

(...) the goalposts change slightly around what we might or might not charge. So, I do think we're probably more likely on the back of some of that NFA rape scrutiny with the CPS, on the back of some of the feedback in relation to investigations, to put the case through and request charging authority. So, I think that kind of threshold has nudged down a little bit as to as to what we would seek a charge on and whether that resulted in more charges, more convictions. (...) (B002)

Overall, interviewees rejected a ‘predictive’ approach where they attempt to anticipate CPS decisions around charging or, even further, jury’s perceptions of the strength of the case. As another participant in Force D summarised, “I think you need to meet the threshold testing to get to CPS. Ultimately, the CPS will have their views on whether it's a realistic prospect of conviction”. This shift seemingly reflects an improved understanding of the scope of police role and decision-making. As one participant put it, “we're sort of with the evidence collectors at the end of the day, and we've just got to bring everything together that we've got and refer that over”. Such perceptions are better aligned with FCT rules, thus potentially leading to a better application of their actual responsibilities.

Following these changes, according to interviewed police officers, more cases were being submitted to CPS and, subsequently, a perceived slow increase in charge rates was noted. Interviews with CPS prosecutors also appear to substantiate the increase in the number of cases sent for charging, because of OSB recommendations:

I think the biggest positive is that the volume of charges across [and in region] particular [Force E], has marginally exceeded the 2016 volumes – and you know that 2016 is the benchmark. That doesn't sit comfortably because the benchmark of 2016 is just a stepping stone for me. Obviously we need to go further ... But anyway, we've got there, and it was a huge jump and now we're gonna continue to go on. The data is all absolutely showing huge improvements. (CPS Area E)

Our charge to NFA rate has increased – so more charges to NFA. Whether that is down to a specific Operation Soteria measure, I think it's too early to say and I'd want to look at it over a 12 month period. (CPS Area C)

Interestingly, in CPS Area E, one of the prosecutors interviewed raised questions around increases in charging rates and the possibility of such increase being reflective of a ‘risk-averse culture’ among police officers (i.e., police sending only the “strongest possible cases”). They explained

how, at one point, charge rates hit a 100%. However, a slow shift was noticed, with charge rates decreasing to around 75%. Such a scenario was viewed more positively and was taken as a sign that the police were attempting to submit more cases beyond those perceived to be the strongest (and more likely to secure convictions).

These findings must be considered in the wider landscape of investigative procedures, but equally officer specialism and capacity. While sitting outside the scope of this paper, participants discussed issues of limited capacity and high workloads. Further research is needed to explore how pressure induced from large caseloads can impact decision-making at the point of submission for the FCT.

Avoiding 'fishing expeditions': an intentional and guided approach

Partly encouraged by communication with the CPS (see below), some participants noted a slight shift in investigative approach and, subsequently, case preparation. Participants across different forces and within the CPS described a more *intentional* and guided approach to pursuing lines of enquiry and evidence gathering, particularly around victims and third-party materials. One prosecutor described:

It's difficult because the one thing that we really wanted to correct was disproportionate lines of inquiry being pursued. (...) So it's quite hard. A message to say if it's a really straightforward case and it's really clear where the regulation's going, you probably don't need any advice. But at the same time, we know from history, that police officers have been following disproportionate reasonable lines of inquiry. So it's trying to find the balance between empowering them to make their own decisions and to progress the cases they see, but also make them realise actually they need a bit of self-reflection. (CPS Area E)

The pursuit of disproportionate lines of enquiry arguably was identified as a crucial area for change (Stanko, 2022), and some improvements were noted here. Whereas previous practice would seemingly focus on maximising evidence and materials collected around the victim (so-called 'fishing expeditions'), participants hinted at a more purposeful and focused approach, guided by reasonable lines of enquiry. Such a shift was equally noted in the more targeted and focused actions requested by CPS:

(...) they just provide you with guidance because before we would go out and get everything, like third party, whereas now they'll say, no, we don't need that. We're not digging on the victim, it's not a fishing trip. We only need to get this, this, this and this. (E008)

So we use early investigative advice, really we use it when we're looking at setting third party parameters (...) we might go for early investigate advice for the CPS to say, right, this is what the third party that we're looking for, what do you think we should be setting, do you think we should be looking at five years within the alleged incident, are we looking at ten years, are we looking at going through their entire medical history to see whether there's anything relevant? So that's what we would usually early investigate advice to set those parameters around third party to make sure that, everything we do is proportional and we're not just going on fishing trips (...). (B009)

The excerpts above capture the widespread view among this sample that early communication with CPS can result in more streamlined decision-making and reduced actions further down the line, thus improving timeliness of case preparation and submission for FCT. This more targeted and focused approach was also seen to reduce the burden of evidence placed on the victims (see below for further discussion), by favouring a suspect-focused approach. As participant A003 put it, “you make sure it's suspect focussed, don't be going off on tangents, getting all this stuff for no reason. It's got to be relevant”. Interestingly, these findings appear to be congruent with the shift described in the previous section, with officers avoiding ‘predictive approaches’ around CPS requests or decisions regarding evidence.

Communication with the CPS and the streamlining of case preparation

A consistent finding among police interviewees concerns the perceived impact of improved communication with CPS on actions and decision-making around case preparation and the application of the FCT. Officers across multiple forces emphasised the value of early communication in allowing for a more guided case preparation prior to submission for FCT, with CPS prosecutors emphasising the need to reduce actions plans and increasing timeliness of decision-making. For example, one participant discussed the value of investigative advice in improving timeliness around case preparation by potentially reducing unnecessary steps (or actions) in the process:

(...) the majority of the time you send up a file for a decision and then you get a whole load of actions come back to you saying, we require this, we require that we require this. So sometimes if you have that Early Advice in place, you speak with someone who, you know, you say, this is what I've got so far. And they say, okay, so what we may need going forward is, you know, a statement from that one person or digital download specifically targeting that, you know, the messages or the location data or whatever it may be. And so I think it's kind of preempting what... it is stopping you from having to do work a bit later down the line? I think it's kind of the aim of it. And yet, you know, maybe just like you said, sort of

offering just a little bit of strategy for us going forward and maybe stopping us from doing something that may not have been necessary. (A006)

This view was echoed by participants in Force E. Two participants noted a change in prosecutors' openness to discuss and provide guidance to the police prior to case submission. This perceived improved communication, including but not limited to Early Advice, was seen to positively impact case preparation. For instance, one participant mentioned such communication allowing officers to have "a bit of a better idea on where you stand [and] what cases will make it across" (E002). Another mentioned the importance of communication with CPS in streamlining decision-making and providing guidance around case preparation. While there is a risk of misconstruing the role of CPS in guiding investigations (and concerns were raised by CPS participants about the quality of officers' questions during Early Advice), improved communication was overall seen as an asset to case preparation (e.g., regarding how to write case files to make charging decisions more efficient), particularly in light of the fairly recent changes stemming from the Director's Guidance (6th Edition).

Interviews with CPS prosecutors also substantiated the importance of clear communication with CPS for improving overall timeliness around charging decisions and the application of the FCT:

I encourage my prosecutors to ask for and as part of that case build, but really look at parameters if they do need material. Well, let's really agree what those parameters are. Now, we may need to extend them. But our initial view should be quite not restricted, but within what we would think would be reasonable in those circumstances. So again, I think what I'm not able to control is that if an officer spends 18 months investigating it and then sends it to me for a pre-charge decision but in that 18 months has got family court proceedings is look through every educational record then I can't- I could say to them now you didn't need the family court proceedings. The educational records weren't of any relevance to this case. So immediately I can say to you, I could have saved you six, 12 months in your investigation. (...) So that early engagement can really decrease the timescales, I think, of the investigation. (CPS Area B)

The quotes above capture other participants' descriptions of a moving away from 'fishing expeditions', and the value of effective and early channels of communication with CPS that ultimately enable a more effective collaborative approach to RASSO cases, rather than working in silos. As one prosecutor mentioned, "We work together, we have different skill sets, and I accept that. But if the combination of those two can actually really support getting the best quality of the evidence from the victim, then that's going to be, and it would certainly be my view in terms of how we can actually progress cases and mix in." (CPS Area C). Another explained, "So

it's all about rapport building and getting them to say, Look, you can speak to us, we can help you with this and just encourage that. (...) We are here to help at the end of the day” (CPS Area E).

A good example of efforts to improve communication, reduce action plans, and improve general timeliness of investigations is the pre-charge meeting initiative introduced in one force, as described by one of the interviewed prosecutors, where it was noted that the “feedback from police and prosecutors has been very encouraging and is helping to build upon existing relationships” (CPS Area B). Another example included “a pre-charge advice list for RASSO cases” (CPS Area C).

These initiatives are in line with police requests for further communication, decision-making streamlining, and increased effectiveness in case preparation. One officer in Force B noted that:

one of the most positive changes [...] is a pre-charge meeting or post charge, not Early Advice, but if we are going to look to charge someone for sexual offences, we're back to now where the CPS, will ask for myself, says as an OIC and a supervisor to have a Teams meeting with them to talk about it. Because years and years ago we had a lawyer in the office, and it was the best thing going because you could have a conversation with them. Then as time went on, they got took away and we send a file off, they send a paper response, we look at that, send the paper response back to them. Terrible. And it took forever. So, we do now have again, and that's the best thing that's come out of it recently is a face-to-face, conversation with a lawyer which helps with these jobs. (B013)

Despite an overall positive picture of interactions with CPS, one participant in Force E highlighted how poor communication from CPS around charging decisions, coupled with administrative and online system issues, led to long delays in case progression:

It was submitted in April [year] and due to errors with our system, certain items hadn't been sent over and this wasn't identified early on by CPS and so I didn't receive a charging decision until August [year]. (E008)

Such delays were also noted in the case review data, including a warning of a two-month delay due to a backlog. These raise concerns around officers' ability to maintain good levels of engagement with victims, particularly within the context of already expected delays in criminal justice procedures. Moreover, despite discussions around potential improvements around timing of investigations, prosecutors still expressed concerns around timeliness within RASSO cases.

Data recording on the Full Code Test

Findings from the Year 1 of OSB highlighted the poor use of data recording systems with far-reaching implications for victims, police workloads, and overall police culture (Stanko, 2022). This section is centred around recording of the application of the FCT by the police, its outcome, and the rationale behind it. The FCT decision-making is a critical element of the investigation, and basic recording practices would suggest that recording this rationale is important.

Individual case reviews paint an inconsistent picture across the five forces when it comes to FCT. Of the 59 cases reviewed, in 22 there was explicit information about the application of the FCT,⁶ seven mentioned the FCT had not been applied, and seven cases were marked by the reviewers as non-applicable (e.g., in cases that were still ongoing or being referenced by the reviewer as ‘getting ready to submit’). Three of the cases reviewed mentioned solely the application of threshold test. Finally, 20 provided no details or made no mention of the FCT. Interestingly, of these cases, seven were coded as charged and/or summoned, seven were assigned an ‘evidential difficulties/victim does not support’ outcome (these were NFA cases), four cases were marked as ‘evidential difficulties (victim supports), and one was coded as ‘evidential difficulties (victim-based)’. We would expect, therefore, to see consideration of the FCT in all but the ‘victim does not support’ cases.

Recording of information concerning the FCT varied across the forces, which might be due to different practices or systems around data recording as well as issues of capacity and resources. In other cases, reviewers had no access to all documentation which could have compromised the analysis. For example, in case review CRE01 there was mention in police logs that rationale was provided in an MG6 form,⁷ but this could not be located within the data recording system. While some forces showed overall positive recording of rationale behind FCT application and decisions, the level of detail within forces also varied depending on the officer or supervisor logging in the information. Again, variation could be due to differences in recording practices across forces but may also reflect the data available to reviewers (see Stanko, 2022 and associated appendixes for further detail). For these reasons, no quantitative data is provided on what cases included rationale for FCT. There should therefore be caution in the interpretation of these findings.

Despite these limitations, to illustrate the wide range of rationales found in cases reviewed, examples are provided of cases at both ends of the spectrum (i.e., *good* and *bad* rationales). Examples of good rationales around FCT decision-making include, for instance, clear outlining of the different evidential sources available, including an overview of possible strengths and

⁶ This includes explicit references to FCT or mention of the application of evidential and/or public interest tests.

⁷ This form provides relevant background information to the case to assist prosecutors in their decision-making, and document police rationale for charging decisions (see <https://www.criminaljusticehub.org.uk/task/mg-forms/#chaptercollapse10>)

weaknesses of the case, and a suspect-focused approach. For example, CRD08 (outcome *charged and/or summoned*) details police decision-makers' responsibilities around the application of the FCT, outlining its stages, and providing strong rationale behind the evidential test. There is also good understanding and dispelling of rape myths. CRB03 also clearly sets out the FCT in the action plan, outlining both evidential and public interest stages. The reviewer also noted there were references to the strength of the case in the file submitted to CPS.

Poor rationales ranged widely from no rationale available to the rationalisation of rape myths when dismissing cases. For instance, CRD14, while explaining how the evidential test was not met (insufficient evidence and consequent no realistic prospect of conviction), mentions the victim's previous sexual relationships as undermining material. In CRD21, the rationale provided calls the victim's credibility into question, with the case reviewer noting that the 'rationale for NFA draws into rape myths'.

Discussion and implications for policy and practice

This work sheds light on police officers and prosecutors' perceptions of the impact of changes made to policing practice because of the Year 1 OSB recommendations, specifically on procedures surrounding case preparation and the application of the FCT. While the findings in this study should be treated with caution, encouraging signs of change can be found.

Firstly, it would appear an apparent shift in thinking around police decision-making on the submission of cases for FCT is occurring, with the predictive approaches outlined in previous studies less relevant in case submission. Previous research has often shown officers' attempts at anticipating CPS and, eventually, juries' perceptions of the case and the likelihood of charging and conviction when considering submission for a charging decision. In their mixed-method evaluation of two Sexual Assault Referral Centres in the UK, for instance, Kelly et al. (2005) found that, at different stages of the process, both police officers and complainants make decisions based on 'second guessing what the likely outcome at the final stage will be' (p. 80). Similarly, a qualitative study looking into the role of police officer's decision-making in rape cases in the UK found that 'police officers primarily make decisions on rape cases based on predictions of how likely cases will be to reach a conviction, including how likely a jury will be to deliver a guilty verdict' (Sinclair, 2022, p. 2). More recently, Murphy et al. (2022) argued that officers engage in 'downstream orientation' (Frohman, 1997) and anticipation of case uptake by prosecutors and jurors when assessing cases. These 'second guessing' or 'anticipatory' attitudes are reminiscent of the heavily criticised bookmaker's approach and lead us to suggest that decision-making should be made on the assumption of an unbiased court and jury.

The current study shows the start of an apparent departure from this predictive approach. While this should be considered in the broader landscape of investigative procedures and decision-making throughout the process, this finding potentially signifies a reframing of officers' perceived responsibilities in the application of the FCT and a better understanding of their role within this context. Given the exploratory nature of this study, further research is required to explore how extra-legal factors, from resourcing and capacity to perceived victim credibility, impact this decision-making and potentially shape threshold-thinking. Indeed, previous research has demonstrated that, beyond legal rationality, police decision-making is affected by extra-legal factors, including, for example, victims' gender, race, as well as rape myths and stereotypes, among others (see e.g., Brown et al., 2007; Dhimi et al., 2018; Gill & Harrison, 2016; Hohl & Stanko, 2015; Sleath & Bull, 2012). For instance, the recent OSB report on CPS responses to rape has equally found evidence of factors such as victim gender, lifestyle, and perceived victim credibility impacting decision-making (King et al., 2023). A holistic evaluation of the process is required here, as anticipatory bias (Spohn et al., 2014) can take place at any stage of the investigation and inevitably feed into the application of the FCT.

Another key finding in this study concerns communication with CPS and the perceived impact on case preparation, particularly around evidence-gathering focus and timeliness. Informal early communication and collaboration with CPS, beyond Early Advice, were seen to benefit case preparation, with police officers accessing relevant guidance which allows for a more focused case preparation. This was perceived to reduce actions during case preparation as well as address the evidence *burden* placed on victims, with officers encouraged to move away from 'fishing expeditions'. It is important to consider these findings in the broader research context regarding timeliness of rape cases. A recent study by Lovett et al. (2022) has highlighted the multiple challenges around timeliness of rape cases, including 'awaiting information from CPS' (p. 296). Similarly, the HMICFRS (2021) joint thematic inspection of the police and CPS' response to rape noted that, 'while communication and relationships between the police and the CPS at a senior level are good, we have concerns that this is not always the case between investigators and prosecutors' (p. 8). It was understood that poor relationships between CPS and police affect how cases are handled which can ultimately impact timeliness. Thus, the report highlighted the crucial role of communication in preventing cases from being 'delayed without good reason' (HMICFRS, 2021, p. 54).

It is also worth noting that, while the opportunities for increased and improved communication with CPS were viewed positively, risks over the misconstruction of CPS (e.g., around prosecutorial steer or investigation guidance) role cannot be ignored. Once again, the report by King and colleagues (2023) highlighted the risks of Early Advice being used to initial negative

assessments of the case. It is crucial that opportunities for communication are created which foster supportive and open-minded conversations over case preparation.

Apart from the opportunities for research already identified, these findings also highlight potential avenues for training and intervention with police officers and crown prosecutors. Crucially, alongside other OSB findings (Barbin et al., 2024; Gekoski, 2023), evidence presented here should be considered when identifying training needs and used to encourage opportunities for reflection police and prosecutors' role in case preparation and the application of the FCT. This study identifies the need for continued emphasis on the rejection of predictive approaches and the importance of a clear delimitation of police officers' roles, particularly beyond RASSO teams. Such recommendations can be extended to include not only RASSO cases, but equally domestic and familial abuse offences which are tainted with the historical unsuccess of prosecution and convictions (Westmarland et al., 2018). Additionally, findings from this study reinforce once again the need to foster cohesive and mutual relationships between the police and the CPS, in view of streamlining communication, improving timeliness, and reducing workloads. Countering fishing expeditions is fundamental not only from a victim satisfaction perspective, but also to ensure the efficient use of police and CPS time and resources.

Whilst the findings from this research are reflective of the context in which the research was carried out, this study adds to a growing body of research around the (slow yet) changing landscape of police investigation of RASSO cases.

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