

# Operation Soteria: **Improving CPS Responses to Rape Complaints and Complainants**

Final Findings from Independent  
Academic Research, December 2023

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This 'Final Findings' report builds upon the previous 'Interim Findings' report, completed by the research team in April 2023 and published by the CPS with its National Operating Model in July 2023. When citing or quoting from this independent academic research into CPS Operation Soteria, readers are kindly asked to refer to this 'Final Findings' report, which is intended to replace its 'Interim Findings' predecessor.

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# Abbreviations

|       |                                     |
|-------|-------------------------------------|
| ABE   | Achieving Best Evidence             |
| CCB   | Controlling or Coercive Behaviour   |
| CPS   | Crown Prosecution Service           |
| DPP   | Director of Public Prosecutions     |
| EA    | Early Advice                        |
| EEA   | Enhanced Early Advice               |
| IO    | Investigating Officer               |
| ISVA  | Independent Sexual Violence Advisor |
| MOU   | Memorandum of Understanding         |
| NFA   | No Further Action                   |
| NOM   | National Operating Model            |
| NPCC  | National Police Chiefs' Council     |
| OIC   | Officer in Charge                   |
| PCD   | Pre-Charge Decision                 |
| RASSO | Rape and Serious Sexual Offences    |
| VTP   | Victim Transformation Programme     |

# 1. Background to the Research

The adequacy of criminal justice responses to rape complaints and complainants has been the subject of considerable scrutiny – nationally and internationally – over many decades (for recent academic and reform discussion, see Cossins, 2020; McDonald, 2020; Killean et al, 2021; Gleeson & Russell, 2023; Horvath & Brown, 2023: see also Scottish Court and Tribunal Service, 2021; Gillen, 2019; NSW Law Reform Commission, 2020; Law Commission, 2023).

In England and Wales, recent years have been marked by a significant rise in the number of rapes being reported to police. The charge rate has not, however, kept pace with this: instead, it has been in marked decline.<sup>1</sup> Indeed, while police in England and Wales recorded the highest ever number of rape offences within a 12-month period in 2021, rising 13% from the same period in the previous year, Home Office data indicated that only 1.3% of recorded rape offences that had been assigned an outcome had resulted in a charge or summons, with CPS figures showing that the volume of completed rape prosecutions had dropped from 5,190 in 2016/17 to 1,557 in 2020/21. These statistics, and their featuring in mainstream media, led the House of Commons Home Affairs Committee to conclude, in its recent report into the *Investigation and Prosecution of Rape*, that “public confidence in the ability of the criminal justice system to respond to reports of rape, to support victims and survivors, and ultimately, to bring perpetrators to justice, is at what could be its lowest point” (2022: 3). Though the Committee acknowledged that a growing proportion of cases were being marked as ongoing, which might, in time, lead to a charge or summons – and thereby improve disposal rates – they were clear that overall volumes were nonetheless “shockingly low,” and that this sent a “terrible message” to victims and survivors of rape that “justice is clearly not being done” (2022: 9). Alongside concern over such attrition, moreover, the protracted nature of investigations, timeliness of charging decisions, and substantial delays in cases coming to trial that the Committee referenced here have also raised their own difficult questions about justice for victims of sexual violence, and public confidence therein (CWJ, 2020; RCEW, 2023).

The acute need to improve victim and public confidence in this arena has been widely recognised. The scale of the challenge in this respect ought not to be understated, however. Indeed, alongside various reviews of operational policy and practice in regard to rape complaints within criminal justice institutions, a substantial body of recent evidence has also documented alarmingly low levels of confidence amongst victim-survivors and the general public. This is by no means restricted to sexual offences – for example, a 2021 survey by the Victims’ Commissioner, which asked for views across all offence types, reported that 88% of victim-survivors lacked confidence in the effectiveness of the criminal justice system and 85% in its fairness (VCO, 2021: 8). However, within this wider survey, many of the most striking free text responses articulating participants’ reasons for this lack of confidence involved victim-survivors of domestic and / or sexual abuse. Moreover, data collected specifically from victim-survivors of sexual offences also bears this out. In an earlier study for the Victims’ Commissioner, which focused exclusively upon this cohort, anxiety regarding the prospects of being believed by police had been listed as a very important (74%) or important (21%)

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<sup>1</sup> See, further, the catalogue of ‘Sexual Offences in England and Wales’ overviews, at [www.ons.gov.uk](http://www.ons.gov.uk) and <https://webarchive.nationalarchives.gov.uk/ukgwa/20160105160709/http://www.ons.gov.uk/ons/index.html>

factor in their decision not to report (Molina & Poppleton, 2020: 11). Meanwhile, 88% said that it was either very important or important that they did not feel their case would be successful because of their gender, sexuality, or what the survey referred to as their 'lifestyle'; and 84% said that it was either very important or important that they had heard negative things about sexual offence trials and were hesitant to put themselves through that process (Molina & Poppleton, 2020: 11). These results were also supplemented with free-text responses, many of which demonstrated this conscious calculation of confidence in the process and its outcomes versus risks and re-traumatisation: as one respondent put it, for example, "my whole life and identity would have been ripped apart and scrutinised and there would have been a 0% chance of him getting prosecuted" (Molina & Poppleton, 2020: 13).

Though 92% of respondents in this survey were female, similar anxieties also dominate surveys undertaken with male victim-survivors. Of the 505 gay and bisexual men who completed a recent survey distributed by Survivors UK, 263 indicated that they had experienced sexual assault, but only 16% reported that they felt they could speak to the police about it, with a smaller percentage (14%) having made a formal complaint. Of those who had done so, while 24% said they felt the complaint was taken seriously and 36% felt supported in the process, 27% said they felt judged, 24% that their complaint was not taken seriously, and 20% that they were disbelieved (Thompson & Beresford, 2021: 24). Such concerns were also voiced powerfully in a series of 26 survivor interviews (23 females, 2 male and 1 non-binary) undertaken for, and documented in, a Joint HMICFRS and HMCPSI *Thematic Review*, as a consequence of which the Inspectorates concluded that much of survivors' trepidation regarding initial and ongoing cooperation with the criminal justice system was influenced by scepticism about, and poor perceptions of, both the process and its personnel (CJJI, 2021: 20; for further discussion, see also Munro, 2023). In addition, though disaggregated data across protected characteristics, including race and ethnicity, remains limited, research has revealed the ways in which victims' experiences of other forms of intersectional discrimination and disadvantage are likely to further diminish their confidence in criminal justice responses (Gill, 2010; Kanyeredzi, 2018). Indeed, Thiara et al (2015) have previously documented that existing services are often viewed as inaccessible and under-utilised by black and minority ethnic women in England and Wales. Drawing on a series of in-depth interviews with survivors to explore how "their intersectional location" impacts on perceptions of safety, protection and justice, Thiara & Roy (2020) have also highlighted that those who interacted with police, particularly in the absence of other advocacy or support, often felt disempowered and disbelieved, with explanations based on culture – defined typically as unchanging and homogenous – being prioritised in the responses they received (see also, HMICFRS, 2021).

Across both phases of their *Joint Thematic Inspection of the Police and CPS's Response to Rape*, published in 2021 and 2022, the HMICFRS and HMCPSI were clear: they concluded that the criminal justice system's response to rape lacked focus, and that justice personnel were too often driven by a mindset in which rape cases are seen as "really difficult," creating and justifying a "more cautious...approach" than that adopted in relation to other types of offence (CJJI, 2021: 2). The Sexual Offences Act 2003 had shifted the legislative landscape to establish a series of evidential presumptions of non-consent, and to require that any belief in consent maintained by the accused meet a reasonableness threshold, in light of consideration of any steps they had taken to ascertain consent. Nonetheless, the Inspectorates concluded that an imbalance remained towards the greater scrutiny of complainants' conduct and credibility



over that of suspects', which fed into a pattern of "some investigators and prosecutors focussing on fully exploring all the weaknesses in a case, rather than on building strong cases" (CJJI, 2021: 2). They called for "an urgent, profound and fundamental shift in how cases are investigated and prosecuted" (CJJI, 2021: 2). In furtherance of that, they highlighted the need for improvement in partnership working between police and CPS, with use of specialist training to facilitate a victim-centred approach, and a commitment to building strong cases through rigorous and targeted investigative strategy, and consistent decision-making.

In a similar, though perhaps somewhat less critical vein, the 2019 *Thematic Review of Rape Cases*, undertaken by HMCPSI, had likewise raised concerns about increased delays in charging, often precipitated by more extensive and protracted police investigations, and had recommended, as a priority, the development of better procedures for communication, partnership working (including around early advice), and escalation between police and CPS in rape cases (HMCPSI, 2019). This can be situated alongside a separate HMCPSI review, published in 2020, into the *Victim Communication and Liaison Scheme*, which raised concerns over the timeliness of letters sent by the CPS to victims, the sufficiency of explanation for decisions provided therein, the level of empathy exhibited in the tone and phrasing of such explanations, and the extent to which they were appropriately tailored to enable the recipient to understand their content (HMCPSI, 2020). Though not specific to communication in RASSO cases, this review indicated that letters in rape and serious sexual offence cases were more likely to be rated as unclear than in other types of cases, with re-use of standard paragraphs and / or over-reliance on legal 'jargon,' and that the levels of empathy were likely to be lower, notwithstanding this being a context where empathy should have been key (HMCPSI, 2020).

A consistent theme across these reviews, then, has been the importance – but also absence – of a 'whole-system' and 'coordinated' approach to responding to rape complaints and complainants. In this context, the ambition reflected in the title of the Government's *End to End Rape Review* is clearly apposite. Published in 2021, but accompanied by subsequent annual updates, this review was intended to gather existing evidence regarding the reporting, investigation, prosecution and conviction of adult rape offences in England and Wales, to identify primary causes of the ongoing and widening 'justice gap' in this context, and to develop a strategy to drive improvement with stakeholder accountability for securing change (MoJ, 2021). Whilst acknowledging that the reasons for the decline in the percentage of reported cases reaching court were complex and wide-ranging, the review was clear that they required to be acknowledged and tackled, with the reversal of this trend and improvement in the treatment of victims – regardless of case outcome – being operational priorities.

In concrete terms, the review set out an ambition to return the volume of rape cases being referred by police, and subsequently charged by CPS, to levels corresponding to a 2016 baseline in the current Parliament. It echoed the need for a rebalancing in investigative strategy to enable a more robust assessment of the behaviour of the suspect, and committed agencies to ensuring that recovery of victims' private data or digital material would be restricted to that which is relevant and proportionate in pursuit of reasonable lines of enquiry. Again, it was underscored that this would require more effective partnership working between police and the CPS, including better processes for and increased availability of early advice, as well as greater collaboration in respect of disclosure strategy, suspect-focused lines of enquiry, and mechanisms to challenge myths or stereotypes in case-building. All of this was

to be accompanied by a commitment to increased transparency and accountability, including through greater scrutiny of decision-making and the periodic publishing of criminal justice data on adult rape (including from the ‘Criminal Justice System Delivery Data Dashboard’).

In its recently published *Rape Review Progress Update*, which we will return to discuss in more detail in the concluding section of this report, the Government has taken stock, two years on from the publication of the *End to End Rape Review*, of its achievements against these targets (MoJ, 2023). It reports that police referrals to the CPS in adult rape cases have been steadily increasing, with recent figures putting the rate at 134% above the quarterly average in 2019 when the Rape Review was commissioned, and at a level higher than the 2016 baseline; with CPS charging rates following suit, albeit not yet meeting or exceeding the 2016 baseline on a consistent basis. The number of cases reaching court, and resulting in conviction, is also reported to have increased significantly, now at almost double the quarterly average in 2019. At the heart of this progress, the Government has suggested, has been ‘Operation Soteria’.

Reflecting an ambitious programme of activity across police and CPS, Operation Soteria aimed to develop sustainable and systemic improvements that will ensure better handling and outcomes in adult rape cases. In many respects, Operation Soteria initiatives represent an extension of activities and commitments already underway in response to the recommendations of the reviews cited above (and, indeed, several of their comparably critical predecessors). For example, to the extent that these reviews have highlighted the need for more effective partnerships across police and CPS, clearer mechanisms to ensure oversight and scrutiny of case progression, and better communication with and empathy towards rape complainants throughout their justice journeys, the *Joint National Action Plan* (JNAP) between police and CPS in England and Wales had already begun to provide important foundational infrastructure in support of this (CPS & NPCC, 2021). In 2021, this JNAP set out shared strategic ambitions for the next three years, with a commitment to evaluation and evolution as required throughout that period. Amongst other things, it committed to improving police and prosecutorial understanding of the impact of trauma, ensuring more timely and sensitive communication with victims, and working in more effective partnership with Independent Sexual Violence Advisors (ISVAs) to support complainants in giving their best evidence. It also undertook to embed better practice in relation to early investigative advice, subject charging decision-making to increased scrutiny, and improve processes for monitoring and escalating (lack of) progression in investigations. Specific commitments were also made around better guidance on balancing the needs of an investigation with the right to privacy in respect of digital or third-party material, and piloting a more ‘suspect-focused’ investigation model. Likewise, the *CPS Rape and Serious Sexual Offences (RASSO) Strategy*, produced in 2020 to guide organisational priorities over the next five years, committed to improving the gathering and use of performance data, strengthening collaborative partnerships with police at local and national level, increasing engagement with specialist third sector organisations, ensuring the proportionality of Action Plans and monitoring the timeliness with which they are completed, and increasing confidence by ensuring greater transparency regarding the operation of the CPS and its charging decisions (CPS, 2020).

Thus, Operation Soteria initiatives can be seen as a continuation of a process already underway to radically overhaul core components of how rape cases are responded to and evaluated by criminal justice professionals, both individually and organisationally. At the

same time, the galvanising impact of the *End to End Rape Review*, in dictating the increased pace, scope and scrutiny of that change under the banner of Operation Soteria has also clearly been substantial. Within policing, there has been an extended programme of activity, focused initially within four pathfinder forces, but expanding rapidly across England and Wales, that has been designed to improve victim liaison, drive suspect-focused investigation techniques, increase effective partnership working with CPS, identify training and development needs, improve the collection and use of data to inform practice, and ensure targeted and effective digital strategies (for detailed discussion of these initiatives and their outcomes, see Stanko, 2023). Alongside this, a series of pilot activities were also undertaken across CPS pathfinder areas, focused around six priority workstreams. Initially, five pathfinder areas were identified, which – as we discuss below – provide the sites of our data collection, though a sixth pathfinder area was subsequently added, and activities took place outside of the formal banner of Soteria in non-pathfinder CPS areas. The pathfinder areas themselves are geographically diverse, with a mixed composition of more urban and more rural populations, and ranging levels of ethnic and cultural diversity across local communities. They vary in unit size and average volume of RASSO caseloads, in the number of police forces from whom they would typically expect to receive referrals as well as the extent to which those different forces have been integrated into Soteria pilots, and the scale, structure and adequacy of ISVA provision in their locality. The potential impact of these variables, in terms of the choice, design and success of CPS pathfinder areas’ Operation Soteria initiatives, will be discussed in due course. All pathfinder areas benefitted from an uplift in dedicated resource to support Soteria activities, although resourcing continues to be perceived as a substantial challenge.

The six workstreams identified by the CPS were designed to dovetail with policing foci, whilst reflecting its distinctive prosecutorial role, remit, and organisational structure. Though envisaged as a series of complementary initiatives that would facilitate holistic improvement, each workstream was also grounded in its own specific rationale. Firstly, in respect of Early Partnership working, the aim is to build stronger investigations and prosecutions with shared development of reasonable lines of enquiry and proportionate approaches to digital and third-party material, that in turn will support increased and more timely referrals by police, improved file quality and higher charge volumes by CPS. To address concerns about the consistency and quality of progression decision-making, the NFA Scrutiny workstream aims to improve confidence by bringing to light case decisions via review by external stakeholders, increasing transparency and accountability, and creating greater opportunity to identify and share learning to facilitate continuous improvement, for example in disapplying myths and stereotypes or maintaining a focus on the suspect’s behaviour in assessing credibility and culpability. Meanwhile, the aim of the Action Plan Monitoring workstream is to improve the timeliness with which rape complaints are investigated and progressed, including by ensuring proportionate enquiries and effective mechanisms for task management and escalation where cases stagnate. Relatedly, activities under the Case Progression and Trial Readiness workstream are targeted towards timely and effective handling of cases to ensure fewer adjournments at pre-trial stage, as well as improving overall trial strategy and preparedness. In the context of the profound lack of victim confidence in the criminal justice process evidenced in the surveys and reviews mentioned above, the penultimate – Supporting Victims - workstream identifies the need to improve victim (and public) confidence, both by improving communication with complainants throughout the process and developing more effective partnerships with third sector specialist organisations and ISVAs, which it is also

anticipated will reduce the risk of victim withdrawal and support the giving of best evidence. Finally, the Our People workstream recognises the importance of ensuring RASSO units are appropriately resourced with what the CPS describe as “well-trained, motivated and resilient” staff, and commits to review training pathways, wellbeing offers and personnel development.

This report outlines key findings from our independent academic research into the design and operation of activities undertaken across each of these workstreams within CPS pathfinder areas during Operation Soteria. In particular, we explore the extent to which they have been – or are likely to be – successful in achieving change of the nature and scale roundly acknowledged to be required. As we discuss further in the Methods & Data section below, this analysis relies primarily on fieldwork undertaken from October 2022 – July 2023, at which point a new CPS National Operating Model (hereafter ‘NOM’) for adult rape was launched in England and Wales, drawing on initiatives implemented and lessons learned under Operation Soteria. In the concluding section of this report, we discuss in more detail the content and parameters of that NOM, and reflect on the challenges it is likely to face as it is embedded as ‘business as usual’ across police forces and CPS areas. Taking seriously the Government’s insistence that any progress achieved to date “is not the end,” and that it is “determined to keep up the momentum...to strain every sinew to ensure that the Criminal Justice System prevents and punishes this shattering crime, and that every rape victim gets the support and justice they deserve” (MoJ, 2023: 5), we will also highlight where we consider that further improvement, innovation, and investment is likely to be required, in and beyond the NOM.

## CPS Perspectives on the Background, Aims and Challenges of Operation Soteria

Before moving on to explore the substance and impact of specific workstream activities under Operation Soteria, it is important to note that, although in many senses precipitated by the kind of external and critical appraisals of the current response to adult rape discussed above, our interviews with CPS personnel, of varying seniority, also underscored their own appreciation and acceptance of the need for substantial change across the criminal justice process. More specifically, whilst several interviewees referred to the “halcyon days” (CPS 1) of the volume and charge levels reflected in the 2016 baseline as providing a context for the implementation of Operation Soteria, there was a wide recognition that simply returning to this would not be sufficient, and that more needed to be done to bring enduring change: as one put it, “the focus has been on how do we increase referrals from police to CPS and CPS charging cases because of that big drop from 2016, but it needs to be wider than that” (CPS 2). Though keen to underscore that there had been some important progress over time in the handling of rape complaints (with several pointing, in particular, to the evolution of ‘special measures’ such as the use of video-recorded police interviews, screens, supporters and live-links at court), interviewees were also under little illusion regarding the substantial decline in public confidence, often heightened by high-profile cases. Indeed, several acknowledged that “we’ve an awful long way to go” (CPS 6) and “a huge amount of work” still to do (CPS 1).

The impact of budget cuts, retraction of police specialism in relation to rape and serious sexual assault, rise in digital evidence and lack of effective oversight mechanisms to facilitate case management were all identified by CPS personnel as contributory factors in precipitating declining rates of case progression, increasing the length of investigations, jeopardising victim engagement, and agitating partnerships across criminal justice and third sector organisations.

Indeed, as one interviewee put it, the relationship between police and prosecutors had become “completely fractured,” whilst levels of trust between the CPS and the third sector had been “lost” as a result of a lack of transparency around operational decision-making (CPS 2). In this context, participants articulated the aims of Operation Soteria variously in terms of “increasing volume” and “improving the quality and number of prosecutions” (CPS 1), “faster, better, more challenges, better outcomes” (CPS 13), making “the right decisions and making them as quickly as possible” (CPS 6), changing “how we talk about this crime and consequences for it” (CPS 13), “increasing public confidence” (CPS 3), or improving “the journey of victims through the criminal justice process” (CPS 6) and “the way we interact with the victim” (CPS 1). Several observed, moreover, that while the focus on referral and charge volumes was important, “public confidence comes in many guises and it’s not just about numbers” (CPS 14). As another put it, alongside a focus on conviction rates, “success could take a number of forms” (CPS 35): it involves “engagement with our victims” (CPS 9) and “how the victim feels as a result” (CPS 44). Significantly, moreover, some CPS participants identified a sense of opportunity, more palpable than they had felt in the organisation for some time, to drive change around sexual offences: one recounted how “for years, I was asked to join the RASSO team and I wouldn’t because I always said I didn’t think I could make a difference. But under Operation Soteria, when I had the choice, I moved into RASSO...because actually I think we can make a difference now, if we’re ever going to change, it’s now” (CPS 6).

That ambition is certainly reflected in the rhetoric of the workstreams outlined above, but as we will demonstrate in this report, a clear-sighted evaluation of the extent to which they have been, or are capable of being, realised ‘on the ground’ is complicated by a range of factors. One such factor relates to timescales: systemic transformation that is embedded robustly in policy, practice and organisational culture takes time, and within that broader temporal landscape the activities undertaken as part of Operation Soteria are still embryonic. Their design, implementation and evaluation has, moreover, been truncated into timeframes shorter than the duration of many rape complainants’ criminal justice journeys, meaning that even early indications of end-to-end effects cannot be reliably ascertained. As one interviewee put it, while “the government and the public are really keen for us to deliver in, you know, what in criminal justice terms are very short timescales...We are in a post-pandemic recovery period...(and) the life of a case now has extended significantly...it’s going to take years for these cases to work through” (CPS 1). A further complicating factor is that CPS pathfinders were encouraged to trial different mechanisms and formats under Soteria (for example, in relation to provision of Early Advice), and to prioritise activities across the workstreams on the basis of their localised assessments of where change was most needed and most achievable. As one interviewee put it, Soteria is “about trialling and looking at things that may or may not work, giving it a go...the point is that different people are trying different things and let’s see what we can get as best practice” (CPS 7); whilst another emphasised that “we’ve linked in nationally and tried to do things that were different to what other areas were testing, just to ensure we could test as wide a range of initiatives as possible” (CPS 11). The logic behind such regional variation was to expedite learning in relation to what works, and what does not work, within tight timescales. However, as we discuss, this can also make it difficult to establish clear baselines for comparison, and to confidently predict what will ‘scale up’ most effectively at national level in a context in which, as CPS 1 put it, “consistency is critical to national public confidence” but “it’s really tough to deliver because of the environment being so different.” The implications of this are likely to be particularly

pronounced over the coming period as specific commitments around provision, made within the National Operating Model, require to be operationalised across all CPS and force areas.

In addition, it is clear that, even where they are performing maximally, the initiatives identified under both the policing and CPS strands of Operation Soteria cannot of themselves generate the ‘whole system’ reform in the handling of rape cases that recent reviews and diminishing levels of victim and public confidence indicate is required. Understandably perhaps, the primary focus of many Soteria initiatives has been on early-stage investigation, case building, partnership working and charge decision-making. The importance of those things cannot be understated, and their potential to shift the tone and content of subsequent trial experience is also significant. At the same time, there are factors beyond these parameters, including restricted court capacity, resourcing and legal scarcity issues (see, further, RCEW, 2023), the appropriateness and adequacy of judicial and barrister training, and at its most fundamental the adversarial dynamics of the criminal trial, that may impinge on the potential for holistic and radical change. These challenges, often associated with being “stuck in the middle” of the justice process (CPS 3), were identified by several interviewees, who expressed concern that “the CPS are the jam in the middle of the sandwich...on your own, you can’t change things” (CPS 6). The compartmentalised nature of the criminal justice process may bring benefits in terms of specialist knowledge and an opportunity for ‘checks and balances’ on any abuse of power, but it can also lead to fractured organisational cultures and incompatible operational procedures. Indeed, in many respects, Operation Soteria has been designed as an antidote to such effects in the policing-prosecution relationship. However, there are other interfaces across which partnership working and holistic approaches must be developed if ‘end-to-end’ justice is to be achieved. In later sections of this report, we will reflect on this further in the context of partnership working between CPS reviewing lawyers, paralegal officers and external prosecuting counsel, as well as between the CPS and the judiciary, where our findings indicate that there may be ongoing challenges.

Related to this, some of our participants reflected that, to the extent that the end point of the justice journey is envisaged to be the criminal trial, there must be confrontation with the inherent nature of “an adversarial system which means it’s never going to be...a good experience” for complainants (CPS 2). Though there are, no doubt, difficulties encountered by rape complainants that can be linked directly to the adversarial nature of trial proceedings, a number of interventions have been made to ameliorate some of the worst excesses of adversarialism, including in particular the use of screens and live-link testimony, provision of ‘rape shield’ protections, and – most recently – roll of out pre-recorded cross-examination. Greater operational reliance on trauma-informed approaches to explain what might otherwise appear as ‘counter-intuitive’ victim behaviour during and after an attack, including through the use of extended judicial directions in appropriate cases, has also made important in-roads. Thus, while it is right to be circumspect about the challenges that an adversarial environment poses, it is important to continue to think about how the needs and interests of all trial participants can be best served throughout their interactions with justice professionals. At the same time, as we discuss below, there remain differing views regarding the value of some of these initiatives in the adversarial setting, and their implementation by court processes and personnel that are already under substantial strain can cause difficulties.

Finally, before turning to the methods used in this research, it is important to observe that – as with any non-clinical context – initiatives under Operation Soteria have been designed and operationalised in a live environment, influenced in complicated ways by a range of factors. Amongst the most obvious of these in the current context is the advent of the Covid-19 pandemic which compelled changes to working practices within organisations (including greater use of video conferencing and remote communication) at an unprecedented rate, with tangible impacts on the reporting, investigation, and progression of RASSO cases (JICSAV, 2022). Though it is likely that lessons from that pandemic shift coalesced with initiatives under Soteria to increase early partnership working across police and CPS through use of online conference calls, etc., it is impossible to discern with any clarity which was the key driver. It is also important here to underscore that learning from Operation Soteria must be understood to mark a stage in the evolution towards substantial and systemic change, rather than any purported end point. There is inevitably more work to be done, not only to embed and refine initiatives and gather more robust and reliable evidence upon which to ground continuous improvement, but also to expand the insights from Soteria to benefit a wider range of stakeholders. This will require, amongst other things, more and better understanding of the experiences of minoritised victims, as well as a focus that extends beyond adult rape complainants to explore - with the same degree of urgency and concern - the experiences of minors who make complaints of rape or serious sexual assault to criminal justice agencies (see, further, for example, Lovett et al, 2018; Daly, 2022; Walker et al, 2019; Cossins, 2020).

## 2. Methods & Data

The CPS onboarded the research team to conduct this work independently of its own internal review and evaluation processes in July 2022. A large academic team had been involved in the development and evaluation of activities within the policing strand of Soteria for some time prior to this, and it was clear from the outset that the parameters and scale of the current research would be quite different. Specifically, this CPS research does not start from a pre-Soteria baseline in the same way and does not purport to provide an evaluation in any strict sense, albeit that our findings do shed substantial insight in relation to how Soteria initiatives have been implemented, and their successes and challenges to date. This work has also been undertaken in tight timescales, with parameters and methods targeted accordingly. For example, without undermining the potential importance of activities undertaken outside of the CPS's pathfinder areas, our analysis is restricted to these five sites, and does not include the sixth pathfinder area that was onboarded at a later stage. It has also been designed from the outset to focus on gaining a textured, in-depth qualitative understanding of activities through detailed one-to-one interviews, fieldwork observations and analysis of case files. Though its findings should be read in conjunction with the quantitative measures that inform performance metrics, many of which have been considered within CPS internal evaluations, its primary focus is less on tracking increases in referral rates or positive charge decisions, for example, and more on understanding the factors that facilitate effective partnership working; the adequacy of decision-making in relation to lines of enquiry, disclosure and case progression; and the barriers to improvement at the individual and organisational level.

Having commenced the work in July 2022, the period until September 2022 was focused primarily on a literature review of academic and policy materials, external Inspectorate and practice reviews, and internal operational materials and trackers, alongside a small series of scoping interviews with senior CPS colleagues. The purpose of these initial activities was to gain a clearer sense of the aims of, and challenges facing, Operation Soteria from a CPS perspective and to better understand the nature of pilot activities underway across pathfinder areas. Data collection in relation to practice 'on the ground' then commenced in October 2022. In April 2023, we completed an 'Interim Findings' report, based on fieldwork undertaken by that stage, which was published by the CPS at the launch of its new National Operating Model (NOM) in July 2023.<sup>2</sup> It was not the researchers' role to become directly involved in the development and design of products contained in that NOM, though we were involved in regularly communicating our emerging findings to those tasked with that responsibility and worked collaboratively with the policing academic team to support this. The vast majority of our fieldwork was completed by the end of July 2023; however, in October 2023, an opportunity arose for inclusion of judicial interviews, which were conducted in November 2023. This Final Findings Report develops and supplements our Interim Findings, drawing on the full range of data collected and analysed throughout this research period.

As outlined in Section 1, there has been a substantial body of research and commentary in England and Wales that has explored patterns of attrition in adult rape cases, and considered

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<sup>2</sup> <https://www.cps.gov.uk/cps/news/cps-rolls-out-national-blueprint-next-step-transform-prosecution-adult-rape-cases>



the bases and adequacy of decision-making by criminal justice professionals in that context. However, much of this academic work has focussed particularly on police involvement. There has been substantially less opportunity or access afforded to explore processes, dynamics and outcomes at the prosecutorial stage specifically. Hester & Lilley's work (2017) provides one notable recent exception, involving analysis of 87 police files, with access as part of the study to additional CPS paperwork relating to the subset of 17 complaints that proceeded to court, along with a small number of interviews with RASSO prosecutors. This was also an important study in underscoring the benefits of qualitative, contextual analysis to explore in detail how "different types of cases progress and the particular circumstances and needs of the victim" (2017: 187), as part of wider initiatives to better understand patterns of attrition and tackle associated justice deficits. While the present study arises against the specific context of Operation Soteria, it recognises the relatively under-researched nature of prosecutorial practice in England and Wales and has not limited its ambitions to learning lessons linked to a narrow interpretation of workstream activities. Instead, we have cast a wider lens to take advantage of the opportunity afforded by our unique access to CPS personnel, processes and paperwork. As we discuss below, we have also leveraged the more qualitative methodology advocated for by Hester & Lilley to shed what we believe to be significant and original insight into organisational culture, partnership working practices, and case decision-making within the CPS. Before turning to that discussion, we provide, in the remainder of this section, a brief overview of the types of data that have been collected and analysed, and an account of our recruitment and sampling. We also reflect on the strengths and limitations of the data sources that we rely upon, which it is obviously important to bear in mind in assessing our key findings.

### Operational Materials and Soteria 'Trackers'

Alongside a literature review spanning a substantial body of existing academic and policy material, and external Inspectorate and practice reviews, the researchers were provided with access by CPS colleagues to a range of internal materials, including RASSO training manuals, Memorandums of Understanding (MOUs) in respect of Early Advice pilots, and entries provided by pathfinder areas into monthly Soteria Trackers (dating back in some areas to August 2021). These Trackers were particularly helpful in the early stages of the research in clarifying the range of activities – and parameters of their operation – in each pathfinder area, given that regional variability was a deliberate feature of CPS Soteria plans. When we commenced the work, it was not clear that a comprehensive overview of such activities existed, and piecing this together was an important, albeit laborious, first step. Across the remaining sections of this report, we have continued to rely at times on information contained in those Trackers, but it is important to underscore that these documents were not always easy to interpret or navigate, with apparent inconsistencies in pathfinder areas' entries across time, and imprecise use of language and data. It is necessary to bear in mind too that they were completed for a particular monitoring purpose and that, in this context, some pathfinder areas provided substantially less detailed entries than others. Indeed, the level of information recorded overall on Trackers diminished in the months that immediately preceded launch of the National Operating Model. In part, this may have been because the contours of that model were more predictable and aspects of Soteria had become routinised; but as we discuss below, there was also evidence that resource pressures required areas to delimit some of their earlier ambitions under Soteria as time went on. We also benefitted in some cases from supplementary materials that reported on local-level evaluations of specific

Soteria activities that were undertaken in some pathfinder areas, but again the availability of this information was patchy and often more forthcoming from pathfinders in relation to which we already had the clearest insight into their activities via fulsome Tracker entries.

## Interviews

In order to gain greater insight into how the activities documented in Trackers were being operationalised, and what impacts they were having ‘on the ground’ in terms of changing practice, outcomes and experiences, we undertook a series of semi-structured interviews with key stakeholders. Interviews were conducted online via ‘MS Teams’ and were audio (and typically, video) recorded for subsequent transcription by a professional service on a confidential basis. Interviews were (with two exceptions where participants preferred to be interviewed alongside a colleague) conducted on a one-to-one basis, lasting on average 60 minutes, and using a schedule that was designed to take participants through key themes in the research, via a series of open questions that prompted reflections from participants in a sufficiently flexible manner to allow them to place emphasis where they considered most important or to draw upon wider insights or experiences. The schedule was modified slightly to accommodate different stakeholder cohorts but in all cases followed the same broad structure: asking participants first to describe their job role and key stages of their involvement in rape cases, then to explore what they considered success to look like in terms of the handling of rape complaints, what changes they had experienced over time in the ways in which complaints were handled, and how they understood the aims and objectives of Soteria. Thereafter, participants were led through a series of topics that focused on the particular objectives of Soteria workstreams, namely their experiences of partnership working; their use or perceptions regarding the value of Early Advice, in particular in terms of setting parameters for investigations; the criteria to be applied in making decisions regarding case progression and the quality and consistency of that decision-making; what they consider to be the markers of a well-prepared case for trial and their engagement with instructed counsel in rape cases; how they would describe their involvement with complainants and what they understand to be the appropriate roles of different professionals in supporting victims; what they consider to be the most rewarding and challenging aspects of performing their job role; and whether there are changes beyond Operation Soteria, as currently designed, that they feel would be required in order to ensure meaningful and lasting progress.

In total, we conducted 146 such interviews. Of these, 58 interviews have been with individuals employed within the CPS across a range of roles and levels of seniority. The majority of these CPS participants have been RASSO lawyers, of varying experience, including legal managers. In addition, however, we have spoken across the pathfinder areas with a number of paralegal officers, case progression and operational business managers, and – where relevant – victim liaison officers, as well as conducting a small number of interviews with national level CPS personnel. Within pathfinder areas, a mixed approach to the recruitment of CPS interviewees was undertaken. In some areas, an open call for participation was made with volunteers making themselves known to RASSO unit leads, who then passed on contact information to us for scheduling discussions. In other areas, following the open call, willing participants were asked to make contact with the research team directly and, to the best of our knowledge, unit leads were not aware in those instances who had put themselves forward. In most areas, though, this open approach was combined with some more targeted recruitment whereby a

smaller subset of individuals with specific roles or responsibilities were identified by unit leads and put forward to us for potential participation. Though this means that CPS interviewees were not entirely self-selecting, this approach to recruitment was required to allow us to best capture a range of experiences and insights from across the respective RASSO teams.

Alongside CPS colleagues, we have undertaken 33 interviews with counterparts in policing. Again, police interviews have spanned levels of seniority and while we have not had interview input from every individual force that feeds into the CPS pathfinder areas, we have ensured a mixed representation usually involving more than one force within each area and a cross-sample of established Soteria forces, recent expansion forces and yet-to-be expansion forces. Though the focus of our discussions with police was more tailored to their interactions with the CPS, our data from the police interviews should be read in conjunction with wider findings from the policing Soteria research team (Stanko, 2023). We have also undertaken 27 interviews with third sector professionals who either work as ISVAs or run ISVA services within the CPS pathfinder areas. Recruitment for both police and ISVA cohorts in the research has once more involved a mixed approach – in the first instance, we asked RASSO unit leads in each area to provide us with the contact details for their counterparts in policing in all relevant local forces, and for names of ISVA services (or individual ISVAs) that they tended to work with most frequently. We then made direct approaches to policing contacts, requesting that they circulate the call for participation to the most appropriate colleagues, as a consequence of which we were then contacted by interested parties to schedule discussions. In relation to one force, we had to adopt a different route to making our initial contact at senior level, since we had not managed to secure contact details directly from the CPS unit lead. Likewise, in relation to ISVAs, some unit leads provided individual points of contact, but in most cases, they provided us with the names of services and we reached out from there to a cross-section, trying to ensure at least some representation from ‘by and for’ services and those that provided specialist support to, for example, victim-survivors in LGBTQI+ communities. Though we faced a degree of challenge in recruiting these cohorts for interview, in some instances attributed by contacts (particularly in policing) to “Soteria research fatigue,” we have achieved a strong representation of views from within these constituencies and secured a good cross-section of participation spanning each of the five CPS pathfinder areas.

We have also conducted a total of 16 interviews with RASSO barristers, all with many years of experience working in the arena of sexual offences and with a good spread of representation across geographical circuits that map broadly to CPS areas. Those barristers were identified in the first instance by requests to RASSO units for details of the chambers or individual counsel they most often instructed, to whom we then reached out directly with invitations to participate in the research, alongside some ‘snowballing’ from those individuals and existing contacts. In addition, as noted above, in the final stages of the research, we were able to secure permission from the Judicial Office to conduct interviews with Crown Court Judges. We reached out to Resident Judges in each of the Crown Courts most likely to hear cases originating from pathfinder RASSO units, and from there identified individual judges who were most well-placed and willing to participate in interviews with us. In total, we were able to conduct 12 such judicial interviews, again with a reasonable spread across circuits.

| Interview Cohort   | Completed  |
|--|--|
| <b>CPS</b><br>Includes lawyers of varying seniority & experience in RASSO, paralegal officers and case progression managers      | <b>Total = 58</b><br>National = 6<br>Area A = 9<br>Area B = 13<br>Area C = 9<br>Area D = 9<br>Area E = 10<br>Other Areas = 2 |
| <b>Police</b><br>Includes officers of varying rank & experience, across a mix of Soteria and non-Soteria forces in each CPS area | <b>Total = 33</b><br>Area A = 6<br>Area B = 7<br>Area C = 4<br>Area D = 7<br>Area E = 9                                      |
| <b>ISVAs</b><br>Includes frontline ISVAs and Service Managers, from a range of services across each CPS area                     | <b>Total = 27</b><br>Area A = 5<br>Area B = 8<br>Area C = 4<br>Area D = 5<br>Area E = 5                                      |
| <b>Barristers</b>  | <b>Total = 16</b><br>Area A = 4<br>Area B = 2<br>Area C = 5<br>Area D = 3<br>Area E = 2                                      |
| <b>Judges</b>  | <b>Total = 12</b><br>Area A = 3<br>Area B = 3<br>Area C = 3<br>Area D = 2<br>Area E = 1                                      |

## Observations

Though the interviews provided extremely helpful insight into activities, successes, and challenges under Soteria, it was important in this research to seek to triangulate and test perspectives shared during interviews with observation of ‘on the ground’ CPS practice. In order to do so, the research team observed a sample of 36 Advice Discussions, where a police officer and CPS reviewing lawyer considered investigative and prosecutorial strategy in a given case at an early stage. The majority of these fell under the banner of ‘Early Advice’ pilots

(n=33), although we have also included in this cohort a small number (n=3) of Pre-Charge Decision discussions that have similarly been conducted in person by the lawyer and police officer. In addition, we have observed 15 Scrutiny Panels (spanning NFA and RASSO-focused Local Scrutiny & Involvement or Multi-Agency Panels), sat in on forums designed more broadly to facilitate CPS / ISVA communication (n=7), and attended 4 RASSO training events.

While identification and attendance at the RASSO training events was facilitated centrally by policy colleagues within the CPS, observation of the other forums outlined above was dependent on pathfinder area unit leads (or occasionally individual lawyers within units) drawing the meetings to our attention and assisting us in organising attendance, including by seeking prior permission from the police in relation to Early Advice and PCD discussions. As with the identification of CPS colleagues for interview, some areas have been more proactive in facilitating such observations than others and differences in how RASSO units organise their EA provision, or the format and frequency with which they undertake scrutiny activities, means that there is still some degree of regional 'patchiness' to our observation sample.

It is also important to note from the outset that the level of information that we were provided with as a research team ahead of these observations varied significantly across meeting type and pathfinder area – for example, in some areas, we received redacted case file data ahead of NFA panels and key documents ahead of EA observations, whilst in other areas we were not provided with paperwork in advance at all. Where the latter occurred, most lawyers took an opportunity at the start of the Advice observation or Scrutiny discussion to give a brief overview of the case and the core issues at hand, but this was not universally the approach taken; and in some instances, the research team thus had to make sense of the case in the moment, evaluating advice given or decision-making with only partial insight. There was also significant variability in the time diarised for Advice discussions across areas, as well as in their actual duration, with some observations being completed within a matter of minutes, most being in the range of 30-40 minutes, and some extending to more than an hour. Though, over the duration of the research, some in-person Scrutiny panels had been scheduled, most were subsequently either cancelled (a pattern that we will reflect on further below) or moved to an online format. As a result, all Advice and Scrutiny observations (except the 3 most recent Scrutiny observations, undertaken in Areas B and D respectively) have been via 'MS Teams,' though ISVA forums / panels have involved a mix of online and in-person.

It would not have been appropriate for the researchers to record any of the observations that we have undertaken. As a result, we rely here on notes taken contemporaneously. Though these do not record verbatim for the entirety of proceedings, they do capture verbatim extracts, and overall provide a comprehensive account of the content of discussions, together with observations in field notes about the dynamics and tone of the meeting. Any identifying information was removed from those notes before they were saved securely in our dataset.

In a context in which, as we discuss below, CPS initiatives under Operation Soteria have included more routine offering of 'familiarisation meetings' with complainants after a charge has been authorised, we had hoped in this study to observe a small number of those meetings to better understand the nature and quality of lawyers' engagement with victims. This has not been possible, however, due to a combination of what pathfinders indicated has been a relatively low uptake by complainants and a decision by the researchers, for ethical reasons,

to restrict our observations to cases in which the complainant was in receipt of ISVA support. In the absence of these observations, we have explored ISVAs' and lawyers' perceptions of familiarisation meetings alongside their wider reflections on CPS / victim communication.

| Observation Type   | Completed   |
|--|---|
| <p><b>Advice</b><br/>Includes Early Advice and Pre-Charge Decision Meetings held between CPS Lawyer and Police Officer</p>   | <p><b>Total = 36</b><br/>Area A = 7<br/>Area B = 7<br/>Area C = 8<br/>Area D = 7<br/>Area E = 7</p> |
| <p><b>Scrutiny</b><br/>Includes NFA Scrutiny and RASSO-focused Local Scrutiny &amp; Involvement or Multi-Agency Panels, at which decisions made in selected cases are reviewed</p>     | <p><b>Total = 15</b><br/>Area A = 2<br/>Area B = 1<br/>Area C = 6<br/>Area D = 2<br/>Area E = 4</p> |
| <p><b>Forum</b><br/>Includes ISVA Forums and Panels held by CPS at which wider issues regarding management of RASSO (c.f. a focus on scrutiny of specific decisions) are discussed</p> | <p><b>Total = 7</b><br/>Area A = 2<br/>Area B = 1<br/>Area C = 2<br/>Area D = 1<br/>Area E = 1</p>  |
| <p><b>Training</b></p>   | <p><b>Total = 4</b></p>   |

## Case Files

Alongside these observations, the researchers have also had access to a sample of CPS case files. As noted above, it was never the intention in this study to undertake case file analysis across a large or potentially representative sample: apart from anything else, the timescales within which the work required to be completed, as well as the primary focus on qualitative over quantitative analysis, entailed that this would not be appropriate. Furthermore, internal stakeholders within the CPS are better positioned to gather and analyse data on case

performance and outcomes on this larger scale. That said, it had initially been envisaged that the research would benefit from close engagement with the content of a greater number of case files (n=50) than has ultimately been possible. Due to unanticipated delays and costs in the redaction of case files, we have only been able to review a total of 24 full case files. These case files were substantial, however, very often running to several hundreds of pages; and our close reading of them has provided rich and detailed insight as part of this wider dataset.

The case files within our sample were selected at random, following a request from central CPS colleagues on 23<sup>rd</sup> August 2022 to each pathfinder unit lead, whereby they were asked to provide a list of Case URNs pertaining to all cases with a section 1 SOA 2003 rape offence involving an adult complainant that had been received by the CPS in the past 12 months, with no further filtering in relation to charging decision, etc. A randomisation process using Excel was carried out on each of these lists with the first 5 files listed in the 100<sup>th</sup> randomised URN set being selected. The details of these 5 URNs were then returned to each unit lead who located the relevant paperwork and submitted it back to CPS central teams for redaction before the files were passed to the research team. During this redaction process, it became clear that one of the files selected did not in fact involve an adult complainant and was therefore removed. Though the ability to engage closely with individual case files has been valuable in this research, compliance with data protection duties and the terms of data sharing agreements for this project entailed that a level of redaction was applied to the case files. On some occasions, this meant that it was not possible to confidently piece together the whole evidential account or fully understand and assess the logic underpinning disclosure strategies. Demographic information that might have assisted in contextualising evidential accounts and evaluating decision-making, where it was recorded, was also often redacted prior to the researchers' receipt of files, in fulfilment of the CPS's data protection obligations.

Alongside detailed, qualitative analysis of the content of the case files, which we explain further below, we have extracted some key information about the cases and their outcomes, which we recorded via an 'Excel' spreadsheet and analysed using 'SPSS' software. Though obviously making no claims to generalisability given the sample size, extracting and collating this information has allowed us to better understand the parameters of the dataset, and to draw out more effectively themes regarding, for example, case types, management, and outcomes, as well as identifying more clearly gaps in the information contained in those files.

Though this was not stipulated as part of the selection criteria provided to pathfinder areas, all of the cases within the sample involved female complainants who had made complaints against male suspects. While there were a small number of cases where the precise age of the parties was unknown (n=3), reflecting the selection criteria, all related to at least one incident involving at least one complainant over the age of 16, with a significant proportion involving complainants aged 16-25 (n=11). By contrast, over half of the suspects in the case files were aged between 25-60 when the incident occurred (n=14). Age differentials between the suspect and victim could be significant, particularly where the complainant fell in this younger bracket: indeed, in 7 of those 11 cases, the suspect was at least 8 years older, with the suspect being two or three decades older in 2 cases that involved victims aged 16-18.

In a context in which previous research has demonstrated the "invisibility" of LGBTQ+ rape victims from the criminal justice system, reflecting additional barriers to reporting and case

progression (Lilley-Walker et al, 2019; Rolle et al, 2018), it was rare for information on the sexual orientation of complainants to be recorded in the case files. However, it was specifically mentioned in two instances. In 'Case File 17,' it was noted that the victim had informed the defendant she was lesbian, in order to deter him from making sexual advances, but she stated in her Achieving Best Evidence Interview (ABE) and throughout the subsequent investigation that she had lied about this and was, in fact, heterosexual. Meanwhile, in 'Case File 2,' the complainant identified as a lesbian and this was drawn upon by police and the CPS alike to suggest a greater likelihood of lack of consent to sexual activity with the male accused.

Notwithstanding the significant concerns that have been raised regarding poor documentation of, and reflection around the effects of, victims' racial or ethnic identities in RASSO cases, this was not consistently recorded in our sample, and where it was recorded, it was often redacted by the CPS to comply with the requirements of data sharing agreements. Across the case files, we were able to identify specific references to the ethnicity of the complainant in only 4 cases. In two of these ('Case File 12' and 'Case File 17'), this arose via unredacted sections in witness statements that described the complainant as 'white.' Interestingly, in both of these cases, there was a suggestion that the suspect was non-white. In the remaining two cases ('Case File 7' and 'Case File 8'), the complainants were identified as Asian or Asian British, with the relevance of this being drawn upon during the investigation to frame the reported (domestic) rapes in a wider context of cultural and honour-based abuse, as we discuss in Section 4. In 6 of the case files, we located non-redacted information that was potentially indicative of the suspect's ethnicity. In all of these cases, this pointed to them being non-white. This often arose, however, in the context of attributions made by complainants or other witnesses. In some cases, this was based on physical appearance – such as in 'Case File 22,' where the complainant described the suspect to police as being "black or mixed race" on account of having "light black skin colour" and "black, afro hair." In other cases, it was based on even more problematic indicators - in 'Case File 17,' for example, where it was noted that the complainant had, more than once during her video recorded investigative interview, described the suspect (who was identified in documents arising later in the investigation as an asylum-seeker, and who required an interpreter during his police interview) as having "that Indian smell." These are clearly imprecise mechanisms for the identification of ethnicity, which are at risk of being grounded in stereotype or prejudice.

In line with other research, which has documented the correspondence between alcohol and / or drug use and sexual assault (Scott-Ham & Burton, 2005; Finney, 2004; Abbey et al, 2001), the intoxication of either or both parties was recorded as a factual feature in over one-third of the case files (n=9). Equally, and also in line with the findings of recent research in other jurisdictions (e.g. New South Wales - Quilter & McNamara, 2023; Scotland - Cowan et al, forthcoming), lack of capacity to consent due to that intoxication was not often used as a foundation when building a case towards charge, or eventually trial. This was so even where the degree of intoxication appeared significant, indicating that its effects were still not deemed sufficient by police or prosecutors to eliminate capacity. In one of the few cases where the prosecution relied more heavily on the fact of the victim's intoxication ('Case File 21'), a not guilty verdict was ultimately returned at trial, with counsel's adverse outcome report noting that "despite a case built on previous behaviours, apologies in text messages, a strong witness in the victim and a defendant who fell apart at cross...the jury asked if there were any injuries (as the defendant is said to have held her down)." As counsel noted, this



implied that the jurors had assumed that there needed to be bruising or injuries in order to substantiate the rape. Though its tenacity amongst (mock) jurors has been demonstrated in several prior studies (Chalmers et al., 2021; Ellison & Munro, 2009; Finch & Munro, 2007), this assumption is both legally incorrect and factually unlikely, especially where the complainant is so intoxicated as to be drifting in and out of consciousness, as had been alleged in this case.

Given the restriction to adult complainants in the sampling frame, age-related capacity did not arise as an issue in any case files. Allegations that the suspect had intercourse with victims whilst they were, or were pretending to be, asleep were raised in 17% (n=4) of cases, and most commonly in situations where the parties were in a pre-existing relationship (75%, n=3).

In over half of the cases (n=14), the complaint related to a single incident, with the remainder involving allegations of multiple assaults. While most cases involved a single complainant (83%, n=20), 4 involved allegations from more than one victim. Ten cases (42%) involved a complainant who had made a previous allegation of rape or serious sexual assault, with this having resulted in a police investigation in 4 of those cases. Meanwhile, of the 19 case files in which the information was recorded without redaction, 3 involved suspects who had received prior convictions or cautions for sexual offences, with a further 4 involving suspects against whom one (but typically more) complaints of rape or serious sexual assault had previously been made and investigated by the police (totalling 37%). 6 cases involved suspects who had previously been convicted of offences under the Offences Against the Person Act 1861, with 5 having convictions against them specifically in relation to prior incidents of domestic abuse.

Though it is known to often be the case that victims of rape will delay reporting, sometimes for substantial periods (see, e.g. Brooks-Hay, 2019), it is notable that in the majority of cases in this sample (n=18, 75%), police had been informed of the incident within two weeks of its occurrence. In Section 4, we discuss the efforts that have been made to disapply myths and stereotypes, including in relation to the relevance of timely reporting, in assessing credibility. It is worth noting here, however, that in one of the few cases where there was a substantial delay, extending to almost two decades, counsel's adverse outcome report following the accused's acquittal noted: "the complainants gave their evidence well" but "these allegations were not brought to police attention for many years, and when deciding if they were sure, the jury were bound to ask themselves why that was if they were true" ('Case File 10').

In line with national prevalence data on sexual offending (e.g. ONS, 2021), just under half of the case files (n=10) involved parties who were in a relationship at the time of the incident(s); and in a further 4 cases, they were ex-partners. This can be situated alongside the fact that over half of the offences took place in the home of the victim (n=13), with a further 3 occurring in the home of the accused. In some instances, the home of the victim was also, of course, the home of the accused where the parties were in a cohabiting relationship. The size of the dataset meant that detailed statistical analysis, for example using chi squared tests, was not possible, but cross-tabulation did indicate potential patterns, many of which correspond to existing evidence regarding the incidence of sexual victimisation. In 80% (n=8) of the existing relationship cases, for example, multiple incidents of rape or serious sexual assault were reported, with accompanying physical injury being present in 50% (n=5); and in 40% (n=4), the suspect also had previous convictions or civil orders against them in regard to domestically abusive behaviour towards current or historic partners. In 90% (n=9) of these

cases, we identified material within the case files which indicated the existence of coercive and controlling behaviour by the suspect towards the complainant, although as we discuss further below, and in Sections 4 and 6, this was not often relied upon to bring related charges.

Four cases (17%), despite having been referred to the CPS for a charging decision, were ultimately 'No Further Actioned' by police after reviewing lawyers indicated that the threshold on the Full Code Test had not been met, while 2 more were abandoned as a consequence of victim withdrawal. In one other case, though the CPS proceeded to bring charges against the suspect, the complainant's allegations of multiple incidents of rape by her abusive then-partner were dropped, with sexual assault, assault and coercive control charges being brought instead. Most often, where charges were brought by the CPS in these case files, the indictment was for rape (n=15), although sexual assault (n=5) or assault by penetration (n=3) were sometimes charged instead or in addition. However, despite the substantially higher prevalence of coercive and controlling behaviour that, as noted above, we identified within the accounts provided by complainants, in only 3 cases were charges brought under the Serious Crime Act 2015 in relation to this. While some case files (n=5) were still the subject of ongoing investigation at the time of writing, of those which had proceeded to trial, 8 had resulted in acquittals (33%), in one case – 'Case File 1' – due to the prosecution ultimately not offering any evidence. 63% of these acquittals (n=5) involved complainants who had made previous allegations of rape or serious sexual assault, and in 50% of the acquittals (n=4), there was evidence of both parties being under the influence of drink / drugs at the time of the incident. Meanwhile, 4 cases had ended in conviction, albeit that in two of those cases, this was the result of the defendant's plea, and in one instance only to a lesser, sexual assault charge. In another of the cases where a conviction resulted, it had involved a swathe of allegations of indecent / sexual assault and rape, of both minor and adult victims: the jury returned a mixed profile of verdicts with 3 of the 4 rape allegations that involved adults being in the minority that received a 'not guilty' outcome. In 50% of the cases where convictions were secured (n=2), the complainant testified that she was asleep at the time of the offence(s), and in 75% (n=3) they had made allegations of rape across multiple occasions, in contrast to 63% (n=5) of the cases that ended in acquittal having related to a single incident.

## Data Analysis

Anonymised transcripts of interviews, together with observation notes, were uploaded for qualitative analysis using 'Nvivo'. Case files were also uploaded to this platform for coding, but the size of files and the scale of redaction meant that such coding was likely to be of limited value. Instead, therefore, the team reviewed case files and produced summaries that included extracts from key documents, alongside narrative explanation and researcher reflections. These summaries were situated alongside the 'Nvivo' coding of transcripts and observations to supplement and contextualise themes arising from that data. Where possible, the team have also sought, and been provided with, updates in relation to cases that were being investigated or awaiting trial when files were selected by pathfinder areas for inclusion.

To provide further contextualisation, we also collated 'meta data' in regard to key characteristics and outcomes across the full range of cases with which we have interacted during this research. Alongside the 24 case files discussed above, this extended to a further 91 RASSO cases across pathfinder areas, of which we encountered 36 during Early Advice or

Pre-Charge discussions between police and CPS, and 55 during observation of Scrutiny Panels. The level of detail we have about these cases varies considerably, of course, depending on the nature of our interaction, and the fact that a significant proportion of the 55 cases discussed during Scrutiny Panels involved 'No Further Action' decisions should be borne in mind. Nonetheless, this collation of data has provided some additional and useful insights.

For example, in line with the case file sample, as well as national prevalence data on sexual offending (e.g. ONS, 2022a), it has shown that the overwhelming majority of the cases we interacted with involved female complainants (n=103, 90%) and male perpetrators (n=107, 93%). Only in 3 cases was the victim identified as being homosexual. In the overwhelming majority of cases, the ethnicity of neither complainant (n=104) nor accused (n=103) was referenced in the information to which we had access. In some cases, it was, however, possible to infer – with varying degrees of confidence and comfort regarding that inference – that the parties were from black and minority ethnic communities, for example, as a result of discussion around particular cultures or beliefs in the case or descriptions of parties' appearance. Partly as a result of the focus in Operation Soteria upon adult complainants, and because of the delimiting criteria imposed in the case file sample discussed above, which formed a significant component of this overall cohort, 93 (81%) of the 115 cases that we interacted with involved individuals who were adult at the time of the incidents. There were, however, 22 cases (19%) in which the complainant was under the age of 16, and there were 10 suspects across the cohort whom we knew to have been aged between 12 and 16 at the time of the incident(s). We offer further reflections regarding how this particular category of cases were treated in Section 4. In the majority of cases, we were not privy to any information which indicated whether the complainant (n=99) or suspect (n=109) had a disability, and in those cases where this was mentioned, it mostly related to a mental ill-health diagnosis.

Across this full cohort, 88 of the 115 cases (77%) involved a sole complainant, which is comparable to the 20 (of 24) cases from the case file sample. Again, in most of the cases, the individuals were known to one another prior to the incident taking place (n=91, 79%) with just under a third of cases (n=35) involving parties in an intimate relationship, and 16 classified as ex-partners. Most often, the offence took place in private, often in the home of the victim (n=43, 37%), with incidents taking place in public being comparatively rare (n=17, 15%). As with the case files, where rape charges were a sampling criteria, across this wider cohort, the charge that we encountered being considered most frequently was rape (n=75, 65%), but there were a small number of cases that involved other charges, including sexual assault (n=11, 9%), assault by penetration (n=8, 7%) and coercive or controlling behaviour (n=6, 5%). Across the 115 cases, there were, once again, many examples where sexual violence was alleged to have occurred in the context of domestically abusive relationships, but other behaviours associated with that abuse were not subject to detailed consideration. While only 6 cases involved charges for coercive or controlling behaviour, we identified at least 30 cases in which such behaviour was present, albeit that in some of those there may have been additional difficulties with bringing instances of coercive control into the time period after the passing of the Serious Crime Act 2015. In other cases, we also found allegations of physical violence and non-fatal strangulation that were left unexplored. This is something we discuss in more detail in the subsequent discussion of NFA decision-making and trial preparation.

Again, broadly in line with the profile of the case file sample, across the 115 cases that we interacted with, just under half were single incident cases (n=48, 42%). Likewise, while a substantial number involved parties who had been drinking or taking drugs prior to the incidents occurring, levels of complainant intoxication were rarely suggested – so far as we could tell from our involvement – to have been sufficient to raise a capacity concern. One case that illustrated the potential for prosecutors to adopt too narrow an approach to intoxicated incapacity arose during ‘Scrutiny 15.’ It involved a complainant who had consumed alcohol and recreational drugs, and then awoke the next day to discover that her then-partner had had intercourse with her of which she had no recollection. In this case, the absence of a toxicology report that could definitively back-calculate the levels of the complainant’s intoxication, together with the lack of any eyewitness accounts that could confirm her state of incapacity, were determinative factors in the reviewing lawyer’s decision not to bring charges. Though a lack of memory could have been seen to support her claims to incapacitation, the prosecutor was clear that “it would be the wrong conclusion to link lack of memory to lack of consciousness,” and implied that anything short of this lack of consciousness was likely to be insufficient to establish that the complainant did not consent. Discussion in the panel underscored the difficulties associated with such cases and perceived obstacles to their conviction at trial. However, there was agreement that the decision-making may have been too rigid here, that greater efforts could have been made to substantiate the effects of intoxication by exploring other circumstantial factors, and that more weight should have been afforded to the complainant’s prompt and corroborative disclosure of the incident.

The three most common forms of corroborating evidence referred to by professionals across the dataset were phone records or messages (n=28, 25%), disclosure witnesses (n=27, 23%) and forensics (n=22, 20%). Of the complainants for whom we had access to information about whether they had made any previous allegations of rape or serious sexual assault (n=59), this was documented in 17 cases (29%). Meanwhile, in the 55 cases where we had access to information regarding the suspect’s history, 5 were recorded as having previous convictions or cautions for sexual offences, and a further 6 were recorded as subject to prior investigation by police in relation to rape or serious sexual assault complaints (20% total). In both instances, this reflects a lower incidence than in the case file sample alone, but that could be attributable to a number of factors, including the earlier investigative stage at which we interacted with many of the cases in this wider cohort, or – somewhat relatedly – to the variable levels of information about the investigation shared in the forums in which we had those interactions.

In regard to qualitative data analysis, the team coded interview transcripts, observation notes and case file summary data collaboratively, first establishing a coding frame on a grounded basis, informed by the literature review and workstream priorities, and using a sub-sample of transcripts: when synergies had been identified, structures imposed, and points of inconsistency addressed, we continued to code using this coding frame, with flexibility to flag and add emergent themes as needed on an iterative basis. This generated a ‘tree node’ structure with overarching themes pertaining to (1) Early Advice, (2) Referral and Charge Decision-Making, (3) Investigation and Case Progression, (4) Trial Preparation, (5) Victim Communication, (6) Staff Wellbeing, (7) Partnership Working, (8) Aims and Challenges in Soteria, and (9) Challenges and Changes Beyond Soteria. Within each of these, sub-divisions were also created to enable greater refinement: for example, in relation to Early Advice, sub-nodes were added to capture data around (i) requirements and format for provision within

pilot, (ii) rate, challenges and strategies in relation to uptake, (iii) reflections on and nature of the content of discussions; (iv) perceived or actual outcomes including in terms of scope and timeliness of investigations, quality of case files or relationship-building. Meanwhile, in relation to Staff Wellbeing, sub-nodes were allocated to capture data around (i) recruitment and workload, (ii) emotional labour, and (iii) training and development needs. This created a final coding design extending to 44 nodes, with over 6,650 coded extracts across the dataset.

Having coded the material in this way, we reviewed the data to identify themes, organising them into the key findings that provide the structure to the remainder of this report. We have generally mapped those themes to the CPS's workstream priorities for Soteria. As noted above, in doing so, however, we have deliberately adopted a broader interpretation to capture reflections that emerged as important, and which are likely to impact on the prospects for success in operationalising change. For example, while much of the pilot activity under the NFA Scrutiny workstream has focused on the establishment of panels, we have also extended discussion in that section to a broader evaluation of decision-making across the range of cases that we have been exposed to over the duration of the research, in order to explore the quality and consistency of suspect-focused analysis, disavowal of myths and stereotypes, and ability to assess complainants' accounts in a suitably trauma-informed way. Meanwhile, though the Case Progression and Trial Readiness workstream has a stronger emphasis on timeliness of pre-trial submissions, we have applied a broader lens to explore issues in relation to collaboration with RASSO counsel over the development and implementation of trial strategy, and the mechanisms for learning from the trial process itself that are currently available to CPS lawyers when making evaluations on the Full Code Test.

## Limitations and Language

While this research has benefitted from a level of access to CPS personnel, operational materials, and case strategy / scrutiny meetings that goes well beyond that hitherto available to the academic community in relation to sexual offences prosecution in England and Wales, the dataset continues to have inevitable limitations that impact upon its findings. In particular, as noted above, we have not been able to directly observe CPS lawyers' interaction with complainants, despite the greater opportunity for such interaction being a core component of Operation Soteria initiatives in relation to victim communication and support. Further, though the case files that we have had access to are substantial in length and often detailed in content, yielding rich qualitative data, particularly when triangulated with our other analyses, it remains the case, as noted above, that 24 is a very small sample. It is also important to acknowledge the absence of any direct input of complainants' voices into this research, which is something that we reflect on in later discussion around victim engagement, and our reliance on ISVAs to provide an inevitably mediated account of their clients' experiences of the criminal justice process, and of their treatment by the CPS in particular.

More broadly, it is necessary to bear in mind the limitations of interview and observation methods of data collection, particularly where they involve professional stakeholders. In respect of the interviews, participants were aware that findings would be reported to the CPS (albeit in non-identifying format), and in some cases RASSO unit leads would have been aware of which of their colleagues took part. In respect of the observations, CPS, police, and ISVA participants alike were aware that the discussions were being observed by a member of the

research team and that notes were being taken that would reflect the content and tone of the meeting, without recording any identifying case information. In most Advice discussions, the researcher introduced themselves briefly before switching off their camera to be less intrusive on the conference call, but in online observation of Scrutiny Panels and ISVA Forums, this was often less appropriate, and the researcher would more commonly remain on mute with their camera on for the duration. Whether in relation to interviews or observations, these dynamics of the researchers' presence and participants' awareness of it in the wider context of the research may have impacted on the capacity for full candour in the discussion. While it is important to bear this in mind, it is also important to note, however, that the researchers have prior experience of interviewing professional stakeholders and utilised a variety of probing techniques to maximise the likelihood of disclosure and honest reflection. It should be noted too that we were often aware of the extent to which – particularly as interviews and observations progressed – participants appeared to move beyond any preoccupation with the research context; and, as we will discuss in the remainder of the report, we encountered several instances in which comments made by participants did not indicate any significant efforts to self-censor or to provide what might have been anticipated to be more socially or organisationally 'desirable' responses in their approach to the issues.

Finally, in respect of language and terminology, we have used the terms 'victim' and 'complainant' somewhat interchangeably throughout the report, trying wherever possible to reflect the terminology used by participants. In the formal confines of the criminal justice process, it might be insisted that those who report an allegation of rape are best described exclusively as complainants pending a conviction against their assailant. Doing so can be interpreted, however, as conveying a suspension of belief regarding those allegations that is often problematic in a context in which there is little evidence of fabrication of claims and a 'justice gap' between experiences of sexual assault and their successful conviction so sizeable and persistent as to have precipitated the activities initiated under Operation Soteria. It is notable, therefore, that CPS and police stakeholders alike have framed workstreams around engagement, communication and support with 'victims' across all stages of the process. That said, as we will return to discuss further in Section 6, that choice has in itself proven controversial amongst some criminal justice practitioners. Related to this, another site of some controversy regarding language choice in the context of Operation Soteria has been the term 'suspect-focused.' For the avoidance of doubt, in our understanding and use of this term, it is not intended to denote any singular focus on the suspect to the detriment of a fair and robust investigation. On the contrary, it is intended to reflect the design of the Sexual Offences Act 2003 itself, which requires consideration of the steps taken by the accused to ascertain consent and careful scrutiny of the basis for any claim they may make to a reasonable belief therein. In so doing, it encourages a rebalancing of what, as discussed in Section 1, has been widely acknowledged by all stakeholders to be an historical tendency for investigations to disproportionately focus on the behaviour and credibility of complainants.

## Research Ethics

This research was conducted with ethical approval from the University of Warwick's Humanities and Social Science Research Ethics Committee. The research team, individually and collectively, have prior experience of conducting research on sensitive topics in a trauma-informed way. At the same time, it is important to acknowledge – particularly in the context

of reflections that we will make regarding emotional labour and vicarious trauma within this report – that this was, nonetheless, challenging research to undertake. Not only is the subject matter of sexual violence inherently distressing, but the way in which complaints were discussed by some participants was also difficult for the research team to witness. We had regular de-briefs during the fieldwork to assist with managing the demands of this emotional labour, but the intensity of the timescales for data collection and analysis also meant that ensuring the appropriate self-care of the research team has been a priority and a challenge.

### 3. Early Advice

Prior to Operation Soteria, the *Director of Public Prosecution's Guidance on Charging* already made it clear that prosecutors could advise the police about possible reasonable lines of enquiry, potential charges, evidential requirements, pre-charge procedures, disclosure management, overall investigation strategy and legal elements of the offence. The specific timing of the request for advice on such matters was envisaged to be at the discretion of the investigating officer, usually following a police supervisory review. However, it was noted that Early Advice (EA) – that is, advice given prior to a charging decision – should always be considered in RASSO cases once a suspect has been identified and it appears that continuing the investigation will provide evidence upon which a charging decision may later require to be made. The DPP Guidelines set out the minimum information to be provided by police in support of an EA request, which was to be formally submitted through the digital interface, after which prosecutors would record and share their advice with police, supported where appropriate by an Action Plan to be agreed and completed by investigators. Notwithstanding this, it was recognised that there was often a reluctance amongst police to seek such advice, which our participants attributed variously to resourcing pressures, restrictive gatekeeping criteria, and / or a perception that its content was likely to be predictable or unhelpful.

Against this context, a key aim of Soteria has been to encourage more routine use of Early Advice mechanisms in rape cases. The hope was that this would not only improve working relationships between local police and CPS but ensure greater clarity and understanding as to what constitute reasonable lines of enquiry and proportionality in relation to disclosure requests, encourage more focused and feasible Action Plans with increased 'buy-in' from police officers, and improve the timeliness of charging decisions. As CPS 1 put it, "where our prosecutors talk to police officers at an early stage, we see better outcomes, both in terms of volumes and numbers of charges and...ultimately conviction rates." Whilst the success of initiatives to encourage more routine collaboration across the country has been acknowledged to vary depending on "how much a police force wants to take up the Early Advice offer" (CPS 3), between September 2022 to June 2023, pathfinder areas reported an improvement to the quality of EA submissions, with some areas seeing an increase in submissions per month. Although this progress sits in line with the ambitions of Operation Soteria, monthly activity Trackers also illustrated a picture of CPS lawyers experiencing pressures to their already high workloads as a result of such increased uptake of EA. In the rest of this section, we explore the ways in which pathfinder areas sought to encourage this use of Early Advice, evaluate the extent to which it has impacted positively on working relationships, investigative strategies, or case progression, and highlight ongoing challenges.

#### Provision and Uptake of Early Advice

Across pathfinder areas, the specific format, timing, and scope of Early Advice provision has varied. In part, this has reflected the unique nature of each pathfinder in terms of unit resourcing, typical volume of RASSO referrals, and number, structure, and size of its local police forces. It also reflected the CPS's intention under Soteria to trial different interventions, and the benefits that participants felt were tied particularly to localised flexibility in relation to EA. As CPS 51 put it, "this is why EA isn't one size fits all, you can't have it, and that's what



our MOU [Memorandum of Understanding] allows for and takes into consideration and account. What's reasonable in one case is not going to be reasonable in another." Meanwhile, CPS 7 reflected that what "works in a smaller area" in respect of EA provision might not necessarily work somewhere else, especially since it can be "quite difficult" to "get buy-in from everyone." As we explore below, the benefits of flexibility – both in the design and implementation of EA pilots – were clear, particularly in areas where there was greater hesitancy amongst police. However, it made the task of assessing EA provision and uptake more complicated, given divergent criteria for which cases would qualify, what paperwork required to be submitted, and how rigidly discussion was tied to pre-established questions.

In Area C, for example, the criteria for cases to qualify for EA was particularly broad: according to its local MOUs, it sufficed that a case was identified by police as likely to "benefit most from early and effective engagement with the CPS." Though there was no mandate to seek EA, there was a requirement for supervisors in relation to rape offences to proactively consider the suitability of EA at the 28-day stage, and either make a referral or note on file the reasons why it was not being requested or felt to be necessary. Together with the wide referral criteria, this encouraged a strong uptake amongst officers. A total of 280 EA meetings were recorded on Area C's Trackers as having taken place between September 2022 and June 2023. During its pilot, Area E trialled going further, and mandating EA in all rape cases deemed capable of being built, but such an approach has not typically found favour. As CPS 5 put it, it risks "removing that thinking approach by officers." Thus, an "opt-out" approach that puts a "positive responsibility" on supervisors to explain "why they aren't going for [EA]" by a particular stage in the investigation has generally been better received by police and CPS alike. As with Area C, Area E has encouraged the use of EA by adopting a fairly flexible approach to the format and case criteria for referral, which has yielded a steady uptake by police officers.

By contrast, Area D has taken a more targeted approach, initially limiting activity under EA pilots to 'stranger' rape cases. The rationale was that these were likely to be "the least complex cases on the whole," and so a focus on them would help to "set a direction of exactly what it [EA] should look like" (CPS 7), thereby assisting police to better formulate questions. Tracker entries for the area suggest significant variation in uptake: for example, in September 2022, despite a rejection rate of 35% of EA submissions, 17 EA meetings took place, compared to only two EAs being submitted and accepted in November 2022. Internal dip sampling by the Area D RASSO unit suggested that a particular challenge here had been the identification and submission of cases by police at a sufficiently early stage in their investigation to bring benefit. Between December 2022 to May 2023, workshops, joint training, and the trial of a new MG3 for EAs have collectively resulted in a significant increase in EA receipts per month. In April and May 2023, the area saw thirty-three EA submissions per month, which reflects an upward trajectory, but still a very small proportion of the rape investigations being conducted by police in that locality. Our observations of EA meetings in this pathfinder indicated that the scope of EA has also now been widened from that initial focus on stranger cases, reflecting – perhaps – a recognition of the need for greater flexibility in order to facilitate uptake. That would certainly be in line with the trajectory that has taken place in pathfinder Area B in respect of its EA provision. There, limiting case criteria were initially set by the CPS around "all adult domestic abuse cases." However, the domestic abuse requirement was removed in mid-2022 after only one referral had been made in the period between November 2021 and March 2022. In fact, Area B has now made several revisions to MOUs with local police forces

in order to encourage EA uptake, including most recently expanding significantly the investigative age of a case that could be eligible – initially set at 42 days post-report, then extended to 56 days, and then extended again to 12 months. Progressively, these changes appear to have increased EA referrals, with 10 in September 2022 rising to 21 in May 2023.

Whilst all pathfinder areas have been working throughout the pilot with a mix of Soteria and non-Soteria police forces, most have designed MOUs and operated arrangements for EA in broadly the same way irrespective of whether a local force has been onboarded to Soteria (albeit that, in some cases, implementation of provision has been staged across forces). Perhaps as a consequence of this, there has not been a consistent pattern in terms of Soteria forces making a greater volume of referrals, as might otherwise have been anticipated. In January 2023, Area C, for example, noted in its Tracker entry that there were more EA submissions from non-Soteria police forces, with onboarded Soteria forces submitting only 27% of EA submissions that month. However, from February 2023 onwards, EA submissions from local Soteria forces steadily increased, and made up just under 50% of all submissions in June 2023. Area A is somewhat different in this respect, however, since it did trial more expansive provision with one local force in particular. Though there was no mandated obligation for cases to go for EA in Area A, information provided on its Trackers indicated a reasonably consistent flow of submissions. But alongside general EA provision, there was – for a period of time during Soteria – an expectation that cases coming from one particular police force would include a Pre-Charge Decision (PCD) meeting with the lawyer reviewing the case. These meetings generally occurred at a later stage than EA meetings but, to the extent that they afforded a parallel process for reviewing lines of enquiry, evaluating the strengths and weaknesses of a case, and observing partnership working in practice, we have combined observations of PCD meetings alongside EA meetings in our data. These PCD meetings were considered by many participants to be beneficial in improving relationships between the CPS and police, and reducing the need for Action Plans (discussed in Section 5), but it appears they were paused in April 2023 to allow for further evaluation of their efficacy.

In addition to variation in the criteria for submission for EA (whether in terms of types of cases or the period of time elapsed since the point of reporting), there were also variations across areas in their commitments on handling EA requests, particularly in relation to intended turnaround times and the mode of delivery. For example, in Area C, the intention was to discuss with the officer within 24 hours, so as to ensure, wherever possible, that delays were avoided. Though attractive from this perspective, a 24-hour turnaround inevitably imposes significant demands on resources which will be harder to sustain if referrals continue to increase. Indeed, while several interviewees in that area felt that this level of efficiency was “really, really important” (CPS 6), they acknowledged that it had substantial implications in terms of the unit’s overall workflow. Indeed, in February 2023, Area C reported in its Soteria Tracker a total of 43 EA submissions, which, although positive in terms of ‘buy-in’ from local police, it was noted had had a significant impact on the unit’s already high charging decision backlog. Ongoing staff shortages in the area were also predicted to impact targeted EA turnaround times. It is perhaps notable too in this context that EA meetings in Area C were often amongst the shortest that we observed. While duration of the discussion should obviously not be taken simplistically as a proxy for the depth, breadth, or quality of its content, this might raise the question about whether a slightly extended timescale for review and consideration could be beneficial in some cases. In contrast, in Area E, the initially

intended timescale was 7 days, but there was consistent evidence in Tracker entries of the area struggling to meet that turnaround time, with the average time being 21+ days. The resultant negative impacts of this on staff morale and the risk of reputational damage were raised as concerns, with Trackers noting EA referrals “flooding in” had imposed additional pressure on workloads. Meanwhile, in Area A the envisaged turnaround was always 21 days.

In respect of mode of delivery, for the most part, EA discussions under the pilots have been undertaken via online conferencing (in contrast to the typically paper-based process for EA submission and provision envisaged in the standard guidance). We will reflect more on their tone and content below, but the duration of the meetings we observed has also varied significantly, with Area C typically scheduling a maximum of 30 minutes and often requiring less time, for example, whilst Area E typically scheduled an hour and some of our observations extended well beyond this. One area that initially trialled a different approach to delivery was Area B. Under its initial MOU with a local force, a lawyer was posted on set days to police headquarters to provide EA as required. It was hoped that this co-location would encourage referrals to be made and build partnerships across police and CPS; but review of the provision concluded that it was not achieving these goals sufficiently. In line with other areas, Area B now provides EA through online discussions (documented thereafter by a written record).

During Soteria, Area A also piloted an Enhanced Early Advice (EEA) offer, made available to one local police force. A key driver for this was concern regarding Achieving Best Evidence (ABE) interviews. This was a concern shared consistently across pathfinder areas, particularly in terms of the audio-visual quality of ABEs and extent to which their structure and content adequately fulfilled their evidential (as distinct from investigative) functions. Interviewees often remarked on the unduly lengthy and detailed nature of ABEs, which they suggested made it more difficult to present a clear narrative to jurors at trial, and potentially introduced a range of unhelpful distractions from the complainant’s testimony, without ensuring sufficient rigour and clarity in respect of key legal issues. Police 19, for example, acknowledged that ABE interviews can be poorly “managed” by the officer, resulting in long recordings with victims going on tangents in their disclosures. This was reflected on too by Barrister 8, in relation to a recent case they had been involved in where, during the ABE, “[the officer] kept asking the [complainant] so many questions that she then thought ‘oh, this is what’s expected of me’, and it was almost like over-sharing about every aspect of her life.” Meanwhile, CPS 13 suggested that “the police need to better understand what on earth it is that we need to have a good case put in front of the jury...police, when they’re collecting evidence, don’t think about the jury. They just think about trying to reach this final threshold. I think that’s a big impact and that makes it harder for [lawyers] to think about the case build.”

The consequences of this are significant, of course, since as CPS 6 put it, “at the end of the day, the ABE is the victim’s evidence-in-chief...If we’ve got a bad ABE at the outset of the case, either because the police have done a bad job or it doesn’t play well when in court, that completely changes the case.” This concern was also frequently underscored by judicial interviewees who lamented both the recording quality and content of many ABE interviews. Judge 4, for example, remarked that, when played in court, the rape complainant is frequently “an indecipherable shadow in the corner of the room” who is “difficult or frankly impossible to hear,” and that this prevents the jury from being able to properly follow, let alone engage with, their evidence. Meanwhile, though acknowledging that “the police have a really difficult

job to do” because they “don’t know what’s going to come out and in what order,” Judge 8 described ABEs as being conducted in a “clumsy” manner, whilst Judge 5 opined they were often “chaotic, unfocussed and not terribly professional.” Judge 4 assessed them to be “far longer” than needed, and “confusing and difficult to follow,” while Judge 3 – most forthrightly - described them as “appalling,” “abysmal” and in need of being “revisited urgently.”

In our analysis of case files, which typically included transcripts of complainants’ video-recorded police interviews, we did encounter several examples to substantiate these concerns regarding ABE content. Perhaps the most striking was in ‘Case File 5,’ where the complainant was required to participate in two ABE interviews on consecutive days, lasting almost 5 hours. It was only in the final 30 minutes of the second interview that her allegations regarding rapes having been committed whilst she was asleep were explored, after an extremely detailed discussion of the extensive history of domestic abuse and coercive control that she reported in her relationship with the suspect. That discussion included several pages of questioning to ascertain the precise location of the fast-food restaurant which she suggested had been the site of a prior incident. In contrast, questioning around the sexual offences was rushed and lacking in key detail, with the officer failing to adequately probe regarding the issue of consent when the complainant indicated that she had submitted to sex on several occasions only as a result of fear or resignation to the fact that her partner would continue regardless of her wishes. Ultimately, as we discuss below, this caused the reviewing lawyer to decline to charge any rape offences because there was an insufficient basis to establish lack of consent to the jury. Meanwhile, in ‘Case File 16,’ what the reviewing lawyer described as a “lack of clarity” in the complainant’s first ABE, which had made the interview “hard to watch and quite confusing,” meant that a second interview was required to address the crucial legal question of whether or not the suspect’s penis had penetrated her vagina.

Though many of our interviewees highlighted better recording (and play-back) technology, and improved police interviewer training, as key factors in increasing the quality of ABEs, some also indicated that there was more that the CPS could, and should, do to assist police in ensuring a quality product, given the importance of the ABE to the prosecution case. Judge 5, for example, lamented what they perceived to be a tendency amongst prosecutors to simply accept the evidence contained in the ABE, “pressing a button” to play it in court without thinking “terribly carefully” about “how they can improve it.” Judge 4 spoke of the possibility of reviewing lawyers conducting a second interview after the police stage, which would constitute the evidence-in-chief. Noting that this was not a perfect solution, since it required asking the complainant to go through the interview process twice and risked introducing inconsistencies, they observed that it could nonetheless ensure “a much better product” that “is more logical, more focussed.” Meanwhile, Judge 2 opined that input at an even earlier point would be most beneficial: “in an ideal world, the CPS would take ownership of it at a far earlier stage and would perhaps advise on the lines in the ABE.” It was this latter model that was piloted by Area A under the Enhanced Early Advice scheme: within 14 days of report, a rape case could be flagged by police and a case-by-case assessment of the material to be submitted to the CPS for review would then be made, with requests and advice tracked through a dedicated mailbox and supported by in-person discussion. The hope was that this would provide an opportunity for CPS lawyers to input prior to police undertaking the ABE with the complainant, and thereby assist in focussing lines of enquiry, reducing unnecessary questioning, and ensuring that relevant points of proof were addressed. Uptake was very

limited, however, with police intimating possible reasons for this being that concern for the victim's wellbeing often pushed officers towards conducting the ABE as soon as possible rather than pausing to seek CPS involvement, as well as a sense that the advice offered may be of limited value when "ABEs are so fluid, you can go in with a plan...and it will change when you're in the moment" (Police 22). As a result, its provision within Area A was suspended.

Within Soteria, then, it is clear that initiatives undertaken by pathfinder areas to increase the uptake of EA by police forces have been varied, both in terms of methods used and results. However, those areas that have seen the greatest uptake, which they typically associated in turn with positive outcomes in terms of case file quality and submission of charging decisions, have been those where there has been flexibility in the interpretation of MOUs and considerable investment of time from senior leadership to demonstrate the benefits of EA.

### Improving Partnership Working Through Early Advice Meetings

As noted above, one of the main aims of encouraging the use of Early Advice more routinely was to improve early partnership working between the CPS and the police in a context where relationships had previously been "fractured" (CPS 2). Certainly, in interviews, participants often shared how tensions between the CPS and police have, and in some cases continue to, impact significantly on their collaboration. As Police 22 put it, "I think there's kind of still a bit of an 'us and them' in our force. I would like that to change." Similarly, another officer in a different locality spoke of how their "relationship with the CPS needs to change" (Police 32). From the CPS perspective, lawyers also explained that the "disconnect is still there" between the CPS and police, but there was optimism that once they overcome that – including through EA provision – "the relationship will work much more effectively, the pushback on case files and the language that's used will be much more effective, much more smoother" (CPS 9).

For many participants, a key source of these tensions lay in the fact that they felt that police and prosecutors had been unclear about, or suspicious over, their respective goals in relation to rape cases, and that this had been accompanied by an inability or lack of opportunity to communicate in a positive manner. As CPS 28 explained, "historically, it's always been felt by the police and probably the lawyers that we're battling against each other. The police say we want to NFA everything, we think the police don't want to do what we want them to do, you know, there's like a misunderstanding when really, we were just heading in the same direction." Echoing the perspectives of other stakeholders that we discuss further in Section 7, police interviewees shared challenges in the approachability and visibility of the CPS, which they felt functioned to further entrench these historic tensions: "the biggest issues we have with [the CPS] is that they're still relatively anonymous to us, that's the problem" (Police 29).

Although some of this is deep-rooted and will take both time and consistent commitment to improve, we found that Early Advice can, and in some cases has, contributed, to a cultural shift in the ways that the CPS and police work together. The value of this cannot go understated. As CPS 6 put it, "conversation often goes a long way in these cases," whilst CPS 27 reflected that the relationship between police and CPS is "only going to get stronger as we increase communication and as we open up." Linked specifically to EA initiatives, lawyers often reflected on how it had assisted them to "have a better relationship" with the officer in charge: as CPS 37 put it, "he knows me better and we have a better sense of each other in a

way that's probably going to be positive for any of the cases I have in the future where he is...involved." Meanwhile, others indicated that it had "helped form that relationship where [we] can work together towards the common goal of getting a charge, if that's the right thing to do" (CPS 40) and underscored that "it shouldn't be a 'them and us'...we are both trying to achieve the same goal really" (CPS 43). Likewise, several police participants spoke positively about the benefits of EA discussions in improving relationships and building partnership approaches. As Police 16 put it, "generally, the RASSO dedicated lawyers and the police RASSO teams have a good working relationship because they do EA a lot with each other."

Across our observations, we have also seen evidence of this in action, with some examples of good practice from prosecutors in acknowledging the time and care that officers had put into investigations or taking on board concerns raised by officers, for example, in relation to pursuing certain lines of enquiry with the victim. In 'Advice 13,' for example, the lawyer asked the officer in charge whether they had taken the victim to the location of the offence, as this was something that the victim had previously indicated they were willing to do. The officer shared his concern that this would trigger the victim's mental ill-health, and that he was, therefore, hesitant to do so. Here, the lawyer took into consideration the officer's better knowledge of the victim's vulnerabilities and suggested they find a different way of identifying the location if required: "I don't want to derail the whole thing for the sake of pictures of that location for now." Meanwhile, in 'Advice 31,' despite it being the officer's first experience of an EA meeting, there was a good balance between the lawyer explaining their assessment of the case, checking in at key points to ensure they were both in agreement, and – most importantly – taking on board the contributions that the officer had to offer in the meeting.

At the same time, however, we also observed less promising practice: in particular, where prosecutors engaged in EA discussions primarily as a monologue in which police were rarely asked for their input, with the officer in 'Advice 15' even referring to the meeting as a "hearing" with the CPS. To the extent that this replicates a dynamic in which prosecutors are positioned with greater authority, it is unlikely to be conducive to genuine partnership working; and the significant efforts that clearly have been made at senior levels to improve relationships across institutions risk being undermined in practice by poor quality discursive exchanges. Especially in police force areas that have faced challenges with staff retention, initial experiences in EA meetings with newly trained officers are crucial in encouraging the value of advice meetings and improving partnership relationships at the outset. This is complicated further, moreover, by the fact that there remains a lack of clarity across pathfinder areas regarding the precise boundaries of, and parties' respective roles within, EA.

In this regard, some CPS lawyers expressed concern particularly about EA placing them in the position of acting as 'supervisors' for the police in their investigations. This was, in part, a concern around resourcing – "if all we're doing is taking on the police supervisory role, we're just not resourced to do that" (CPS 2). Reflecting on the impact of this on collaboration in a current case, Barrister 10 shared the tense working relationship they identified between the police and CPS: "I've got [a case] at the moment and the relationship between the lawyer and the police officer is just toxic because neither of them have the time to do what the other one is asking." But it was also a concern about the need to develop that expertise, and take that responsibility for its development, in policing itself. Though sympathetic to the challenges created by personnel turnover and resource constraints in policing, CPS participants

expressed concern, more heightened in some pathfinder areas than others, about the choices of cases being presented by police officers for EA, as well as about the types and framing of questions around which those EA discussions were being requested. Such interviewees observed that “we’re moving a little way towards that system of instructing the police. I’m not completely in favour of it because I think the investigation is theirs, that is for them to do...[But] we want a quality product” (CPS 20). Other interviewees also appreciated these risks, but suggested EA on the scale being piloted under Soteria should best be understood as a temporary, transactional intervention, designed to “upskill” (CPS 2) officers until a shared understanding evolved. While this might assuage concerns about overreach of the prosecutorial role, there are substantial limitations to this “quid pro quo” (CPS 2) approach, particularly given the often case-specific nature of the advice sought and provided, the partial reach of mechanisms to feedback learning from EA discussions in any systematic way, and the likelihood that high staff turnover in RASSO units will continue to be an issue within policing.

At the same time that prosecutors were expressing concern about taking on this supervisory role, however, a number of police participants expressed frustration precisely because they felt that their expertise was not adequately acknowledged by the CPS within EA discussions. Some less experienced officers did indicate that they had found the meetings they had been involved in helpful. Police 12, for example, remarked that “I’ve never come out of an Early Advice feeling deflated or not listened to” and “as time has gone on...those conversations are better, they’re more constructive.” However, some more experienced officers often construed it as something that was *only* helpful to those less experienced colleagues: “there are cases where they are very simple in terms of the actions and the outlines that need to be done...we know what it is they want us to do...the vast majority of us are experienced detectives” (Police 29). Similarly, another observed that they struggled to see the benefit: “I’ve done a few but because I’m quite experienced, I’m not really asking anything because I know what needs to be in there” (Police 27). In observations with more experienced officers however, EA was still found to be a beneficial experience for both parties. In ‘Advice 10,’ for example, when the officer was specifically asked by the CPS lawyer if the EA was helpful, she shared that she always found them so, and noted that she wished she could get EA on cases where she did not have a specific question. In this meeting, that officer’s evident experience in RASSO cases ensured that she was able to cover significantly more ground with the lawyer than what we often observed elsewhere, including issues around case strategy, witness support, and special measures. The hesitancy of other experienced officers to seek CPS advice arguably speaks, then, to a failure to construct the EA space as one in which equally valued expertise about the case can be aired and an agreed plan devised. But it also ignores the reality that legal and evidential requirements are not static - as the evolving approach to disclosure requirements, for example, aptly demonstrates - and that, as such, regardless of prior experience, early dialogue on investigative strategy should often still be productive.

Clearer guidance is needed, therefore, on respective roles and expectations, with a balance to be struck between consistent operational standards and localised flexibility to maximise their use and value. Future evaluation should continue to monitor uptake and speed of EA provision, but should also seek to better capture information about case types and key issues being referred, which will assist both in identifying areas of greatest training need and in ensuring referrals are being made in cases where CPS input is likely to be most beneficial.

## Investigative Benefits of Early Advice

Alongside the more intangible benefits of improved relationships and partnership working, the extended provision of EA under Soteria was also intended to ensure better identification and pursuit of reasonable lines of enquiry, with a more targeted approach to disclosure requests and a realistic but expedited timeframe for case progression. Across pathfinder areas, we found evidence that Early Advice can indeed have a positive impact on the pace and scope of police investigations. As we discussed above, navigating the discursive space to ensure open exchange was not always easy, particularly in the absence of clear boundaries and expectations about the process. However, the improved communication made possible by real-time dialogue rather than stagnated exchanges of paperwork and emails was often highlighted. CPS colleagues emphasised, for example, how the mandate to have conversations online or in-person as part of the EA process avoided things “getting lost in translation” (CPS 43), whilst police confirmed that “face-to-face is so much more...effective than [when] you get a legal document outlining what you haven’t done, and lists and, you know, deadlines” (Police 18). It was noted, in particular, that where the lawyer who provided the EA stayed with the case thereafter to Full Code charging and beyond, this early discussion opened up a channel of easier communication that could be relied upon throughout the investigation, often making the process more efficient. As Police 27 put it, “if you have the same lawyer and you can get that case ready within a few months, that’s where I think it’s good.” Across our EA observations, we routinely observed lawyers providing their direct contact details to officers and, without usurping the formal process required for further EA or submission for a Full Code Test decision, encouraging police to reach out if matters arose in the course of completing the Action Plan that it would be helpful to briefly discuss. This was confirmed by CPS 43, who observed: “I know a lot of [my colleagues], I’m pretty sure all of them, we often will say, you know, here’s my direct details, if there’s anything further that arises, you know, come back to me, give me a call, send in a further early advice file.” Though it will not always be possible for the same lawyer and officer to remain associated to the case throughout, due to staff turnover for example, wherever possible, this was clearly best practice in terms of ensuring more efficient and timely case progression, which is something we discuss further in the wider context of Action Plan Monitoring in Section 5 of this report.

In substantive terms, it was widely suggested by participants that the most common matters discussed in EA meetings centred around the parameters of disclosure requests, whether for digital or third-party material. As shared by CPS 9, “while [the police] do know what to do with a rape [case] and how to present it, I think what assists them is the disclosure side as to what reasonable lines of enquiry is, what we expect, and phone downloads to narrow down the terms, the parameters.” Similarly, CPS 36 noted that the focus was often around how to set parameters for third-party material: “all the disclosure changes that we’ve had over the years, I think the police just sometimes like a bit of a steer as to what they should be looking at and what they need to look at.” As CPS 36 alludes to here, this is perhaps unsurprising since, as we will discuss further in Section 5, it has been an evolving area of law and policy that requires careful, case-by-case assessment to determine what would be relevant, specific, and proportionate. Broadly, there was a sense amongst many interviewees that EA had the potential to reduce ‘digital fishing’ and overly expansive excursions into victims’ third-party material. As CPS 43 put it, “there seems to be a real focus now of, are we trawling for information or is this actually a reasonable line of enquiry.” We saw evidence of this in



practice in 'Advice 10,' for example, where the CPS lawyer agreed with the (experienced) officer's rationale for limiting third-party material requests around the complainant's mental health history. The CPS lawyer noted that to go beyond this would be verging on a speculative trawl, which could risk putting the complainant under unfair scrutiny; in response, the officer in charge remarked that this was "music to her ears" in terms of moving the case forwards.

Meanwhile, during their interview, CPS 10 identified how, through EA, lawyers had been able to interject into and curtail a practice that they suggested had become common in the local police force whereby "you apply for third-party material, you send somebody's phone off for download and examination, without any kind of focus on what the issues are in the case or what's proportionate or what's necessary." At the same time, Police 19 underscored the benefits of "early join up" to "set those early parameters around your third-party, your digital extraction...which are the ones that tend to be the things that come up later down the line when there's that difference of opinion." This was noted to help streamline police investigations: "they [the CPS lawyers] can shrink it all and say, no, you don't need to do that. And then we have the reassurance that, okay, we've got an audit trail, the lawyer has told us not to do it, that's fine, we don't have to worry about it, we'll focus on elsewhere" (Police 16). The support voiced for the benefits of EA in this context was echoed, moreover, in responses to the Home Office's *Consultation on Police Requests for Third-Party Material* (2022a), where 91% of the 34 CPS respondents and 64% of the 203 police respondents agreed or strongly agreed that it can help in rape cases to ensure that requests are proportionate and necessary.

At the same time, notwithstanding the provision – or at least extended availability – of EA, other participants continued to raise concerns about approaches to disclosure, with those concerns often pulling in contradictory directions. So, on the one hand, some CPS colleagues complained that police were still routinely gathering disproportionate volumes of material before seeking advice from prosecutors. As CPS 7 put it, "at the moment, one of my barriers is, the police don't know what they're doing with third-party, and we just get unused by the shedloads of hundreds of pages...so they'll send me 40,000 pages of phone download." But on the other, there was a sense amongst some officers that the CPS still have a tendency to set parameters too widely. As one officer, operating in the same pathfinder area as the prosecutor above who complained of police excess, said: "one of the things that I forgot to say about dealing with the CPS is their obsession with obtaining third-party material in cases that just...where it just isn't relevant...it's a complete fishing exercise" (Police 29). Meanwhile, Police 2 referred to "continual arguments with the CPS" where he felt that the lawyers were not adopting a sufficiently tailored approach to disclosure, wanting "absolutely everything."

Another key benefit of EA, which was pointed to by participants, related to the ability to identify and address any shortcomings in the Achieving Best Evidence interview at an early stage. As discussed above, efforts in Area A to trial an Enhanced Early Advice process under which CPS lawyers inputted into the questions to be asked during the ABE, in order to help tease out relevant points of proof for charging, were not deemed successful and abandoned. However, it was generally recognised to be beneficial that EA still afforded the opportunity for police to discuss matters arising from the ABE with lawyers at an early stage in the investigation. This enabled them to identify relevant lines of enquiry in a more timely manner, or to determine if a second ABE was required, albeit that this was always to be undertaken with caution given the impact on complainants and risk of introducing contradictory accounts.

Again, we saw examples of this across our observations. In 'Advice 5,' for example, the lawyer noted that it would be "cruel" for the victim to be cross-examined at court on the fact that her account seemed unreliable given information about a further offence that had allegedly been committed against her, which had not been known about during the initial ABE, and so suggested that a further police interview should be arranged. Meanwhile, in 'Advice 41,' the CPS lawyer was able to highlight to the officer in charge not only the need for an additional ABE but also the importance of avoiding going back over any information already discussed and instead using the second ABE as a space to clarify specific points arising. At the same time, however, we also saw evidence in EAs of lawyers remarking in potentially problematic ways about the 'presentability' of the complainant in ABE interviews, and supporting some officers' apparent focus on how that might interact with the myths, stereotypes and assumptions of any future jurors. In 'Advice 2,' for example, the police officer remarked that, while they "believe everything that they have been told" by the complainant, they did "not think 12 members of the jury would believe her" due to her appearing "frantic" in the ABE interview. Despite noting that the complainant's son had been in the room next door throughout the interview, there was little recognition from either the lawyer or officer as to the potential impact of this on the ability to effectively disclose what had happened to her. Instead, the discussion focused on their shared concerns that the ABE was like "getting blood from a stone" and that it would "require a lot of explaining on her part" to bolster her credibility.

What this demonstrates is that EA can assist in setting investigations on a robust but proportionate track in relation to disclosure strategy or in highlighting the need to respond to shortcomings or omissions in ABE interviews at an early stage. In turn, this can reduce wasted time and, crucially, minimise intrusion and distress to victims. However, it cannot - in itself - be the solution to these challenges. As we discuss elsewhere in this report, ongoing training, monitoring and review of investigative strategy and case progression, with a keen eye to disclosure and ongoing improvement of the structure, content and capture of ABEs, both within and beyond the EA space, is going to be required. In several respects, the same can also be said in relation to determination of reasonable lines of enquiry in EA discussions, and the extent to which they are informed, in particular, by evolving understandings of the importance of challenging myths and stereotypes, and a proportionate focus on the behaviour of the suspect. This is something that we return to consider further in the context of our reflections on charge decision-making and case trial strategy, in Sections 4 and 6.

For current purposes, it is also important to address a related concern that has been raised in relation to the impact of EA on encouraging or being relied upon to help endorse potentially premature 'No Further Action' (NFA) decisions by police in rape cases (CWJ, 2020: 40). Though it is absolutely not the function of EA to provide a prosecutorial 'steer' in relation to any predicted outcome at a subsequent Full Code Test, there is a concern that this opportunity for early consultation may be used, in some cases, to confirm an initial negative assessment on the prospects for conviction rather than to explore in an open-minded manner the ways in which the complaint can be investigated and a prosecution built. As CPS 27 put it, "I've had some [officers], they think they know that their case is not going anywhere, they think they know that their case is flawed but they don't want to make the decision. So, they're coming for Early Advice for us to kind of go, this is rubbish, you know, drop it. And I just...it feels...there's a danger...that it replaces...proper police decision-making." Meanwhile, CPS 8 observed that, even if such cases are not brought by police with that intention, the tenor of

EA discussion can encourage them to terminate investigations, even though prosecutors' input is inevitably limited to the evidence available at an early stage and more proactive case-building could generate a very different assessment in due course: "we have seen some cases, we haven't made formal decisions, but we have had a conversation with the officer,...I'm not giving you a formal decision, [but] I'm saying to you, based on what you've just told me, the case is not going anywhere, so I think you're well-placed to NFA that case. Well, if you've heard that from a prosecutor, then obviously that influences your decision to NFA the case."

In some of our observations, it was clear that CPS lawyers were mindful of the need to navigate this risk. In 'Advice 8,' for example, the questions provided by the police officer ahead of the discussion were targeted specifically around aspects of the complainant's behaviour, mostly related to the fact that she and the suspect were under investigation for child neglect and that, despite prior police interaction due to domestic abuse against her, she had not disclosed any rape allegations until during proceedings in the family court. The officer was seeking guidance from the lawyer specifically as to whether such factors would substantially undermine the victim's credibility. During the discussion, the lawyer – rightly – drew the officer's attention to the importance of establishing any evidence of coercive control within the relationship and to the fact that there may be several reasons for delayed disclosure. At the same time, his answers were often, in his own words, somewhat "woolly," and framed in terms of matters "not necessarily being fatal" to the case. That this was driven, in part at least, by concern not to steer the officer towards any premature NFA decision was supported by the fact that, at the end of the meeting, the lawyer underscored that "the fact it has had early advice doesn't change the fact that it is a police decision in the first instance."

Meanwhile, in other observations, we saw evidence of lawyers more explicitly encouraging proactive case-building in order to avoid this risk of premature NFA decisions. This was recognised by some interviewees: "I do think there is that mindset change from the CPS. And officers are seeing that, which is, you know, obviously changing their mindset too. Because I'm in no doubt, historically, officers would have said 'finalise this case, it's not going anywhere' because they would have had their previous mindset set by the CPS and the previous challenges they've had on those cases. Where now they're seeing that change" (Police 19). Similarly, CPS 40 noted they could identify cases within their area where "I think [police] were going to NFA a case, but now it's been built towards a charge because of that discussion." In 'Advice 3,' for example, the officer in charge had watched CCTV footage in the intervening period since submitting the EA request, which she described as "disappointing" since it appeared to show the complainant to be relatively sober, with "no staggering about to suggest she is not steady on her feet," in a case where the allegation was that the victim was too intoxicated to have had capacity to consent. The police officer opened the meeting by intimating that the EA discussion may be less necessary in light of this emergent evidence, implying that she was minded to terminate the investigation; but the lawyer carefully worked with the officer to establish the timeline on the CCTV, highlight the strengths of the case and identify a strategy for moving the investigation forward nonetheless. Similarly, in 'Advice 35,' while the lawyer recognised the evidential challenges of the case, which concerned allegations of rape and coercive control in a relationship between two sixteen-year-olds, they provided proactive suggestions for case-building. This included asking the police officer to further explore the behaviour of the suspect, who – despite never having been convicted – had multiple allegations of sexual assault made against him, which the lawyer identified as

raising concern that his behaviour was “escalating.” In setting the parameters for that line of enquiry, moreover, the lawyer took a contextual lens, asking the officer to explore not only the risks potentially posed by the suspect, but, due to his young age, also whether he had any history of being sexualised himself as “all this stuff is extra but vital for decision-making.” Meanwhile, in ‘Advice 33,’ the benefit of the police officer engaging with the CPS lawyer in a discursive and more flexible way than had previously been possible was vividly demonstrated. Here, the EA discussion was initiated by the officer with only one question, relating specifically to what information could be provided about the fact of the investigation to a second potential victim of the suspect who had been identified. However, within the meeting, the lawyer picked up on several additional issues, including the parameters of third-party and digital enquiries that had been set too widely by police. The lawyer also identified that there were another two individuals who had made complaints against the suspect, but had been hesitant to support prosecutions, and whom the police had not made plans to reach out to about being added to this investigation until the lawyer suggested that they ought to do so.

At the same time, other EA observations appeared to substantiate concerns about the process encouraging premature NFAs following the lawyer’s advice. In ‘Advice 20,’ for example, a lawyer who made contributions reflecting misunderstanding of trauma, use of force and the significance of inconsistencies in accounts of historical abuse, opened the Early Advice meeting with the comment (to an inexperienced police officer) that “this is one where I am going to invite you to NFA straight away.” Without any further explanation, the lawyer went on to simply opine that “the reasons for late disclosure are not very convincing.” What is more, the lawyer did not engage with the officer’s subsequent intimation that the police had recently received a potentially corroborative complaint from another source, and instead closed the review abruptly, noting “well that was good, it only took 5 mins, if only every case was as good as that.” Similarly, in ‘Advice 16,’ though the lawyer stopped short of positively encouraging a NFA decision, his focus throughout the discussion was primarily on the weaknesses that he felt the case suffered from. Early in the meeting, he observed that “all of this is going to be seriously problematic if we charge it, so it is very negative, and I am having trouble with the positives.” He continued to describe the complainant’s evidence as “very vague,” for example, in relation to how she knew that the rape had occurred when the basis of her complaint was that she was incapacitated at the time. Without considering the possibility of a second ABE, he also raised concerns about the poor video quality of the recording – “she is so out of focus, I would hardly be able to identify her” and “the jury needs to be able to see the face of the victim, so it is possible it would be inadmissible” – and surmised that “it’s not looking very good from the beginning.” Despite this, whilst suggesting to the police officer that “I am sure you would be pleased if I were to say that this is going nowhere,” he intimated in the end that, the officer having brought it to him for discussion, he did have a responsibility to “give you some advice just to see if we can give it a bit more.” But in the context of the wider discussion, as well as the pressures of police workloads, it is optimistic to think that this officer would still be motivated to pursue the case any further.

The need to monitor this risk was underscored by CPS 6 who noted: “a lot of the cases the police are NFA’ing without sending to us for a Full Code Test decision are cases that have had EA on them. Now whether they would have always been NFA’d by the police and never come to us anyway, I don’t know. Or whether the discussion with a lawyer is pointing out the issues early and saying...if we can't address that issue, we're never going to be able to charge...and

that's then given them the confidence to say...we can't deal with that issue and we're NFA'ing it. So, we are dip-sampling police NFAs just to check that they're not NFA'ing cases inappropriately." Though, for reasons we explore further in the next Section, such scrutiny is clearly important, it is also crucial to link these concerns regarding premature NFAs to the need, highlighted above, for clearer guidance on roles and responsibilities in the EA process, and for an open, discursive exchange that does not presume participants' motivations.

## Final Reflections

In summary, then, it is clear that making a success of EA requires substantial and ongoing investment in relationship-building with police, as well as increased resourcing to address the impact on workloads – both of providing EA itself and of the anticipated flow-through of a higher volume of cases for charging decisions as a consequence of that early partnership working to build cases and improve file quality. Without this, the benefits of EA cannot be harnessed, and progression delays will be postponed but not eliminated. As Police 16 put it, "EA is definitely working: I think it's a good thing. The downside is that, as we've got better at doing it, it's causing problems with CPS with delays...so then you lose trust in the process." Moreover, while EA creates a valuable opportunity to develop a shared approach to setting reasonable lines of enquiry and a robust but proportionate approach to disclosure, which can facilitate timely and effective case progression, in and of itself it does not address concerns about the adequacy of trauma-informed and suspect-focused approaches in that process, and our observations have continued to highlight markedly variable practice in these respects.

## 4. No Further Action (NFA) Scrutiny

The aim of the No Further Action Scrutiny workstream under Operation Soteria has been to increase transparency, accountability and confidence in relation to the consistency and quality of decision-making and create more routine opportunities to identify and share learning that will enable continuous improvement, including in relation to dispelling myths and stereotypes (referred to in recent CPS materials, including its Equally Ours *Research into the Public Understanding of Rape and Serious Sexual Offences and Consent* (2023) by the terminology of ‘misconceptions and assumptions’). In this section, we outline our findings regarding the implementation, operation and efficacy of the mechanisms put in place across pathfinder areas to facilitate this scrutiny, including dedicated NFA Scrutiny Panels. However, to fully address the ambitions of transparency, accountability and confidence set out above, it is obviously necessary to take a more expansive approach that considers decision-making beyond the confines of panel discussions and extends to the reasoning applied at all stages of case evaluation and progression. Thus, later sections explore these broader considerations, reflecting particularly on our findings regarding the tenacity of (some) myths and stereotypes.

### No Further Action Scrutiny Panels

Each pathfinder area has established its own mechanisms for internal and external scrutiny. These include dedicated NFA Scrutiny panels, to be convened at periodic intervals and typically with the mandate to critically assess both police and CPS reasoning in relation to RASSO complaints that were not progressed. Broadly speaking, these panels were considered valuable by CPS, police and ISVA interviewees alike, and often because, as CPS 51 put it, “the best way to learn is from your mistakes and from previous cases and ensure those don’t happen again.” Again, at least partially reflecting the ambition under Operation Soteria to test and learn from different models across pathfinder areas, the frequency of these panels, the make-up of panel membership and the amounts and types of cases reviewed has varied considerably, however. In Areas C and E, for example, panels were scheduled to occur on a quarterly basis, and notwithstanding some postponement and rescheduling over the duration of our research, this panel process appeared reasonably well-embedded in standard operative practice. Meanwhile, in Area B, whilst its Tracker entries advised that lawyers were undertaking a bi-monthly review of CPS NFA decisions alongside police, limited information was provided regarding how many cases had been reviewed; and though Scrutiny Panels had been instituted, their frequency was unclear. Similarly, Area D documented on its Tracker entries that it was piloting three different types of NFA scrutiny, including panels and quarterly reviews at a senior level. However, data on the number of cases reviewed, or panels held, was not provided beyond December 2022 with difficulties in co-ordinating with police cited as a reason. As a consequence, separate forums for review (with ISVAs) of CPS decision-making had been running concurrently. In Area A, though NFA Panels were initially convened when Operation Soteria commenced, they were paused from July 2022 onwards, due to what was described to us as a concern that the cases being selected for panel review were too often ones from which learning outcomes were likely to be limited. Instead, in order to scrutinise police NFAs, lawyers were attending police stations on a monthly basis to dip-sample, whilst internal quality assurance checks were carried out to scrutinise CPS decisions.

On a bi-annual basis, RASSO panels were also held in Area A, where ISVAs, lawyers and police from all local forces came together to review decisions that had been NFA'd by the CPS.

It is also clear that there has been variation in terms of the composition and balance of panel membership. In Area C, for example, panels were often composed of several police officers with far fewer CPS lawyers in attendance. Indeed, in one panel we attended, there were 14 police colleagues present but only one CPS lawyer. At times, this shifted the dynamic of the meetings, with discussion of police decisions taking up a disproportionate focus and facing the majority of scrutiny, while CPS decisions received minimal engagement. Increasing the efficacy of panels will require ensuring a more balanced mixture of CPS and police involvement, as well as a good level of representation from ISVAs and appropriate specialist 'by and for' services. The benefit of this broader composition was reflected upon by CPS 32: "it is really valuable to get external, and those with lived experience, insight into our casework. I think it's a two-way process actually, particularly with the panel members we have and their roles within their various respective organisations." Similarly, CPS 50 noted that "I've gone to rape scrutiny panels, interacted with ISVAs that come to that...it's been really positive [to talk to them] about why things haven't worked or perhaps just being quite honest about decisions we've made, and they've given us their feedback and their input [has] been really useful." In this context, it is notable that some pathfinder areas are exploring ways to build more tailored NFA scrutiny panels that harness specialist expertise – in Area A, for example, there are now plans to work with third sector colleagues to create NFA panels for vulnerable victims and sex worker communities in particular, in order to develop learning.

At the same time, it is important to note that simply curating a diverse panel membership does not in itself automatically ensure an open and egalitarian exchange of views. This also requires good chairing, and a conscious effort to ensure that all panel members are given the opportunity to engage effectively with the discussion, as well as a foundation of mutual professional respect. Modelling of good practice in this respect was particularly evident in 'Scrutiny 4,' where the panel, which was chaired jointly by the police and CPS with a senior officer from each leading discussion in regard to 'their' decisions, was structured to allow each member in turn to share their reflections about the cases. This created an atmosphere of inclusivity and allowed for effective participation by all, thereby enabling a more diverse range of perspectives to be presented and considered. Notwithstanding the challenges in relation to workload, it was also conducive to effective panel discussion that they were attended by personnel in senior police and CPS leadership positions. This underscored the importance of the process at an organisational level and is apt to increase the likelihood that learning and feedback can be pushed to colleagues with the appropriate weight and impact.

In regard to this point about organisational importance and running panels with respect for all participants, it is also worth emphasising that, to ensure scrutiny becomes an embedded practice, it must be afforded priority, notwithstanding competing demands on stakeholders' time. A reliable schedule for the frequency of panels across all areas would be beneficial in establishing a routine that would allow stakeholders, as well as the police and CPS, to plan appropriately. Although there may be circumstances that require panels to be cancelled or rescheduled at the last minute, this should be avoided wherever possible. We say this in a context in which, in all of the pathfinder areas that were running them as part of their Soteria activities, Scrutiny Panels that we were scheduled to observe as part of this research were

cancelled, often on short notice and sometimes with no alternative date provided. Given the amount of preparation that is required prior to the panel itself, frequent rescheduling is likely to frustrate stakeholders and may, in time, impact their willingness to engage and attend. On this point, moreover, the importance of ensuring that adequate time is afforded for preparation ahead of the panel should not be understated. This means sending out documents in a suitably concise format and in good time, rather than 1-2 working days before panels, as occurred in some of our observations, which reduces substantially the likelihood that panel members will have engaged and reflected meaningfully beforehand. Relatedly, agendas for each panel need to be realistic and flexible. Of the panels that we observed, those that had extensive agendas with large numbers of cases to review often felt rushed, or as though adequate time had not been afforded to the scrutiny of each case. Although a balance must be struck between the coverage of cases and depth of review, having time for discussion and reflection is key to ensuring meaningful learning occurs as a result of these panels.

In terms of the selection of cases for review, there was not a consistent process, with the number of cases discussed at each meeting varying both within and across pathfinder areas, although most have committed to the standard inclusion of both police and CPS NFA decisions. The disproportionate likelihood currently of a NFA decision occurring at the police rather than prosecutorial stage means an imbalance in the volume of cases available for selection, however; and if not carefully managed, this risks panels becoming a space in which police feel more exposed. While there are benefits in enabling targeted selection of cases, for example, to enable scrutiny of approach towards particular issues or types of cases, concerns were also raised by a number of interviewees regarding the risk that, without more random sampling, cases may be 'cherry-picked' to shore up confidence rather than encourage critical reflection. As mentioned above, this was suggested by some participants as a factor in the decision by Area A to rethink their NFA panel format: "The concern was that the police were perhaps cherry-picking some of the cases and sending them through. So a sense that you couldn't get a full picture of their decision-making because what you were being sent through were ones that were obviously NFAs" (CPS 36). On the one hand, this highlights the benefits of more specific and transparent guidance regarding how cases should be selected for review. On the other, it suggests a possible need for further investigation regarding the partnership dynamics underpinning this process, and whether these have themselves generated incentives for such selectivity or suspicions about it. Indeed, this sits at odds from the reflections of one officer regarding his recent attendance at a panel in Area E, who observed: "it was very reflective, there was no blame game, there was no finger pointing. It's about how do we unpick how this has happened, what's the rationale for these decisions that have been made? What we can learn from that and how do we do it different next time?" (Police 14).

The expectation to communicate learning and outcomes from all panels clearly and consistently also needs to be further embedded. Without this, as ISVA 23 put it, "there is a danger where they kind of, they feel like talking shops. They give the appearance that there is reflection happening but where's the oversight, where's the governance?...Where's the learning for the people that made that decision? They have the potential to be something, but they don't feel particularly joined up in the rest of the system." In the most effective panels that we observed, time was set aside at the outset for feedback on previous learning that arose at the last panel. In Area E, each case was scored numerically from 1 to 4 and the actions that needed to be taken after the Scrutiny Panel were clearly set out, with cases



scored at a 4 or even a 3 often prompting further investigation. For CPS cases, the DCP attending took responsibility for speaking to the prosecutor who made the decision, irrespective of whether it secured a high or low scoring. In addition, themes arising from panels are published in a regional RASSO newsletter that is circulated to all police and CPS staff. In other pathfinder areas, mechanisms for reporting on and learning from Scrutiny Panel discussion were less clearly established and, in our view, would benefit from an approach more consistent with that which has been developed in Area E. It is also important to underscore, however, that Scrutiny Panels ought not to be the only forum in which the quality and consistency of decision-making is reviewed, and lessons about good and bad practice shared. Internal quality assurance, training and mentoring continue to be crucial. In Area B, there have been initiatives to implement ‘pre-charge masterclasses’ where lawyers workshop practices to improve decision-making. CPS 10 explained the benefit of this in helping to ensure that lawyers are not having “myths and stereotypes drift into their decision-making” whilst “trying to level out” inconsistencies in approach. In Section 8, we explore some of these training and mentoring initiatives in more detail, and reflect on the extent to which they are fit for purpose in terms of equipping CPS colleagues in RASSO units to perform their role well.

Finally, it is worth reiterating that, while scrutiny of NFA outcomes is vital, focussing exclusively on this is likely to be of limited value. To improve decision-making and increase confidence, scrutiny as to the reasoning behind those outcomes is also imperative. Indeed, scrutiny should ideally extend to the end-to-end handling of a case, including investigative strategy, appropriate use of EA, proportionality and effectiveness of Action Plans, reasoning behind and defensibility of charging decision, communication of that decision where NFA’d, and trial preparation, strategy, execution and outcome where a case is charged. It is only through this more holistic and rigorous process of review and reflection that genuine confidence in decision-making around, and handling of, rape complaints can be restored, both within and between criminal justice agencies and amongst victims and the general public.

## CPS Decision-Making, Myths and Stereotypes

Throughout this research, we have sought to better understand CPS decision-making across and beyond dedicated NFA Panels and Scrutiny. This has involved, amongst other things, considering the ways in which prosecutors spoke about cases at the EA stage, exploring language and assertions made in case files and asking interviewees directly about decision-making and the potential impact and influence that myths and stereotypes may have thereon. There has been more substantial research, including most recently in England and Wales under Operation Soteria, into the influence of myths and stereotypes in the context of police decision-making (see, for example, Gekoski et al, 2023; Sleath & Bull, 2016; Brown et al, 2007), as well as a body of literature that explores public attitudes in these respects and their potential impact on the content and outcomes of jury deliberations (Leverick, 2020; Munro, 2019; Chalmers et al, 2021; Thomas, 2020; Tinsley et al, 2021; Equally Ours, 2023). However, to date, while it has been the subject of conjecture (see *R (On Application of End Violence Against Women Coalition v DPP [2021] EWCA Civ 350*), there has been little research undertaken to explore in a sustained way prosecutorial decision-making in RASSO cases. In this section, we highlight the existence of what we consider to be an ongoing disconnect between what lawyers appreciated, in theory, regarding trauma reactions and the danger of reliance on myths and stereotypes, and the way in which some cases were understood and

evaluated in practice. In particular, we identify areas of most pronounced concern in relation to: an ongoing preoccupation with interrogating complainants' credibility over suspects' behaviour, and a lack of nuance regarding the relevance of factors such as mental ill-health to that credibility; an inconsistent approach to documenting and recognising the impact of coercive control or grooming behaviours on the perpetration of, and victims' responses to, RASSO offences; a reliance on new myths in relation to 'modern' or 'non-conventional' sexual practices, including the use of dating apps to facilitate more casual sexual interactions; and a risk of trivialising forms of adolescent sexual abuse and associated safeguarding concerns.

## Decision-Making in Theory

During interviews, the reviewing lawyers we spoke to generally showed a good awareness about the importance of identifying and challenging myths and stereotypes, maintaining a suspect-focused investigation and understanding the complexity and diversity of victims' trauma reactions. This was often discussed in relation to training delivered to RASSO lawyers. As CPS 53 put it, "there's loads of guidance and people have had lots of training on myths and stereotypes and how people react to trauma. And, you know, people don't necessarily always react in the same way and that's something you have to consider. I think that has been drummed down to people now." In relation to trauma reactions in particular, lawyers were keen to emphasise that they understood the extent to which late or 'inconsistent' complaints should not be taken necessarily to indicate a lack of credibility. CPS 43 referenced, for example, that there is a "real focus now on 'late complaints don't mean that things haven't happened' or 'inconsistent complaints don't mean that they haven't happened', you know, just because it hasn't been reported previously, that's not a weakness." Translating that knowledge from training into how they suggested they would approach specific cases, CPS 49 gave the following example: "if your complainant is inconsistent about the time of day...well you know whether it's 3am or 5am, it's still at night, it's still dark...it sort of makes sense."

Meanwhile, in relation to wider myths and stereotypes, although research in other contexts has indicated that these can be tenacious, and interact in complicated ways with specific case and victim characteristics, several lawyers asserted with some confidence that these no longer informed their decision-making. Again, this was linked directly to the positive impacts of training. CPS 43, for example, maintained that "I think our team, in particular because of all the training we've had, the experience of the team in general, I think it's clear from our day-to-day conversations really that those don't influence our decisions." Echoing this sentiment, albeit applying what might be viewed as a disappointingly low threshold, CPS 35 also underscored that, in their experience of reviewing colleagues' decisions, "there's nothing sort of said that's really outrageous" in terms of reliance on myths and stereotypes. In addition, several lawyers during interviews showed an awareness of the importance of adopting a more suspect-focused approach, with CPS 51, for example, articulating it as involving a series of questions to consider: "what steps did this suspect take to ensure that the victim, the complainant, was consenting? Did they target them, did they target their vulnerabilities? Let's focus on the suspect and what they did or didn't do?". Several participants highlighted the benefits of adopting this approach as a mechanism to offset an historical imbalance whereby the primary focus had been on complainant credibility. Criticising that imbalance, CPS 20 observed that too often "it's all about credibility, it's all about *her* credibility," while CPS 6 confirmed that it felt at times like "you were convincing

yourself that there was no case,” despite the fact that, as CPS 7 noted, “every single person lies, if it was a criteria that you could never have lied in your life, we would have no cases.”

Importantly, during interviews, there was also a sense, from some external partners, that there had been something of a “mindset shift” (Police 19) among prosecutors towards trying to build and charge more cases, which supported the assertions by lawyers of an impact on decision-making due to their training on trauma, myths and stereotypes, and maintaining a suspect focus. One barrister explained how: “there was a move away from worrying about it just being word against word, and actually there was a shift towards thinking that, you know, if it’s just word against word it may well be sufficient” (Barrister 2). Similarly, Barrister 7 reflected on this apparent shift in prosecutorial approach, which they appeared to greet with more ambivalence given their perception of the challenges that it gave rise to at trial – as they put it, I’ve “done plenty of cases that both I and the reviewing lawyer have known I’m not going to get home. And by that I mean, you know, we know from the get-go that on paper, the case is there and the case is properly run, but we know that the obstacles of reasonable belief and stigma are going to stop a conviction.” Meanwhile a police officer, reflecting on their recent investigations, also noted that “we’ve had some borderline ones where I’ve felt it’s worth putting through to CPS but wasn’t quite sure if they would charge. And they have done, so it was worth sending” (Police 6). This perhaps demonstrates the benefits of lawyers being involved with officers in case-building from an earlier stage as a consequence of EA, discussed above; but prosecutors also indicated that it was reflective of a broader shift at senior level in how they were being advised that decisions are to be made within RASSO units. As CPS 49 explained: “there’s a heightened awareness that a marginal pass is still a pass, you know...we have leadership that says, you know, you won’t be criticised for a marginal pass.”

## Complainant Credibility

Despite this, several other interviewees continued to express concern about the extent to which CPS lawyers remained unduly preoccupied with victim credibility and continued to fixate on their behaviour in the period immediately before, during and after the incident, as well as throughout their subsequent engagement with the justice process, without directing equivalent scrutiny to the suspect. For example, ISVA 16 explained how, from their perspective, the CPS still appeared to endorse the idea that “if you’ve got a victim, who isn’t crying, who isn’t broken into pieces, it’s obviously not happened.” Another ISVA emphasised the peculiarity of the approach that they felt was still taken to victim credibility in rape cases: “So if I was burgled today, I wouldn’t expect the police to come around and say, really were you, you know? I wouldn’t expect them to say, well, why did you leave your window open, did you actually really subconsciously want to be burgled?” (ISVA 26). Meanwhile, several police officers, when asked about CPS decision-making, likewise maintained “there’s still an obsession about the victim’s credibility” (Police 27) and that “it’s still so much victim, victim, victim, what did they victim do? Why did the victim put herself in this position?” (Police 16).

This, at least partial, disconnect between a good theoretical appreciation and its practical application was also acutely apparent in several of our observations. In regard to trauma reactions and their interaction with assessments of credibility, ‘Advice 20’ and ‘Advice 21’ provide apposite examples. When considering an historic allegation that involved individuals who remained in contact for some time following the incident, the lawyer in ‘Advice 20’

observed to the officer: “What is she in contact with him for if she has been raped by him?” The same lawyer then repeated this approach in relation to ‘Advice 21,’ which he combined to discuss in the same EA meeting. In this case, the complainant had exchanged text messages with the suspect after a series of reported incidents that occurred in the context of an abuse of power relationship. The lawyer observed: “why would you have friendly exchanges I ask myself if you are in fear of the suspect...I just don’t think this hangs together;” and in respect of their content, opined “you wouldn’t say that if you had been abused, not in a million years.”

Meanwhile, other observations provided evidence of wider myths and stereotypes at play. In ‘Advice 16,’ for example, the lawyer who, as discussed in Section 3, appeared preoccupied with the negatives of the case, interrupted the officer in charge as he was recounting a chronology whereby the victim had been ejected from the marital home on account of her drug use, in order to observe “and she has got children as well doesn’t she.” There appeared to be no point to this interjection other than to underscore a negative appraisal of the victim’s character, and it highlights a lack of empathy for vulnerabilities tied to addiction. The lawyer went on to ask questions about whether the complainant’s husband (who was not the suspect) was of good character, which he attributed to establishing if this was a “normal family” from which the victim had “gone AWOL.” Meanwhile, ‘Advice 3’ illustrates, in a different way, a similar focus on respectability as a proxy for credibility. Here, the main focus of the EA was on whether there was enough evidence to support the victim’s account that she was too drunk to consent to intercourse with the suspect, a stranger whom she had met a couple of hours prior in a nightclub. The lawyer and officer discussed the relevant CCTV footage at length and explored the possibility of interviewing nightclub security. Notably, the discussion did not feature common myths and stereotypes in relation to intoxication and the potential for drunken, regretful sex, which was promising. However, at the same time, an emphasis was placed on the fact that the complainant’s friends seemed “like sensible people” who, on discovering her, “did all the right things,” including taking steps that ultimately assisted the police in identifying the suspect. Though obviously also evidentially significant in assessing the case, whether the complaint (and complainant) would have been viewed differently had her friends not reinforced her respectability by reacting in this way is unclear.

As noted above, we identified increased scope for myths and misunderstandings related to the relevance and impact of victim mental ill-health to inform assessments of credibility. Though the precise scale of mental ill-health diagnoses and symptoms amongst victims of rape remains unclear, research that has interrogated the relationship between pre-existing vulnerabilities and victimisation has demonstrated the prevalence of such conditions, often precipitated or made more pronounced by prior experiences of abuse (Hohl & Stanko, 2015; Stanko & Williams, 2009). The challenges that may be presented to police and prosecutors by a complainant’s mental ill-health, in terms of ensuring trauma-informed responses as well as assessing credibility and building a robust case, can be substantial and complicated (Ellison et al, 2014). Equally, previous research has raised significant concerns about attrition amongst this cohort (Ellison et al, 2014; Hester & Lilley, 2017; Lilley-Walker et al, 2019). In support of those concerns, we certainly observed examples of poor handling of the issues associated with complainant mental ill-health in this research, with lawyers too often making assertions about its significance to the case, and in particular to the victim’s credibility, that appeared to lack appropriate nuance as to the context of the complaint and the nature of the condition.

In 'Advice 16,' which we referred to above, though there was no mention of any diagnosis in relation to the victim, the lawyer remarked that there were "some references that make [them] think she possibly has mental health problems as well, on top of her multiple drug problems." This was then used to support his assessment that establishing her credibility would be "difficult." Meanwhile, in 'Advice 23,' the victim had been found by police in a distressed state, with forensic evidence uncovered at the scene that appeared to corroborate her account of forced intercourse. The victim was an in-patient at a mental health hospital, and this became the focal point for discussion, especially in relation to reasonable lines of enquiry and third-party material. Though the exact details of her diagnosis and how it impacted on her perception, behaviour and memory were unknown at the time of the EA, the lawyer underscored that a key question in respect of her credibility would be "what influence her mental health might have had on her." Depending on the details of her condition, it may well have been appropriate to address this issue, but what was striking was the extent to which the complainant's mental ill-health was presumed to undermine her credibility from the outset, and the priority then afforded to that in a context where there was additional evidence that supported her complaint and allowed for a more suspect-focused strategy.

The consequences of such an approach were also apparent in a case, discussed in 'Scrutiny 15,' in which the CPS declined to charge a rape reported to have taken place years earlier in the context of a domestically abusive relationship. In the intervening period, the complainant had been diagnosed with mental ill-health conditions, which were exacerbated by her alcohol (mis)use and could manifest in hallucinations. Police were unable to confirm when these conditions were diagnosed and noted that any causal relationship between the allegation and the mental ill-health could operate in either direction, i.e. with the rape and abuse having precipitated the condition or with the rape being a false complaint arising from "psychiatric delusions." Though accepting that this was "a difficult case," the police supported charge on the basis that there was corroborative evidence through disclosures to family members and her GP, and because "the issues caused by the complainant's poor mental health are not insurmountable." Despite this, the reviewing lawyer decided to take no further action: in respect of the complainant's mental ill-health, he opined that obtaining an expert assessment to better understand her condition was not proportionate and unlikely to be helpful. Combined with subsequent "unsubstantiated allegations" made in intervening years, the lawyer concluded that a jury would be likely to consider her rape complaint to be the result of her hallucinations. He also dismissed supporting evidence by noting that, while the complainant had indeed attended her GP in the aftermath, there was no record of a rape disclosure in the file, which he considered "unlikely" if disclosed. Likewise, he suggested that the fact that a third party, to whom the complainant said she had disclosed at the time, later referred to what occurred as a 'sexual assault' rather than 'rape' undermined credibility since it was "unlikely" they would have used this language "given the significant difference," thereby ignoring the reasons why more imprecise language might well have been preferred.

As part of the panel discussion around this case in 'Scrutiny 15,' it was noted that this was a "nuanced situation" and involved a "difficult" assessment by the reviewing lawyer. Equally, it was observed that it could be "dangerous," when someone's medical condition and its potential impact is relevant to assessing a case, not to ensure that decision-makers are properly informed, rather than operating on the basis of assumptions or generalist knowledge. As one of the CPS representatives in attendance put it, "if you don't understand

what the hallucinations were, how they manifest, there is a gap in knowledge there.” There is also potentially a missed opportunity to be able to delimit more effectively the impact of the mental ill-health if, for example, a clearer date could be put to onset of symptoms or better information provided about factors that increased or decreased the likelihood of hallucinations. The importance of reviewing lawyers taking time to ensure appropriate knowledge and understanding about the relationship between trauma, mental ill-health and memory as part of effective case decision-making and preparation was also underscored by other interviewees. Barrister 11, for example, queried how – in the absence of that – it would be possible to “enable juries to understand this evidence in a meaningful way.” In many cases, as we discuss below, ensuring that meaningful understanding requires not only a more informed assessment of symptoms and diagnoses, but also a greater appreciation of the linkages between abuse and trauma / mental ill-health and its weaponisation by abusers.

In our case file analysis, we also identified further evidence of victim mental ill-health being discussed in potentially problematic ways. In ‘Case File 6,’ for example, emphasis was placed in the lawyer’s review on the fact that the victim had undergone “repeated and lengthy periods in hospital because of her mental health problems.” Notwithstanding corroborative forensic evidence regarding her complaint of rape, the extent to which the victim might suffer from “paranoid and grandiose delusions” that undermined her credibility was emphasised. Assessment was further complicated here by the fact that the complainant had made prior allegations of rape that were NFA’d. These were described, therefore, as “unfounded,” despite her having protested their veracity even to the extent of making a formal complaint regarding what she perceived to be poor handling of their investigation by police. In addition, the language used by police to describe interactions with the victim was laden with disapproval, describing her as “problematic” and “argumentative,” “hesitant to put herself out” in co-operating with police and “giving the impression that she is trying to call the shots” when she refused to attend, at short notice, to give her ABE interview because of difficulties she advised it would present to managing her complex health problems. Meanwhile, in ‘Case File 14,’ the complainant – who was identified as being vulnerable due to her mental ill-health and learning disabilities, and who relied on the assistance of an intermediary – was required by police to give three ABEs, with a suggestion from the CPS that a further ABE may be required as the investigation progressed. Though this was a complicated case, involving multiple counts of acquaintance rape alleged to have occurred while both parties were under the influence of drugs, the impact of undergoing repeated ABEs on this already vulnerable victim should not be underestimated, and raises questions about the absence of a suitably trauma-informed lens to investigative decision-making. It is also notable that neither the lawyer nor police officer in this case appeared to raise the possibility of exploring the victim’s lack of capacity to consent given her vulnerabilities, which might have been an appropriate avenue of enquiry. And in ‘Case File 19,’ which we discuss further in Section 5, the lawyer’s request for expansive disclosure was driven by his assessment that the “issue in the case is *her* credibility and reliability.” Though there was corroborative witness and first disclosure evidence that supported her complaint of rape by a previously unknown suspect, a search of over a decade of medical records was requested, partly justified on the basis that the victim had a diagnosis for General Anxiety Disorder. There was also a note on the complainant’s counselling records which described her as “easily led” and hesitant to “upset people,” which correlated with her account of how the alleged assault took place. Rather than develop that as part of the case strategy, however, the lawyer’s advice to the officer in charge chose to

focus on the fact she “did not report the matter for 10 days,” whilst actioning no interrogation of the suspect’s propensity for the allegedly persistent pursuit of the victim on the night in question. This suggests that a complainant’s mental ill-health may not only be misunderstood by prosecutors, with unfounded assumptions about symptoms and their impact on reliability informing progression decision-making, but that it may also be invoked to assist in drawing wider conclusions about victim credibility that are rooted in other myths and stereotypes.

## Understandings of Coercive Control

Another area of concern in the context of CPS decision-making that we have identified relates to lawyers’ understanding of the relationship between coercive control and / or grooming behaviours and RASSO offences. The need for further training and understanding around this was underscored by CPS 2, who noted that, within RASSO units, “the interplay between domestic abuse and rape is still not fully explored or understood...I don’t think we understand the complex interplay between coercion and control in domestic settings and rape, so I think there’s more challenges for us in the future.” As highlighted in our case interactions – discussed in Section 2 – there are currently a large proportion of rape complaints being investigated that arise against a context of domestic abuse, but in which the possibility of bringing charges against the suspect in relation to that abusive or coercive behaviour may not be considered properly, or is dismissed. This can create a situation in which the entirety of the victim’s experience is eclipsed, the prospects for securing justice diminished, and risks posed by perpetrators are unmanaged. In ‘Case File 11,’ for example, the suspect was charged with a string of sexual offences against children and adults over decades. Although the reviewing lawyer agreed that there was substantial evidence of abusive and coercive or controlling behaviour towards his adult partners, they specifically advised against bringing charges in relation to this: noting that “in a stand-alone case, I might have advised charging,” they went on to advise that “given the size that this case is going to eventually be, I think we should focus on the sexual conduct and use this evidence to demonstrate his grooming, control and methods as bad character.” It is difficult with hindsight to assess the effectiveness of this strategy, but what is clear is that, despite returning guilty verdicts on the overwhelming majority of charges, the jury acquitted this suspect of all three charges of rape that were laid in relation to those adult complainants with whom he had been in an intimate relationship.

The challenges associated with prosecuting domestic abuse have been well-documented in previous research, and while statistics indicate an increase year-on-year in England and Wales in the number of coercive control prosecutions, this continues to represent only a very small proportion of the overall profile of domestic abuse related offences (ONS, 2022b). Indeed, recent studies evidence an ongoing tendency amongst justice personnel to trivialise the effects of non-physical forms of abuse and a lack of clarity regarding appropriate standards for charging, especially in relation to coercive control (Bishop & Bettinson, 2018; Barlow et al, 2020; Myhill et al 2022; Bettinson et al, forthcoming). In April 2023, the CPS took steps to address this via refreshed CCB and stalking or harassment legal guidance to prosecutors that, amongst other things, stipulates that - as a general rule - they “should seek to put before the court all relevant evidence of CCB” and pay careful attention to the behaviour and actions of suspects, including conduct that manipulates victims or capitalises on existing vulnerabilities

(see also Home Office, 2022b).<sup>3</sup> It is obviously beyond the scope of the present research to explore the impact of that refreshed guidance in detail, and it should be borne in mind that the case files explored here (though not necessarily the cases interacted with during Advice discussions or Scrutiny panels) pre-dated its publication. That said, to the extent that this previous research indicates challenges in recognition, case-building and charging of coercive control even in specialist domestic abuse units, it is perhaps less surprising that we identified some comparable concerns about the handling of such issues by RASSO teams in this study; but this only speaks to the need for less siloed processes and expertise to improve practice.

Across the study, we interacted with a number of cases where rape was alleged in an abusive relationship but, despite this, no associated abuse charges were considered. That context of abuse and control often either receded to the background of the sexual offences investigation or emerged as a complicating factor in establishing the requisite lack of consent. In 'Advice 16,' for example, the lawyer, in relation to a complainant who had a prior relationship with the suspect arising from prolonged drug use together, observed that her account "is very, very vague and it is very difficult for us to put to the court" since "she admits consensual sex with him in the beginning and then plays that down...and says she was effectively pressurised into the sex but doesn't say that it wasn't consensual." Similarly, in 'Advice 21,' the lawyer, in relation to a complainant who reported having been repeatedly abused by someone in a position of authority with whom they continued to engage after the abuse occurred, observed that: "if you were able to stop after a few months of abuse, why were you able to stop then and not before, you said you were frightened of this chap." Reflecting a lack of understanding regarding power relations and vulnerability in and beyond coercive or grooming contexts, this lawyer also noted that the victim said they tried, on some occasions, to resist the suspect: but rather than see this as supportive of non-consent, the lawyer interpreted that as undermining any claim to a lack of agency, since the complainant "suggests that he puts up some resistance so he was not completely dominated by the suspect to have had no willpower at all."

Meanwhile, in 'Advice 1,' the complainant and suspect had previously been in a relationship, which the officer in charge confirmed had been established as having been abusive. Though describing the victim as "chaotic" and as having struggled to place dates and times, the officer advised that the victim and the suspect were separated at the time of the incident and that she had a new partner. Whilst following it up with a disclaimer that it was not intended to victim-blame, the lawyer's opening contribution in this discussion, after the officer had set out these facts, was to ask: "what would the jury say to know she was [meeting in private] with another man?" In response, the officer indicated that the complainant had advised that she met with the suspect in the belief that he wanted to make amends for his past behaviour. But this, in itself, led the officer to raise a concern that jurors would be unsympathetic to the complainant, with the implicit suggestion being that she ought to have anticipated and avoided the risk posed on the basis of this history of prior abuse. A suspect-focused approach would, by contrast, have explored that profile of abuse and documented the cycles of control associated with violence, 'love-bombing' and amend-making by perpetrators. And though the lawyer did ultimately steer the officer towards investigations regarding coercive control, it is notable that they did not use that context to challenge their own instinctive concern about

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<sup>3</sup> <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>



the complainant's meeting with the suspect after the end of their relationship, which the lawyer returned to throughout the EA discussion, as to "why she was there in the first place."

It is important to note that we did also see evidence of more promising practice. In 'Advice 35,' for example, a case that involved two young adults who had been in a relationship together, the complainant had commented to police that, on looking back at it, she never really felt like she had consented to sex with the suspect (who had been the subject of previous allegations of sexual assault and rape by others), because she had been acting under such fear and pressure. Despite this, it was clear from the content of the EA discussion that the officer in charge was sceptical about the prospects of being able to build a case around that coercive control. While respectful throughout of the officer's contributions, the lawyer here consistently underscored the significance of this aspect of the case, making it clear that the coercive nature of the parties' relationship needed to be further explored alongside any evidence of escalating behaviour from the suspect: indeed, they asked the officer to "bring as much information on the suspect as possible in the way that you would with the victim" to inform decision-making. Bolstering the benefits of such an approach to the officer in charge, the lawyer also noted that "if you can charge him with coercive control, it becomes relevant with the other incidents in other relationships...(and) if she has been manipulated by the offender..., there is an inequality in the relationship, it is not a free relationship between two people." Meanwhile, in 'Case File 9,' a case in which the complainant, who was significantly younger than the accused, had been sending naked selfies at his request since she was a minor, and the accused had a long history of domestic and other offending, the reviewing lawyer was keen in their advice to emphasise the importance of the fact that "she describes him putting his hand on her neck...an action which I would suggest is one of subjugation of her to his will...From the outset he...clearly did not want to take her views seriously." Though initially unsure about the inclusion of a separate coercive control count in relation to allegations that the suspect exercised control over the complainant's actions and physical appearance, the lawyer continued to pursue this possibility, highlighting the benefit in "explaining the trajectory and purpose of his behaviour" to jurors at a subsequent rape trial.

It was, however, relatively rare to see this more nuanced approach being taken by lawyers to the interaction of coercion, abuse and freedom to consent to intercourse. In Section 6, we explore the extent to which this impacted trial strategy as cases developed. But its effects were also apparent at earlier stages of CPS decision-making. In 'Case File 5,' for example, there was a long history of domestic abuse and coercive control, but the CPS declined to bring charges because the victim's claim to have been raped on several occasions whilst she was pretending to be asleep was ultimately considered to be "one word against the other." Meanwhile, her account of having submitted to sex against her will, because she was so ground down by abuse as to feel she had no power to refuse, was interpreted as "reluctant" consent. In 'Case File 13,' references were made to the "chaotic relationship" between the victim and suspect who had been in an on-off relationship for several years when the incidents occurred. Although there was a known history of domestic abuse by the suspect in prior relationships, with documented physical violence and strangulation of the complainant, the lawyer – who did authorise five charges of rape – stated that they did not think an offence of coercive and controlling behaviour could be made out. Though the timing of the allegations in this case would have precluded a charge under the bespoke non-fatal strangulation offence, which came into force in June 2022, the reviewing lawyers' overall reasoning here is

disappointing, since it skipped over acknowledged physical assaults and implied a demanding threshold in terms of the spheres and scope of control required: “victim does describe some assaults, such as being grabbed by the throat and being kicked in the stomach [but] there is no evidence to suggest that she was controlled in terms of where she went and who she could see, or that the suspect controlled her finances.” In response to the accused’s acquittal at trial on all rape charges in this case, external counsel noted that, while the complainant gave her evidence well, “this was not a strong case to place before the jury.” Though the basis for that view was not articulated, it raises questions about the decision not to pursue any assault or CCB charges, given what in ‘Case File 9’ was identified to be their contextualising benefit.

In a case that was brought for discussion in ‘Scrutiny 15,’ moreover, the consequence of not pursuing such lines of enquiry from the outset was powerfully demonstrated. Here, a complainant reported that she had been raped on a recurring basis in the context of a domestically abusive (arranged) marriage to the suspect. Initially, the suspect was charged only with assault and threats to kill in respect of a specific incident involving a knife attack which had immediately preceded the report. This was because the reviewing lawyer concluded there was no realistic prospect of conviction in respect of rape with the complaint being “one word against another,” and felt that charges in respect of CCB were not appropriate since “there appears to be little or no corroborative evidence.” However, after the suspect was convicted, the police requested a review of CPS decision-making regarding the rape and CCB charges, noting the possibility to include the assault and threat to kill convictions as context and character evidence. At this stage, a second lawyer took a markedly different approach: noting that, while the complainant confirmed in her ABE that she “never said no” to her husband in relation to the vaginal intercourse, the lawyer concluded that there may be a reasonable prospect of conviction in relation to rape if a count of CCB was added since “the evidence, taken as a whole, tends to support the premise that this relationship was one of power and control where the suspect used coercive or controlling behaviour to have non-consensual sexual intercourse with the complainant. A charge of CCB contextualises the whole relationship and explains the reasons why the complainant did not say no to intercourse when the suspect demanded it.” Though this reflects a far more nuanced approach to issues of freedom and consent in this context, and so is to be welcomed, it is lamentable that it came too late for this particular complainant since, by this point, the suspect had left the country; and when arrested at the airport on his return some years later, the victim indicated she no longer wished to support the prosecution, and the case was NFA’d.

In addition, the contrasting approach from the second reviewing lawyer in this case, in which it was noted that the parties were of Pakistani heritage, may also speak to a further and complicated issue. As discussed in Section 2, we had limited data regarding the ethnic and cultural background of parties in the cases that we interacted with in this research, with only a small number specifically being identified as involving victims and / or suspects from Black, Asian or minority ethnic communities. However, in the two case files in our sample in which the parties to domestic rape were noted to be from South Asian and Middle Eastern Muslim families, it could be argued that a somewhat different approach was detectable towards issues of coercion and control. It is important to bear in mind here that our sample of case files was a small one, and we clearly did not have the opportunity within it to ‘control’ for variables tied to culture or ethnicity, for example by exploring decisions across a cohort of

cases by the same reviewing lawyer. As such, we make these observations tentatively, not to suggest a generalisable finding, but to raise the possible value of some further exploration.

We noted above a tendency for some lawyers both to invoke a very demanding threshold in terms of the types and levels of domination that suspects needed to demonstrate in order to prompt sustained reflection on dynamics of abuse or coercion within relationships, and to rarely consider submission to sexual activity as a consequence of fear, pressure or isolation as sufficient to establish lack of freedom to consent. But in both 'Case File 7' and 'Case File 8,' there appeared to be a greater willingness to attribute significance to claims of coercion and control, which were typically linked by police and lawyers alike to dynamics of 'honour' and 'culture' within Muslim communities. In 'Case File 7,' for example, the complainant disclosed that she had been raped throughout her marriage: that she would tell her husband that she did not want to have sex with him, ask him to stop and tell him that she was in pain, but that he would carry on regardless. The complainant also reported that she had been subjected to physical assaults, including strangulation, but confirmed that the suspect was not controlling her finances, surveilling her communication or restricting her daily movements. In some other cases, the absence of such latter factors was not only seen to preclude a coercive control charge but to undermine victims' accounts of having submitted to sex due to fear or pressure. In 'Case File 7,' the allegations likewise did not generate any separate CCB charges, but charges were authorised for rape, alongside additional charges for common assault and assault occasioning actual bodily harm. Cultural norms around gender roles appeared to have been foregrounded in this process to highlight their impact on the complainant's freedom to give, or refuse, consent. Indeed, the Investigation Log summarised that "throughout her marriage...she had been forced to have sex...through fear of violence and because [her husband] feels it is her duty." Meanwhile, in 'Case File 8,' the complainant disclosed an incident of rape in an abusive marriage: having initially been told by the complainant that she did not want to have sex with him because she was running late for a meeting, the suspect continued despite her refusals and efforts to push him off, becoming violent and telling her he was entitled to sex because she was his wife. The complainant's ABE suggested there may have been other occasions on which her husband had forced intercourse, which were not pursued, but charging was authorised for rape in respect of this incident, alongside charges tied to the physical assault. It was noted in the Investigation Log that "the victim has called the police but never formally made a complaint due to 'the culture' and fear of reprisals" and that "culturally, it is a shame to call the police in relation to this matter, according to their cultural traditions, and by doing so now the victim has gone past the point of no return."

On the one hand, such recognition of the additional layers of control and constraint that can impact upon specific communities is to be welcomed, particularly in light of substantial evidence regarding ongoing barriers to reporting and disclosure (Gill, 2022; Gill & Harrison, 2016; Thiara & Roy, 2020; Thiara et al, 2015;). Equally, however, the handling of these cases risks perpetuating harmful tropes about agency based on ethnicity, gender, and culture. This was reflected in 'Forum 7,' for example, where discussion centred around "hints of cultural issues" in one of the cases under review, notwithstanding participants having received no information about the complainant's actual ethnicity and a paucity of any clear articulation within the discussion itself as to what these "issues" might be exactly, or how they might have impacted. Without underlying exploration of the victim's subjective experiences of abuse and potential barriers to disclosure within their specific community, participants were quick in

'Forum 7' to underscore that she could have been "culturally embedded in coercive control being part of the relationship" such that she "doesn't recognise it." These *are* important factors to consider. However, a simplistic approach here risks constructing minority ethnic complainants in a particular – and primarily passive – mould. This may make recognition of their victimhood precarious where they fail to conform to this expectation and does little to challenge wider and dubious assumptions about all victims' capacities for agency, disclosure and exit in the context of domestically abusive relationships. Indeed, as others have previously argued, viewing 'culture' as unchanging and homogenous may be apt to present barriers to effective responses by statutory professionals, leading to a reframing of sexual violence as 'cultural' and encouraging a reductionist analysis that fails to adequately capture the nuance and complexity of the issues at stake (Thiara & Roy, 2020: 8; Gill & Walker, 2020).

### Non-Conventional Sexual Practices, Dating Apps and 'New Rape Myths'

Irrespective of any progress that may have been made in relation to disapplying other long-standing myths and stereotypes - for example, regarding the clothing of the victim, the inevitability of injury being sustained or the relevance of prior promiscuity - we also identified in this study a potential emergence of 'new' myths tied to 'modern' sexual practices, described by Police 14 as "the new rape myths and stereotypes around 'Tinder' and dating apps." These have already been raised as an area of attention for the CPS following a study, conducted in conjunction with Equally Ours, which highlighted their public prevalence (2023). Our findings lend support to this by documenting some of the ways in which those myths may have impacted the handling and determination of cases by prosecutors and illustrating, therefore, the need to ensure that training and monitoring remain alert to evolving concerns.

In 'Advice 7,' for example, one of the issues of contention was whether the parties had met using a "normal" dating platform or one specifically aimed at those wanting to engage in non-monogamous sexual practices. Despite the lawyer underscoring that the complainant's being on an app in order to engage in such practices "wouldn't mean that she was any more or less likely to be raped," jokes were made between her and the officer in charge about how "you do learn a lot about things in this job," and there was a judgemental overtone to the discussion regarding the parties' lifestyle. At the same time, this 'othering' was tempered somewhat by the lawyer, who observed that the platform in question was a "posh one," having been featured in a "civilised" newspaper article, which appeared to be relied upon to bolster the complainant's respectability. Similarly, in 'Scrutiny 7,' in discussing a case in which the victim and suspect were part of a BDSM community, the panel noted that there had been a lack of professional curiosity during the initial investigation about the rules of engagement within that community, supporting the contestable conclusion that the complainant's consensual involvement in such practices would be likely to make establishing lack of consent to the incident more difficult. Apparent unease with regard to such sexual practices was also underscored within the panel itself where the lawyers in attendance made comments about the nature of the club and joked with the police about it. One officer remarked, for example, that he was in "stunned silence" at the facts of the case, while a lawyer commented on how much of an "eye-opener" it had been, noting that "all jokes aside, it was well investigated."

Meanwhile, in 'Case File 15,' the reported rape occurred after the victim and suspect – who were married – had engaged in sexual intercourse together with a third party. Throughout

her ABE interview, the police officer asked the complainant repeatedly about the details of her “sex life”, and specifically about whether she and the suspect had engaged in roleplay or BDSM. Given the facts of the case, some questioning around the couple’s sexual practices may have been necessary for the investigation, but they were pursued with a level of determination and detail that, in our reading of the case file, it was difficult to justify; and it was clear from the transcript that the complainant found this distressing. Ultimately, this case was charged and went to trial, some seven years after the incident had taken place and was initially reported. When the accused was acquitted after a very short deliberation by the jury, counsel submitted an adverse outcome report that highlighted the relevance of the “so-called threesome,” which made the verdict outcome “disappointing” but “by no means surprising.”

Across the study, we encountered only 4 cases in which the parties had initially ‘met’ on a dating platform. In one of these, discussed in ‘Scrutiny 3,’ the complainant alleged that the incident occurred on the parties’ first meeting in-person. In the run up to the police decision to NFA this case, multiple references were made to the possibility that the complainant had “catfished” the suspect and, when he rejected her, falsely reported that he had raped and strangled her. There was little to no explanation afforded as to why this possibility had been given such credence, although it may have been influenced by the fact that this case involved a complainant who was older than the average user of online dating platforms, with associated norms around gender, age and sexual promiscuity at play. Later in the same report, moreover, references were made to the improbability of the suspect “pinning her down,” as the complainant had claimed, on the spurious basis that she was notably larger than him and, therefore, it was assumed, would have been able to resist had he attempted to do so. Although, at the Scrutiny Panel, the language and this decision were subjected to significant criticism, it does not negate the fact the report was written initially without any challenge.

Meanwhile, in ‘Case File 24,’ the parties had met on a dating app approximately one month prior to the incident, and engaged in consensual sexual intercourse as well as phone / digital sex in the intervening period. The complainant reported having been forcibly orally raped by the suspect, who had previously been investigated in relation to a similar complaint by another woman. Despite the lawyer who reviewed the case on the threshold test describing the complainant’s ABE interview as “detailed and credible” and the police highlighting as strengths in the case the fact that the complainant was of good character, had given an account to a disclosure witness which was consistent, reported immediately and had injuries that would appear to corroborate her allegations, on requesting an update on progress from the local police force, the CPS lawyer had noted on the file that the case was NFA’d. We do not have sufficient information to be able to account for this decision, but one thing that was clear was that the suspect interview focused considerable attention on whether or not the complainant had communicated non-consent rather than on whether the suspect had taken any steps to ascertain it, or on what basis he had grounded a reasonable belief therein. It is possible that this approach reflects a ‘modern myth’ regarding individuals who use dating apps, and engage consensually in casual sexual encounters arising therefrom, that they can be presumed more readily to be willingly consenting, absent clear and concerted refusals.

It is also important in this context to recognise that cases where the parties have ‘met’ and communicated using an online dating platform or app, can be challenging for other reasons: in particular, they often create considerable additional work in relation to phone downloads

and digital material. Though contextual information from that data may well be relevant, it also opens up scope for discovery of a range of other details about the parties' lives, including around sexual promiscuity and proclivities, that require robust evaluation for any relevance. In addition, those in younger age groups may be more likely than others to make use of such platforms, and there may be a substantial disconnect between their norms of usage and socio-sexual behaviour and those of individuals who may be required as justice professionals or jury members to evaluate their reports of abuse (for further consideration of these issues, albeit in the New Zealand context, see McDonald, 2020). This makes the task of approaching modern dating and non-conventional sexual behaviours without 'othering' complainants who participate in them both important and challenging. As Barrister 8 put it, "if you think of like a teenager, you know, defendant's 19, complainant is 17, 16, you know, they met on Tinder or something like that. Those ones, you know, the defendant's of clean character, he's in university...Those are the ones where you think I'm not going to get a conviction on this."

### Trivialisation of Adolescent Sexual Abuse

Though the primary focus of this research, and Operation Soteria more broadly, has been on adult rape complaints, as discussed in Section 2, we did nonetheless interact across the study with a proportion of cases that involved adolescent victims. In respect of those, one theme that emerged and would, we argue, merit more careful exploration in the future, related to a tendency across some interviews and panel observations alike for adolescent sexual abuse to be trivialised. Perhaps the most striking example of this arose in an interview with CPS 48 where they spoke of an increase in young girls coming forward to report non-penetrative offences in the area and remarked that "they are doing a disservice to the cases that really need to be investigated...because they're getting attention." This sense that adolescent sexual abuse is not always taken sufficiently seriously was also picked up by ISVAs who specialised in working with young people. Speaking about conversations that they had had with criminal justice personnel, ISVA 13, for example, suggested that "I've heard some of them say loads of them are just making it up, you know, it's teenagers being teenagers."

The implications of this were marked in our observation of 'Scrutiny 9,' where two relevant cases were discussed. In the first, which involved a 13-year-old victim and 16-year-old suspect, the officer presenting the case remarked that it had become clear early in the investigation that the parties were in a relationship and that the complainant had had consensual sex with the suspect previously. Though she alleged she had not wanted to have sex on the occasion that was the subject of the complaint and had acquiesced under pressure, the officer advised that police were "confident there was no rape there," noting that "the 13-year-old victim had sex and appeared quite chuffed with herself for having sex" when she spoke to friends about it afterwards. The relevance of that prior consent to the incident in question, and the nature and impact of the pressure that the victim referenced, did not appear to have been robustly interrogated. This was the case, moreover, notwithstanding the fact the suspect had – as one panel member put it – previously "got into some hot water" after approaching another 13-year-old girl for sex, and this prior incident was "never really unpicked" at the point of report or subsequently. Importantly, at the panel, it was noted that the case had already been returned to the officer to be "reinvigorated" to ensure that the suspect was not a serial perpetrator, with members observing that "we're talking about a 16-year-old and a child, and we have ancillary aggravating factors in this case that we ignored."

In the second case at this panel, a 14-year-old girl made a complaint of sexual touching against a peer. Though she reported it to the school, she was hesitant to make a formal police complaint. It emerged, in the course of investigations, that the suspect had previously been accused of sexually assaulting another girl, about which the school were also aware, but that the officer in charge “had the view that the victim did not want to engage and as a result there were limited enquiries.” At the panel, it was again noted that this case would be returned, potentially to be re-opened, but if not for learning purposes since there was inadequate consideration given to safeguarding. Reflecting across both cases, one panel member noted that “this is the second one where we’ve been blinkered by the children’s ages.” Meanwhile, another highlighted this as a wider, thematic issue by juxtaposing the tendency to trivialise as ‘banter’ amongst young people that which would be considered to be predatory behaviour amongst adults, and thereby underscoring the prevalence of specific myths and stereotypes regarding what sex offenders and offending look like, as well as the need for suspect-focused investigation, within this terrain of adolescent sexual abuse.

The resistance that can be encountered amongst some justice professionals to adopting this approach was, however, powerfully demonstrated in ‘Advice 23,’ which involved a case in which a girl under the age of 13 alleged she had been sexually assaulted by an adult male whilst travelling on public transport. Though the ages of the parties meant that questions of consent were irrelevant, the officer in charge made repeated reference to the complainant’s (bad) character, noting she was in “some sort of gang,” had several “previous relationships with older men,” “goes out drinking and smoking,” has “implicit sexual connotations” on her social media and had “bragged” to the suspect about “how many times she had had sex.” To the lawyer’s credit, in this exchange, they worked hard to remind the officer of the pertinent points to prove and did not suggest any kind of support for the views being expressed about the complainant’s character. And, in a context in which it was apparent that the officer was disinclined to pursue the investigation, noting that “I have met the victim and the suspect, I know I need to stay on the facts, but I do think the suspect is the truthful person,” the lawyer continued to focus on the reasonable lines of enquiry that would facilitate case-building.

There may be specific difficulties posed to effective case-building in adolescent cases, particularly where social media apps are used that do not automatically store posts to the user’s profile in a way that would enable easy retrieval; and these are often mediums used heavily by young people. There may also be compelling public interest reasons against prosecution in some cases. But none of this justifies a trivialisation of such abuse, a disregard of safeguarding concerns, nor the adoption of a sceptical approach towards the veracity of complaints made. It is worth reflecting, moreover, that there were cases encountered in this research that saw perpetrators embark, from adolescence, on a trajectory of offending that escalated in severity over time and in some cases spanned decades, but which might have been interrupted far earlier if complaints made had only been more robustly investigated.

## Work Still in Progress: Trauma, Myths and Stereotypes

As discussed above, a number of CPS colleagues spoke positively about the training they had received on developing a more suspect-focused approach that would avoid disproportionate emphasis on complainant credibility and on disapplying myths and stereotypes. In Section 8, we discuss that training in more detail but by way of concluding remarks here, it is important

to underscore that, however much it may have increased knowledge in the abstract, the translation of that knowledge into concrete decision-making remains, for some lawyers and / or in relation to some issues, clearly very much still work in progress. Our findings highlight the need in particular for training that is alert to the ways in which age-old stereotypes around victim credibility and respectability might resurface in new forms, for example, in relation to victim mental ill-health or 'non-conventional' sexual practices; and that is proactively driving a contextual understanding of consent and belief in consent that interrogates both the suspect's behaviour as well as the effects of power dynamics tied to domestic abuse, coercive control, grooming and other victim vulnerabilities. In addition, as we will discuss in due course, our findings highlight the need for that training and monitoring of decision-making to persist across careers, in order to embed and ensure continuous professional development.



## 5. Action Plan Monitoring

As discussed in Section 1, amongst the most persistent and significant criticisms of the handling of rape complaints in the criminal justice system, particularly in recent years, has been the protracted nature of investigations, the slow pace of progression towards any prosecution and the fact that complainants often experience substantial delays in their justice journeys that prolong their distress, prevent closure and, in many cases, risk withdrawal of their cooperation (CWJ, 2020; RCEW, 2023; Wunsch et al, 2021). As ISVA 23 put it, it's a "service-wide challenge...because the criminal justice process is so long" but "the feeling of frustration and stagnation with cases" is "a major issue." Other ISVAs we spoke to, reflecting on their clients' experiences, likewise cautioned that "no one understands when they're about to report this horrific thing that's happened, that they're going to be in this for three or four years...it's too long for them" (ISVA 9), and "when you've gone through something so traumatic and you're waiting that long for an outcome, it is really distressing and really disastrous for them" (ISVA 10). Though some of the difficulties here are attributable to poor resourcing and infrastructure at the court stage, there are clearly mechanisms through which both police and the CPS can increase the timeliness of their contributions, as well as improve their communication with victims in respect of anticipated timescales and unforeseen delays.

Much of the focus of the CPS workstream on Action Plan Monitoring under Operation Soteria has been developed with this in mind. More specifically, activity under that workstream sets out to improve the timeliness with which complaints are investigated and progressed, including by reducing the need for multiple Action Plans and ensuring that the content of those Plans is proportionate and case-specific – in particular, in relation to the recovery and disclosure of digital and third-party material. This has been accompanied by initiatives to ensure more effective mechanisms for scheduling and task-management between police and CPS, and processes for escalation where necessary to avoid stagnation in case progression. The foundational importance of making such improvements was acknowledged by several interviewees. As one put it, for example, "improving the quality of investigations and the speed of investigations, the timeliness is the biggest thing that we need to address because I think the other things will almost fall into place" (CPS 6). Meanwhile, CPS 9 underscored that "if we can ensure that we make decisions more efficiently and more effectively, and that our Action Plans are proportionate, it would help deliver justice a lot quicker," which matters for criminal justice and third sector professionals, suspects, victims and the general public alike.

### Initiatives to Reduce the Number of RASSO Action Plans

When an Action Plan is set by a prosecutor, it effectively returns primary responsibility for the case to the police with the onus on them to complete the tasks outlined before resubmission of the file. Action Plans can arise at various stages in the criminal justice process: where cases are submitted by the police for Early Advice, for example, this will often generate a first Action Plan that details relevant lines of enquiry and investigative strategy, as well as providing a timetable for the completion and oversight thereof. Equally, Action Plans might also be generated later in the investigative process, for example, where information comes to light that opens up new lines of enquiry or where case files are submitted for a charging decision and considered to require more building. In addition, just because a charging decision has

been made does not mean that there will not be further Action Plans created to facilitate the progression and prosecution of the case, for example where counsel make additional queries. Particularly in the context of persistently heavy caseloads and resourcing shortages, the generation of multiple Action Plans can slow the progression of a case significantly. Across pathfinder areas, there has, therefore, been a concerted effort to monitor the volume of Plans and impose a tighter 'grip' in relation to their delivery. In some areas, this has also been accompanied by initiatives designed to proactively reduce the number of Action Plans issued.

These initiatives have dovetailed in complementary, but also complicated, ways alongside initiatives to increase uptake of Early Advice. As discussed in Section 3, Early Advice has, in part, been encouraged to improve the speed, appropriateness and scope of RASSO investigations. As such, where Early Advice is given, it can clearly play a useful role in developing more comprehensive and strategic, but also more proportionate and tailored, Action Plans. This, in turn, might reduce the likelihood of additional Action Plans being required. In some CPS pathfinder areas, there has indeed been evidence indicating that increased uptake of Early Advice is reducing overall volume of Action Plans. In Area E, for example, it was noted in the March 2022 Tracker that the average number of Plans per case had fallen from over 3 to 2.6-2.7, and this was attributed directly to Early Advice improving the focus of investigations and the quality of files submitted by police for a Full Code Test decision. The benefits of EA in facilitating this increased investigative efficiency were also identified by some police participants within this research. One observed, for example, that "we've recognised that we're getting too many Action Plans. So, if we can replace the Action Plan with the EA pre-charge discussions and clarify those points with the lawyers...surely then that's an efficient way of getting it right first time" (Police 18). At the same time, however, the fact that the provision of Early Advice itself will typically generate an Action Plan means that, in other pathfinder areas, it has been suggested that "increased use of EA has led to an increase in the number of cases with 2+ Action Plans" (Area C, RASSO Report, July 2022). This underscores the fact that simply counting the number of Action Plans in a case, or the number of items listed on a Plan, does not in itself provide a particularly reliable indicator of the scale, quality or value of partnership working involved, or of the appropriate parameters of enquiry. As CPS 6 explained, "we monitor three-plus Action Plans and they haven't really reduced...But actually when you're looking at what we've got, I think the quality of the files we're getting are better than those that have not had EA and they are addressing more of the points."

Thus, simply 'reading off' from the average number of Action Plans is unlikely to provide an index of increased efficiency *per se*. That said, since the issuing of repeat Action Plans can build additional, and potentially avoidable, delay into the investigation and prosecution process, it is right that pathfinders have been paying closer attention to mechanisms for streamlining. Alongside internal dip-sampling for quality assurance, each pathfinder area has mechanisms in place to trigger reviews (either internal or with police) in cases with multiple Action Plans (set at either 2+ or 3+, depending on the area). In addition, Area B rolled out 'pre-charge masterclass' sessions designed to improve the quality of Action Plans, and – as referred to in Section 3 – Area A undertook a pilot with one of its police forces under which prosecutors hold conferences prior to making a charging decision, in the hope of resolving lingering enquiries and avoiding the need to set additional Action Plans. As one interviewee succinctly explained the motivations behind this pre-charge discussion, "we don't want files going backwards and forwards" (CPS 34); and feedback in this respect has been encouraging.

Tracker entries suggested a reduction of over one-quarter in the number of Action Plans produced, with fewer items contained in Plans overall – from an average of 7.3 before the pilot to an average of 5.8 after 3 months of pilot activity. In addition, the proportion of cases that were able to be either charged or No Further Actioned at this consultation increased from 29% to 52%. In line with our findings regarding the benefits of in-person EA provision, many respondents underscored the value of these meetings, in particular, in encouraging a more constructive and effective dialogue between police and prosecutors. As CPS 40 put it: “often we’ve found that just by asking the question, the officer’s got that knowledge at their fingertips, but it’s perhaps not been put on a MG6 or it’s not in the file somewhere, but it is knowledge the officer has, so we can reduce the number of actions or Action Plans.” This potential for PCD meetings to minimise Action Plans was also borne out in ‘Advice 14’, for example, where the officer was able to share the contents of a file during the call, circumventing the need for this to be formally requested by the lawyer via an Action Plan.

By contrast, in other pathfinder areas, it was noted that “there is still that disconnect when we’re bashing out Action Plans or they’ll send back emails; and in fact, picking up the phone and speaking to the officer or the inspector is much easier” (CPS 9). As a consequence, there was a concern that “we see much greater repeat Actions in that system where it’s a kind of faceless exchange of information and potentially things in an Action Plan are misunderstood or misconstrued” (CPS 10), rather than successfully “identifying everything that needs doing on the first review” (CPS 9). The regularity of this was highlighted by Barrister 8, who commented: “there seems to be a huge back and forth between the police trying to get it to the CPS quickly, the CPS rejecting the files because they’re not up to standard or not everything is in them. And then you get this huge back and forth, back and forth, back and forth. And sometimes by the time it comes to us, you know, it can be 12 months down the line, and that’s for a pretty standard case.” Similarly, Judge 2 observed that too often, in their experience, “the police will send in a file, the CPS will send it back. The police do some more work, the CPS will send it back. The police will do something else, it’ll be sent back. And it just ping-pongs between the two agencies for months...the CPS and the police almost seem to be on opposite sides rather than working together, and they just pass the buck back and forth.”

An illustration of this arose in ‘Case File 6’ where, following an initial Action Plan, a further six Plans were set over the ensuing six-week period. This was a case impacted by custody time limits which partially explains the pace of activity, particularly given that in several of the Action Plans repeat requests were accompanied by the threat of escalation. At the same time, Action Plans were issued by the CPS – sometimes on consecutive days – requesting different substantive information, which is likely to have made it difficult for the receiving officer to keep track, generating an unproductive series of ‘ping-pong’ exchanges that only partially addressed the matters in hand. Moreover, in one of the MG6s, it emerged that a significant obstacle to progression could have been easily resolved: the officer wrote “I have attempted to call the senior prosecutor, however the number I have doesn’t work and the email address says it is not in use. I am available to speak on the phone whilst I am on rest days” and gave their phone number. It is not clear that this was picked up on by the reviewing lawyer, and it was not until the seventh Action Plan that the first request was made regarding third-party material. Although there were potentially relevant mental health issues to address in this case, it was also not clear that the lawyer’s directions on this were informed or tailored in any meaningful way by engagement with the police; and what was requested extended to wide

parameters, covering “any material from the complainant’s medical / mental health records about false allegations, exaggeration, behavioural problems, attention-seeking, self-harm, mental health problems, anxiety, depression, attention-seeking behaviour,<sup>4</sup> hallucinations, delusional thoughts, alcohol and / or drug issues, suicide attempts, suicidal ideation, etc.”

The ways in which this “disconnect” in – particularly, written - communication between police and reviewing lawyers could impact on stakeholders’ confidence in one another’s motivations for issuing and engaging with Action Plans was also apparent. In a context in which all stakeholders are being assessed for their timeliness, several police officers highlighted that there may be perverse incentives to ‘game-play’. While Police 22 emphasised that “as soon as they [the CPS] have sent that Action Plan, it means their review is concluded and it’s back over to the police,” Police 31 spoke more plainly: “the cases just keep getting knocked back...and you don’t know if it’s a delay tactic because everybody’s busy and it might be that they haven’t got the time, so if they send it back to for a particular action, they’ve got another 28 days to carry on with something else.” Meanwhile, Police 5 suggested that, within their unit, suspicion of CPS motives was common: “it’s very evident that [the CPS] are under their own pressures. So, we do get Action Plans back from them that can be really frustrating for officers, that drag it out even further...it’s nicknamed the Friday evening Action Plan, that they will send it back and the only real enquiry on it is ‘can we make sure that the complainant is still on board’. Well, we wouldn’t have sent it if they weren’t.” Though these suspicions may be unfounded, the very fact that they were raised by police across several areas is itself a concern, highlighting the precarity of partnership working and the importance of ensuring opportunities for dialogue, transparency and professional understanding wherever possible.

Indeed, notwithstanding Soteria initiatives to improve police / CPS partnership working in their localities, several judicial interviewees also spoke of having identified this same sense of suspicion and frustration. As Judge 3 put it, “the whole idea of us having the CPS was to have a glass wall between the prosecution service and the police, but I think the problem is that it’s become a trench rather than a glass wall.” Meanwhile, Judge 2 described the relationship between the police and CPS as “an exercise in delay,” and Judge 9 - with the disclaimer that perhaps they were “cynical” - opined that there continues to be a “them and us” mentality, “which is very unfortunate and very time consuming,” with “an awful lot of that on the part of the CPS lawyers: just send it back, buy more time, and it’s just kicked down the road a bit.”

Alongside resourcing and workload pressures, and the challenges of written modes of communication where misunderstandings may be more frequent, additional obstacles to effective engagement between police and prosecutors in relation to Action Plans are also posed by incompatible IT systems. As Police 3 explained: “the CPS see a case, create an Action Plan and send it out to the officer. That stops the clock for the CPS then...the officer does the work two weeks later and sends it all back on our police system, but...it doesn’t generate something called a CM01 message and because it doesn’t generate that message the prosecution won’t accept it...So we’re ending up with cases going 30 days, 60 days, 70 days, where CPS are refusing to accept it and the officer’s going ‘but I’ve done it’...Beyond all that is a victim who’s waiting for an outcome on a case and it’s sat between us and the CPS because the two IT systems don’t talk to each other properly.” To circumvent such difficulties with IT

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<sup>4</sup> Mentioned twice in the original

compatibility, we saw evidence, in some circumstances, of case documents being shared through alternative – but potentially less secure – mediums; and even where there were less drastic challenges to system integration, it was clear that there were concerns regarding IT systems being fit for purpose. In addition, ensuring the timely progression of cases under Action Plans often relied significantly on the skills and capacity of Case Progression Managers, which is something that we will discuss further below in respect of tracking and escalation.

Of course, in all of this, it is crucial to underscore that the ambition to make charging decisions with greater efficiency – whether through provision of Early Advice or reduction of Action Plans – must never be at the cost of building cases wherever possible and robust decision-making. In Section 3, we highlighted some tensions that can arise in the EA context where discussions regarding the evidential parameters of a case could be interpreted or positioned in ways that support potentially premature NFA decisions. Similar tensions are also possible where there is an impetus towards making decisions without additional Action Plans: this might deter prosecutors from requesting further enquiries that, if pursued, might have strengthened the prospects for conviction. The importance of being alert to this was emphasised by CPS 5: “we’re not alone in feeling under pressure...and the impact of that is not on the quality...You might have too many cases and you might have too many tasks to do but what you do is you still do a really, really good job. You still make sure that you take time and make the right decision at the right time...If timeliness slips, that’s the thing that can slip. Our victims would not want to have a bad decision in quicker rush time.” For this reason, monitoring volume, length or timeliness of Action Plans – though potentially important mechanisms through which to ensure more efficiency – will only provide partial insight. What is also required is ongoing (and, ideally, multi-agency) qualitative scrutiny of the content of those Action Plans, and the bases for decisions that are made around them. In a context in which concerns have been expressed about proportionality, particularly in relation to third-party material and digital recovery, this is all the more pertinent. As noted above, there have been various efforts under Soteria to make improvements on this, which we now consider.

## Reviewing and Improving the Proportionality of Action Plans – Disclosure

Several of our interviewees indicated that, in their view, one of the most significant changes that they had observed as a result of Operation Soteria initiatives was the development of a greater shared understanding between police and prosecutors regarding appropriate parameters for third-party material and digital disclosure, and how this should feed into the development of more proportionate, reasonable lines of enquiry. As CPS 10 put it, “setting proportionate Action Plans, I think, has been the biggest revelation for the police, that actually much of the investigation that they undertake, that takes a long, long time, might not have been necessary or proportionate, so it’s changing that culture.” This notion of effecting a change was also echoed by another interviewee who remarked, “it is a huge cultural change as we try to be super-super proportionate and super-super targeted and justified” (CPS 5).

Though some CPS interviewees attributed the trend towards “poorer investigations” and “more onerous disclosure” (CPS 2), which had been identified in several pre-Soteria Inspectorate Reports, primarily to the retraction of police resourcing and specialism, others were more reflective around the extent to which that previous culture was not one solely of the police’s making. Indeed, several interviewees spoke candidly about the “chilling effect”

(CPS 1) of the *Liam Allan* case, that – in 2017 – attracted substantial publicity, where a trial involving multiple charges of rape and sexual assault collapsed when it emerged that text messages that would have been relevant to the defence case had failed to be identified and disclosed by the prosecution. It was suggested that a shift towards requiring more developed police investigations to be completed prior to any charging decision, together with a prosecutorial mindset that was cautious regarding the prospects of falling short on disclosure requirements, meant that a “checklist” mentality emerged (CPS 3) with “wide-ranging Action Plans with everything you can think might be faintly useful...just asking for the earth on things” (CPS 29). Though some interviewees were at pains to point out that this “wasn’t done with any intention other than trying to get the cases in front of the court in the best state possible,” they conceded that “it made it take longer in order to take the decisions and it also meant that they were asking for things that perhaps weren’t essential” (CPS 3). Some participants also acknowledged that this produced a stubborn legacy effect, whereby – notwithstanding subsequent provision of more circumscribed legal guidelines – police sometimes still presumed extensive lists of what prosecutors would “always want to see” (CPS 8). The consequences of this were reflected vividly in a case reviewed in ‘Scrutiny 12,’ for example. Here, it took over one year from the time of report to the file being reviewed by the CPS; and at that point, the lawyer noted that considerable time and resource had been wasted on obtaining extensive third-party material in relation to both the (child) complainant and witnesses that was unnecessary and irrelevant to the key point to prove in the voyeurism charge, which related to whether the accused acted for the purposes of sexual gratification.

In this context, the Attorney-General’s Guidance on Disclosure has obviously been an important development, alongside clearer parameters in case authorities (in particular, *R v Bater-James* [2020] EWCA Crim 79 regarding use of mobile phone data); and a bespoke podcast, designed to explain the application of this law to police and prosecutors, has been well-received. There is also now dedicated training on Disclosure Management provided to RASSO lawyers, through a one-day module that members of the research team observed during this project. Despite this, the legal landscape is often complicated, requiring a level of case-specific assessment that can make it difficult to ensure a consistent and proportionate approach. As one interviewee put it, “it’s really sort of subjective and you can think about, when what would be appropriate, and what one person might think is fine, another person might think isn’t, so it’s trying to get that balance” (CPS 50). This, of course, should not preclude efforts to improve the guidance provided to police and prosecutors to assist them with this task, including the development of broad principles that can guide that balancing.

Certainly, in this research, we were able to identify examples that indicated improved practice and reinforced the suggestion of a shift from blanket requests for extensive digital and third-party material driven by a ‘just in case’ attitude that disproportionately harmed complainants. In ‘Advice 17,’ for example, the lawyer queried whether the officer in charge had any indication on file of the victim having had any prior involvement with social services. When the officer said that they had no information around this but could make enquiries, the lawyer indicated that this would not be necessary at this stage: “I am happy to say that we don’t believe social services have been involved in any way...I can’t rule out the defence coming back and saying well she has all these problems and you need to go and look at all these things, and if they do, they do” but “we are actively discouraged from looking into things which are not a reasonable line of enquiry so hopefully my EA will be the last you hear about

third-party material.” Meanwhile, in ‘Advice 15,’ the lawyer was clear: “I cannot see in this case that it is a reasonable line of enquiry to delve into the victim’s third-party material – these are two strangers who have just met and the issue [consent] is very narrow.” When the officer in charge here went on to note that there was information on file to indicate the victim had been referred for counselling, the prosecutor advised that “unless there is something giving rise to the suggestion that there is anything relevant in those records, there is nothing to make it a reasonable line of enquiry.” Similarly, in ‘Advice 13,’ we observed a constructive discussion between the officer in charge and reviewing lawyer regarding the imposition of parameters on any review of the complainant’s social services records, to ensure a focus only on interventions at a relevant crisis point and avoid “looking at everything in a blanket way.”

At the same time, we also saw evidence of concerning practice whereby expansive requests were still being made in Action Plans without a clear or apparently compelling basis. In ‘Advice 23,’ for example, as discussed in Section 3, the complainant was found by police, in a distressed state at the scene of the alleged rape where corroborative forensic evidence was identified. The lawyer nonetheless requested that extensive third-party material be collected as part of the investigation, including her mental health and GP records, and phone downloads spanning the past 6 years. This was justified on the basis that the parties had previously been in a relationship and that the complainant had a mental health diagnosis which was considered an inevitable “credibility issue.” Meanwhile, in ‘Advice 6,’ though the lawyer did impose some restrictions on the search parameters initially proposed by the officer in charge, delimiting enquiry into the complainant’s medical records to the period after she was 13 years old, whilst the police had suggested commencing from age 10, they continued to request those records knowing that “we probably won’t need it but will get it all” and asked for a review of her social services records “just to make sure we have covered everything.” Strikingly, moreover, this was in a case where the key issue was not one of consent, but rather of whether the adult suspect knew the complainant was under the age of 16 at the time of intercourse, on which point there already appeared to be compelling media evidence, thereby raising further questions about the proportionality of the Action Plan set. Likewise, in ‘Case File 19,’ a reviewing lawyer providing Early Advice – exclusively in writing – on a case in which the accused was not someone previously known to the victim, rejected the officer in charge’s substantially more minimalist proposals regarding the scope of third-party material requests. Instead, the lawyer adopted a significantly extended remit: specifically, he advised that since “at present, the suspect has denied having sexual contact with the complainant...the issue in this case is likely to be her credibility and reliability.” Therefore, he instructed the officer to obtain her GP records, spanning over a decade, as well as her counselling records, since “if the complainant has been receiving counselling then those records need to be viewed fully...Is there anything in the records that could undermine her reliability as a witness?” In addition, the lawyer instructed enquiries to be made as to any social services records that might indicate her dishonesty, whilst stipulating in response to the officer’s query regarding the suspect’s records that no parallel enquiries were required.

Not only does this raise questions about the paucity of a suspect-focused-investigation, it underscores the concerns expressed by CPS colleagues that, notwithstanding new guidance and training, “some of the Action Plans I see are very lengthy...lawyers literally are sort of ticking every box in terms of making sure that everything is covered” (CPS 53). These findings sit alongside recent internal CPS analysis, reported by Area D in its Soteria Tracker, that some

50% of cases with 3+ Action Plans, assessed as part of Quality Reviews in that area, were found not to be reasonable and proportionate, resulting in unnecessary requests and delays. These concerns are also supported, moreover, by an analysis undertaken by the Home Office, concurrently with the present research, into requests for third-party material in rape cases. As reported in the Government's *2023 Rape Review Progress Update*, this dip sample case review within 8 police forces, conducted during the period from January to March 2023, found that, across 139 rape cases, there were a total of 342 third-party material requests made. 71% of cases contained a request for GP records, 47% for social services records and 29% for counselling or therapy notes. 62% of the accompanying forms did not contain any limits as to the scope and intrusiveness of the request (for example, stipulation of a specific date range), and in 36% of requests there was no evidence on file to indicate that the victim had been asked to give consent to requests for such disclosure from third parties. This review also assessed that, in 32% of cases, the rationale for the request was grounded in establishing perceived victim reliability or credibility. What is unclear is the extent to which those requests were initiated by police as a consequence of CPS input (following the setting of an Action Plan), and how often they were made independently of prosecutorial requests. In responses to the Home Office's *Consultation on Police Requests for Third Party Material* (2022a), it was notable, however, that the reason most commonly given by police respondents for why they would make third-party requests was because they were instructed to do so by the CPS or another external party. This accounted for 39% of responses, closely followed by explanations grounded in it being considered necessary to support or refute a reasonable line of enquiry (36%), with 21% saying they did so because they considered it routine practice. As the Home Office consultation concluded, "this suggests that, in at least some cases, unnecessary and disproportionate requests for third party-material are driven by the CPS and the defence, and this may be exacerbated by police thinking that the CPS expect a large volume of records."

Inconsistencies in approach towards disclosure were also apparent in interviews with CPS personnel. CPS 10, for example, emphasised that there was a perception amongst their local police forces, which she was working to dispel, that "we don't just say, because we've always done it, we apply for someone's medical records." Meanwhile, however, a colleague in the same unit was keen to underscore: "it's fairly case-specific but certain things are prevalent... third-party material, education and health records, social services material, it sometimes creates a bit of a blind spot for the police. They sometimes think just because someone's never been in trouble with the police before, there's no need to do it. And I have to keep saying to them, no, reliability and credibility of witnesses is so key in these cases, particularly if it is one word against one, we need to know if there's anything within those records that might possibly show there's a degree of untruthfulness in their past, exaggeration, attention-seeking...say at school, they were badly behaved...that sort of thing, we need to know...maybe drug dependency, things that might make them unreliable generally" (CPS 19).

The existence of such inconsistency in approach across prosecutors in relation to third-party material and disclosure had also not gone unnoticed by other stakeholders. Police 22 observed, for example, that "where we're seeing inconsistency is definitely Action Plans. There are some lawyers who will give a 30-point Action Plan...And then you'll have other lawyers that don't give very big Action Plans at all." Meanwhile, Police 31 commented that "the biggest thing is...what one lawyer expects will be totally different to another lawyer, especially...ways of doing disclosure." At the same time, it was clear that there was variable



practice, in turn, on the policing side in terms of their willingness to ‘push back’ against Action Plans that they felt were disproportionate or unreasonable. Police 22, for example, observed that “quite often...if you get an Action Plan, even if you think it’s unreasonable, you’ll go and do the Action because it speeds everything up. At the end of the day, your lawyer is going to be progressing that case and if that’s what they want, we’re just going to have to go and get it.” One significant disclaimer to this, she suggested, was that “if it’s something that completely, really going to impact the victim, like that second ABE, doing further downloads of her phone, that sort of thing...we’re more likely to push back.” Equally, as she went on to note, “there isn’t really a process for that pushback or for us to question Action Plans,” which makes things difficult in practice (Police 22). Likewise, Police 19 observed that “it is starting to change” in that police are more willing to challenge: giving the example of a case the preceding week involving an historic complaint where the lawyer had asked for information that “seemed a really unreasonable request,” she reflected “even though we might be overruled, we’re still challenging that to go, actually, we don’t agree that’s necessary.” Other officers reflected that this increased willingness to question had been beneficial to wider partnership working: “we’re a lot better at setting parameters and the CPS are a lot better at agreeing those parameters and understanding why we don’t just get everything” (Police 17).

At the same time, there was also some evidence in the case files of such pushback causing tensions. In ‘Case File 10,’ for example, there were complaints made against the same suspect by three individuals: the complaints related to historical assaults and the accounts provided clear corroboration in terms of the suspect’s *modus operandi*. An Action Plan on file requested the police to obtain full downloads of Facebook messages between the complainants, which the suspect was suggesting indicated collusion of false claims. In response, there is a note on the Investigation Management Document which indicates a refusal by the police to take this approach, explaining that “victims are exactly that, it has taken a great deal of courage to eventually disclose their experience and it was not felt proportionate to examine devices when they had not actually seen each other [for decades] and contact between them had been minimal and was only made so police could get in contact.” The police appear to have held firm to this position notwithstanding a complaint made by defence counsel against the Disclosure Officer, which alleged that he was acting unreasonably. At a subsequent ad hoc CPS review, however, the lawyer continued to insist that the screenshots provided by the complainants were not sufficient and that the full conversation needed to be downloaded, as requested by the defence. Another Action Plan was issued asking for these downloads since “the suspect is alleging that these allegations are fabricated and that the *girls* have colluded. This needs to be ruled out.”<sup>5</sup> Though we do not know whether this request was ultimately complied with by the police in this case, on obtaining an update from the relevant pathfinder area regarding the outcome of the trial, which resulted in the accused’s acquittal of all charges, it is worth observing that counsel’s adverse outcome report specifically commented, “although [the complainants] had plainly messaged one another, there was no compelling reason to think that they had colluded.”

In our observation of ISVA engagement panels, there was also encouragement for third sector specialists to similarly feel confident in questioning requests for third-party materials, and specifically copies of their clients’ ISVA notes. In ‘Forum 1,’ for example, a CPS representative

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<sup>5</sup> Emphasis added, since the complainants in this case were, in fact, mature adults by the time of the report.

emphasised that “we try our best to be proportionate, focused and precise with our third-party material requests, but it is difficult.” In response to a suggestion from one of the ISVAs present that colleagues in their service are “still being given blank forms, sign the form to share the info” and “it is not really being explained to them what information is being shared...we’re just being told we need it all,” the police representative advised them to “push back” and ask “what do you want and why do you need it.” Echoing that, the CPS colleague added, “I totally agree...you need to demand that the request is specific and if you don’t think it is specific you are within your right to refuse.” Again, there was some evidence in interviews with ISVAs of them becoming increasingly robust in their challenges around this. ISVA 6 remarked that “in the past there’s been a lot of blanket requests for third-party material...and we’ve started pushing back on that now and saying, unless there’s something specific in our notes then we won’t be handing them over.” Similarly, ISVA 7 noted that “we are pushing back as an organisation. If an officer just does a blanket request for our notes, we just say no. If you’ve got a really specific reason that the CPS think it would be a good idea for them to have our notes, then fine, but you need to send that, otherwise you’re not having them.”

However, one further theme that is worth bearing in mind in the context of this discussion around disclosure, particularly in light of the effects attributed to the outcome in the *Liam Allan* case, was a measure of hesitancy amongst some participants given the current lack of clarity regarding how this more targeted approach was likely to impact upon, or potentially be undermined at, the trial stage. Interviewees expressed concern, in particular, about the extent to which members of the criminal bar and judiciary had “moved with the times in terms of things like disclosure” (CPS 54), with Police 18 noting that “we’ve got to get it right as the police in terms of parameter setting...we’ve got the change in attitude in the CPS, and the next step really is the change in attitude within the court system.” There was also a suggestion that this may generate tensions in trial strategy – something we discuss in Section 6 – whereby “you get advice from counsel that say, go and get all of the third-party material...and you’re saying, it’s not a reasonable line of enquiry” (CPS 54). This concern was echoed in ‘Forum 1,’ where a CPS lawyer acknowledged in discussion with local ISVA services that “we are still getting some ‘old school’ requests from barristers...that the message hasn’t quite reached.”

In addition, even where a more delimited approach had been supported by prosecution counsel, Police 18 observed that “a lot of good work can be undone at the trial stage...if there’s a bit of an ambush and the judge concedes to it.” In this context, CPS 57 recounted a case in which the judge had supported the defence’s assertion that disclosure had not been dealt with correctly, since medical, educational, counselling and Children’s Independent Sexual Violence Advisor records in relation to a complainant had not been extensively searched and disclosed. Neither the CPS nor police considered this to be reasonable or proportionate since the contested issues were in relation to age and consent. CPS 57 wrote to the judge, highlighting relevant paragraphs in the Attorney-General’s Guidance, querying how the records in question could assist the defence given the nature of the dispute and advising they were unwilling to secure them until the defence could justify the request. At the next hearing, CPS 57 reported that the defence “stepped back from it and nothing was ever given,” which she felt indicated “if we follow the letter of the law... it absolutely works...[but] I just don’t think that’s translated necessarily into the way the defence approach it.”

Genuine change in this respect may thus require a robust judiciary. However, judicial interviewees in the present study offered mixed views as to whether appropriate procedures for, and proportionate content of, disclosure was currently being achieved. Judge 7, for example, recounted that “there was a time when the pendulum may have swung too far and defence advocates thought ‘we’ll just ask for everything and we’ll get everything’,” which they intimated had resulted in a “very clunky” process. They suggested that there had been a retraction from this in recent times, however, with “good defence counsel” using a “sniper” rather than “shotgun” approach to “target exactly what they want;” but that this was still met, too often, by police or CPS being “difficult in providing the material that is sought.” By contrast, Judge 4 remarked on how they rarely had to get involved in disputes over disclosure since the system “works really well,” with the process having become “more collaborative.” Meanwhile, though Judge 6 intimated that efforts by the defence to introduce third-party material were exceptionally rare and could be effectively delimited by judicial scrutiny as to relevance, Judge 5 relayed that “there are many, many cases where there are wrangles about it.” And while Judge 4 reflected on the importance of a more restrictive approach “to protect the complainant from intrusive enquiry,” Judge 9 emphasised that “broader exploration” was necessary, particularly in rape cases since “the focus of the criminal justice system must be on ensuring a really robust investigation.” Reporting that they did encounter situations at trial where they disagreed with the prosecution’s assessments regarding disclosure, Judge 9 warned, moreover, that a “protective mindset vis-à-vis the complainant’s privacy and rights” was being applied “without the prosecutor being able to consider the defence arguments.”

Several barristers that we interviewed likewise expressed concerns about how decisions around disclosure were being made, and who was making them. Barrister 12, for example, lamented the shift from a prior approach under which record-holders would instruct an external barrister to identify disclosable third-party material ahead of a hearing at court where a judge reviewed and issued appropriate orders. This approach, they suggested, “worked effectively, very well, because it took the burden off the CPS; disclosure was looked at objectively, not from the point of view of defence and prosecution.” While, of course, it remains the role of the Disclosure Officer in the current system to perform this task with similar objectivity, Barrister 12 queried the adequacy of the training and resourcing provided to police to enable them to do so, concluding that disclosure has “not got better, it has got worse.” Similarly, Barrister 15 observed that “you’re reliant upon the police to do a proper job in filtering out what they think is required and...because they don’t defend, they don’t have quite the objectivity...they don’t seem to understand quite the relevance of the whole picture.” As intimated above, this view was echoed by some judicial interviewees, who observed that “disclosure being taken control of by someone who has no trial experience can cause problems” since “you’ve got to be able to put yourself in the shoes of the defence advocate” and that’s a “difficult mental exercise” for police and CPS to undertake (Judge 1).

Speaking more forthrightly about the tensions this can create in the courtroom, Barrister 10 remarked: “I know it’s not very popular, but the new *Bater-James* approach to disclosure is not working, taking a very narrow view, this is what the guidance is, so don’t look at phones, don’t get medical records, don’t do this. And I know they set it all out in the [Disclosure Management Document] and I understand that, but what I am quite sure about is that the courts are not backing that approach up...go to the court, the defence are saying these medical records need to be reviewed and the judge says, yes, they do. School records, yes,

they need to be obtained. I'm clear on that. I think we just have to do it." Meanwhile, Barrister 14, though more supportive of initiatives to delimit disclosure, observed "I don't think everybody has thought about or even read all of the more recent AG Guidelines on disclosure...when you're prosecuting, you suddenly get requests for all sorts of things and you say, well, no... And a little bit depends on the judge because some judges will be very sort of, oh, no, you have to have this sort of thing, rather than thinking through whether actually it's necessary at all." It is clearly beyond the scope of the present study to interrogate this question of how disclosure is operationalised in the contemporary courtroom, but the Law Commission's Consultation on *Evidence in Sexual Offences Prosecutions* has identified this as a matter that requires further investigation. Certainly, our findings suggest that there remains variable practice (and potential for conflict) across the criminal justice process, which may impact on what information is sought, disclosed and admitted into evidence in rape trials.

## Improving Oversight of Action Plans and Escalating Processes

The core aim of this particular workstream under Soteria is to ensure that Action Plans are set which are proportionate, specific, and realistically capable of being complied with in a reasonable timescale. Though, as we have outlined, there are ongoing challenges to achieving this, where it is achieved, the expectation is that it will maintain momentum in case progression and prevent unnecessary delays. As CPS 10 put it, "it's creating momentum in the investigation which otherwise wouldn't be there...but also attempting to give victims a timeline that they can try and engage with" since "they will know that in 28 days, the officer is required to come back to the CPS with a progress report." In reality, however, stretched resourcing means that RASSO cases are still often not being advanced as quickly as hoped, with actions not being completed in the timescales allocated. The implications of this were highlighted powerfully by ISVA 7, who cited a current case in their service where "the officer sent the information over to the CPS, they were given a 28-day Action Plan. And 18 months on, we still haven't had any update, that Action Plan is still floating around somewhere." In such cases, it is obviously important that better mechanisms are in place to ensure that actions are chased, that investigations do not stagnate and that victims are kept informed.

Across pathfinder areas, there have been initiatives under Soteria to improve escalation mechanisms in relation to cases in which an Action Plan had been set but there had been no subsequent updates. The format for this varied. In Area C, for example, cases that had been sitting with the police for 90 days or more were to be highlighted and referred to the Senior District Crown Prosecutor for escalation at Chief Superintendent level, whilst in Area B, cases with Action Plans that had been with officers for more than 60 days were to be proactively flagged. As one interviewee put it: "we are going to start implementing checks in relation to cases that have been Action Planned, so that after about, they usually give them a month to reply, but after about two months, I think, we're going to go back to the police to say 'what's happening with this, why have we not got it back, you need to make sure that you're doing x, y and z'; so there is a handle on those cases, and we are keeping them on our radar" (CPS 21). Meanwhile, in Areas A and E, RASSO units implemented monthly casework meetings where reviewing lawyers examined the 'top ten' at risk cases with a view to precipitating progress.

Such initiatives were welcomed by several stakeholders, who echoed the view espoused by Judge 9 that "ultimately, [the CPS] are the people who bring it to court. They are

responsible...for any delays...because they should have chased it up...As soon as you've got your hands on the file, you should have been pursuing it...they should be chasing these things." At the same time, it was clear that in some areas these initiatives were not yet consistently embedded, imposed significant additional demands on Case Progression Managers' time, and had mixed results in terms of the efficacy of chasers in re-establishing any momentum. Police participants commented, for example, that while they appreciated the importance of setting and trying to meet Action Plan timescales, "the times are always too short" (Police 16). Some intimated that they try to manage this by "overestimating" in order to "buy everyone time," which they acknowledged "probably isn't in the spirit of things" (Police 16). Meanwhile, other officers reflected that they do often receive chasers from prosecutors, but appeared fairly relaxed about this, observing that "the worst that happens is it goes over, and I have to email them [the CPS] and say, look, I'm really sorry it's late" (Police 18). Some officers also observed that the monitoring process was often designed in a one-directional way, with the assumption being that police are most likely to be the ones responsible for delayed progression and no complementary mechanisms in place for escalation where delays occur with prosecutors. This could undermine the claim to be engaging in genuine partnership working. Indeed, one officer who was sympathetic to the resourcing pressures experienced by the local RASSO unit nonetheless noted that "we shouldn't have cases with the CPS for two or three months"; and in situations where that occurs, noted that there needed to be mechanisms for "chasing the cases" (Police 12). Some police also intimated that part of the difficulty is that, after the Action Plan has been issued, CPS lawyers "don't tend to have any oversight, they tend to leave us to it with an end date in mind...They don't say how are you getting on with this?" (Police 32). Though resource pressures make this "task-based" approach (CPS 6) understandable, it reduces the opportunity for more responsive case management where additional lines of enquiry opened up as a consequence of tasks in an original Action Plan could, for example, be identified and responded to in the same initial time period; or where tasks that have now emerged as likely to be less important than they had previously appeared could be abandoned. This risk was also underscored by some police officers who cautioned that, once an Action Plan has been set, "we have a bad tendency to just be, the supervisory oversight becomes about working through CPS Action Plans and that's it, there's no thought gone into it" (Police 9).

Across pathfinder areas, there also remained inconsistent practice in relation to what was previously referred to as 'admin finalisation' (now 'PRFI' – 'Pending Response: Further Investigation'), in cases where it had become clear that longer timescales for Action Plan completion were required. For example, in Area E, they committed under Soteria to not admin finalise cases but continued instead to maintain dialogue in relation to their progression with local police forces. This, it was hoped, would address the concern that if "you trigger admin finalised, we've taken our eye off it, it's not on any tracker and it will drift" (CPS 5). A not dissimilar approach was adopted in Area C, where it was noted that admin finalising is undesirable "because it stops you having any control." Though cases were still admin finalised in Area C, there were regular meetings between senior police and CPS colleagues where cases were discussed to confirm whether they remained live investigations, meaning there was "some sort of control even over the cases that have been admin finalised, but it's not as robust as those that have got Action Plans" (CPS 6). By contrast, in Area B, the Soteria Tracker noted that "where it is clear that the investigation is going to take substantially longer than 60 days to complete the actions on the Plan, the case is administratively finalised,

giving the investigator sufficient time to complete the enquiries.” This returns responsibility for progression to the police and “we wait for the police to tell us that they’ve done the Action Plan or that they’ve closed their file” (CPS 9). To work effectively, this requires mechanisms by which CPS areas continue to be informed of progress and police are motivated to maintain momentum. In Area B, this has presented an ongoing challenge: CPS 9 observed, for example, that “we don’t always get that information” about the fate of cases that they have admin finalised. Equally, in Area D, it was noted that the alternative in their context was “having 400 or 500 cases sitting with the police” that had not been admin finalised but were “sitting on the books, scaring the lawyers” until the police were in a position to deal with them (CPS 7).

The logistical challenges of effective case progression and escalation were also often highlighted. In particular, not only was incompatibility across police and CPS IT systems a source of difficulty, but the fact that the CPS’s own Case Management System was “quite a clunky tool” (CPS 38) that’s “really difficult to follow” (CPS 7) and in need of “a lot of modernising” (CPS 31) was frequently commented upon. This meant that it was often an unduly complicated process to identify precisely what stage a case had reached or what documents had been lodged in respect of it, with Case Progression Managers and Paralegal Officers alike often having to devote additional time to navigating these systems, or developing their own alternative approaches that allowed them to manage data more effectively. One interviewee reflected, for example, that “we’ve got a really good [Case Progression Manager] in our team, he’s excellent, so every Monday he’ll be like ‘these are the directions for the week’ so you’re kind of bearing that in mind. But otherwise, you’d have to go out of your way to then go on each case and have a look. It’s a bit disconnected...but that’s the workaround, that we then have the Case Progression Manager who helps us remember” (CPS 31). Meanwhile, a Paralegal Officer reflected that “I used to, when I had paper files, I’d read through it...and then on my brown correspondence folder, I would write down...the police memo of what’s outstanding...and I would just tick it off. Now I can’t do that because it’s all digital. I tried to do it and it got a bit too much, especially with the volume of cases, and I had to give up. So it’s just, I sort of know what to do on each of my cases. I don’t know how I do it, I really don’t, but it happens, it works” (CPS 17). While this approach may work for someone with many years of experience in RASSO units, it is considerably less clear how sustainable such “workarounds” are in units with more mixed levels of experience within key job roles. The implications of that were underscored by CPS 12, who noted that “there are so many elements to a RASSO case that are easily missed if you’re not on top of things.”

In 2 of the 5 pathfinder areas, moreover, entries on their Soteria Trackers over the duration of our research specifically recorded that ensuring more proactive case progression management would require a significant further uplift of unit resource, in particular to allow for the appointment of additional case progression personnel. Meanwhile, in Area A, efforts were made to design and pilot a new tracker system that would provide a more user-friendly and holistic platform for accessing information about case progression, including a series of automated prompts. The feasibility of transferring that tracker tool to the national level remains unclear, since it has been trialled only on a small number of cases. In Soteria Tracker entries from this area, there has also been a consistent concern about lack of resourcing for the development of the new platform, culminating in an entry in early 2023 confirming that the initiative had been paused. Though early indications from the pilot were positive, with interviewees explaining that the platform provided them with a “full and up to date picture

of where the case is at” (CPS 12), it was also noted that it would be likely to impose further resourcing demands, particularly on Paralegal Officers. Moreover, as currently designed, the platform only extends to cases post-charge, so would need to be extended in order to yield improvements in the monitoring of cases with Action Plans at an earlier stage. Still, the benefits of a better integrated and streamlined IT system to monitor Action Plans and case progression, facilitate updates for counsel, judges and victims in a more timely manner, and build-in a level of systematic cross-checking that would facilitate better data collection, as well as the training and development of RASSO staff with mixed experience levels, seem clear.

## 6. Case Progression & Trial Readiness

Related to the initiatives around Action Plan Monitoring discussed in the previous section are a range of wider activities, under the Case Progression and Trial Readiness workstream of Operation Soteria. These have been designed to: support more timely and effective handling of cases from the point of charge to trial, ensure fewer adjournments at pre-trial stage and improve overall trial strategy and preparedness. Case progression here involves, amongst other things, ensuring that applications (for example, for ‘special measures’ or admission of ‘bad character evidence’) are lodged appropriately, alongside documentation to comply with disclosure obligations. It requires timely trial preparation for the Pre-Trial Preliminary Hearing (PTPH) and beyond into the substantive trial, by ensuring appropriate instruction and communication with counsel, as well as mechanisms for effective review of trial strategies.

Though several of the key activities under Soteria, and envisaged in the *Joint National Action Plan*, have focused on early partnership working, investigation and progression decision-making, this focus on latter stages of the justice journey is also much needed to improve processes and outcomes, and learn lessons that might inform earlier stage activities. This is all the more so given that a series of recent Inspections of RASSO casework across pathfinder areas has highlighted concerns in relation to the adequacy of their post-charge reviews, development and articulation of trial strategy, and instruction and review of counsel (HMCPSI, 2019; CJJI, 2021 & 2022; HMCPSI Area Inspection Programme Reports, that include RASSO Casework, at <https://www.justiceinspectores.gov.uk/hmcpsi/our-reports?page=2>).

### Development and Articulation of Trial Strategy

When asked what a ‘well-prepared’ case looked like, CPS lawyers that we spoke to tended to focus on practicalities – “being well organised, having nothing outstanding” (CPS 41), “having everything that you need on time” (CPS 31), or “ensuring that all stage dates are complied with fully...serving your evidence, dealing with the unused material and everything else” (CPS 43). This was often echoed by external counsel who noted that, at the point they tend to become involved in a case, “if the unused material is dealt with right from the outset, so there’s no outstanding disclosure requirements, that’s ideal. Early bad character applications, a good quality ABE interview, where you’ve got a very good facial view of the complainant, there are no sound quality issues, and the questioning is relevant...that’s a really good start to the case” (Barrister 5). The importance of all this should not be understated. In Area C, for example, a key theme identified in discussions between the CPS and RASSO counsel, which – as noted in Section 3 – is by no means a problem that is localised to that area, has been the lack of quality of police ABE interviews, in terms of the content and clarity of recordings, and the reliability of court playback equipment, which was leading to delayed or vacated trials. In response, senior CPS colleagues have undertaken a series of training events with local police to drive improvement in the focus of questioning, as well as to address practical issues that affect sound and visual quality, including positioning of microphones or background noise. At the same time, it is apparent that broader and significant problems remain regarding the courts’ facilities, and this is an issue that the CPS themselves are unlikely to be able to rectify.



The importance of dealing effectively with disclosure, and ancillary matters and applications, for example in relation to special measures and bad character evidence, has also been underscored by recent RASSO Inspections, which have highlighted considerable scope for improvement. In Area E, for example, a recent review noted that only 2 of 15 cases examined fully met the required file standard in this respect, with examples where early opportunities to adduce evidence regarding the suspect's bad character were missed, or further enquiries that might have allowed a background context of coercive control towards the victim to be more clearly evidenced were not actioned. Meanwhile, in Area D, the Inspectorate found frequent failures to speak with complainants about special measures, with expected standards being fully met in this regard in less than one-third of cases; in Area C, over 50% of cases reviewed included instructions to prosecutors that were considered to be insufficient in their scope and level of detail; and in Area A, it was noted that prosecutors had not always taken adequate account of potential defence arguments in developing their trial strategies.

This latter point is significant given that preparing a case for trial is clearly about more than organising evidential bundles, dealing with disclosure documents, and making timely ancillary applications. In making a charge decision, reviewing lawyers are asked to complete a section on 'trial strategy' that ought to go beyond lists of exhibits and witnesses, giving a narrative of how they anticipate that the case should be opened, presented, and closed at trial. As part of developing and articulating this trial strategy, CPS Legal Guidance is clear that prosecutors have a responsibility to identify and address any myths and misconceptions that might arise or be used by the defence "in order to ensure a proper case-strategy and effective advocacy" (2021: Chapter 4). The importance of this to successful prosecution was underscored by barrister interviewees who reflected, "when I'm prosecuting a case...I always start by looking at it as if I was defending, that's the way to do it. You can sit there looking as a prosecution barrister at the case, you'll miss things. I look at it...right, I'm defending this case, where are the holes, where's my line of attack? And that's really the way you plug them" (Barrister 3).

Although, as noted above, a focus on the practical aspects of case management was more common amongst CPS interviewees, there were also some lawyers – especially those who had previously worked in defence practice before joining the CPS – who underscored the importance of taking this strategic approach when discussing trial preparation. As one put it, for example, "a well-prepared case would be that the lawyer has properly anticipated pretty much what the defence are going to be saying about the case, which is all part of our strategy...ideally what we want to be saying to the defence from the beginning is we know what you're going to say and here's the reasons why you don't need to be asking this because we're able to answer it...so, it's anticipating that" (CPS 28). We also saw real-time development of this strategy within some EA discussions. In 'Advice 8,' for example, the complainant had disclosed allegations of rape against an ex-partner as part of an ongoing family law dispute. Here, the lawyer discussed with the officer the retrieval of text messages between the parties, in order to "support a picture of a wider, abusive relationship." The lawyer also anticipated that the defence would be likely to argue that the victim had made the rape allegations to "up the ante" in the family court case, but noted that it may well have been that she did not feel comfortable to disclose previously, and was only able to do so now after building a relationship of trust with her solicitor: to address this, the lawyer emphasised that "we want to take control of that narrative" and "put those disclosures into our case narrative rather than the defence case narrative" by explaining the context of her reporting.

At the same time, recent Inspectorate reports have been critical of the extent to which this anticipation of trial strategy has been a consistent feature in RASSO cases. In interviews, concern over whether lawyers had sufficient opportunity and training to ‘think trial’ was also raised on several occasions. CPS 5 was of the view that prosecutors did often have a trial strategy that underpinned how they approached the case – from considering reasonable lines of enquiry to making a charging decision, and submitting ancillary and evidential applications – but it was not always adequately articulated in the file and instructions to counsel: “what is lacking is the quality of structure and being really clear on what our strategy is, what our case strategy is, what our trial strategy is.” By contrast, CPS 7 was more critical, reflecting that some prosecutors too often think in terms of “what is their case, as opposed to saying this is what I’m going to do at court.” As a result, they suggested that lawyers were not “really getting to grips with that approach of addressing what the defence are saying.” This was echoed, moreover, by an October 2022 entry in Area D’s Soteria Tracker, which noted that files were being identified in which case strategies were unclear: whether due to a lack of analytical thinking around what was essential to the case, a lack of confidence in relation to the defence position, or a lack of time after providing lists of evidence and exhibits to document how that material is to be used. Some of the files that we reviewed in this study also supported that concern, moreover. In ‘Case File 6,’ for example, under the header of ‘trial strategy,’ the lawyer simply wrote: “the complainant is a willing witness – case to be kept under close review – urgent review required if the complainant should withdraw her support for the prosecution. Case strategy to be discussed with Counsel.” Meanwhile, in ‘Case File 9,’ the lawyer had commented more clearly elsewhere on how they felt that the case should be presented to a jury, but under ‘trial strategy’ had noted rather more vaguely: “this is a case whereby the narrative can be presented of the defendant’s single-mindedness being pursued to the detriment of and with indifference to the feelings and autonomy of the woman he claims to love.” This failed to capture much of the essence of the case which – amongst other things – featured grooming of the complainant by the suspect since she was in her early teens.

In particular – and as we highlighted in Section 4 in respect of the role of myths and stereotypes in decision-making – within the case files, there was a theme of potentially missed opportunities for developing trial strategy in rapes that occurred within domestically abusive relationships: specifically, where coercive or controlling behaviour had left complainants’ freedom to make a choice in relation to sexual activity radically depleted, if not obliterated. In ‘Case File 5,’ for example, a ‘classic’ coercive control trajectory was demonstrated: after an initial period of intense courtship, the suspect subjected the victim to physical assaults, including strangulation, isolated her from family and friends, and secured financial control over her. In his police interview, the suspect underscored that whatever he asked the victim to do sexually she would agree to, and intimated that the idea of him “having to rape my own wife” was unfathomable. The ABE interview in this case was disappointing, lasting over 300 minutes with huge levels of peripheral detail but lacking clarity in relation to key issues of consent and belief in consent for the rape charge. Nonetheless, the complainant described the suspect as believing that she was his property and clearly intimated that she no longer felt able to say no to his persistent sexual advances. As discussed above, the reviewing lawyer declined to charge, suggesting that the case was “one word against another,” despite extensive corroborative reports regarding domestic abuse, evidence of physical injury to the complainant and partial admissions from the accused. Indeed, the lawyer concluded “it seems

from her account that, after he pestered her, she reluctantly gave in and thus consented, or at least the suspect may have had a reasonable belief that she was consenting.” Similarly, in ‘Case File 1,’ a victim who had, since she was 18, been in an on-off relationship with the suspect (almost 30 years her senior), reported that all intercourse between them had effectively been non-consensual over the past 5 or 6 months. Identified via domestic abuse risk assessment tools as at high risk from her partner, she described herself as “petrified” of him, but “petrified of losing him.” She reported that he had physically assaulted her, strangled her, and made threats to kill her, with the suspect having a record of similar offending against previous partners. There were also indications in the file about the suspect isolating the victim, controlling her, and exerting financial control over her. She explained that she went along with sexual acts that she did not consent to in order to placate him and because she was fearful of him. In the case review, however, the lawyer focused on the fact that the complainant “does not use the word rape and it’s not clear whether she did not consent or just went along with what he wanted.” Again, rather than interrogating, as an integral part of the trial strategy, the possibility of meaningful consent (or reasonable belief therein) against the context of this abusive relationship, the lawyer simply flagged this “difficulty” and requested to speak with counsel about “the issue of consent.” On following up with the CPS area to determine the outcome of this case, we were advised that it had indeed been charged, but ultimately the prosecution chose to present no evidence and the accused was acquitted. That decision was informed significantly by the fact that the complainant, despite continuing to support the prosecution, had resumed her relationship with the accused and, in being perceived to have been untruthful to police about the extent and nature of this reunion, had substantially undermined her credibility. The officer in charge commented that “there is extensive daily contact, and it is certainly a two-way conversation,” observing that, in their view, the tone of communication showed the complainant to be “paranoid and suspicious,” whilst the accused “expressed himself as someone very much in love with the complainant and at the whim of her mood / attention.” External counsel did balance these remarks, which appeared to show a substantial lack of understanding of the complex dynamics of coercive control, by specifically noting the existence of power disparities in the relationship whereby the complainant was vulnerable and subject to grooming by the accused. However, neither they nor the CPS reflected sufficiently on why, in that context of abuse, the complainant may have resumed the relationship and presented herself to the accused as being willing to do so.

More broadly, from their perspective, barristers often recounted variable experience in the levels of preparedness of RASSO case files by the time they were instructed by the CPS: “some cases, it might be pretty much there, and some cases you think, I have to put the whole thing together, build the whole thing” (Barrister 6). Barrister 2 noted that “part of the reason for the CPS to instruct a barrister is to...get that fresh pair of eyes and check they haven’t missed anything” but that, in terms of further investigation, they found “on the whole, there’s not normally too much to do by the time it gets to me.” Specifically in terms of trial strategy, however, barristers were often of the view that this was under-developed. As one put it, “the trial strategy is to generally play the ABE interview, call any supporting evidence, deal with what the defendant had said in interview...The CPS tend not to give us advice on trial strategy or they’ll sometimes say ‘I’m not going to use this witness because they’re not useful or it’s an irrelevant issue...the CPS lawyer will ask the barrister whether they approve of that trial tactic and in most cases you do” (Barrister 5). Similarly, Barrister 2 observed that “it depends a bit on the lawyer,” but referencing a recent case where the lawyer had “made it perfectly

clear to me what her thinking has been, what she sees as the strengths and weaknesses of the case and so on,” they noted that “it’s quite unusual to get that level of information.”

At the same time, though, barristers were typically of the view that it was not the responsibility or role of the CPS to develop trial strategy, and that – to the contrary – this was something best left to counsel when they are instructed. As Barrister 1 put it, “trial strategy is always a matter for the barrister because the barrister is the one presenting the facts with the narrative. And very good reviewing RASSO lawyers understand that, so they don’t present a strategy to you.” Likewise, Barrister 3 observed that “I don’t think it’s the reviewing lawyer’s job to do the trial strategy...there is a part of the advice which says trial strategy and they do put their comments in it, but ultimately it’s for the advocates,” while Barrister 2 underscored that “we will have discussions about how to approach a case and those can be pretty helpful, but by and large it is for the advocate to decide how to run a case.” Several barristers reinforced the appropriateness of this division of labour based on disparate levels of trial experience: Barrister 3 suggested, for example, that “most of the RASSO lawyers will have had no trial experience at all, other than perhaps doing one or two cases in the magistrates court.” They went on to note that, in their local area, with a couple of exceptions, “all of them have just qualified as solicitors and then just gone through...or as barristers and gone through and remained in the CPS without much exposure to the Crown Court.” More stridently, Barrister 16 remarked that “the CPS don’t dictate the trial strategy. Most of the CPS RASSO lawyers have never done a trial in their lives,” while Barrister 4 also observed that “there are a lot of less experienced lawyers coming in,” but did not see this as a particular concern since “they’ll often ask for advice...and they don’t turn around and say ‘well, I’m not listening’, they are prepared to learn.” Though most areas in fact had mixed profiles in their RASSO teams in terms of Crown Court experience, often with greater levels of exposure than these barristers suggested, concerns about the variability of lawyers’ skillset and training – and the ways in which this might diminish their capacity to ‘think trial’ – were also echoed by CPS colleagues.

With this in mind, under Soteria, some pathfinder areas have focused on increasing lawyers’ capabilities around trial strategy. In Area E, internal training has been provided; and in Area B, a series of ‘masterclasses’ were provided, designed to show “the importance of building a strategy and having a case plan, understanding how you can prove a case, how you can add value to a case and structure it in the right way for it to go to court” (CPS 22). In addition, Area B set an early ambition to increase lawyers’ courtroom exposure, by having them attend their own case trials end to end, and observe legal arguments, speeches and defence counsel approaches to cross-examination, in order “to ensure robust and well-informed decision-making by reviewing lawyers based on a strong knowledge and understanding of legal and practical issues.” However, subsequent entries in its Soteria Tracker demonstrated that this ambition was thwarted by a lack of resourcing, with the opportunity restricted to the unit’s least experienced lawyers. Though such observations may have a limited impact on addressing the concerns raised by barristers regarding reviewing lawyers’ direct experience of advocacy, there is no doubt it could assist them in developing a more holistic understanding of prosecutorial strategy in the adversarial trial process. As CPS 23 put it, “being in the trial is helpful for things like your case strategy, being in a trial, seeing how it works”. Likewise, CPS 40 noted: “the more that [lawyers] are at court and can see what’s happening on the ground, the better that makes their decision-making.” This matters because, particularly with an increased focus on building better cases from the outset, there is greater scope for the CPS

to play an active role in developing trial strategy as well as advising on reasonable lines of enquiry: “you need the police to have a clear strategy from the beginning as they do the investigation. That strategy then passes to the lawyer who uses the same strategy, refining it as they prepare it for court, and the barrister ultimately runs with that strategy” (CPS 22).

Of course, this ideal scenario also requires good communication and shared understanding between reviewing lawyers and the external counsel that they instruct to take cases forward. Several of our judicial interviewees reflected, in particular, on possible challenges to this. While keen to underscore that “cases should be owned by an individual” (Judge 4) and that “it’s the reviewing lawyer’s case really” (Judge 6), they suggested that “one gets the feeling that there is a distinct lack of that sort of steering of individual cases” but that, equally, “the advocates aren’t given the freedom over a case to control it and to devise a strategy” (Judge 5). This perception of a growing “lack of trust in advocates” (Judge 5) within the CPS was contrasted to the approach that several recounted from prior experience in criminal practice: as Judge 10 put it, “there used to be trust in counsel, I don’t know why there isn’t now.” And it was met by some interviewees with apparent frustration: Judge 3 commented, for example, that “the RASSO lawyer really does need to listen to prosecution counsel” whilst Judge 1 observed “the CPS takes responsibility...but why hire an advocate if you think the advocate is not competent? If they are competent, take their advice and you let them get on with it.”

There were, thus, competing views amongst interviewees regarding the extent to which reviewing lawyers currently do, or should, get involved in developing trial strategy – and relatedly, the extent to which they do, or should, yield to the advice of instructed counsel. However, across cohorts, there was wider consensus regarding the types of matters in regard to which points of disagreement were most likely to arise within the prosecution team. As discussed in Section 5, these often mapped to the concerns raised by participants over the extent to which barristers and the judiciary were ‘on board’ with changes to delimit reasonable lines of enquiry, including in relation to third-party material and digital disclosure, to make more routine use of special measures in the presentation of complainant’s evidence, and to tackle myths and stereotypes proactively from the outset of the prosecution case. In the next section, we explore in more detail the engagement between the CPS and counsel across the pathfinder areas, the processes for communicating and translating case strategy into the courtroom and for reconciling any disagreements that might arise around these matters. As CPS 5 put it, this is crucial because “we and the officers can be doing a sterling job and it means nothing if the advocate doesn’t bring it to life in the right way...that’s always a challenge...[but] where we’re really driving an improved approach...it’s particularly marked.”

## Instruction of and Engagement with Counsel

Though, prior to Soteria, the CPS had already committed to holding timely case conferences with counsel in all RASSO cases, it was clear that this was not being done consistently in practice. The scale of non-compliance was evident across the recent HMCPSI Area Inspection Programme Reports referred to above. Indeed, reports published in 2021 indicated, for example, that in respect of RASSO cases, less than half of the cases reviewed in Area A showed evidence that a conference had taken place, whilst in Area C, conferences were not taking place in almost two-thirds of cases. Though attributable in part to the impact of the Covid-19 pandemic, CPS 8 underscored the unacceptability of that position: “we don’t have a

conference in every RASSO case...this is the person that you're paying money to go into court to hopefully do their very best at court, and we're not always having a conference. Everyone's busy, etc, etc...but that isn't happening and that's supposed to happen in every case." Perhaps unsurprisingly, then, one of the activities in pathfinder areas that were performing poorly in this respect has been to address this "lapse" in practice, recognised by interviewees as a "massive hole" (CPS 6). Though now more confident regarding their compliance, it is important to note, as one interviewee put it, "we're not doing anything over and above what we should have been doing, but at least we're doing what we should have now" (CPS 6).

Such moves towards more partnership working between the CPS and counsel were welcomed by barristers who emphasised that "if you've got that relationship between counsel and CPS working as a team together with the police, that's really the best way" (Barrister 3). Likewise, judicial interviewees underscored the importance of this partnership, and the role of a well-timed conference between the reviewing lawyer and counsel in developing this. At the same time, this was often positioned as a mechanism to compensate for the belief, discussed above, that "most RASSO lawyers will have no trial experience at all" (Barrister 3). As Judge 12 put it, "yes, [reviewing lawyer's] are going to be less strategic thinkers in terms of trial process, but if you have a conference with your trial advocate, they should be able to tell you that if we go down that route, this is how that will play out in court." Against that context, in this section, we look beyond the mere fact that such exchanges take place to explore further their tone and parameters, the extent to which views may diverge between prosecutors and counsel on aspects of the case, and perspectives on how such disputes are to be resolved.

Some CPS interviewees were confident regarding the willingness and ability of their colleagues within RASSO units to challenge counsel advice when needed. CPS 10 observed, for example, that while counsel "do bring another dimension and sometimes will have a different perspective on case strategy...we're not just adopting counsel's case strategy and abandoning our own." Meanwhile CPS 9 underscored that "most of our lawyers are robust and counsel...does act under instruction," and though CPS 28 acknowledged that "there can be respectful disagreement" regarding matters such as disclosure, they were confident that they could be, and were, "resolved most of the time" by lawyers "explaining their thought process, why they are prosecuting in this way and why they disagree with counsel's notion." Typically, however, the ability to do so was linked to having a cohort of "experienced lawyers" (CPS 9); and other interviewees were more circumspect about the prospects for robust conversations, particularly involving newer lawyers. CPS 7 worried that reviewing lawyers "listen to counsel too often...just because counsel says something doesn't mean to say it's true." Meanwhile, CPS 40 warned there is a risk that "some of the more junior lawyers have counsel on a pedestal," and CPS 29 acknowledged that "if you get someone who's a bit dismissing and doesn't agree...it's quite difficult." The potential for exchanges to become one-directional in such situations was also alluded to by Barrister 3 who noted that "in my experience...when I've asked for something to be done or I tell the CPS I don't like that,...or this is the way I'm going to run with the case, I've never had anything back saying, well we don't want you to do that." Not dissimilarly, Barrister 8 reflected that "we have a conference, so normally we would discuss it. And in my experience, they take everything on board," while Barrister 7 observed "I've never known a case where trial strategy has been dictated to me...(and) I've never known a case where I've dictated trial strategy and the CPS have been reluctant to accept it," and Barrister 10 noted: "[the CPS] don't set out what they think the

trial strategy should be. I think that's my job...having said that, we are a collaborative unit so if they think something's a good idea, I'm more than happy to listen, but I think it is my job."

One particular aspect of trial strategy in relation to which it was frequently suggested there may be a heightened potential for conflict was around complainants' use of special measures. Barrister 5 opined that "there's a difference in view between barristers and the police," whereby police are "caring for the witness at the expense of the presentation of the evidence" by offering special measures when "the barrister would rather have the witness in court...so the jury get to see them." Though this barrister acknowledged that any link between conviction and in-person testimony was purely "anecdotal" (indeed, arguably at odds with existing evidence – Munro, 2018; Ellison & Munro, 2014; Taylor & Joudo, 2005), he noted that "prior to the case being listed for trial...I speak to [the complainant] and explain the differences in perception," in case "they can change their mind and go into court." Likewise, Barrister 2 underscored that it is a common view amongst counsel in RASSO cases that it is "much more impactful" and "a lot more powerful" to have a witness give testimony "face to face" with the jury, and so "I do try to encourage them, if they feel able to, to do that." Echoing this from the bench, several judicial interviewees also indicated that, in their experience, the most impactful evidence came from complainants who were present in the courtroom. As Judge 1 put it, "the most powerful evidence for a jury is to see the witness in front of them...because humans communicate by so much more than mere words." With this in mind, Judge 1 went on to express "concern" that, in making applications to remove complainants from the courtroom, the CPS are "overlooking whether or not the measures that assist to make the witness comfortable are, in fact, damaging the prosecution case." These views can certainly be contrasted with the strong endorsement of the use of special measures, including live-links, often voiced by police and prosecutors within this research. The tensions that this can generate across criminal justice professionals were also remarked upon: Judge 9, for example, observed that "you'll get advocates who make it quite clear that they're not terribly happy that you've got special measures being sought" in RASSO cases. At the same time, though, CPS 13 commented that "I'm sick and tired of judges and barristers saying that they want the victim in court behind a screen, so the jury can see them cry and shake." Similarly, CPS 39 observed that "there's been a couple of occasions where I think counsel have tried to push that [in-court testimony] onto a witness. And maybe they need to take a step back and realise...it's about...how they feel they'll give their best evidence, as opposed to how you think they'll come across better in court." This concern was underscored in 'Forum 2,' where one ISVA reported she had encountered barristers telling victims they won't secure a conviction if they are not in court because "it is like watching TV for the jury." This was echoed by a second ISVA who emphasised that "once it is said, it can't be unsaid," and for complainants who use special measures, they can blame themselves for that choice if there is an acquittal.

Equally, the quality of the advice given to complainants regarding their choice to use special measures was also something that sparked concern, particularly amongst judicial interviewees. Allied to the view that mediated forms of presentation could weaken the impact of testimony, Judge 9 observed that there was a greater role for the CPS to play in "influencing the conversations that the police have with those witnesses" and "being really discerning in the cases in which they make the application." Meanwhile, Judge 7 remarked: "I have grave concerns – and I don't mind using that word – as to the way in which the options are explained." Judge 8 wondered "whether the options are presented on the basis...these

are the pros and cons of each...or whether the witnesses are slightly nudged,” and Judge 9 surmised that “I fear that not all these choices are informed on the part of the witness.”

The implications of this appeared to be particularly acute in the current context of increased use of pre-recorded cross-examination for intimidated, as well as vulnerable, witnesses under section 28 of the Youth Justice and Criminal Evidence Act 1999 in England and Wales. Early evaluations of section 28 indicate that its provision – though often well-received by complainants and their supporters – has caused what Judge 6 described as “enormous difficulties” in terms of court listing and counsel availability (JICSAV, 2022; MoJ, 2023). Not only may this compound logistical challenges around adjournments, it can create increased scope for disagreement between stakeholders in relation to case strategy. Indeed, building on the potential divergence of views regarding special measure more generally, barristers often expressed scepticism regarding the benefits of section 28, specifically for adult rape complainants. As Barrister 1 put it, “section 28 is dangerous. Asking juries to watch videos is not the way to administer and dispense justice. It’s a poor substitute for having expedient trials very quickly.” Meanwhile, Barrister 15 suggested that it was “doing a disservice” to victims by “dehumanising” them in the courtroom, and Barrister 3 referred to it as a “sticking plaster” that is “attractive in that we get the evidence captured early,” but only in a form that is “completely disconnected to the trial process” and reduces the potential for “chemistry” between the complainant and the jury whilst giving testimony. More stridently, Barrister 13 described it as “an awful system” that may be “politically convenient” but makes “a bit of a mockery” of the idea of achieving best evidence, while Barrister 11 opined that it was “overused and something of a disaster,” since “it turns a rape trial into an episode of Eastenders and...allows juries to completely disassociate.” The perceived effect of this on trial outcomes was reflected upon by Barrister 16 who observed: “it is not fit for purpose, and I believe strongly that it is impacting on convictions and it’s putting the conviction rate down.”

Again, this was often in contrast to the views of many CPS colleagues who described section 28 as “revolutionary” (CPS B19), “brilliant” (CPS 33 and CPS 42), “making life easier for the complainant” (CPS 20) and giving them “some control back” (CPS 53), with those who conducted local analyses of its impact on conviction commenting that they had found no reliable basis for counsels’ concerns thus far (CPS 5). For several barristers, however, this more positive appraisal of section 28 by CPS lawyers was only seen as a further reflection of their lack of proximity to, and understanding, of trial realities: as one put it, “the lawyers...never come to court because they’re too busy. They don’t see how things play out in the courtroom, both in terms of tactics...(and) of how a case looks when you’re playing a section 28 video” (Barrister 12). Similarly, judicial interviewees expressed mixed views as to the benefits and risks associated with section 28, particularly in its usage by adult witnesses where there was less unanimity regarding its appropriateness, and a concern expressed by several that it may “backfire badly” (Judge 2) or have “unintended negative consequences” (Judge 12) on the prospects for conviction. A common concern was also expressed that use of pre-recorded cross-examination was being presented to complainants too readily, and with too optimistic an account of its operation. As Judge 4 put it, while section 28 is capable of being “extremely effective” and “massively beneficial,” its current implementation - via poor quality recordings and court IT infrastructure – results in a diminished process that, if the complainant were to observe it at trial, in contrast to live testimony from the accused led by counsel, they “may get the impression that this isn’t a particularly fair fight.” This led Judge 7



to remark that “it’s not that I want to point fingers at the CPS or at the police, but I think there is a need for a holistic change at that end of the process so that complainants are better informed.” They also suggested that this was likely to require the expertise of advocates who had a clearer appreciation of how the evidence would be presented and received at trial, since - as Judge 7 put it - “you’re not an engineer just because you know what bits go into a piece of machinery, you have to put it together and be able to ensure that it runs smoothly.”

The availability and use of special measures was also clearly a space in which tensions could arise between counsel and ISVAs. Concerns were raised by a number of barristers, for example, regarding ISVAs’ levels of understanding of the operation of special measures, including section 28, which can be made more difficult by the specificity of the layout of each courtroom. Some barristers also worried that ISVAs could inadvertently misrepresent complainants’ use of special measures as an entitlement, rather than a matter of judicial concern, causing further difficulties and distress. Most vociferously, Barrister 12 - prefaced by the fact that they were “going to say something that’s quite controversial” - went on to describe ISVAs as “an absolute liability”, “difficult” and “obstructive,” and often “more of a hinderance than a help.” Meanwhile, others spoke of ISVAs giving “seriously flawed information” (Barrister 13) or “marching in and demanding to be everywhere” (Barrister 15). Similar concerns were also raised by some judicial interviewees who, though often at pains to underscore their appreciation for the work that ISVAs do in supporting their clients, observed that, specifically within the court environment, “some ISVAs have started getting a bit too big for their boots and think that they are major players once it is in court” (Judge 7), or were displaying a “sense of entitlement” (Judge 9) in relation to their attendance during the trial. Meanwhile, Judge 8 remarked that, in their view, “it wouldn’t surprise me if an ISVA didn’t say, well this is the better way of doing it” when discussing the use of special measures with complainants, while Judge 12 was more categorical in stating “I certainly know that some ISVAs feed into misconceptions about special measures” albeit “with the best of intentions.”

On the one hand, the tone of such comments may suggest a defensiveness amongst barristers (and potentially the judiciary) regarding their professional space, as well as a failure to fully understand the client-led role of ISVAs and to embrace ISVAs as partners in the justice process, who perform a pivotal role in supporting victims and reducing the risk of their withdrawal. On the other, this does raise questions about the consistency of training provided to ISVAs and the quality of partnership working between ISVAs, police and CPS at earlier stages. It also underscores the value of the CPS ensuring that familiarisation meetings, of the sort that we will discuss in the next section, are more routinely held in RASSO cases, with effective input from ISVAs, CPS and counsel alike to empower complainants ahead of the trial.

In addition to the use of special measures, including section 28, a further area that was identifiable as a site for potential conflict in relation to trial strategy was addressing myths and stereotypes. CPS 18 acknowledged that “counsel may have a different interpretation of the undermining material in a case,” but felt that “the vast majority understand what we’re driving at with the offender-centric approach” and will “prosecute robustly...what is put in front of them.” Likewise, CPS 58 noted that “we’ve been starting to say now to our counsel, you need to educate the jury,” which requires challenging the defence’s use of potentially undermining material as part of the case narrative. At the same time, it was not clear that this was always achieved in practice. ‘Case File 2’ provided a rare example in our sample of a

reviewing lawyer giving a detailed account of trial strategy that went beyond lists of exhibits and witnesses, and – as per CPS Legal Guidance – explored strategic approaches to addressing and responding to likely defence tactics. In this case, the complainant had recorded a series of videos on the night in question, including some in which the suspect was kissing her, apparently with her consent. In their review, the lawyer noted that several of the videos: “have limited evidential significance [but] they do provide a visual narrative of the night which would be useful for the jury to see – the videos evidence the complainant’s intoxication...which supports this part of our case narrative. Although some of the clips could be viewed as unhelpful, I am inclined to play them all as evidence and deal with them as part of our case rather than allow the defence to rely on them as part of the defence and make the point that these are the clips that the prosecution didn’t show you.” In counsel’s advice, however, it was observed that “the principal weakness in the case is that the complainant had made, or caused to be made, a video of herself kissing the defendant...This sits uncomfortably alongside her contention that she would not have engaged in consensual sexual activity with [him].” Further, counsel noted “I am not myself convinced that all of the clips are relevant or supportive of the prosecution case” and indicated that they would review this in light of the defence statement. Though we do not have full details as to the outcomes of that review, we do know that the case proceeded to trial and resulted in a not guilty verdict. In counsel’s adverse outcome report, it was clear that the question of how to position these clips continued to be a source of tension, with them noting that “prior to trial, I advised in conference that there was not a reasonable prospect of conviction,” citing in particular the existence of these clips that “had all the objective appearance of consensual conduct.” The scope for such strategic disagreements to persist into the trial was also evidenced further in a report on a project undertaken in one pathfinder area to review trial outcomes over a fixed period during Operation Soteria. As part of that work, various stakeholders were asked to give their opinions on anything that could have been done to improve the cases. In one instance, it was noted that counsel – without discussion with the reviewing lawyer – had chosen not to play CCTV evidence, which the reviewing lawyer had identified as being key to the case.

Some barrister interviewees also reflected on what they considered to be a recent ‘over-reach’ from local CPS areas, whereby counsel had been asked to submit advance copy of their opening statements, specifically to ensure that those speeches included advice to jurors on disapplying myths and stereotypes. This was suggested to be an example of “tick-box engagement” on trial strategy from the CPS that came too late to be meaningful, as well as an unwelcome additional imposition on counsels’ time (Barrister 16). It was commented that requiring it of counsel was likely to damage professional relationships, and the reasoning that lay behind it was again attributed by interviewees to a perceived lack of appreciation amongst reviewing lawyers of trial realities. As Barrister 16 put it, “they’re asking us to write an opening note 14 days before a trial...so that someone who hasn’t had any input into the case for the best part of a year by then, sometimes three years, can read it and go, yes, I agree with this or I disagree with this. Based on what? They have no trial experience, no trial expertise.” Barrister 12 described the request as having “caused a fair bit of consternation” locally, with “the idea that [your opening statement] has to be approved by a lawyer who never comes to court” having made “a lot of people very upset.” Meanwhile, others pointed out that there were nuances around narrative and timing that they felt this approach failed to appreciate – in particular, they suggested that opening by directing jurors’ attention to aspects of the complainant’s account that might give rise to myths and stereotypes, only to tell them not to

be influenced by them, may be counter-productive and appear “apologetic” to the jury (Barrister 7). By contrast, addressing them in a tailored way, after testimony had been given, was clearly their preferred route, which they considered likely to be more impactful. Though judicial interviewees did not typically express a view on the specific timing of ‘myth-busting’ interventions by prosecution advocates, a number of them did echo the concern voiced here by barristers regarding the ways in which reviewing lawyers’ lack of advocacy experience may make them less well-placed to direct counsel on this matter. Though sympathetic to the multiple demands on their time, several judges expressed disappointment that “it is very hard to get a reviewing lawyer to court” (Judge 4) which, they felt, made it harder to “get a feel for what for what goes on” (Judge 9). More specifically, Judge 2 highlighted a disconnect in that “the way juries think and are influenced is not the way that the police and the CPS look at it,” and Judge 6 suggested that, in this context, “it would be very helpful for the CPS lawyer to come and watch the cross-examination of a defendant...because it’s all very well compiling the papers and thinking about what might happen in an ideal environment but the court is much more of a battlefield...defendants trot out quite strong narratives to try and persuade a jury...and understanding those narratives and how to defeat them would be really helpful.”

For some, moreover, this attempt at greater oversight by the CPS in relation to counsels’ opening speeches was reflective of a wider, potentially growing and arguably politicised, tension in understandings of the function of the prosecution. Barrister 7 described the inclusion of commentary on myths and stereotypes as a “hot topic” for the CPS, while others expressed related unease at “talk about the defender-centric approach,” which they worried could be interpreted as at odds with the need to “look at both sides and deal with it sensibly,” including by putting counter-intuitive behaviours to complainants (Barrister 10). Meanwhile, Barrister 8 highlighted what they considered to be a telling difference whereby “the language that is often used by the CPS is that of the victim” whilst “when you speak to the bar, the language that we tend to use is that of complainant.” This, they felt, indicated a different conception of what success looks like in the justice process: “a successful outcome for the bar is a fair trial,” while they suggested that for the CPS “a successful outcome will be a conviction.” Likewise, Barrister 11 commented that it “drives me crazy” that police and CPS “all use the word victim when we’re talking about complainants.” They suggested, in particular, that this use of terminology reflected a failure to “keep your politics at the door” and an inappropriately “unthinking position” in relation to investigation and trial strategy.

Though senior leadership in both policing and the CPS have been candid regarding their aspirations within, and beyond, Operation Soteria to improve conviction rates in rape cases, the suggestion here that this aspiration sits in tension with investigative and prosecutorial neutrality, or with a commitment to fair trial processes, would undoubtedly be disputed. Moreover, this positioning of police and prosecutors as unthinkingly inclined to accept the veracity of accounts provided by rape complainants is not one likely to accord with the views of many third sector specialists, academic researchers or, indeed, victims. Nonetheless, what this demonstrates is that while some of the tensions in this space reflect the more prosaic consequences of what Barrister 13 described as a “disconnect” between RASSO counsel and “a lawyer who is in the office just looking at paperwork, and won’t have the same intuition of what goes on in a courtroom and what plays out with juries,” others may map to wider ideological questions about adversarial processes and rape justice, in the context of an acknowledged chasm between rates of reporting and conviction. At both levels, this can

impact not only on how reviewing lawyers might frame case strategy, but also on the extent to which they can have confidence that any such strategy as has been agreed with counsel is, in fact, operationalised effectively at the trial stage. As CPS 4 put it, “hopefully our prosecutors now provide much stronger cases to the advocates but there’s still this big gap between, you know, how do we know that what the prosecutor has said and advised in the bundle...has actually been acted on.” Likewise, while CPS 6 reported that, in their view, trial strategy was “something which some of the lawyers are getting very good at...saying how are we going to present this case...if there’s undermining material...this is the way we explain this to the jury,” they acknowledged, when asked if that was operationalised effectively in the courtroom, “if I’m honest, I can’t say...because we’re not in court, watching.” This is troubling in a context in which previous research has raised concerns regarding particular defence strategies and their effects within the courtroom in rape trials (Durham et al, 2017; Smith, 2018; Daly, 2022).

One mechanism identified for increasing confidence in this respect was use of RASSO panels to ensure selection of counsel with appropriate expertise. However, some interviewees were alert to the limitations of this, as well as to the fact that in some geographical areas there will be a smaller pool of counsel to draw upon: as CPS 7 put it, “we don’t go and look and see” the RASSO advocates, “it’s just on have you done this, have you done that, show me on paper.” For lawyers themselves, it was clear that this lack of insight regarding latter stages of the case was often disappointing: as CPS 36 put it, “that’s one area that is quite frustrating that, you know, you’ve lived and breathed that case from start to finish but the end part is sort of a bit of a mystery to us because we’re not there, we’re not in court and we don’t get that feedback about what’s happened....you very often don’t know how a trial has panned out at all. So you’ll end up like the trial’s started, hear nothing and then you’ll get the results, whether it’s a guilty or not guilty.” For some, it was not only disappointing, but disempowering, provoking them to take steps on their own initiative to redress this knowledge gap. As CPS 50 explained, “I’ve been to a few trials actually, I went in my own time because they were my trials and I just wanted to see them, I went on my day off...it was really informative to see what counsel are actually like because you don’t get to see them otherwise. We’re just briefing them and then they turn up to court with our victims...So that was really informative, and I was like, you know, I didn’t realise you were quite like that, you know, and see their manner in speaking to victims and so on at court. It was really useful in terms of what they say and how they say it.”

In the absence of that independent initiative from lawyers, or any opportunities for observation as part of their training, the primary mediums through which feedback on the trial (including execution of case strategy) are received will be either adverse outcome reports completed by counsel or reports provided by allocated Paralegal Officers. In respect of the former, it was noted that these are often not particularly detailed or insightful in terms of distilling learning: as CPS 18 put it, “counsel will come back and say, you didn’t miss anything. And they’ll give you a reason, you know, they might just say it’s a runaway jury, I can’t help you.” Similarly, CPS 12 noted that the general pattern is that “counsel says the evidence went well, it’s a perverse decision by the jury...the case couldn’t have been prepared any better, the police couldn’t have been any better prepared, I couldn’t be any better prepared, it was a jury decision. So you don’t get any learning out of that.” More sceptically, Police 16 observed that “what generally happens is at the end of the trial, counsel will write out a word document summarising the case, what worked well, sort of like a debrief I guess. But, of course, always how wonderful they were and they did their best with limited evidence.” Police 16 went on

to contrast this with reports from paralegals which he anticipated “would probably be a bit more impartial.” Amongst barrister interviewees, though several noted that they were content to provide adverse outcome reports, there was also a sense that they had a limited function in increasing lawyers’ insight into, and understanding of, what happened at trial. This was coupled in some instances with a degree of defensiveness at the notion of being required to account for themselves as counsel in the process. Barrister 16, for example, commented that, for the CPS, “the easiest way to get feedback is to be there but we don’t often have caseworkers in court now let alone lawyers,” and went on to note that counsel “don’t have time to write very lengthy reports about why a jury has made the decision they have. And in fact, we might get it wrong...So I can write a report...but I’m speculating.” Similarly, Barrister 10 remarked that “frankly, at the moment, I do not have time to write a massive report” and that “the CPS do have a slight tendency in their forms to make you feel like it’s your fault, and I think some counsel do get a little bit frustrated by that.” Interestingly, in an echo of the preceding discussion about the benefits of more dialogue rather than reliance on exchanges of paperwork, Barrister 10 also observed that one mechanism that might help increase genuine understanding and reduce the risk of any suggestion of blame or defensiveness would be “a short conference with the lawyer and the officer to say what went wrong here.”

Judicial interviewees also reflected on the importance of robust feedback mechanisms, in the absence of reviewing lawyers’ court attendance. Though Judge 2 was confident regarding existing processes, noting that the CPS “get feedback, they use the same counsel, and counsel will basically say, this has gone wrong,” other judges were significantly more circumspect regarding reliance on adverse outcome reports for this purpose. Judge 6 remarked, for example, that “I am not sure how valuable they are because the barrister is busy, under pressure.” Meanwhile, Judge 7 queried: “what is an adverse outcome report for? If you are senior counsel, the object is to explain how the verdict came about, to explain the things that went wrong in the trial. All terribly important. If, and only if, whatever the message is in that report is taken on board by the Crown Prosecution Service. But if everybody feels, oh, I’ve done my form, look, we’ve got that form, we’ll just file it under we lost. If that’s all, then it’s all a pointless exercise.” They went on to observe, moreover, that for less senior counsel who may be “anxious to continue getting prosecution work,” there is also a temptation to be “more defensive” in the completion of any adverse outcome report, which will even further diminish their value. This point was echoed by Judge 1, who observed more forthrightly that “counsel are hardly going to bite the hand that feeds them,” either by denigrating their own contribution or suggesting that the work done by the CPS in case preparation was deficient.

Meanwhile, paralegals certainly underscored to us the value of learning from being in the courtroom: as CPS 12 put it, “you tend to learn most of the things at court. You see things that went well and you see things that didn’t go well. So you think, oh well I don’t want that to happen again or oh this was really good. That is how you build up, just on things that you experience.” Specifically in regard to counsel’s performance, another spoke of how “we’re watching them at court...if counsel are doing something that’s contrary [to lawyers’ instructions] or I’m not happy with, then I will be alerting my managers by completing a counsel monitoring form” (CPS 17). Without supplanting initiatives to increase lawyers’ direct observation, paralegals may thus be particularly well-positioned to supplement feedback loops from the courtroom to RASSO units. However, they are currently provided with little specialist RASSO training to support them in this role, and as with lawyers, there will likely be

variable levels of confidence and capacity to question counsel. In addition, there is inconsistent practice in terms of whether paralegals are expected to have a dedicated presence in the courtroom or to 'float' across trials, and it is rare that they will be present for the entirety of proceedings in any case. In a context in which CPS 17 described the paralegal role as "like a sinkhole," where she fields enquiries and makes judgments across a caseload of approximately 100 cases, there would clearly need to be substantial investment in the capacity and resourcing of paralegals for them to fulfil this feedback function effectively.

In closing, it is also worth reflecting on the fact that these existing feedback mechanisms – whether via counsels' adverse outcome reports or paralegals' monitoring processes – tend to focus on what has not gone well at court, and so only ever provide partial insight. As CPS 12 put it, "everybody hones in on what went wrong but we don't concentrate enough on what went well, because when you've learned something that went well, well let's keep doing it." This was what motivated the trial outcomes project mentioned above to be undertaken in Area A. Across a 3-month period, feedback from a wide range of trial stakeholders (extending to counsel, lawyers, paralegal officers, police, witness care and victims) was collected on all RASSO trials, to explore what went well or not, and what lessons could be learned. Though a largely upbeat set of findings, including in relation to partnership working between professionals, it is notable that a clear desire was expressed by lawyers for "regular updates on how the trial was progressing and the outcome" with "reviewing lawyer, counsel, OIC and paralegal officers working closely, including addressing disclosure thoroughly and early." As discussed in this section, though this is an optimal model, obstacles remain to achieving it.

### Obstacles to Progression: Court Listings and Liaison

It is important to recognise, of course, that some significant obstacles to success under the Case Progression and Trial Readiness workstream of Operation Soteria are also posed by processes and structures outside of the CPS itself. In particular, there are acute challenges around court listings as a consequence of trial backlogs, exacerbated further by the Covid-19 pandemic, recent strike action by criminal barristers, and background issues of legal personnel scarcity and lack of investment in court infrastructure. The effects of this were evident throughout this research: for example, in its Soteria Tracker entry for October 2022, Area D noted that "the CBA strike has had a massive impact on our trials" with an adjournment rate of 79% compared to a rate of 8% in the same month in the previous year. Meanwhile, Area C's entry for the same month referenced the high number of rape cases being vacated and adjourned at trial as a result of the "unavailability of counsel," which was tied to strike action, but also to ongoing recruitment challenges across the criminal bar.

Several of our interviewees highlighted the substantial, negative consequences of such trial adjournments for victims. CPS 45 observed, for example, that the trial "gets adjourned and we don't really get told why, the reason why, so we can't tell the complainants why. And sometimes I've had cases where there's been like five or six times it keeps getting pushed back, you know, and that's so disappointing for them." Meanwhile, CPS 38 went further, describing the impact on victims of these repeated adjournments as "prolonging their trauma." For some prosecutors, an awareness of these impacts meant that they saw it as an additional part of their role to advocate for their cases in listings processes. As CPS 49 put it, "we're now having these problems where the court starts to decide, oh, we're not going to

list it. We might list it, we might not list it. And then you're going, well, I want you to list my case...it's banging on that door and making sure that you make enough noise so that your cases get above the maelstrom of all the other work...that's increasingly part of the role of the prosecutor is to shout – I'm being metaphorical, I'm obviously not shouting at the court – but writing the letters to make sure that the judge understands that you've been waiting. Because now it's a crushing queue to get your case heard and we need these cases heard.”

ISVAs were keen to highlight, moreover, that it was not only the associated delay that impacted negatively on clients, but the unpredictability of the process as reflected in those short notice adjournments: “we can prepare survivors for them waiting a long time for a trial but what's really difficult to prepare them for and support them in as well is when things are changed at the last minute, that's really hard. So I don't think it's necessarily...the delay is one thing but also the kind of chopping and changing is another that's really detrimental” (ISVA 14). They provided repeated examples of cases in which clients were required to refresh their memory of ABE interviews, with all the distress this could provoke, only to be told on the day of the trial that it would not be going ahead, and that they would need to give testimony at a future date: “it happens a lot, especially at the moment. We've got trials that are adjourned left, right and centre. And some of our clients, they're on their third or fourth adjournment. So they've worked themselves up for the trial to take place and it's adjourned, and then it's adjourned again and then it's adjourned again, it's terrible, absolutely terrible” (ISVA 6). ISVAs also expressed concerns about RASSO cases continuing to be put on floating or reserve lists: “sometimes I can have five or six ISVAs saying I've got a trial starting on this day, and I'm thinking 'there's no room for all those trials'...and then people are racing across city centres...and then we're expecting people to go and achieve best evidence, it's not fair. It's really not fair” (ISVA 19). In ‘Forum 1,’ this problem of over-listing was raised, with discussion confirming that rape cases were being listed as back-up trials at local Crown Courts, even though they ought not to be. The CPS representatives present intimated that they had been raising concerns directly with court listing officers about this, but also reflected on the limits of their ability to impact, and the tensions this created in partnerships elsewhere: “we're a bit piggy in the middle and we're doing the best we can...I am sorry you're having to deal with very upset people...we've just got to do the best we can when the courts are floundering.”

Alongside the tensions discussed above amongst some justice and third sector professionals regarding the use of special measures, and section 28 pre-recorded cross-examination in particular, this ongoing difficulty with listings and court / counsel capacity arguably also reflects a wider disconnect in terms of earlier stage initiatives designed to improve victim care, and reduce the likelihood of withdrawal, being afforded less priority in latter stages of the process, which in turn continues to undermine confidence about reporting and prosecution overall. As one police officer put it, for example, “it's frustrating for us to go through the Soteria process and try and make sure that we're doing everything that we can to support prosecution or not even just the prosecution but the right outcome for the victim. And then we're losing it because our court administration is letting us down at the last hurdle. And when you think of all the resources that we've put into that to get to that point and then lose the faith of the victim is...yeah, it's just something that we can't ignore” (Police 15). In the final section of the report, we will return to consider the implications of this further in the context of evaluating the legacies of Operation Soteria and ongoing challenges for the future.

## 7. Victim Support & Communication

In Section 1, we highlighted evidence of a lack of public and victim confidence in the criminal justice system's handling of rape complaints and complainants. Partnership building with police to improve the quality of investigations and ensure more timely progression of cases with robust and consistent decision-making in relation to charging and trial preparation are obviously key objectives under Operation Soteria. They will be of limited impact, however, if the experience of victims who report is not simultaneously improved, including in terms of handling initial disclosures, processes for testimony-giving, communication and support. Under its penultimate workstream, and in parallel with a wider and ongoing Victim Transformation Programme (VTP), the CPS has committed to improving collaboration and understanding with Independent Sexual Violence Advisors (ISVAs), as well as increasing the level and quality of its communication with victims. These initiatives are intended to reduce the risk of withdrawal, assist witnesses in giving best evidence, enhance procedural justice outcomes and increase overall confidence in the criminal justice process, for victims and the public alike. In this Section, we outline key activities that have been undertaken, at national and pathfinder area level, to facilitate this before exploring their successes and challenges.

### Victim Support / Victim Transformation

As with activities such as Early Advice, where the advent of Operation Soteria prompted an acceleration and expansion of initiatives already (at least formally) in place within pathfinder areas, it can be argued that activities under the Victim Support and Communication workstream represent a continuation of a trajectory that was already underway across the CPS. In particular, the Victim Transformation Programme (VTP), which is aimed at improving victims' experiences with the CPS in all cases, had been developed following a *Victim and Witnesses' Strategic Needs Assessment* undertaken by Crest Advisory in 2021-22. That assessment found that the service offered to victims needed to be improved in all cases and identified a particular need to prioritise specific cohorts of victims and witnesses by offering them an 'enhanced service' (Crest Advisory, 2022). Echoing findings from prior victimisation surveys that complainants of rape and sexual violence find their engagement with the justice process distressing and often retraumatising, this assessment clearly indicated the need for that enhanced service to be applied in RASSO cases. This has resulted in the development of an 'Adult Rape Operating Model' designed to improve victim communication and the service offered to victims, which has been being piloted in tandem with initiatives under Soteria.

On the one hand, this has been useful to the extent that Soteria has been able to capitalise on momentum already underway to bring change in this area, with the prior research by Crest Advisory and others having clearly demonstrated the need for it. On the other, it has meant some blurring of boundaries between the VTP and Soteria that makes it more difficult to clearly identify what has been implemented under which initiative. Though, ultimately, that may not matter greatly if the consequence is an improved victim experience, there is a danger here of 'slippage' in organisational commitments, which may undermine the urgency with which it was envisaged that the injection of resource and focus under Soteria could bring change. Certainly, as we discuss below, implementation of new initiatives in relation to victim communication and support has been at a generally slower pace across pathfinder areas than



in respect of activities under most other workstreams, which sits at odds from the recognition in interviews with key stakeholders of the importance of improved practice in this regard.

Perhaps one of the areas in which there has been most discernible progress within the CPS under Soteria has been improving partnerships with ISVAs. At the national level, the CPS and NPCC published their *National ISVA Framework* in 2021, which “outlines minimum standards on liaising and communicating with ISVAs and local services supporting victims.” It was intended that this should be applied by the start of 2022, so its implementation has dovetailed with the advent of Soteria activities. At the local level, moreover, there have been a variety of initiatives to strengthen partnerships with ISVAs and ensure better understanding of their respective roles, in a context in which Area B observed in its Soteria Tracker that “the key role of ISVAs was not fully appreciated by CPS staff...[n]or was the role of the CPS clearly understood by ISVAs.” In Area A, for example, a CPS / ISVA mailbox has been running since August 2021. This allows ISVAs to make easy, direct contact with the CPS in order to raise questions or concerns that they, or their clients, might have. Feedback on this initiative has been positive, with reports from Area A of receiving an average of 10 emails per month. The aim, in creating this mailbox, was to make the CPS more accessible and streamline communication in a more effective way; and mailboxes have now been implemented too in other pathfinder areas. Meanwhile, a number of areas have also initiated ISVA Forums that create a space in which ISVAs can communicate directly with RASSO lawyers, raising issues of concern regarding overall practice or, as in Area C, running through case-specific arrangements relating to special measures, etc. ahead of impending trial dates. As with the Scrutiny Panels that we discussed in Section 4, there is variable practice, however, in terms of the frequency with which such ISVA Forums are held and their occurrence is better embedded as standard practice in some areas than in others. For example, in Area A, at present, ISVA Forums are not taking place but regular meetings are occurring between CPS staff and ISVAs as a result of mailbox queries. To assist in implementing these and related initiatives, Area E was the first pathfinder to appoint a dedicated Victim Liaison Officer whose role it is to act as a consistent point of contact within RASSO units for victims and ISVAs alike.

Alongside this, there have been a number of initiatives identified or now underway that are intended to improve communication between the CPS and victims directly. In February 2022, the CPS published a new *Guide for Victims of Rape and Serious Sexual Assault*, which sets out in accessible terms how cases are handled when they come to the CPS, and what support is available.<sup>6</sup> Increasingly, across pathfinder areas, schemes have also been put in place whereby ‘hello’ letters are sent to complainants at the point of receipt of a case file from the police. Again, these have varied in format and design. In Area E, for example, a template has been devised in conjunction with local ISVAs and the letter is sent from the unit’s Victim Liaison Officer. Meanwhile, in Area B, they are intended to be sent directly from the reviewing lawyer who will go on to make the charging decision in the case. In addition, some areas – such as Areas C and E – have also begun to devise a more expansive communication strategy that encompasses other key moments in the justice journey, for example, where an Action Plan is set or there is a delay to anticipated trial dates. Recent entries in Area’s B Soteria Tracker also indicated that they are now making telephone calls to complainants where trials do not proceed or are subject to delay, with the intention that this will “provide a voice for

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<sup>6</sup> [A guide for victims of rape and serious sexual assault](#)

the CPS.” In respect of all these communications, there are some challenging issues to resolve in operationalising who is responsible for delivery or ensuring appropriate and safe channels of access where the victim is not in receipt of ISVA support. It is also necessary to ensure adequate resourcing so that responses can be given in a timely manner to victims who take up the opportunity, for example in ‘hello letters,’ to make contact with the CPS upon receipt.

Where a decision to charge is made, some pathfinder areas have also been sending a letter to victims that includes the offer to meet with the reviewing lawyer, officer in charge and ISVA (where applicable) for a ‘familiarisation’ meeting. Initially, in Area A, these were limited to victims who were already in receipt of ISVA support, but have now been expanded to all victims, as has always been the case in Area C. Some pathfinders have, however, reported “relatively low” (Area C and Area D) levels of uptake from complainants on this offer. Indeed, CPS 43 remarked, “we’ve been shocked that we haven’t had as much uptake of the meetings as we thought we would have had,” whilst CPS 44 echoed that “we are very surprised that the uptake has been quite low.” Though there are likely to be a number of factors influencing the uptake of such meetings, one thing that is likely to be key is ensuring they are proactively offered rather than more passively presented to victims as an option: and in this context, we would suggest that more consideration might usefully be given by CPS colleagues to any avoidable barriers that may be preventing uptake, either tied to the needs of particular victims or to the timing and format of the meeting that is being made available. Where these familiarisation meetings have been conducted, though direct feedback from victims is currently limited, there is evidence to suggest that they have generally been well-received. ISVA 22, for example, emphasised that victims “really appreciate it. They take that on board, and they feel part of that process then. They don’t feel as though they’re just a commodity, just being told what to do, when to do it. I think it’s a very important part of the process for the client to feel involved.” Likewise, ISVA 25 spoke favourably of a comparable scheme, which offered post-charge meetings, noting that it “is really helpful for survivors to have, to know they have, that option...it’s a good step.” Feedback requested by lawyers to be submitted to Area A’s ISVA mailbox also indicated a positive appraisal, with CPS 11 summarising that victims had shared that they “felt empowered, heard and listened to,” with the provision of these meetings helping “keep victims on track” in terms of their participation in the justice process, and allowing “everybody to understand what each other’s roles are.”

Training, provided by third sector specialists, has also been rolled out in some pathfinder areas to increase CPS colleagues’ capacity for empathy and effective communication with victims. Alongside this, and reflecting the concern expressed by CPS 3 that where the decision has been made not to proceed with charges “our letters [to complainants] have just been poor, plain poor,” important work has also been ongoing at national and local levels to improve the quality of NFA letters. In particular, the focus here has been on developing templates that set things out in “simple language” and “break down all the jargon” (CPS 13), and on ensuring that the individual letters sent to complainants are suitably accessible, clear in meaning, detailed in their explanation, and empathetic in tone. Though this process has benefited from the input of ISVAs in developing templates and broad guidelines, the scale and frequency with which specific letters are reviewed by ISVAs for scrutiny and learning purposes has varied across pathfinder areas. Though tied in part to the congested nature of Panel agendas, which we highlighted in Section 4, this is a significant missed opportunity, particularly in light of CPS 57’s reflection that “ISVAs and CHISVAs were great in terms of

helping us craft those parts of the [NFA] letter” in a context in which “one of the biggest fears [amongst lawyers] was saying why a decision was reached...and the impact on the survivor.”

In the rest of this section, we consider these initiatives in more detail. In particular, we reflect on how their implementation during the research period was experienced by CPS colleagues, and in lieu of robust feedback directly from victims, we draw on insight from ISVAs as to how adequate they believe clients found support from, and communication with, the CPS to be.

### CPS as a ‘Faceless Institution’

The majority of our participants recognised that many of the challenges to victim support and communication that have historically been encountered by the CPS (in and beyond RASSO cases) have arisen as a consequence of its tendency to be a “faceless” institution (‘Forum 5’). As CPS 3 put it, “we need to be less faceless. I think the problem is that, as an organisation, because people don’t know us and don’t see us, sometimes they think we don’t care.”

Despite initiatives under Soteria to improve visibility and partnership working, this perception that the CPS is a ‘faceless’ institution was still echoed by other stakeholders across pathfinder areas. This is not to say that such initiatives have not had positive impacts, but it is to underscore that the legacy impression of the CPS as an institution that is unknown and opaque will take time and sustained investment to overcome. ISVA 7 explained, for example, how she and her colleagues often find the CPS to be an “omnipotent kind of being that...are never really present.” Meanwhile, Police 10 described the CPS as “an entity that is there, and there’s no face to it, there’s no emotion to it, there is no relationship with it. It’s just an entity.” In terms of their engagement with latter stages of the justice process, moreover, a similar sentiment was also expressed by judicial interviewees who variously described reviewing lawyers as a “mystical beast” (Judge 7), who have “rather retreated behind their desks” over time (Judge 9) and become at best “somebody on the end of a telephone” (Judge 5). This perception of the CPS as aloof and abstract amongst other professionals in the justice process is likely not only to undermine partnership working, but to reduce their confidence in the prospects for its effective and appropriate communication with victims. Reflecting on how they believed that their clients often viewed the CPS, ISVA 4 explained that “I think that they see it as this invisible hierarchical people, who they’ve never seen the face of and they don’t really know, it’s difficult for them to even picture it, you know, these people. Like I said, it feels like they’re kind of behind closed doors making decisions about people’s lives who they’ve never met before. I think that’s how it feels to clients.” In a similar vein, Police 22 observed that “the CPS have been invisible to a victim. Because they deal with the police, they know it’s then gone to someone else, but a lot of people don’t understand the process of CPS, police, court.” Initiatives such as ‘familiarisation meetings’, ‘hello letters’ and provision to victims of a ‘Guide to RASSO’ that sets out the function and responsibilities of the CPS are clearly intended to address this gulf in victim understanding and institutional accountability.

The extent to which many CPS colleagues themselves appreciated the need for change in this context was notable. One prosecutor, having recently joined the CPS, reflected, for example, on how surprised they had been by “the lack of victim contact, face to face contact, in terms of reviewing lawyer’s role” (CPS 37). Similarly, another acknowledged that they had “thought it was so strange that we didn’t have a lot more contact” with victims when they joined the

RASSO unit (CPS 16). Several lawyers confirmed, moreover, the assessment regarding victims' experiences and impression of the CPS that had been provided by other professionals: as CPS 25 put it, speaking about feedback they had received from victims, it is often "very much [that] the CPS is a quite a faceless organisation" and that they "never hear from the CPS." Echoing this, others underscored that, for many victims, their only contact with the CPS tended to be at the point of charge or the receipt of a NFA decision, which even when issued by police is likely to reference the Full Code Test and the role of the CPS as subsequent arbiters of whether the case satisfied the standard sufficiently to merit a charge. As CPS 22 put it, "some of them probably feel they don't have any interaction and they wonder who the heck the CPS is and why it is that the police say, we've sent this case to the CPS and then some man in a suit says no. I should imagine it's very frustrating for them." Similarly, CPS 28 observed that "I think we are totally invisible to them until we either charge or NFA it, that's the time we become visible, is when we go, no, we're not charging it." Meanwhile, CPS 27 reflected – from their perspective in performing the legal role – that I "find it odd writing to somebody and saying, I'm the lawyer that's been looking after your case for nine months and I've decided to drop it." As they put it, this "feels like a very odd time to be saying hello" (CPS 27).

## Prosecutorial Independence vs. Victim Engagement

Despite this general sense among CPS participants that they ought to communicate, and engage, with complainants more readily as part of their job roles, some interviewees also spoke about their concerns over the potential implications this might have on criminal justice processes. Often these concerns stemmed from the fact that "when the CPS was set up...our identity was that there were miscarriages of justice in policing because they were too close to the action. So this is an independent process" (CPS 2). In other words, these interviewees identified a possible tension between engaging more directly with victims whilst maintaining, and being seen by others to maintain, an appropriate level of prosecutorial independence.

The challenges but also feasibility of navigating this was underscored by CPS 2, who observed that "you can make independent, objective decisions, but engage really well with victims: the two are not mutually exclusive," albeit that "it's not an easy thing to do and takes great confidence and courage to do it well." In Section 8, we reflect further on the training currently provided to lawyers to enable them to do this effectively, and how it might be strengthened. ISVA interviewees – recognising lawyers' anxiety in this regard – also underscored that "you can have boundaries and still be kind and supportive and empathetic and trauma-informed, it doesn't mean you have to just lose all your boundaries and lose your professionalism" (ISVA 13). At the same time, many CPS participants emphasised how they "still have to be impartial" because it "needs to be a fair trial" (CPS 31). Others noted "there does remain that important kind of distinction that the CPS doesn't act as the victim's lawyer, and that the victim understands that process" (CPS 36). Lawyers also reflected on their concerns that this could create a "tricky situation" since they "obviously don't represent victims" (CPS 51), and that it would require treading "such a fine line" (CPS 31) in order for them, and the CPS as an institution, to be more open with victims whilst acting as an independent body. As CPS 18 put it, "my concern is that we're not the complainant's prosecution service, we're the Crown Prosecution Service, we're an independent body who brings prosecutions, we won't get into the whys and wherefores...and we are, I think, possibly getting into the realms now with what we're being asked to do in terms of some of the communication, of tipping the balance the

other way.” Meanwhile, reflecting on their recent experiences of being involved in familiarisation meetings under Soteria pilots, CPS 46 articulated their concern that “once [the victim] meets you in person or even over teams they think [X] is my lawyer” and “that could be even harder and more confusing for people because they see a face and think, that’s my person, just like the defence has got someone.” Though clear explanation of the CPS’s role, facilitated by ISVA support, could address much of this concern, it clearly animated several CPS lawyers for whom engaging with victims directly in this way was uncharted territory.

Relatedly, while ISVA 1 underscored the value in the CPS meeting with victims directly and reassuring them that “you’re our case, you’re our witness, you’re doing this for us and we’re honoured to have you in this courtroom,” several lawyers expressed anxieties about being accused of witness coaching, and the potential disclosure implications, if more communication with victims is encouraged. As CPS 51 put it, “we have kind of been trained, you know, to think, obviously you can’t coach victims or witnesses, you know you’ve got to be very careful of what you say to them and how you say it...it’s engrained in us that you can’t discuss the evidence with them, you can’t tell them too much.” Similarly, CPS 5 reflected on previous attitudes and noted how there was: “historically a bit of anxiety amongst prosecutors that we don’t engage directly with a complainant, that you don’t speak to the complainant because of the disclosure risks and things like that.” The need for “careful management” of meetings to navigate such risks was also underscored by Judge 8, whilst Judge 1 observed that “without an awful lot of safeguards” increased engagement could “cause more problems than [it] could solve,” particularly in respect of “allegations of coaching.” These are indeed important considerations to bear in mind as part of ensuring fair trial processes within our existing adversarial system, but they are not insurmountable challenges (Ellison 2007; Roberts & Saunders, 2010; Wheatcroft, 2016). Moreover, lawyers’ reported experiences of ‘familiarisation meetings’ under Soteria generally indicated that setting ground rules with complainants at the outset as to what could and could not be discussed provided adequate protection, safeguarded further by the recording and note-taking of meetings. As CPS 27 put it, “we absolutely have a role to play but we’ve really got to be clear about the boundaries of that role and expectations. And I think that is the value of that independent legal framework of the code because that is our guide. But we have got an accountability I feel to victims to explain our role, I think that’s a really important part of it.”

## Victim Communication: Assessing Skills and Capacity

Alongside these concerns about risks in relation to independent decision-making, coaching and disclosure as a consequence of greater direct communication between CPS lawyers and complainants in RASSO cases, several interviewees also worried about whether they had the appropriate skills and training to speak with victims in an accessible and suitably trauma-informed way. CPS 13, for example, having emphasised that the aim is for CPS engagement with victims to be “more structured, more controlled, more informed, so it doesn’t feel like such a chaotic black hole for everybody involved...more empathetic and more nuanced,” went on to acknowledge, “I don’t think the training we have right now is sufficient to give the prosecutors the skills they need to write the letters they must and have the meetings, sensitive meetings, they need to have with these victims.” This was echoed by other participants who noted that there “were some concerns raised by prosecutors about speaking to victims because it’s not necessarily what their skillset is” (CPS 11), “it doesn’t come

naturally to everyone to be able to feel comfortable in that scenario” (CPS 36), and that “this is territory which we haven’t necessarily been involved in before and...we are not experts in trauma and understanding how people want to receive communications or be heard in meetings” (CPS 32). Interestingly, moreover, this was an anxiety expressed by participants in relation to different forms and stages of communication with victims, suggesting that the unease may be as much about the principle of direct engagement as it was about the ways in which that was to be operationalised (e.g. whether via verbal or written communication).

Even in relation to what might be thought to be the most innocuous of victim interactions – ‘hello letters’ – there was evidence of some hesitancy, particularly in areas where it was envisaged that these would be written directly by reviewing lawyers rather than mediated through Victim Liaison Officers. While ISVA 9 described these letters as “great” because they open up channels of communication, some lawyers involved in these pilots queried the appropriateness of an introduction from the CPS at such an early stage and raised concerns about a duplication of communication with victims across police, ISVAs and CPS that could be unhelpful or overwhelming. As CPS 18 put it, “I think that actually usurps a bit the role of the police,” with the attendant concern that it could mean lawyers “being persistently chased as to where it is and where things are.” Similarly, CPS 20 explained that they “don’t want to be opening up conversations with complainants at a very early stage” since it might result in complainants saying to them “will you hurry up because this is really awful for me.” Taking these concerns into account, dedicated Victim Liaison Officers might well be better placed than reviewing lawyers to send ‘hello letters’ and to act as the CPS point of contact for victims as cases progress. At the same time, though, it is important to ensure that VLOs are not under pressure to take on all victim communications, since there will be some communications (for example, regarding a NFA decision) that ought to continue to come from reviewing lawyers; and even where lawyers are not undertaking direct communication with victims, the need for them to continue to develop and apply a trauma-informed lens across their practice remains.

Perhaps unsurprisingly, given the subject matter, it was the communication of NFA decisions to complainants that was typically the greatest area of concern for lawyers. On the one hand, this is not novel territory since lawyers are already in the practice of providing NFA letters, which – in furtherance of commitments under the Victims’ Code – ought to offer an opportunity for a follow-up conversation, as well as providing information about other mechanisms for complaint and further review. On the other hand, recognising the concerns of various Inspectorate Reports regarding the failure in RASSO NFA letters to provide enough explanation to enable recipients to understand why their cases had been discontinued or to reflect appropriate tone and level of empathy, there has been a concerted focus under the VTP and Soteria alike to do more and better with this correspondence. Cognisant of this increased expectation, interviewees often underscored that NFA letters were a “huge challenge” to write, and that ensuring they are not written like a “lawyer business letter” but at the same time do not “come across as forced empathy” is a time-consuming and difficult task (CPS 29). CPS 23 described writing NFA letters as “the hardest things to do” in their role in the RASSO unit, since “it’s never normally because you don’t believe them” but “it’s so difficult to put into words to a victim, who is going to be so disappointed.” Similarly, CPS 20 explained how they “really worried about upsetting and disappointing people because obviously they’ve been through a lot. A lot of the time you do believe them, it’s just a legal test, rather than you don’t believe them.” Several lawyers reflected on how, in seeking to

strike this balance between emphasising that they did not dispute the veracity of the complaint and making it clear why they had nonetheless concluded that there was insufficient evidence to proceed, they often struggled in particular with how much information to provide, and how to convey legal tests in an accessible way to the recipient. As CPS 53 put it, for example, “you don’t want to re-traumatise a complainant by being too specific. But if you’re too vague, then they don’t necessarily understand the reason behind it.” Similarly, a CPS representative in ‘Scrutiny 14’ observed that “people have been through the most traumatic experience and the last thing we want to do is land more pain on their doorstep.”

Though, as noted above, detailed examination of the content and quality of NFA letters was not a consistent feature across the Scrutiny Panels or Forums that we observed, there were some instances in which it was undertaken. Overall, the ISVAs and representatives from specialist services that were present during these discussions did appear to recognise that there had been some improvements as a result of recent VTP and Soteria initiatives. There was also a clear sense within the discussions of local CPS partners being keen to learn from third sector expertise, and typically being receptive to, and respectful of, their contributions. However, those contributions also clearly underscored that there was substantial work still to be done. In ‘Scrutiny 14,’ for example, a CPS NFA decision was reviewed in a case involving allegations of rape against someone that the complainant advised had been stalking and harassing her. The prosecutor declined to charge after text messages emerged which appeared to show that the parties had been in a friendly relationship during the time period in question. Several of the contributions from the ISVAs present focused, understandably, on the potential misreading of those text exchanges by the lawyer, particularly in a context in which the victim might have been seeking to ‘manage’ risk within the relationship, but she was not asked to provide any explanation of the messages before the NFA decision was actioned. However, it was also highlighted that the NFA letter itself was “very blunt” and “unsympathetic” in tone, in response to which one of the CPS representatives for the RASSO unit in question had to concede that “it is a very good example of a very, very bad letter.”

Meanwhile, in ‘Scrutiny 15,’ as outlined above, a decision not to charge in respect of a complaint made by someone with a history of mental ill-health was discussed. It was noted by one of the CPS representatives present that, while the complainant’s mental ill-health had in fact been a significant factor in the NFA decision, this was not addressed in the letter, which “deliberately omitted the difficult part.” This prompted discussion at the panel regarding the importance of liaising with ISVAs (where they are involved in a case) in advance of drafting the NFA letter so as to better assess how “the message will land” and “how to couch it.” Here, the lawyer’s hesitancy to address directly the complications arising from the complainant’s condition resulted in a letter that was described by one of the attending ISVAs as “very cold, blaming and dismissive.” The explanation for the decision came to focus mainly on the fact of the complainant’s unrelated allegations, described in the letter as “unsubstantiated” and likely to “weaken the argument of the prosecution.” This, another ISVA observed, would likely be read by the victim as saying “this is your fault” and implying that, because her previous allegations were not substantiated, it would not now be possible for her to report a rape.

‘Scrutiny 12’ was the only panel that we observed in this study where the focus was deliberately targeted around the content and quality of NFA letters, and here the multi-agency group closely reviewed four letters. Particular themes that emerged related to the

appropriate level of detail to be provided. Noting, for example, that “every victim has different individual needs in terms of how they would like to be communicated with,” a CPS representative for the pathfinder area invited views regarding the information contained in one of the letters, sent to a 15-year-old complainant, about the relevant legal tests that required to be met. This was broadly felt by ISVAs to overestimate the recipient’s capacity to understand, particularly at a time of heightened distress and anxiety in processing this news. In addition, examples were drawn out from other letters where prosecutors could be interpreted as implying a criticism, whether of police colleagues or of the victim, to whom they attributed some of the responsibility for their inability to charge. This was most pronounced in one case, which involved a reported rape against a complex background of domestic abuse and coercive control. Here, the lawyer’s attempt to explain that they could not build a sufficient case without the support of the victim, which had been withdrawn, was described as “blunt” and “passing too much to the victim,” particularly given that this was reiterated four times in the letter, which was felt to be “excessive.” The lawyer’s description of this 14-year-old victim’s relationship with the 19-year-old accused as “volatile” was also suggested to belittle what was in fact high risk domestic abuse, and potentially to suggest the view that some degree of reciprocal responsibility for that abuse lay with the victim.

Notwithstanding these examples where greater care could and should have been taken, it was apparent that, in seeking to navigate this terrain, several of the lawyers that we spoke with were committing considerable time, and expending significant emotional labour, in the process of drafting these letters: and this was not adequately acknowledged in their current organisational workloads. As CPS 13 put it, “they only get given about half an hour to 45 minutes” within generic resource efficiency models to write NFA letters, but “all the RASSO lawyers are saying, no, this takes me two or three hours...that’s time they want to spend really carefully drafting these letters and they don’t have it.” This was underscored powerfully by the reflections of CPS 54 that “they are hard letters to write. I’ve spent two days writing a letter...You’ve got to explain in nice, easy terms how that has happened to somebody who has already been traumatised once, ...you can’t just say, well, I’ll just quickly knock out a letter, that just doesn’t happen, you just can’t. You have to go through every single paragraph, all the words and, you know, is this too formal? You’ve got to also take account of the age of the victim, you know, is this person going to understand what I’m saying, does it need to be translated? There’s all of these complications that come into play.” Though, as we will discuss further in Section 8, resourcing is an acute concern across RASSO units, if the opportunity is not afforded to lawyers to take due time and care in drafting NFA letters, with mechanisms built in to facilitate effective review and revision, they are unlikely to serve the purpose of improving victim communication and confidence. The same can also be said, moreover, in relation to recognising that this is not a skillset that will come easily to all lawyers, nor one in which they have been substantially trained, so initiatives to improve that training and to support them in the emotional labour involved are also key. Indeed, as CPS 49 put it, “if we’re going to deal with victims, we need to be trained how to do it. We need to have less work. There needs to be a conscious understanding that it will take more time and money.”

## The Limits of Evaluation of Current Victim-Facing Initiatives

Thus, as we have outlined, there have been a number of initiatives piloted across pathfinders as part of Soteria that aim to improve victim communication and support. At the time of



writing, however, many of these are still not sufficiently embedded to allow for proper evaluation. In addition, partly as a consequence of the sensitivities and ethical considerations involved, it is fair to say that this is the workstream in regard to which we have had most limited data in order to inform our analysis. In relation to ‘familiarisation meetings,’ for example, as discussed in Section 2, though we had hoped to be able to observe a small number of these during the research, this has not been possible, as a result of low uptake, the challenges of relying on individual lawyers or unit heads to identify and refer observations to us, and a decision on our part to restrict such observations to cases in which the complainant was in receipt of ISVA support. This has inevitably limited our ability to understand and directly assess the tone, content and parameters of those meetings, and the dynamics of participation. Likewise, though as we discussed above, we have had sight of some NFA letters where they were contained in case files or included in the paperwork for Scrutiny Panels, we do not have information across a sufficiently sizeable sample to assess robustly the quality and appropriateness of those letters. That said, there can be no question, in our view, that the broad direction of travel that we have outlined in this regard is to be welcomed. There is clearly more work required to embed these initiatives, to support and train CPS staff to meet the challenges of this evolving aspect of their job, and to determine how best to navigate some of the tensions that have been highlighted in regard to the prosecutorial role. But those challenges are not insurmountable, and the potential for these changes to improve RASSO victims’ experiences should not be underestimated, albeit that, as we have observed elsewhere, there are aspects of the adversarial trial process itself that lie beyond the reach of these initiatives and that continue to pose risks of re-traumatisation and disempowerment.

Equally, however, it is important to draw attention once more to the current paucity of direct feedback from victims themselves in respect of their experiences of the CPS in general, and these evolving victim-facing initiatives in particular. There are difficult questions to consider in this process, especially in terms of managing associated power dynamics as cases are progressing and identifying the most appropriate timing and mediums for seeking feedback from victims. However, it is also vital that their experiences, presented in their own terms and multiplicity, are taken into account in the process of developing and evaluating CPS engagement. ISVAs can and do, of course, provide crucial and powerful insight, but this should ideally be coupled with greater efforts from the CPS to hear directly from victims, and to ensure the representation of experiences from a more diverse cohort, including those who may not have ISVA support or may be supported by smaller or more specialist organisations that will perhaps be less likely to benefit from invitation to participate in Scrutiny Panels or Forums. As noted above, this may be especially important in regard to victims from minoritised communities, or those with additional needs, for example, in relation to language or communication. In this context, it is worth re-emphasising that data pertaining to such victim characteristics in this research (accessed, for example, via attendance at Scrutiny Panels or from redacted case files) was often limited – whether because of a lack of systematic recording, restrictions on data sharing, variability in the level of information provided to us in advance of observations, or a combination thereof. Better understanding of the support needs of RASSO victims by the CPS requires, as a first step, more consistent and detailed knowledge regarding protected characteristics; to be accompanied by more direct engagement with the voices and experiences of the justice process provided by victims in and across their different and intersectional registers. Without this, we would suggest that revised models for victim communication, support and engagement that purport to be inclusive are

likely to prove far more selective, and that the ambition articulated by CPS 3 for the CPS to “have a much more person-centred approach to victim engagement” is likely to be frustrated.

## Improved Partnership Working with ISVAs

Finally, before concluding this Section, it is important to consider how effectively the other initiatives discussed above, which were designed to improve partnership working and mutual understanding of roles between CPS and ISVAs, have functioned in practice; and in particular, how they have been received by ISVA stakeholders across the Soteria pathfinder areas.

From a CPS perspective, it was clear that, broadly, interviewees felt there had been significant improvement in relationships. CPS 37 observed, for example, that “we’ve done a lot of work locally with our local ISVAs so that they understand the role of the CPS, they kind of have a better understanding around the criminal justice system...and it’s a really positive working relationship now.” Meanwhile, CPS 51 reflected on the value that ISVAs added within the criminal justice process and the benefits, for professionals and victims alike, of their involvement: “ISVAs are unfortunately underrated within the system. I mean, you know, they are so incredibly important...so you know, let’s use them, let’s bring them in and involve them. They’re part of the prosecution team.” Amongst ISVAs, there was also a recognition of some significant improvements. ISVA 20, for example, reported that she and her colleagues are “not just, you know, a support worker anymore...[the CPS] see us at a professional level.” Similarly, welcoming this greater focus on partnership working, ISVA 8 emphasised that “all our skills lie in different departments. We have different skills and if we utilise them it can just only make it more stronger and better. Because what our prosecuting [lawyer or] barrister can do, I can’t do that, but what I can do they can’t do. So it’s about coming together for her.” Such responses can be contrasted, however, to the more negative appraisals of partnership working with ISVAs that, as discussed in Section 6, were still expressed by some barrister interviewees. A number of external counsel (and some judges) raised concerns about the levels of training and understanding they felt were exhibited by some ISVAs in relation to court processes, suggesting they could inadvertently mislead complainants in terms of their entitlements or give “too much expectation of how nice the court process is going to be or how the victim is going to be accommodated” (Barrister 15). Though not seeking to downplay the value of ISVAs in supporting victims more broadly, these comments did indicate a resistance to their involvement during trial proceedings which appears to sit at odds from the suggestion by CPS 51 above that ISVAs should be seen as “part of the prosecution team.”

The existence of an increased respect for, and recognition of, ISVAs as partners - at least amongst reviewing lawyers - was also evidenced in a number of the Panels and Forums that we observed where prosecutors worked hard to encourage contributions from ISVAs and to address their concerns. This is an evolving relationship, however, and we did continue to observe some discussions in which CPS and / or police still dominated, with ISVAs and other specialists speaking or being asked for their input only infrequently. It was also clear that developing effective partnerships in this context is likely to be easier in some areas than others, on account of the fragmented nature of service commissioning and variable representation of ‘by and for’ specialist organisations. In one of the pathfinders, for example, ISVAs – though retaining operational independence – are employed by one of the local police forces, which it was suggested often allowed for easier integration and partnership working.

By contrast, ISVAs in other areas are not only spread over large geographical distances, but in some localities are employed by services with particular criteria for access, tied for example to membership of LGBTQI+ communities or having specific disabilities. Opening forums to wide participation to facilitate representation is obviously important, but as ISVA 26 intimated, it can risk undermining their functionality if a 'tipping point' is reached: "it's massive, but I don't think that it, from what I can see, it does what it was supposed to do."

In terms of specific initiatives under Soteria that have been most particularly welcomed, as noted above, the use of dedicated ISVA mailboxes to open up channels of reliable and direct communication with the CPS was particularly highlighted. In Area A, which was the first area to embed this practice, ISVA 17 observed: "I have taken a few things forward to do with cases that I've been working with through the ISVA mailbox...which is a really good resource, I find that really useful." Meanwhile, ISVA 14 underscored that one of the benefits of the mailbox was its flexibility: "you can direct any queries that you might have. So if you wanted to arrange a post-charge meeting, if you had concerns about a client's access issues, so that needs to be taken into account when listing at any given court...you know, that's really beneficial as well;" and ISVA 18 went so far as to describe it as a "lifeline" because it has given her and her colleagues an avenue "when they have an issue with a case or something, to go 'I don't know why this has happened' and 'why has this case has been adjourned' and 'why has this victim's sort of not been updated'." So too, the creation of forums was mentioned by some ISVAs as being particularly useful in opening up communication, particularly with more senior leaders in local RASSO units. However, reflecting the challenges tied to representation in such forums that we raised above, it was clear that these should be seen as a supplement to, rather than alternative for, mailboxes or bespoke points of contact that are available to individual ISVAs. In addition, as we reflect on further in the next Section, the demands that can be imposed on CPS staff through the opening up of these additional channels of communication also require careful monitoring to ensure that resourcing and support is sufficient to permit their sustainability. This may be particularly acute in relation to the Victim Liaison Officer role, which has been created to act as a single point of initial contact within RASSO units – though a new innovation, Tracker entries have already indicated that the workload within this role can be substantial, impacting more significantly than anticipated on wellbeing and resilience.

## 8. Our People

Amongst many of the CPS participants in this research, there was a sense of opportunity, tied to Operation Soteria, for substantial organisational and operational change, on a level that they would have been sceptical could be achieved only a few years ago. At the same time, however, it was clear that this change could be challenging, that it required learning new skills and ways of operating, and imposed additional demands on time and workload, all in a context in which recruitment and retention of suitably qualified RASSO teams is difficult. Against this context, the final workstream around Our People is foundational to the success of other CPS Soteria ambitions. At a national level, it has been articulated that this workstream aims to “generate a learning culture” and “empower staff” through initiatives such as comprehensive training, enhanced wellbeing offers and sustainable resourcing of RASSO units. Across local pathfinder areas, however, there was somewhat less clarity amongst participants, and reflected in Tracker entries, regarding exactly what activities ought to be undertaken under this workstream or how to strategically localise those larger aims.

We divide our findings here across three key, and inter-related, themes that emerged during our interviews and observations: namely, around resourcing, recruitment, and retention within RASSO units; emotional labour and wellbeing; and training, learning and development.

### Resourcing, Recruitment and Retention

There was a shared view expressed by almost all interviewees that the criminal justice system has been, and continues to be, substantially under-resourced. More specifically, CPS 2 spoke of having “faced significant budget cuts from 2010 onwards,” which meant that agencies were still “going through a resourcing challenge.” This was reflected in Tracker entries, with areas reporting how resourcing pressures had impacted on the sustainability of Soteria pilots. As noted previously, the resources and time devoted to improving EA uptake in Area E, for example, resulted in a charging backlog which became a critical priority. Similarly, entries from both Areas B and D reported resource challenges in holding NFA scrutiny due to time-pressures faced by CPS staff. Thus, the overriding message from many participants when asked what would be most likely to make the biggest difference to working conditions, and in particular to the capacity for CPS staff to perform their jobs to the best of their ability, was increased and sustainable resourcing. Barrister 1 begged “please just fund [the CPS] properly. It just makes life a lot easier and the justice system smoother.” Meanwhile, police reflected not only on the scarcity of resourcing within their own departments but also on the fact that, as Police 1 put it, “I don’t think there’s sufficient resources...to manage demand” on CPS workloads, given increased rates of rape reporting. The consequence of this, they observed, was that CPS colleagues were “massively overworked” (Police 24) and “until they’ve got more lawyers, things won’t be as quick as we want them to be” (Police 12). This was often echoed by CPS interviewees. CPS 47 commented that the main thing that would ensure success under Soteria would be “more lawyers, smaller caseloads, the more time we have to dedicate to a case, the better things will be done...if the CPS wants to get things better, they need to have more people.” Similarly, CPS 34 noted, “resourcing is challenging because they are difficult cases...and the greater a caseload a lawyer has, the more difficult it is to do them justice,” while CPS 48 commented that “the amount of work that’s coming through to us, we’re having

real difficulties coping with it.” This was predicted to become an even more acute concern as police forces were onboarded to Soteria, and participants emphasised the need for a holistic approach: “I don’t care what resource model they’ve looked at, it’s inadequate...The work has trebled, the lawyer profile has doubled, but the Paralegal Officer profile has remained the same...If they don’t address that, stuff is not going to get done...errors will be made” (CPS 33).

Though some pathfinder areas were initially working closer to their baseline resourcing model and so saw tangible benefits from an uplift in resource specifically tied to Soteria during this research, that has not been a consistent picture. In particular, Tracker entries between September 2022 to June 2023 showed that, even where additional funding had been made available, difficulties in staff recruitment and retention meant that RASSO units lacked the resources to meet increased demands. In Area E, for example, entries in their Soteria Tracker documented them working under their baseline, with 9 of the 13 prosecutors in the RASSO unit being relatively new and, as such, requiring extra mentoring, development, and oversight. Though significant efforts were made to recruit, Area E documented what it described as “baffling” difficulties in appointing to vacant positions, which resulted in some Soteria activities having to be scaled back or postponed. Meanwhile, during their interview, CPS 56 observed that currently within their RASSO unit, “we’re at least 10 lawyers short...[and] that’s impacting on a lot of decision-makers.” This in turn underscores the reality that, even where resourcing was made available to appoint additional lawyers into RASSO teams, recruiting suitably qualified applicants to those roles, and retaining them once recruited, can be very challenging. As CPS 8 put it, “finding people to man these units is really difficult. It’s a really hard job...You have a big caseload, the stakes are really high.” Meanwhile, CPS 58 simply observed that “RASSO lawyers, I’m afraid, don’t grow on trees.” In response to such challenges in recruitment, Area A has implemented a series of ‘taster sessions’ intended to demystify RASSO casework for potentially interested applicants, and has designed a development pathway that it hopes will enable promising lawyers with an interest in RASSO to be transitioned into the unit. Other areas have utilised alternative strategies, including RASSO secondments made available to external counsel or CPS colleagues in other units.

Though these can provide useful ‘feeders’ for resourcing RASSO units, retention risks in relation to these cohorts of incoming staff remain. As CPS 6 put it, “we’ve had quite a few people recently who have asked to move out of RASSO. New lawyers who we’ve moved in to try and get resources up to where they should be, but they’ve then said, ‘I can’t do this, you need to move me back out’. So we’ve had literally like in a revolving door, they’ve gone in, we’ve put them on RASSO training, then they’ve come out within a couple of weeks...The area is committed to putting resources in, but we seem to be losing out the other end as quickly.” This has certainly been the case in Area C, for example, where it took several months to replace two highly experienced RASSO lawyers. Tracker entries documented challenges in hiring lawyers within the CPS, necessitating recruitment of external candidates to fill these roles. CPS staff in the area are thus unlikely to see the benefits of such recruitment for some time whilst new colleagues attend induction courses and require increased RASSO training.

Several participants identified these heightened risks to retention as arising, at least in part, from the increased recruitment of staff with less experience in other roles within the CPS, and in particular staff who have come from Magistrates’ rather than Crown Court units. CPS 24 emphasised this potential tension between redressing recruitment deficits and ensuring a

suitably skilled and sustainable workforce: “we have been struggling to get the lawyers that we actually need. We have been traditionally under-resourced, so we have actively been trying to recruit, recruit, recruit...But then that brings another issue in terms of experience, and do we have the right experience within that legal cadre to deal with those RASSO cases?” Though the challenges posed to transition into RASSO units will vary from one individual to another, and in many cases will not be insurmountable, this highlights the importance of fulsome inductions and systematic training for incoming staff. In the final part of this section, we explore in more detail participants’ – and our – reflections on current training provision.

Alongside the sufficiency of induction and training, the challenges identified with retention – particularly in relation to staff who have been in RASSO units for a more settled duration – also underscore the importance of taking steps to “incentivise people to stay” (CPS 55). Though this sits in tension with previous CPS initiatives to encourage rotation out of RASSO units, in order to mitigate risks of staff burn-out, the general consensus amongst interviewees was that it was important to develop and retain expertise. Reflecting on this, barristers also noted the importance of experienced lawyers for the RASSO unit as a whole: “it’s a specialist area, you need to have a specialist investigation unit, you need to have experienced lawyers” (Barrister 13). At the same time, they also acknowledged that this was difficult in the current climate: “I think they need more experience actually. And at the moment, there’s not much the CPS can do about that because they’re having to draft in as many people as they possible can” (Barrister 10). Equally, it was felt that the internal mechanisms to appropriately recognise and reward specialism (whether through remuneration, status or otherwise) were not adequately in place. As CPS 41 put it, “we’re not considered specialist lawyers at all and I think we should be.” Meanwhile, CPS 1 agreed that “in the past, we’ve sort of assumed that people can go from one crime type to another” but RASSO work “takes a very specific set of skills.” Barrister 11 highlighted how, in their view, this was indicative of a wider lack of appreciation regarding the skill required to do RASSO work: “it’s universal lack of training and specialisation. Not giving it the respect it deserves, you know, it is different to other trials, it is different to other areas of law.” At the same time, CPS 8 also highlighted the more practical aspects of this resource-recruitment-retention dilemma: “some people say the only way you’re going to [get the personnel] is if you reward people more handsomely for what they’re doing, recognising that it’s more demanding than other types of prosecutorial work...but you could never make all the people specialists and therefore give them more money.”

## Emotional Labour and Wellbeing

A further substantial risk to retention identified by several participants was tied to the demanding and stressful nature of RASSO work, including the emotional labour and risk of burn-out that this might pose. In interviews, barristers were often quite candid in sharing the emotional impacts that working on RASSO cases can have, reflecting on the caveat that whilst it is important to build the experience of RASSO lawyers, it is this very experience that “burns you out and it makes you jaded, and you can really lose track of what you’re dealing with sometimes” (Barrister 11). This same barrister spoke specifically about the impacts of relentless exposure to distressing evidence: “there is something uniquely poisonous about sexual offending and the damage it does that really does need...It does need a different consideration and it does need a different kind of care.” Meanwhile, Barrister 13 opined that, in their view, “a lot of CPS lawyers have burn-out. And the senior ones...I mean, a lot of the

really good, solid RASSO lawyers who knew what they were doing have gone. And they've gone because of the pressure, they've gone because of the culture." This was echoed too by some of our CPS interviewees. As CPS 6 put it, "a huge issue...is getting people to come in who will stay, you know. And it's not because they don't want to do the work, it's just they haven't got the resilience to be able to deal with it." Meanwhile, CPS 7 reflected that "some people can only do it for a finite period because it's exhausting...it changes your world...people leave because they can no longer cope with the sheer weight of the horror and trauma that they're dealing with." Similarly, CPS 56 observed that "we've lost a lot of experienced staff...the problem is we're getting in new staff...[and] some of them find it quite stressful, so some people don't want to stay, the nature of the work doesn't suit everybody, some people just find it quite traumatic." Several participants also noted that this was not only a reflection of the distressing nature of the subject matter in RASSO cases, which CPS 33 described, for example, as "awful" and "harrowing", but also of the fact that colleagues were sensitive to the public scrutiny against which handling of rape complaints was, and still is, undertaken.

While CPS participants consistently acknowledged the challenging nature of RASSO work, they diverged in the extent to which they felt that they were personally impacted by this. Some emphasised that they had developed effective coping strategies, especially with time and experience in the role, which enabled them to manage the work without negative impacts on their wellbeing. CPS 19, for example, observed that "one of the things I've developed over my career is an ability to be objective to the point where I can switch off," while CPS 22 insisted that "ultimately, for me, you just have to learn the knack of turning the computer off and forgetting about it." This idea that "you learn quite quickly internal coping mechanisms" in RASSO was also acknowledged by CPS 1, while CPS 38, who had been working in the organisation for almost two decades, observed that "you get quite de-sensitised because you have to...you have to put it in a little box and, you know, the things I've seen you just have to." Several CPS interviewees saw such coping strategies as enabling them to perform with greater detachment, rationality, or objectivity, which they considered to be core to their legal or paralegal roles. However, as ISVA 2 warned, where lawyers become "desensitised" to the nature of RASSO cases, a complainant's trauma response may also be overlooked, leading to poorer outcomes: "between the police and the CPS, the victim's emotional response gets forgotten...I think it's more of a case that they're probably desensitised to what's happening, they're desensitised to the cases that they listen to because they have to do it on a day-to-day basis, it just becomes part of the norm." As we discuss further below, this also risks RASSO lawyers coming to perceive of acknowledging and engaging with their own emotionality as reflecting a lack of professionalism, which may make them less likely to recognise its impacts or seek support. Having observed that "the difference of this unit is emotions...It's very emotional," CPS 20, for example, noted that "we're not taught like that. We're prosecutors and we've got the code and we've got a way of thinking. But this is about emotions."

At the same time, the 'overflow' effects of that emotionality were candidly acknowledged by a number of other participants. CPS 38 observed, for example, that undertaking RASSO work "does change your view of the world...because we've seen things that are beyond comprehension at times." Similarly, CPS 41 noted that "sometimes you're dealing with really, really horrible thing that you can't get out of your head afterwards, but apart from the people that you work with, and who never come into the office now anyway, there's no real outlet." Though such effects were discussed by participants across a range of RASSO roles, there was

some evidence in our research to suggest that they could be felt particularly acutely by Paralegal Officers who, as things stand, often have a greater level of direct contact with victims, including meeting them at court. We encountered situations in interviews where Paralegal Officers became tearful in discussing cases. Moreover, CPS 17 disclosed that “there have been times where I have not coped” and “I was feeling it was getting on top of me,” although she reported receiving excellent support from her manager and paralegal colleagues, which assisted her. Equally, CPS 42 observed that “this kind of job isn’t the kind of job you can talk to anyone about, it’s really difficult;” and though she again cited support from paralegal colleagues as helpful, she indicated she was hesitant to make too much use of peers in this way since they encountered similar challenges, and “it’s not nice to put that kind of information on other people.” In discussing their work on a particularly distressing case, Barrister 11 shared too that the only way that they felt they could emotionally cope was through regular psychological support: “it took a bit of all our souls that case...and the way I dealt with it was I was in therapy, and I did... I dealt with it in real time in therapy, so processed and processed and processed as we were going through it, because it was the only way.”

Our findings in these respects are in keeping with a substantial body of previous research that has explored emotional labour, burn-out and risks of vicarious trauma amongst professionals within the criminal justice process. Though much of this work has focused attention on those most likely to be first attenders at the scene of a traumatic incident or exposed to particularly acute stressors (such as, for example, terrorist events), there is a growing body of international evidence exploring such issues amongst lawyers. This has revealed that, from as early as the first year of their studies, future generations of lawyers learn to accept the prospect of anxiety, depression and stress as an inevitable feature of their professional lives (Larcombe et al, 2012). Numerous studies have also demonstrated heightened rates of depression, stress and alcohol (mis)use, particularly amongst lawyers working in areas of criminal practice (Krill et al, 2016; Levin et al, 2011; Levin et al, 2012). Building on Hochschild’s concept of “feeling rules” (1983), which explores how the expression of emotion, stress and trauma is governed within organisations, and in accordance with standards of professional expectation, previous work has also highlighted the significant challenges to acknowledging emotionality in criminal justice environments in which neutrality, rationality and objectivity are prized (Leiterdorf-Shkedy & Gal, 2019; Kadowaki, 2015). Gunby and Carline (2020), in particular, speak of the “tempered indifference” that barristers working in the RASSO space are expected to develop and display towards the accounts of victimisation they encounter; but also of the inevitability of this leaving an “emotional taint” on professionals over time.

Existing CPS wellbeing interventions typically target more generic coping techniques, accompanied by the formal availability of additional support where it is proactively requested. In the mandatory 2-day RASSO induction training, which we observed as part of this research, there was only fleeting reference made to prosecutors’ wellbeing, which was prompted – potentially accidentally – by trainers’ uncertainty over the intended meaning of a ‘PowerPoint’ slide in the training pack that simply showed an image of sunlit scenery. The toolkits and resources available to support colleagues’ wellbeing were neither mentioned, nor links provided, during that brief discussion within the training. It was also not clear from the tutor brief, which the facilitators otherwise relied upon heavily to guide the structure and content of the session, that this was the anticipated function of the slide, since in the brief there is no mention at all of wellbeing across the two-day workshop. Meanwhile, the CPS’s



Wellbeing Toolkit – though providing a range of resources to colleagues, including apps that offer coaching techniques and occupational health facilitated counselling support – continues to place a heavy emphasis on line-manager check-ins, supplemented as necessary by the offer of meetings with a counsellor or mental health first-aider where individuals take the initiative to request it. Alongside this, to provide additional support, some pathfinder areas have begun to implement peer-to-peer ‘Schwartz Rounds,’ described by the CPS in the associated toolkit as creating “a safe place to speak freely about the emotional impact of your work, sharing experiences – you are not alone. 2 or 3 panellists tell a story for five minutes about an incident on a particular theme that has impacted on them. The rest of the group listen to the stories and mentally will start to relate what they are hearing to their own experiences.”

Though, for some interviewees, these support offerings were appreciated and useful, for others they clearly did not go far enough. As CPS 44 put it, “we get general sort of support in how to deal with, you know, stresses and strains generally. But I’ve never been on a course where I’ve been given any guidance to deal specifically with what we read and what we see.” Meanwhile CPS 26 commented that “the support you get is like breathing and stuff and mindfulness,” and CPS 38 observed that work “offer help and we’ve got these welfare courses...where you can sit and chat...but it doesn’t really take away the fact that you still have that knowledge of what you have read in case files.” More broadly, it is notable that these existing initiatives are apt to encourage reliance on individualised or localised coping mechanisms, for example, through personal de-stressing techniques, internal strategies to develop resilience, or debriefing with peers or line-managers. This not only assumes a strong relationship with line-managers that would permit such disclosures, but places an onus on individuals, or teams of individuals, to develop the “psychological make-up that makes you able to absorb and deal with” RASSO work (CPS 1). Simply ‘absorbing’ such impacts is not a sustainable solution, however, at the individual or institutional level. To the contrary, it can embed trauma *within* organisations, setting an institutional benchmark for ‘acceptable’ levels of emotionality that may deter those in need of greater support from disclosing and exposing peers to higher levels of distress through a shared responsibility to hold and manage colleagues’ emotional responses. In this context, the introduction of ‘Schwartz Rounds’ – though potentially beneficial in creating a workplace culture with greater openness regarding mental health, emotional labour, and risks of vicarious trauma – may also serve to cement rather than address those difficulties, especially where the peer-to-peer conversation is envisaged as the objective in itself, without mechanisms for onward resolution (for example, through a more extensive model of organisational and individual trauma risk management).

A more structured process, involving routine, external clinical supervision is thus likely to be required. Though there was some hesitancy amongst participants in this research about a “one size fits all” solution (CPS 5), and a concern – based on prior experience – that there would be resistance from colleagues to any mandated approach, CPS 1 also underscored that “there’s definitely something about embedding a culture that you have these, you know, almost MOTs.” The fact that this is now routine practice within other criminal justice agencies was noted by several participants; and although some argued that lawyers’ engagement with cases is qualitatively different from, for example, a police officer in attendance at the scene of a violent offence, the observations above regarding the impacts of RASSO casework underscore the extent to which emotional labour and traumatic responses can be engaged across a variety of mediums and interactions. Indeed, recent research has specifically

highlighted that engaging with video evidence, of the sort that increasingly plays a key role in RASSO cases (e.g., ABEs, CCTV, body-worn footage, and social media) also carries substantial risks of vicarious trauma for professional evaluators (Birze et al, 2022). As Barrister 14 put it, “I have read and seen certain things that will never be removed from my brain, and I sort of try not ever to think about them because, yeah, I can feel myself changing inside just talking [to you now], you know.” In this context, several interviewees did underscore the importance of the CPS moving beyond a position in which clinical support requires proactive initiative, albeit that any mandatory approach would require sensitivity to the fact of suppressed emotional stress. As CPS 47 put it, “even having done [the job] this long and enjoying it as I do, I think sometimes you perhaps don’t even appreciate the effect it could be having on you without somebody sitting down and talking to you about it.” Likewise, CPS 6 noted that “sometimes the people who most need the support don’t recognise that they need the support. So, unless it’s mandatory, how do you get them to have the support?” The building in of this provision as standard working practice was also seen to be important to ensuring its priority amongst competing demands on time – as CPS 49 put it, “I think that if I really was seriously negatively affected by a case, there would be mechanisms I could use to gain assistance [but] it’s whether you want to avail yourself of it, whether you have the time to. The thing is, when you have a very high volume of caseload, self-care gets put to one side.”

The fact that previous efforts to encourage routine use of such clinical support within the CPS have been unsuccessful does, no doubt, attest to the scale of cultural change that is required, but it is not a sufficient reason to abandon efforts to embed it at the organisational level. In addition, although our evidence on this is more limited, there may be a case for arguing that previous initiatives, perhaps in part due to compromises intended to limit their obtrusiveness, have lacked the commitment to drive success. In respect of one such past initiative, under which colleagues attended a training event to be followed by mandatory, periodic calls with a counsellor, CPS 1 observed that “all we said to [the lawyers] is that the phone call is mandated but you can literally ring them and say, I’m fine, I don’t need this conversation, thank you very much” and nonetheless, “the pushback even on that was really strong.” However, CPS 41, who disclosed a receptivity to clinical supervision and better support, having “at times been really upset or really stressed” about work-related matters, described this particular training as “a complete waste of time,” noting that the phone calls from the counsellor came “in the middle of the day when we were in an open plan office, everybody sitting around, so nobody’s going to say, yes, I’ve got a problem, and so nobody did.” Meanwhile, CPS 5 reported that, despite attending the event, “I’ve never had a call.” Similar equivocation regarding a mandated supervision approach was indicated by entries in Soteria Trackers where, in one pathfinder area, welfare support for RASSO staff through a national provider was investigated, but after some colleagues attended the training and provided “mixed feedback,” it was decided that it would not be routinely offered. Instead, staff were reminded that they could make use of wellbeing and resilience training on request and a RASSO ‘mental health first aider’ was identified to give a presentation internally to colleagues.

It may be an individual staff welfare issue first and foremost, but embedding routine supervision in this way is also likely to reduce the need for unit managers and peers to engage in what CPS 54 described as “enormous amounts of handholding” to mitigate the emotional demands currently placed upon colleagues. In that respect, it is also, therefore, a resource and retention issue. Moreover, and crucially, it is likely to provide a more sustainable

foundation for effective and fair decision-making within RASSO units. Indeed, previous research in the context of evaluating rape allegations as part of asylum claims has indicated that unacknowledged and poorly managed emotional labour can promote the adoption of maladaptive coping strategies by decision-makers. Such strategies rely on distancing and detaching oneself from the narratives and individuals involved in a case, which in turn can function to create and sustain cultures of scepticism or victim-blaming (Baillot et al, 2013). The relevance of that risk in the RASSO context was highlighted by CPS 58, for example, who suggested that prosecutors may be able to avoid “emotional entanglement” by engaging with the case before them “almost like an exam question in university.” Meanwhile CPS 42 observed that “my colleagues say that they deal with it like it’s not real life, like it’s just some horrific story,” and CPS 12 noted that “as a coping mechanism, I think you can treat a lot of the work that you do as almost like a book, you can distance yourself emotionally from it.” Though an understandable self-protective reaction in this context, such distancing is at odds with a commitment to engaged and empathetic evaluation and risks a sense of interchangeability in relation to individual complaints that diminishes the quality of case analysis.

## Training, Learning and Development

Allied to the above discussion of resourcing, recruitment and retention in RASSO units, and initiatives to improve wellbeing support, are a wider set of issues regarding colleagues’ training, learning and development. Particularly in a context in which RASSO staff are being appointed with more diverse skillsets, and their roles are shifting towards requiring greater partnership working with police and ISVAs, more involvement in early-stage case building, and greater visibility to and communication with complainants, the need to ensure effective and robust training is key. As CPS 8 put it, “these are hard cases...you’ve got people coming into units who are inexperienced in the prosecution of those cases, and they’re expected to hit the ground running...some of the training is very good but I’m just saying it’s a big ask.”

A minority of interviewees were of the view that the best way to deal with this would be to impose additional criteria as part of the recruitment process: “there should be a qualification to come into RASSO...are you a good enough lawyer to do these sorts of cases, because they’re really important” (CPS 7). However, perhaps in part because of existing challenges with recruitment, this was not a widely advocated for position. And despite the concern raised by CPS 8 above regarding the scale of the task in upskilling new recruits, feedback from participants in relation to existing RASSO induction was broadly positive. CPS 19 described it as “really helpful because it took me through the very, very intricate stages you have to go through...it gave me quite an insight into how to approach cases, what to look for and what to avoid.” Likewise, CPS 53 reflected that “there’s a range of courses that people have to go on before they can become a RASSO specialist; and in fairness it is quite a rigorous process.”

Though the mechanisms for monitoring compliance across CPS areas have been recognised to need improvement as part of the new National Operating Model, before being ‘signed off’ by managers as RASSO lawyers, colleagues must undertake a 2-day RASSO induction course, as well as a 1-day session on Disclosure Management and a half day session on the Impact of Trauma on Memory. During this project, the research team were able to observe these training sessions, which were held online. The sessions spanned a range of topics – from substantive provisions under the Sexual Offences Acts (SOA), to indictment drafting, digital

and third-party disclosure, dispelling myths and stereotypes, suspect-focused analysis, applications for bad character and sexual history evidence, and impacts of trauma on victims' communication and recall. At the same time, reflecting, no doubt, the timescales allotted to the training, much of the discussion was relatively superficial. In a context in which some inductees may have had no RASSO or Crown Court experience, and universities in England and Wales may not even cover sexual offences in their core law degrees, the overview of the legislation and case authorities was limited. For example, there was no explicit mention of the existence of conclusive and evidential presumptions in relation to consent and reasonable belief therein under the Sexual Offences Act 2003. Meanwhile, some issues on which there was more detailed information contained in the Tutor Brief (which the researchers benefitted from prior access to, but our understanding is that this would not be routinely made available to participants) were moved through briskly in practice. This was notable, in particular, in relation to the nature and impact of sexual offending on victims and the use of supporting evidence to present cases to the jury in a way that tackles any assumption that rape allegations involve 'one word against another.' These are, however, two aspects that we have identified above as being key to prosecutors' development of effective case strategy. In relation to consent, moreover, the 'consent as tea' video<sup>7</sup> was shown, with the suggestion that it was helpful in illuminating some key issues in RASSO cases: in a context in which this video is designed with (overly)simplistic messaging to address a basic level of misconception (Adams 2021; Kerr, 2019), its inclusion in training to RASSO specialists is concerning.

No doubt again in part a reflection of compressed timescales for the training, there was also relatively little space made available for shared or critical reflections around the material within these sessions. The online delivery may have created additional difficulties in this respect, but the input was relatively one-directional throughout, and it was not always clear that delegates had been provided with, or done, the relevant reading in advance. Where opportunities were incorporated for group work, moreover, it was often to apply knowledge to relatively 'easy' case studies, thereby reducing scope for deeper engagement. For example, while a session on suspect-focused investigation was introduced well by the trainers, both of whom underscored the importance of rebalancing scrutiny to encompass the behaviour of the suspect rather than focussing primarily on the complainant, the case study that delegates were then asked to apply this approach to did little to stretch their capabilities in terms of engaging in such scrutiny. It involved an intoxicated victim who met the suspect via 'Tinder' at a nightclub. The suspect stayed sober all evening, said he would take the victim home when she was heavily intoxicated, but instead took her to his home, and had intercourse with her when she was likely incapacitated. This fact pattern is amenable to a suspect-focused narrative, of course, but it is not clear that it would greatly assist delegates in relation to other, more challenging scenarios with which they will likely be confronted. Similarly, the scenario on consent that delegates were asked to consider also involved a heavily intoxicated complainant, whose state of unsteadiness, slurring of her words and being "absolutely out of it" was corroborated by evidence from a third party. She reported having been raped by her partner, in the context of a well-documented abusive relationship (with convictions against the suspect for ABH to a previous partner), and it was known that the victim was trying to leave him in the immediate period that preceded the attack. Again, as one of the trainers explicitly acknowledged in the session, this presented delegates with a largely straightforward

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<sup>7</sup> [Tea and consent video](#)

case study. As such, the extent to which it encouraged prosecutors to probe at the interpretive boundaries of the legislative provisions around consent or assisted them in developing robust decision-making across other, more complex cases was unclear.

There were moments in the training that indicated an appetite amongst some delegates to engage in a more critical way with challenging scenarios, but it was not well-capitalised upon. In respect of the victims' intoxication in the scenarios above, for example, one queried, with the disclaimer that "I hope it's not too controversial," how to deal with the fact that drunkenness can impact memory and recall; and noted that "there is a blurred line between evidence and myths and stereotypes" in such cases. In response, the trainers underscored that a person is entitled to go out and drink alcohol, and suggested that someone who is drunk, though unlikely to recall extraneous details, is likely to have a good recollection of the rape. The relationship between encoding and recall of traumatic memories whilst intoxicated is, in fact, complicated (Flowe & Carline, 2021), and it was not clear that the delegate's point related to the acceptability of the victim's intoxication as this response tended to imply. Nonetheless, no further discursive space was afforded to the question of how to navigate the evidential versus judgmental relevance of victim intoxication in developing a case strategy. As we discussed in Section 2, however, with specific reference to a case reviewed by the panel during 'Scrutiny 15,' a failure to critically interrogate such complicated questions and the associated parameters of legal and evidential doctrine can encourage a conservative approach that disinclines reviewing lawyers from additional efforts to build intoxication cases.

It is important to underscore, of course, that attendance at these training sessions is not the only, and perhaps not even the primary, way in which new recruits are inducted and transitioned into RASSO units. The process of completing these training sessions can take some months due to a lack of available spaces and in the period pending completion of the mandatory training, lawyers involve themselves in, and gain learning from, cases, under review by senior colleagues. Moreover, after completion of mandatory training, there will continue to be systems in place to review the decision-making of more junior lawyers within RASSO teams. There was a clear sense amongst interviewees that this was appropriate, since much of the knowledge required to perform the role comes not from the induction but from 'learning on the job'. At the same time, this learning required effective, and time-intensive, mentoring and oversight, which imposed additional pressures on unit resources and workloads. CPS 20 noted that while "everybody welcomes new lawyers because...you're thinking somebody is here to help us out," it is about more than "bums on seats." Likewise, CPS 56 observed that "we're getting in new staff and it takes a while to build them up and get them to understand," while CPS 52 commented that "we've lost a lot of very experienced lawyers so even though we may have some numbers, they're not necessarily up to speed."

This was reflected too in pathfinders' entries in Soteria Trackers. In October 2022, Area D, for example, noted that 5 of their lawyers had been with the unit for less than 8 months, and 3 for less than 2 months, with the additional mentoring this necessitated impacting significantly on timescales for charge decision-making. Similarly, Area C, whose Tracker narrated a running theme of difficulties in appointing lawyers to the team, included a note – after appointees were finally identified in the wake of a dedicated RASSO recruitment campaign – that "mentors will be identified for all new lawyers and induction plans drafted to ensure that all appropriate training and awareness-raising is provided. The number of new lawyers, whilst

welcomed, will have a significant impact on the unit in terms of support and mentoring.”

Aside from the resource implications associated with this focus on ‘learning on the job,’ there is also the question of *what* is being learned in this way and the extent to which it might reinforce, or sit uncomfortably alongside, messages provided in induction training. To the extent that those most likely to undertake mentoring roles are also likely to be those with longest service within units, they may be least likely to have undertaken recent training themselves. Especially in respect of evolving aspects of the prosecutorial role, this risks perpetuating out-dated approaches or mindsets that will undermine ambitions under Soteria. As such, it is crucial that a robust regime of continuing professional development for all RASSO unit staff is implemented, with appropriate support, incentive and reward tied to participation; and it is right that this has been identified as a key priority in the CPS’s NOM.

In previous sections of this report, we have highlighted the need for additional training to support *all* CPS colleagues in relation to consistent approaches to disclosure strategy, ensuring that myths and stereotypes are challenged in decision-making, articulating trial strategy and engaging in robust discussions with counsel around this, and communicating with empathy and clarity to complainants throughout their justice journeys. As part of the research, we also asked interviewees about the areas in which they felt that further training would be especially beneficial, and these often mapped to the same broad terrain. In particular, participants identified the need for “trauma-informed training around victims” (CPS 4), which was coupled with a recognition that it was important to “give an external perspective that raises awareness of issues that maybe the CPS training doesn’t cover so much, really giving an insight into victim perspective” (CPS 10). In a context in which there is limited space afforded within existing training for thinking about the interactions between victimisation, trauma, and diversity (for example, ethnic and cultural diversity, neurodiversity, or disability), this intervention from third sector experts is also likely to be particularly beneficial. In Area B, for example, this has prompted the implementation of a series of workshops, provided over a 6-month period by a specialist organisation to lawyers and paralegals, on the impact that sexual violence can have on victims and trauma-informed communication techniques. Meanwhile, in Area D, there have been training sessions with doctors experienced in providing care at sexual assault referral centres. In addition, as highlighted in the previous Section, participants also emphasised the need for training, more specifically, on communicating and engaging with victims in a manner that preserved their prosecutorial independence whilst making them more accessible, and conveying appropriate levels of respect, empathy, and sensitivity throughout their interactions. Beyond this, a number of interviewees also underscored the benefits of collaborative training undertaken by both police and prosecutors. Indeed, two pathfinder areas specifically highlighted in their Tracker entries the benefits that colleagues had derived from sessions on the ‘whole story model’ and how it could be used to support suspect-focused investigation, which were provided by Dr Patrick Tidmarsh as part of activities by the Soteria policing research team.

In conclusion, we would underscore that what is important here is both that induction training for incoming RASSO team members is rigorous and fit for purpose, and that mechanisms are in place to ensure continuing professional development and refresher training for all colleagues, regardless of career stage. This should extend to Paralegal Officers who do not currently receive any bespoke induction into RASSO units, notwithstanding the

unique – and uniquely demanding – nature of their role in this context. This, of course, will impose further challenges in terms of resourcing, but it is a vital investment in terms of staff wellbeing, retention, and progression, as well as ensuring the best quality performance, decision-making and communication across RASSO teams. To work most effectively, such training and development pathways should dovetail with the mechanisms for oversight and scrutiny in relation to case strategy, progression and outcomes that have been discussed elsewhere in this report, including drawing learning meaningfully from multi-agency reviews.

## 9. Beyond Soteria: Implementation, Review and Refinement

Across this report, we have documented our key findings regarding the design and impact of activities piloted by CPS pathfinder areas under Operation Soteria, reflecting on their aims, efficacy and challenges encountered. We have situated that reflection in the wider context of critical concern regarding the handling of rape complaints and complainants across the criminal justice process, including at the prosecutorial stage where - to date - in England and Wales there has been limited research access and insight. To summarise our conclusions:

In Section 3, we explored initiatives to encourage earlier, and improved, partnership working with police, in order to enable more proportionate and appropriate lines of enquiry that would in turn increase file quality. We concluded that, while there were clear indications that proactive use of 'Early Advice' (EA) discussions could be beneficial in these respects, barriers to ensuring uptake by officers were substantial in some areas and required concerted effort from leadership as well as localised flexibility around operational approach to overcome. We observed that, while EA could assist with delimiting disclosure and rebalancing the investigative focus to include the behaviour of the suspect, practice in these regards remained variable, with examples of good and bad practice being apparent. We also noted that logistical challenges posed to units by increased uptake of EA should not be underestimated, requiring careful attention to the roles and responsibilities of professionals within the process, and a commitment to sufficient resourcing to avoid simply postponing delays to the charging stage.

In Section 4, we examined activities designed to increase confidence in, transparency around and learning from police and CPS 'No Further Action' (NFA) decisions, including through the use of dedicated 'Scrutiny Panels.' We concluded that, while the implementation of such panels could be beneficial in encouraging reflective practice and strengthening local partnerships - particularly where they included a diverse and balanced composition, were conducted in a way that facilitated open and non-defensive engagement, and the resultant learning was effectively cascaded - there was work to be done in some areas to ensure that this was the case. Looking more broadly to the substance of CPS decision-making, we underscored a disconnect between lawyers' theoretical understanding of the danger of applying myths and stereotypes, in respect of which training and policy appeared to have made some in-roads, and practical application in concrete cases where we identified an ongoing preoccupation with the complainant's credibility, and poor handling, in particular, of cases that involved victim mental ill-health; contexts of domestic abuse, coercive control or grooming; 'non-conventional' sexual practices; and complaints of adolescent sexual abuse.

In Section 5, we explored activities across pathfinder areas which have been designed to improve the timeliness of investigations, including by ensuring more proportionate disclosure and more effective mechanisms for task management and escalation between police and CPS. We underscored the benefits of greater dialogue between justice professionals in respect of Action Plans, rather than reliance on written modes of paperwork exchange that can undermine partnership working, create misunderstanding and introduce unnecessary delay. In relation to approaches to disclosure, we noted some evidence of a greater shared



understanding between police and prosecutors regarding the need for requests to be tailored, specific and proportionate, along with some emerging confidence across police and third sector colleagues to challenge requests from prosecutors that they felt over-reached. However, we also identified expansive requests continuing to be made by some reviewing lawyers in Action Plans without a clear or apparently compelling basis, and concerns were raised by some stakeholders regarding the impact of, and legal professionals' support for, more delimited parameters of enquiry and disclosure during the trial process. In regard to escalation of stagnated cases, we noted that improved processes had been implemented in some areas, but these required a substantial investment of resource from Case Progression Managers, with mechanisms for maintaining momentum still being variable in their efficacy, and inconsistent use across pathfinders of 'Pending Response: Further Investigation' markers that formally returned responsibility for progressing the case file back to local police forces.

In respect of case progression beyond charging and towards trial, in Section 6, we highlighted concerns regarding the capacity and ability of reviewing lawyers to 'think trial' given their frequent lack of experience of, and typical absence in their current role from, the courtroom. The implications of this on case strategy were highlighted, using the example of complaints arising in the context of a domestically abusive relationship which appeared to pose particular difficulties. At the same time, ambiguity regarding whether the development and articulation of trial strategy fell appropriately within the role of the reviewing lawyer was also discussed, with counsel frequently indicating that they considered this to be their sole responsibility. The implications of this in situations where the CPS lawyer and external counsel may disagree on approach were also considered, with heightened risk of such disagreement being identified, in particular, in relation to use of special measures (including pre-recorded cross-examination) and approaches to disavowing jurors of potential myths and stereotypes. We highlighted the importance in this context of empowering reviewing lawyers through greater presence within the courtroom, as well as improved feedback mechanisms in their absence.

In Section 7, we turned to initiatives to improve victim communication and confidence, including by developing more effective partnerships with third sector specialists. We observed that – while activity will continue to develop under the broader auspices of the 'Victim Transformation Programme' – this was an area in which there had been less embedded progress under Soteria, notwithstanding its importance. We noted significant progress in some areas in respect of partnership working with Independent Sexual Violence Advisors, which had resulted in improved understanding of the roles of ISVAs and prosecutors, with increased opportunities for direct engagement through dedicated 'mailboxes' and 'forums,' as well as the involvement of ISVA expertise in scrutiny processes. At the same time, chartable improvement in respect of direct victim communication has been more difficult to identify. Initiatives such as 'Hello Letters' and 'Familiarisation Meetings' have been well-received by ISVAs, as has the appointment of Victim Liaison Officers within RASSO units to provide a single point of contact. However, there has been little direct feedback collected from victims regarding how they have experienced these initiatives, with uptake of 'Familiarisation Meetings' being lower than anticipated. In addition, we identified considerable anxiety amongst CPS lawyers about the appropriateness of direct contact with victims and how best to maintain prosecutorial independence. Notwithstanding the increased attention at local and national level to the content, tone and accessibility of 'No Further Action' decision letters, our findings also indicated considerable variability in their quality,

and ongoing unease amongst lawyers regarding the adequacy of their skills and training to communicate in an effective and trauma-informed way. Though the aim to move beyond the CPS being a “faceless institution” is welcome, we concluded there is considerably more work to be done in this regard, and underscored the importance of more and better data about the profiles and experiences of the victims with whom the CPS interact to inform this process.

Finally, in a context in which the evolution of victim-facing and partnership-working roles for CPS colleagues have imposed additional demands on their expertise and workloads, we turned in Section 8 to the ‘Our People’ workstream to explore the success of activities designed to ensure “well-trained, motivated and resilient” RASSO staff. We underscored, in particular, the substantial difficulties presented by personnel scarcity and retention issues across the criminal justice system, and the challenges that this posed to ensuring a sustainable and specialist workforce. We highlighted too that risks to retention were often associated with the stressful and emotionally demanding nature of RASSO work, and the potential for this to lead to vicarious trauma that is embedded within the organisation given the lack of current mechanisms for structured, holistic and external support. In addition, we reflected more broadly on the adequacy of existing training provision, for both RASSO lawyers and Paralegal Officers, concluding that more robust and ambitious induction training should be considered, along with a clear regime of continuing professional development and refresher training for all colleagues, sitting alongside internal mentoring and quality review processes.

## New Operating Models and Business as Usual

As this research has progressed, we have provided regular feedback to CPS policy and operational colleagues on key findings, with a view to informing their new ‘National Operating Model’ (NOM), which was launched - alongside publication of our Interim Findings Report - in July 2023. The bulk of our data collection (other than the judicial interviews) had been completed by July 2023, at which point a revised format for data return was to be developed across CPS areas as part of the NOM’s implementation, and it was agreed that the research team would stop receiving monthly Soteria Tracker updates. This means, inevitably, that there has been limited opportunity within this work to explore directly the reception and implementation of that NOM across, and indeed beyond, pathfinder areas. Nonetheless, the publication by the CPS of this series of undertakings regarding what is to become standard operating procedure in adult rape cases across RASSO units provides an opportunity for some additional reflection. In this section, we consider the extent to which the CPS’s substantive commitments, as articulated in the NOM, capture and adequately address our key findings.

The legacies of Operation Soteria, across policing and the CPS, are of course yet to become fully apparent, with much to be gained or lost in this transitional period as its insights are used to inform operational and policy change, and those changes are rolled out nationally. The CPS’s NOM sets out, as its overarching aim, to “transform how we prosecute adult rape, bringing more offenders to justice and building victims’ trust.” This is a laudable but ambitious objective, particularly given the scale and consistency of concerns discussed in Section 1.

Acknowledging that it represents “the beginning of our transformational journey,” the CPS have identified as intended outcomes – building stronger prosecutions at an earlier stage through Early Advice and consultation with police, with a refocus on the suspect as part of

that investigative process; increasing confidence in prosecutorial decision-making, and in particular ensuring that Action Plans are proportionate and reasonable, including in respect of requests for digital and third-party material; working in partnership with others to ensure effective case progression and a reduction in ineffective, cracked or vacated trials; reducing victim attrition and increasing public confidence by enhancing the approach of the CPS to victim care and building better understanding of the prosecutorial role; and transforming our culture, including by improving staff learning and confidence, and prioritising staff wellbeing.

In the main, it is clear that these outcomes map on to the workstream activities pursued under Operation Soteria pilots. In many respects, moreover, the specific operational commitments made in furtherance of those outcomes also correspond to recommendations that we have made, or would make, on the basis of the findings discussed in this report. The requirement for all RASSO units to provide “consistent and high-quality advice” to their local policing counterparts, with Memorandums of Understanding (MOUs) to be devised and implemented within each force to ensure that “police are aware of the benefits of Early Advice” is welcome, for example. So too is the routinisation of multi-agency Scrutiny Panels, to be conducted in all areas on an at least quarterly basis and with the benefit of improved guidance regarding minimum standards on composition, case selection, and mechanisms for cascading learning. The introduction of a national level forum for reviewing learning from local scrutiny panels, and the commitment to publication of an annual report on the substance and outcomes of those proceedings, are also important innovations that go beyond pre-existing Soteria initiatives, and can help to embed critical reflection and transparency around decision-making in ways that have greater longevity and potential to generate deeper organisational change.

Likewise, though much of the activity within Soteria pilots was targeted around investigative approaches and charge decision-making, the specific emphasis within the NOM on ensuring that RASSO lawyers are encouraged, enabled and empowered to ‘think trial’ from the outset, both through clearer development and articulation of case strategies prior to the instruction of external counsel and through effective engagement with advocates thereafter, is significant in recognising and responding to the end-to-end nature of the justice process. And while there is much yet to be done in relation to Supporting Victims, recognised in the continued activities of the Victim Transformation Programme, the very stipulation in the NOM of an aim to “build trust, empathy and compassion” as part of the CPS’s standard operation marks a significant turning point in re-imagining its institutional role and organisational ethos.

At the same time, the NOM is, of course, an operational document designed intentionally at a level of generality to make national roll-out feasible. As such, its content will require to be interpreted by various stakeholders in diverse settings and shifting contexts; and, as is often the case, the prospects for achieving the aspirations that drive this document will depend significantly on the detail that underpins these commitments and the mechanisms that are put in place to scrutinise their implementation. In respect of Early Advice, for example, the commitment to continue to encourage its usage, as part of a wider desire to strengthen early partnership working with police, is clearly important. So too is the commitment to such engagement taking the form of an in-person or online discussion rather than paper-based exchange of questions and answers, which our findings clearly indicated generated poorer quality communication with greater likelihood of delay and misinterpretation. Equally, however, the baseline requirement within the envisaged Memorandums of Understanding

(MOUs) with local police is for there to be an “offer” of an EA discussion and “encouragement” for police to “utilise it in all suitable cases.” This opens up space for a potentially paired down version of the approach taken in the pathfinder areas that achieved greatest success in increasing referrals and improving resultant file quality. Though, as discussed in Section 3, those pathfinders typically reported that mandating meetings, especially when that mandate was tied to a stipulated timeline in the investigation, could be unhelpful or even counter-productive, it was also clear that mere “offers” and “encouragement” in relation to EA meetings were insufficient to drive uptake if not accompanied by very concerted (and often time-consuming) relationship-building; and systems that mandated consideration, followed where appropriate by conscious and suitably documented ‘opting-out’, of EA discussions were often felt to strike a better balance. Though those who drafted the NOM may well have envisaged the offer by CPS lawyers to hold EA discussions with local police as being actively rather than passively made, it is worth bearing in mind that, prior to Operation Soteria, EA discussions were already to be offered and encouraged in rape investigations, and yet it was widely acknowledged that uptake by police was poor. It is clearly important to be vigilant against any creeping return to that position.

So too, in respect of the NOM’s encouragement for police and reviewing lawyers to hold a Pre-Charge Decision Meeting, the same risk may require to be navigated. Our research was clear that these meetings – particularly when held in person or online as the NOM envisages – can have a number of benefits in terms of cementing partnership-working, as well as more effectively delimiting lines of further enquiry, reducing unnecessary delays and enabling more timely charging by reducing the need for additional Action Plans. Equally, and particularly when implemented alongside more routinised use of Early Advice discussions, this will impose additional demands on police and prosecutors’ time. That time investment may well be offset, of course, by gains in ensuring a more delimited and efficient progression of the investigation through to charging; but that may not prevent difficulties arising in enforcing and maintaining a culture where encouragement to hold such meetings is routinely acted upon. And though the policing NOM’s guidance is also clear that “an important element of the police-CPS partnership will be through EA or PCD meetings,” ongoing monitoring of levels of uptake will be required to ensure that this mechanism is being utilised to its full potential.

The commitment within the NOM to develop a standardised approach to cases marked as ‘Pending Response: Further Investigation’, which sits alongside joint escalation processes for cases in which timeliness targets are not met, is also important; and the pace at which a new PRFI process has been agreed and launched in the wake of the NOM’s publication is encouraging. At the same time, it will require investment to ensure suitably robust escalation processes, and effective mechanisms for maintaining momentum and communication on progress across police and CPS, with IT systems that facilitate rather than frustrate this. More broadly, it will require maintaining working cultures across both policing and the CPS in which there is a collaborative approach rather than siloed management of tasks and timeliness. None of this is likely to prove to be a simple matter as the process is rolled out across areas.

Looking more broadly at end-to-end aspects of the investigative and prosecutorial process, as noted above, the commitment in the NOM to encourage CPS colleagues to ‘think trial’ from the outset - including through training to develop more effective case strategy, a nationally consistent approach to the instruction of external counsel, and better processes for ensuring

engagement between reviewing lawyers and counsel - provide important foundations, all of which are well-supported by our data and analysis as requiring increased attention. Recognition of the need to provide bespoke RASSO training to Paralegal Officers is particularly welcome too in light of our findings regarding the significance of their role, its uniquely challenging nature and the current lack of tailored training and support pathways for them.

At the same time, in a context in which reviewing lawyers' absence from the courtroom due to workload demands was repeatedly raised as a source of concern in this research, the clarity of the CPS's commitments under the NOM in respect of facilitating this could be improved. On the one hand, in its 'Our People' section, the NOM does commit to "professionalising the work of all our RASSO staff – through clinical supervision, refresher training and encouraging courtroom exposure." However, the breadth of phrasing here is ambiguous: as much as it could imply an equal commitment to courtroom presence for lawyers and paralegals alike, it could also imply the same for case progression managers or administrators, for example, even though this is unlikely to have been the intention. Meanwhile, in the 'Case Progression and Trial Readiness' section, although there is a clear - and welcome - focus on upskilling reviewing lawyers to develop and articulate trial strategy, any specific commitment in regard to increased court attendance is reserved here for Paralegal Officers, leaving the parameters of the obligation to provide similar opportunities for lawyers more equivocal. Without trivialising the significant challenges around resourcing that we discussed in Section 8, there will be an inevitable imbalance in the credibility with which lawyers are able to 'think trial' and discuss the operationalising of case strategy in the courtroom with counsel where they do not regularly attend and observe proceedings; and while feedback loops via Paralegal Officers can doubtless be improved, including through greater training, they will inevitably remain mediated in ways that might reduce the potential to inform lawyers' decision-making.

In addition, while the NOM rightly identifies the need to effect cultural transformation in respect of certain aspects of CPS operation and decision-making around rape cases, it is notable that the mechanisms through which this change is to be achieved remain unclear and its foci unarticulated. This matters significantly in a context in which cultural change can be notoriously slow and difficult to achieve, and yet our findings in relation to case decision-making, and in particular the tenacity and resurgence therein of myths and stereotypes regarding complainant credibility and reliability, underscore the scale of that challenge. Again, the commitment in the NOM to review training mechanisms, and the work that has run in tandem with the NOM – conducted by Equally Ours - regarding public assumptions and misconceptions are important. So too, as discussed throughout this report, and foregrounded as part of the CPS NOM, improved partnership-working with ISVAs can assist substantially in subjecting received wisdom and common practice within the organisation to critical scrutiny, which it is hoped might shift processes and outcomes in ways that facilitate sustainable cultural change. In this respect, it is also important that the NOM has committed to ongoing scrutiny of CPS communication with victims, as well as the routine establishment of ISVA mailboxes in all areas. But as discussed above, it is vital that this sits alongside efforts to ensure an inclusive representation, with the experiences of those supported by specialist 'by and for' services appropriately represented and conveyed, and mechanisms in place to enable third sector organisations' sustainable involvement in this process of culture transformation.

In this context, the recently announced creation of a 'Victim Reference Group' that will seek and receive feedback directly from victims as the CPS develop their enhanced RASSO service is also greatly to be welcomed, subject to the proviso that appropriate care is taken to ensure a diverse representation and a forum for engagement that is suitably democratic, respectful and trauma-informed. At the same time, the current formulation of the NOM seems to allow scope for the more expansive role of prosecutors in liaising directly with victims, which had been explored in various guises under Soteria pilots, to be delimited. This arises partly as a consequence of the establishment of Victim Liaison Officers in all RASSO units who, depending on the parameters of their role, might absolve lawyers of expectations in regard to at least certain types of communication. But it is also implied by the commitment under the NOM for the "prosecution team" - not necessarily the reviewing lawyer - to meet with the complainant ahead of trial as part of the expansion of 'Familiarisation Meetings.' It is right that the CPS should listen to the anxieties voiced by their lawyers about taking on this direct communication role, and that the NOM should therefore commit to training "staff so that they are better able to meet victims' needs." It is also right that such engagement should be victim-centred and allow for the possibility that the complainant might prefer to meet with a member of the CPS team other than the reviewing lawyer. However, currently, the relative benefits and appropriateness of lawyers being at the fore of these communications - instead of, or alongside, Paralegals and Victim Liaison Officers - are yet to be robustly evaluated; and that evaluation may show that, with appropriate training, such interactions can attend better to victims' procedural justice interests in being heard, involved and respected, and be well-managed in ways that avoid concerns regarding due process within an adversarial system.

More broadly, the commitments in the NOM in respect of training are universally to be welcomed - recognising the need for ongoing and refresher training, proactive provision of regular clinical supervision, and a greater emphasis in training on a compassionate approach to the needs of victims as well as a rebalancing of attention towards a greater focus on suspect behaviours. Though underlying this remain substantial challenges in terms of recruitment and retention, these are necessary goals that will increase the sustainability and skill of the workforce, and improve decision-making in individual cases. At the same time, the scale of what is proposed should not be underestimated, particularly the extent to which ensuring capacity for this increased training regime will impose additional pressure on workloads and timeliness targets, amplifying the urgency with which calls for greater resourcing are made.

In short, then, the NOM builds effectively on a number of the insights that have emerged as a consequence of Operation Soteria initiatives, and makes commendable commitments in respect of operationalising some core components at the national level. Equally, there are aspects in regard to which there is scope for slippage that require to be carefully monitored - for example, in respect of commitments around reviewing lawyers' presence in the courtroom, or the reach of their obligations in relation to victim communication. There are also aspects in regard to which pragmatic compromise to ensure a universal standard may dilute impact - for example, in respect of "offers" of EA and Pre-Charge Discussions. So too, and perhaps somewhat inevitably given the 'top level' and aspirational nature of the NOM itself, there are aspects in regard to which greater detail around mechanisms for implementation and review are required to fully assess their adequacy - for example, in the commitments in relation to leadership drive and associated shifts to organisational culture.

## Beyond the NOM

Of course, it should also be borne in mind that the CPS NOM is only one component of a broader set of undertakings, across the criminal justice process, that are intended to respond to concerns raised and lessons learned from Soteria. In policing, a new national operating model has also been launched, intended to dovetail in a complementary manner with the CPS's, to ensure a more coordinated and holistic response. Broadly coinciding with the publication of these new models, the Government has also published its *Rape Review: 2 Years On Report*, which was intended to reflect on progress achieved and challenges ahead. As briefly discussed in Section 1, this conveyed an encouraging prognosis, but one in regard to which there was no basis for complacency. More specifically, it noted significant increases in rates of police referral and CPS charging in adult rape cases, with the target set of return to a 2016 baseline in the current parliament being either met or within close reach. It suggested that, together, the police and CPS NOMs would “transform the response to rape,” in particular by ensuring “that investigations focus on the suspect’s behaviour, rather than the victim’s ‘credibility’” and “that the police and CPS are working hand-in-glove to conduct rape investigations as considerately, effectively and efficiently as possible” (MoJ, 2023: 4).

Thus expressing high levels of confidence in the transformational power of these NOMs - a confidence that might be somewhat tempered by considered reflection on the scale of the challenge and some of the lingering questions that we have highlighted above - the Government acknowledged too that “there can be no let-up.” Indeed, the report underscored that “we are determined to keep up the momentum” (2023: 5). In furtherance of this, the Government has identified eight ‘levers’ under its *Rape Review Action Plan* that will be extended beyond Operation Soteria on a “dynamic” basis (2023: 10) until December 2024. These levers include – ensuring appropriate infrastructure to oversee implementation of NOMs; funding to enable updated specialist training; and placing the ISVA role and restriction of unnecessary and disproportionate disclosure on a statutory footing. These are, of course, all matters of appropriate concern to the CPS, but the report is striking in its tendency to focus primarily on their application in policing, with specific mention of the College of Policing in relation to training and of the Home Office and National Police Chiefs’ Council in relation to NOM infrastructure, for example, but no comparable clarity regarding prosecutorial counterparts. In addition, while there is a specific commitment to update the existing CPS legal guidance on tackling myths and misconceptions, as part of the ‘lever’ around improving victim experience at court, there is less clarity around envisaged processes for ensuring that such guidance is translated into practice on a reliable basis, by prosecutors or counsel alike. What this indicates perhaps most clearly of all is that, although Soteria initiatives have now formally drawn to a close, this is still a period of significant flux in relation to best practice in handling rape complaints and complainants. That in itself may make it more challenging to set about improving practice that currently often falls a considerable way short of ‘best’ in a suitably structured and systemic way. Moreover, the compartmentalised nature of justice processes may result in an uneven focus on the activities of some participants over others.

Much of the remainder of the Government’s *Rape Review Action Plan* is focused, moreover, not on the earlier stages that have been the priority under Soteria, but on later stages; and particularly on the courtroom where, as discussed above, there are ongoing challenges, for example in regard to trial listings, case management, and the impact of adversarial dynamics

on the presentation of evidence and the experiences of victims. In this respect, commitments are made regarding the provision of training on trauma-informed approaches to court staff at specialist sexual violence courts to be rolled out across pilot sites. These specialist courts are intended to provide more timely and predictable trial listings, with hearings to be conducted in buildings that are equipped with appropriate technology to allow victims and witnesses to make most effective use of the range of available special measures. Meanwhile, notwithstanding the unease expressed, as discussed in Section 6, by some barristers and judges about its roll-out placing an “almost insurmountable burden” (Judge 9) upon the courts, the report emphasises the benefits of greater use of section 28 pre-recorded cross-examination by adult rape complainants as a mechanism to “ease the court process.” It also highlights the recent work of the Law Commission, which has issued a Consultation into *Evidence in Sexual Offences Prosecutions*, with a focus particularly on the influence of myths and stereotypes introduced into rape trials through sexual behaviour and character evidence.

Exploring the ways in which such later stage processes rebound upon the handling of earlier investigative and prosecutorial practice (and vice versa), as well as victim reporting and withdrawal, is important. Indeed, the lack of familiarity regarding the aims of, and activities under, Operation Soteria, often expressed to us by court-based professionals, was itself a significant and potentially telling finding within this research. Judges, for example, despite being interviewed after publication of the CPS NOM, reported that Soteria was “not something I have heard of” (Judge 4), something of which “I am ignorant” (Judge 8), “not very familiar with” (Judge 2), or would be “difficult to put my finger on” (Judge 6). This reflected, according to Judge 3, a “troubling” absence of communication, tied to wider “political flipflopping” (Judge 1) and a “bunker mentality” (Judge 3) in the arena of sexual offences. To the extent that this reflects the existence of points of tension and transition across the justice system, it again underscores that any successes achieved via Soteria in regard to increased charging or expedited case progression will be substantially undermined if attention is not also paid, and resourcing devoted, to ensuring that courts and their personnel are able to receive those cases and undertake their preparation, presentation and determination in ways that are reliable, robust, and trauma-informed, with a system-wide coherence of approach.

We began, in Section 1, by highlighting a long history of concern, review and reform associated with responses to rape and serious sexual offences, in England and Wales as elsewhere. We observed that such cycles of intervention have yielded important innovation and improvement, including, for example, the introduction of special measures regimes and the drafting of ‘myth-busting’ specimen judicial directions. At the same time, we also reflected that this has co-existed alongside ongoing evidence of substantial (and widening) ‘justice gaps’ for victims of sexual violence, with acute challenges documented regarding procedural and substantive outcomes for those who engage with the criminal justice system. That “paradoxical sense of stasis in constant change” has similarly been highlighted by Conaghan and Russell in respect of the use of sexual history evidence in rape trials (2023: 91). The ambition and urgency that has driven initiatives under Operation Soteria has, in many respects, been genuinely unprecedented; but to ensure transformation, it is crucial that it is capitalised upon further, with its expansion into other stages and spaces of the justice journey requiring to be navigated with courage and critical reflection, as well as with sustainable resourcing, ambitious training and a deep commitment to transparency and accountability.



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