# Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission

**November 2024**

**Michele Burman, Olivia Smith, Oona Brooks-Hay & Yassin Brunger**

# Acknowledgements

We are grateful to the Criminal Cases Review Commission (CCRC) for granting access to their files in order for us to conduct this research and for their abiding patience over the time it has taken to produce this Report.

The study received funding from the University of Glasgow Revitalising Research fund and we are very appreciative of this.

We are thankful to Dr Ellen Daly for additional research support.

# Contents

# 1. Introduction

This report presents the findings of the *Digital Communications as Evidence in Sexual Offence Applications to the Criminal Cases Review Commission* (CCRC) project. The study examined the nature and outcome of CCRC applications involving charges of rape where it was claimed by the applicant that their conviction was unsafe due to non-use, or failures in the use of, digital communications evidence (DCE)[1]. This includes claims of inadequate police investigation, non-disclosure, poor legal representation, or where DCE was identified as an issue during the case review process. The research took place in the context of increasing public and political attention about demand for digital evidence in the form of communication technologies (e.g., social media posts, multi-media messaging, photographs, call logs).

The implications of digital evidence, particularly digital communications evidence (DCE), have been debated in relation to adult sexual offences. Evidence drawn from personal electronic devices belonging to the suspect, complainant, and third parties is increasingly sought by the prosecution to support claims of non-consent, a lack of reasonable belief in consent, or to challenge the defendant's credibility. It is also increasingly used by defence counsel to infer consent, reasonable belief in consent, or to discredit complainants. Rumney and McPhee (2020) produced useful insights into the value of electronic communications data in rape and sexual offences based on a study of English police records and found that the evidence has the potential to identify and corroborate elements of both prosecution and defence cases, such as motive or alibi, and can be useful in evaluating witness credibility (Rumney & McPhee, 2020). At the same time, there is international debate about the collection, relevance, and disclosure of such material; including concerns that 'digging for digital dirt' (Browning 2011:467) is altering the legal landscape in potentially problematic ways. The UK Information Commissioner (2019) suggested that recent approaches to digital evidence were breaching data protection laws, and a series of appeals created new case law (e.g., Bater-James & Anor. V R. [2020] EWCA Crim 790). In turn, this led to enhanced statutory protections for complainant rights when their digital data is accessed, mostly under the *Police, Crime, Sentencing and Courts Act 2022.*

DCE presents new challenges, not just for police in accessing and collating it, but also for courts and the CCRC in determining its relevance, admissibility, and probative value. There have been significant problems with the way evidence is disclosed to the defence (or not) in sexual offence cases. Disclosure obligations apply to all offence types, but there are particular challenges in rape and other serious sexual offences, which often involve large volumes of DCE and sensitive third-party material. High-profile rape cases which collapsed due to disclosure failings (e.g. R v Allan [2017]), highlight a lack of clarity about the consistency of disclosure policy and practice in relation to DCE. Since *R v Allan*, police and prosecutors acknowledged an 'over-correction' which led to the collection of disproportionate DCE in sexual offences (Smith & Daly, 2020).

These concerns intensify questions of how to simultaneously ensure a defendant's right to a fair trial and victims' rights to privacy, whilst at the same time raising questions about the burden placed on criminal justice professionals charged with extracting, analysing, collating, and storing such data. At issue is the pursuit of justice, with concerns that this is being compromised as victims withdraw from cases, police and prosecutors are swamped by excessive amounts of digital materials, and there is inconsistent practice over privacy rights (Baird, 2022; HMCPSI, 2019; Stanko, 2022). All of this has

[1] We use the term 'digital communications evidence' (DCE) to refer to information obtained from digital downloads of personal devices belonging to the complainant, defendant or third parties. Whilst digital evidence is a broad concept and could incorporate any evidence that is collected, analysed, or stored in electronic form, the scope of this project is limited to new forms of evidence that are created in a digital format, e.g. data from a mobile phone is treated as digital communications evidence, but medical records stored online are not.

substantial implications for public trust and confidence in the justice system, as well as the efficacy of justice processes (see Hohl, 2023, for more on the impact of intrusive investigations of victims of rape).

Given these concerns, we were motivated to understand the extent to which digital evidence may feature in Criminal Cases Review Commission (CCRC) cases where it is alleged by an applicant that there has been a miscarriage of justice. There is currently no research on the role of digital evidence in CCRC applications involving rape and sexual offences. This study seeks to address this gap. Specifically, the study objectives are to:

1. describe the frequency and nature of CCRC applications involving DCE in adult (complainant aged 16+) rape and sexual offence cases, including the types of evidence discussed and any arguments as to its prejudicial and/or probative nature;
2. identify whether any types of DCE are associated with particular CCRC outcomes (e.g., closed at triage, not referred after investigation, referred after investigation); and
3. develop recommendations for CCRC.

# 2. Existing Knowledge

In what follows, we provide a brief review of existing international literature concerning the issues presented by the increasing volume of digital evidence in criminal processes, the complexities of disclosure of digital evidence, and the use of digital evidence in the courtroom and at appeal.

## 2.1 Growing Volume of Digital Evidence

Reviewing high volumes of digital evidence is challenging in terms of staff time and resources. Participants in Goodison et al.'s (2015) study noted that the volume of digital evidence caused high workloads and said there was minimal support available, which was especially problematic given the lack of staff resource and training combined with rapidly changing technologies (not only the devices themselves but also the technology used for data extraction). Freedom of Information data from 12 police forces in England and Wales suggested that the examination of mobile phones adds an average 3.5 months to an investigation, with the Metropolitan Police average rising to 6 months (Big Brother Watch, 2019), a view also supported by practitioners in George and Ferguson's (2021) study. Indeed, in 2022 it was reported that there was a backlog of over 20,000 digital devices awaiting examination in England and Wales (Long, 2022).

In a Canadian study, Dodge et al. (2019) noted that police investigators considered that while digital evidence does provide more context and more evidence, it is a 'double-edged sword' because it makes cases lengthier and more invasive. For example, investigators in Watson and Huey (2020) had to review text message transcripts manually, which amounted to hundreds of hours of work. Some jurisdictions allow keyword searches, and while these can be used to quickly identify potentially relevant material, these searches are imprecise and can only be used on a limited range of file types, which affects both prosecution and defence cases (Turner, 2019). Turner (2019) highlighted the use of slang, coded vocabulary, and foreign languages within digital communications as a particular issue with regards to keyword searches, and this could also arguably be extended to the use of emojis, gifs, and so on. Similarly, May et al.'s (2022) work with several English and Welsh forces described the use of keyword searches as lacking nuance and ignoring contextual factors. For example, participants reported searching for sexual words such as 'dick', 'boobs', 'fisting', 'fuck', 'tits' and 'rape', but not words such as 'sorry'.

While the volume of digital data increases, Muir and Walcott (2021) noted that there have been cuts to spending in the area of digital forensics in England and Wales and this lack of investment contributed to long investigations and missed opportunities to convict offenders. Ultimately, Muir and Walcott (2021, p. 5) concluded that "unless there is a significant uplift in digital forensics provision the police service could be overwhelmed and the criminal justice system unable to function effectively". Operation Soteria has further emphasised the importance of developing digital capabilities in policing, as May et al (2022) found a disconnect between investigation teams and Digital Forensic Units (DFUs), with software systems often incompatible and a general state of confusion about the tools available for extraction and analysis of digital data. Investment to create more consistency, technical capabilities, and training is ongoing.

## 2.2. Digital evidence at the police investigation and CPS stages

Police and prosecutors face a dilemma between respecting privacy and fulfilling disclosure obligations, and this is made even harder in digital evidence cases because of the sheer volume of data (Turner, 2019). This can have significant implications for privacy with regards to digital communications data held on smartphones and other devices (Goodison et al., 2015; Turner, 2019), not only for those whose electronic devices are being searched, but also for all those who feature in the communications with that person (Information Commissioner's Office). As US Supreme Court Chief Justice Roberts wrote in *Riley v California* 573 US 373 2014:

> "*Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life'. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought*."

There are further considerations in England and Wales, where police and prosecutors in the particular context of sexual offences cases must balance complainants' Article 8 right to privacy with the accused's Article 6 right to a fair trial. The Crown Prosecution Service (2021) state that the decision to request material from digital devices "should not be taken lightly and only where relevant", with 'stranger rapes' and non-recent allegations provided as examples of cases where it may not be relevant or reasonable. The *Policing, Crime, Sentencing & Courts [PCSC] Act 2022* introduced further requirements around the extraction of digital data to reduce irrelevant use. For example, Section 39(3) of the PCSC Act states that complainants must receive notice in writing about what information is being sought, why it is being sought, and how the information will be dealt with. The accompanying Code of Practice (HM Government, 2023) states that the written notice should cover "who it [the data] will be shared with and how long it may be retained for" (para 147). The National Police Chief's Council created a template example of a written notice, called a DPN, for English and Welsh forces to use. The form states that a complainant will be told what information is disclosed to the defendant as unused material and that the defendant will not see any 'non-relevant' material. It also states that the complainant will be informed about sharing their digital data with others. This is significant because there is currently no reference to the appeals process or CCRC in police Data Processing Notices.

Goodison et al. (2015, p.18) noted that the participants in their study had no interest in "legally overstepping their boundaries for digital searches". For example, one lawyer participant pointed out that because not all information on a device would be relevant to a case, close working between police and prosecutors can improve efficiency and lessen the workload of those conducting the digital analysis. Indeed, this was also found to be the case in an English pilot scheme which provided legal advocates for people reporting rape to the police (Smith and Daly, 2020). Similarly, Turner (2019) argued that redacting/anonymising data is time-consuming and deciding on what should be redacted

requires collaborative discussions. There are currently no technical solutions that can speed up redaction in England and Wales, although there are discussions between the Government and tech companies about how and when this could be developed.

A challenge can arise when police and prosecutors have different ideas about the extent of digital evidence required to build a case. Dewald and Lorenz (2022) observed detectives in sexual violence cases in the US and found that "*detectives view digital evidence as necessary because prosecutors expect this type of digital evidence to 'solidify a case*.'". Smith and Daly (2020) and George and Ferguson (2021) found similar tensions between police and the CPS in England and Wales, with police officers widely holding a perception that the CPS would not look at a case unless a full download of the complainant's phone had been done (and all third-party records collected). Similarly, victims reported being told by police officers that their case would be dropped if they did not consent to their digital devices and other records being searched (Smith and Daly, 2020). The PCSC Act 2022 aims to prevent this by including a clause that a complainant not providing their digital device cannot automatically mean that a case is discontinued. Additionally, internal case file reviews from the Ministry of Justice (2023) suggest that police may be wrongly pre-empting the need for digital evidence and third-party material, as prosecutors do not appear to be requesting it so frequently.

There is a perception among criminal justice practitioners in England and Wales that the tendency to extract all phone data became entrenched after the Liam Allan case (George and Ferguson, 2021), where it was revealed at trial that the police had failed to disclose relevant digital material from the complainant's phone to the CPS (Metropolitan Police and CPS, 2018). Such issues were not unique to sexual offences investigations, as highlighted in a 2017 investigation by HMCPSI and HMIC, which found that police records of digital data were routinely poor and that prosecutors failed to challenge this. The investigation found that both parties were failing at managing sensitive material effectively, leading to last minute and unauthorised disclosure between counsel at the time of trial and causing unnecessary delay and discontinued cases (HMCPSI and HMIC, 2017).

Nevertheless, the Allan case was arguably the catalyst in putting the issue into public consciousness, which resulted in an increased scrutiny of digital communications evidence in investigations that likely played a role in decreased charging levels in sexual offence cases (George and Ferguson, 2021). An investigation by the Information Commissioner's Office (ICO) criticised police and CPS practice regarding digital data, finding that properly informed consent from all parties for whom data is held on private digital devices is not possible (i.e., friends and family of the victim-survivor as well as the victim-survivor herself) and therefore some data should only be requested when it is strictly necessary—with an emphasis on "the challenge of the high threshold, i.e. 'strictly necessary' is more than 'necessary'" (ICO, 2020, p.37). Furthermore, the ruling in Bater-James & Mohammed v R [2020] EWCA Crim 790 stated that speculative searches of victim-survivors' private records do not constitute a reasonable line of enquiry. This was not the first time such a ruling had been made, however:

> "*The trial process is not well serviced if the defence are permitted to make general and unspecified allegations and then seek far-reaching disclosure in the hope that material may turn up to make them good*." (R v H and C [2003] UKHL 3, para.35)

Smith and Daly (2020) found that excessive requests for private data were routine in rape investigations, although that research was based in one police force, and a report by HMCPSI (2019) found that "some prosecutors are still asking for a full download of a complainant's or suspect's phone" (para. 5.52). Operation Soteria Bluestone, a study into five other police forces in England and Wales, found similar evidence that victim-survivors were routinely being asked to bring their phones for download during police interview, rather than after a specific and identifiable foundation for believing the phone contained a relevant line of enquiry (Stanko et al., 2022).

Another dilemma sometimes faced by criminal justice practitioners in relation to digital evidence in sexual offence trials relates to uncovering videos or images that evidence an assault that a victim-survivor had not previously known about or could not remember (Regehr et al., 2021; 2022). The study also highlighted the potential for a considerable negative impact on complainants when this imagery of their assault is played in open court. The impact on victims is also clear from surveys in England and Wales. Two national surveys of sexual violence victim-survivors in 2020 showed that concerns over their private data were important in reporting and withdrawal decisions, and that providing blanket access to their data negatively impacted on emotional and mental wellbeing (Molina and Poppleton, 2020; Smith and Daly, 2020). A further survey by the Ministry of Justice (Silk, 2023) also suggested that some victim-survivors avoid seeking formal support because their digital data or third-party material might be accessed. Finally, a large victim survey is ongoing as part of Operation Soteria, and further demonstrates the importance of victim rights for both wellbeing and satisfaction with the criminal legal process (Hohl et al, 2023). Far from being supplementary considerations, victim privacy rights are therefore foundational to trust in the justice process and ensuring that the public are willing to report crimes to the police.

## 2.3. Digital evidence in the courtroom

There are concerns about the presentation of digital evidence in the courtroom, not only in relation to practicalities such as the poor quality of audio-visual equipment (Muir and Walcott, 2021), but also to the linguistic ways in which lawyers present the evidence to the judge and jury (Daly, 2021). For example, Biederman and Vuille (2016) explored the linguistic presentation of digital evidence in court and argued that lawyers' presentation of evidence using phrases such as 'is consistent with' without specific and explicit explanations are imprecise and inherently biased. Digital evidence is therefore presented as 'objective', despite requiring interpretation and being framed in different ways at trial.

On the value of digital evidence at trial, one participant in Goodison et al.'s (2015, p. 18) study noted that juries "love it, they eat it up". Interestingly, Crimmins (2021) found that prosecutors tended to view digital evidence more positively than did defence lawyers, and that prosecutors tended to use it more in pleas and at trial than did defence lawyers. Similarly, participants in Goodison et al. (2015) considered that defence lawyers were usually on the backfoot with digital evidence but felt this would change as they become more familiar with how to use it. Indeed, Murphy (2014) argued that the value of digital evidence greatly depends on the skill of court counsel.

Two studies in England and Wales examined, with contrasting results, police case files in order to determine whether digital communications evidence tended to prove more helpful to prosecution or defence in sexual offences cases. Rumney and McPhee (2020) found that digital communications evidence supported the prosecution case in 36% of investigations where such material had been accessed, compared to assisting the defence in 31% of cases where data was accessed. Murphy et al. (2021) found that digital evidence assisted the prosecution case almost half (7%) as often as it did for the defence (12%), but most of the time (47%) it supported neither. While both studies used case file analysis, it is unclear how the assistance of digital evidence was established in Murphy et al. (2021) (it was not the main focus of that study), whereas for Rumney and McPhee (2020) it was established by the researchers assessing the evidence against CPS guidance. Notably, Rumney and McPhee (2020) did not get defence lawyers' perspectives on the utility of the evidence, who may have provided alternative insights as to its usefulness for defence strategies at trial.

Indeed, digital communications data has been referred to as a 'treasure trove' for defence teams (Browning, 2011) and so-called 'fishing expeditions' are a noted tactic of defence lawyers across Western adversarial jurisdictions (Howell and Herberlig, 2007; Uncel, 2011; Sholl, 2013; Boux and

Daum, 2015; Carimico et al., 2016; Dodge, 2018). This is interesting when considered against George and Ferguson's (2021) finding that cases involving contact over social media were more likely to be assigned an NFA outcome by the police. Relatedly, the following quote from a police participant in a Canadian study demonstrates how digital communications evidence can be implicated in NFA decisions based on rape myths, with some victims facing significant barriers in terms of being believed:

> *"So domestic relationship, they break up, she saying he came over sexually assaulted her. He's saying there's no way. I went over to see my son and then I came home. And then she's like I can give you Facebook messages. Give them to me. Well he has no problems giving them to me [...] from just reading those messages you can tell that they were basically trying to get back together, and then she finds out he's dating someone else. And it's the same timeline as the allegation"* (Spencer et al., 2019, p. 156)

In their US based study, Markey et al. (2021) found that a delay in reporting meant investigators were less likely to investigate digital evidence and although almost half of cases involved acquaintances, digital communications evidence was not always accessed in these cases (84% for mobile phone communications; 52% for social media communications); the case files did not explain the reasons for not accessing digital communications data.

While digital communications evidence can support prosecution cases by providing evidence that corroborates allegations (Boux and Daum, 2015; Carimico et al., 2016; Maras and Miranda, 2017; Dodge, 2018; Ramirez and Denault, 2019), societal myths and stereotypes about sexual violence also provide defence barristers with strong tools for undermining complainant credibility (Boux and Daum, 2015; Powell, Henry and Flynn, 2015; Dodge, 2018; Hlavka and Mulla, 2018) and even for undermining digital communications the prosecution present as corroboratory (Daly, 2021). Dodge (2018) surmised that digital communications evidence is often uncritically viewed as a snapshot in time that acts as a remedy to flawed human memory, when really it can be moulded to fit competing narratives at trial. This is possible because the nature of adversarial justice systems does not account for the context within which digital communications are produced, and separating them from their original context and transferring them into courtroom narratives allows that original context to be replaced with a new context that fits the barrister's narrative, thus leaving the digital communications evidence open to manipulation and reinterpretation (Dodge, 2018; Hlavka and Mulla, 2018; Daly, 2021; Ramirez et al., 2021). As such, ordinary behaviour can become incriminatory within the context of a sexual offences trial (Bluett-Boyd et al., 2013; Carimico et al., 2016; Dodge, 2018; Hlavka and Mulla, 2018). This is particularly pertinent as the sending of sexualised messages and nude images has become a normal element of online dating practices (Jordan, 2019; Daly, 2022).

Indeed, Carimico et al. (2016) argued that defence lawyers frequently turn to social media accounts to evidence a complainant's behaviour as incompatible with 'ideal victim' stereotypes (Killean et al., 2022). For example, Ramirez and Denault's (2019) analysis of 287 court judgements in Canada revealed that defence lawyers used Facebook data to challenge the issue of consent by evidencing 'flirting', sexual messages, and messages indicating a desire to have sexual contact, as well as to challenge the credibility of the complainant through pointing to inconsistencies and messages that support a 'motive for lying', such as expressing sadness about the end of a relationship or making threats against the defendant (Ramirez and Denault, 2019). Moreover, in the context of 'mistake of age' cases, Ramirez et al. (2021) found that girls were vilified in court judgements for lying about their age on social media and that sexual behaviour evidence gleaned from social media was also used to vilify them. It is important to point out, however, that digital communications evidence can also be used to reinforce stereotypical cultural narratives about defendants too; for example, Ramirez and Denault (2019) found that Facebook data was also used to challenge the credibility of the defendant,

with prosecutors evidencing defendants' 'darker side' through pointing to past violent language, reference to substance use, and evidence of poor parenting skills.

Dodge (2018) noted the importance of considering the potential readings and interpretations of digital evidence in sexual offences cases through an intersectional frame because such evidence is not immune from the influence of bias and prejudice. Indeed, observations of domestic and sexual violence trials in the US illustrated that defence lawyers framed digital communications evidence through culturally entrenched gendered and racialised narratives that enabled them to cast complainants as 'cunning liars' (Hlavka and Mulla, 2018; Ramirez et al, 2019). Slane's (2015) analysis of a 'cyberbullying' homophobic hate crime case in the US demonstrated how the defence lawyer in the case used 'laughing indicators' (such as lol) to evidence that the victim (who had taken their own life) was not distressed; Slane pointed out, however, that "*a contextual reading of these expressions would show that [victim]'s online conversations are virtually all peppered with such expressions, regardless of the seriousness of the subject matter*" (2015, p. 270). Once again, this example demonstrates how easily digital communications can be moulded to fit competing narratives when they are removed from their original context.

As technologies advance there is likely to be a wider range of technologies available that are not currently commonplace in investigations but may become so in the future (Watson and Huey, 2020). White and McMillan (2020) speculatively assessed the problems that anti-rape technology, such as mobile phone apps and wearable devices, could pose in future sexual offences investigations. They noted that while such technology may increase the availability of corroborating evidence, it will likely also increase victim-blaming attitudes in investigations (e.g. 'why didn't you use the rape tech?'), may reinforce expectations of resistance, and would be as malleable as other forms of digital evidence (White and McMillan, 2020). There is also an increasing move to online services for health and wellbeing, such as the NHS app and counselling apps, which blur the boundaries between digital evidence and third-party material.

## 2.4. Digital evidence in criminal appeals

In comparison with the use of digital evidence in the courtroom, there is relatively little research on the use of digital evidence in criminal appeals. In the US, Novak (2020) examined 145 criminal cases that went before the US Courts of Appeal between 2010 and 2015 due to issues with digital evidence. The types of evidence in these cases included: desktop PCs, laptops, GPS trackers, mobile devices, external storage devices. Most of the cases (89%) related to Child Sexual Abuse Material (CSAM) offences. Only 22 appeals were based on the science of digital forensics and in all of them the original rulings were affirmed. Most appeals related to sufficiency of evidence or search warrants (or lack thereof).

McMillan et al. (2013) examined the extent to which mobile phones were used in 537 UK appeal judgements which took place from 1 January 2006 to 31 July 2011. They found that the presence of digital evidence in appeal judgements increased year on year, and that the most common types of evidence during that time were call records and SMS data. The study examined appeals across a range of offence types and argued that most appeals featuring phone evidence were drug-related (especially call records and texts), while sexual offence judgements were more likely to feature videos and images. Analysis of the appellants' ages showed that mobile phones were most likely to feature in appeal judgements for those aged 15-29 and dropped off significantly when the appellant was aged 50 and above (McMillan et al., 2013).

In a recent report for the Home Office, Richardson et al. (2022) investigated national level changes, over time, in the extent to which police in England and Wales use digital evidence, using the analysis

of criminal appeal judgements as a proxy to assess the changes in police investigations. For the purposes of their research, they defined digital evidence as: mobile phone cell-site analysis; internet and personal computing (search history and files); calls and communications/audio; mobile device data (i.e. texts, social media, images); and network intelligence (i.e. computer network traffic information gathering). They found that there was a statistically significant increase in the proportion of appeal cases that contained references to such digital evidence, up from 21% in 2010 to 34% in 2018. There was an increase in the proportion of appeal judgement summaries referencing digital evidence across all high-level offence types – drugs, sexual offences, violence against the person, fraud, robbery, theft and miscellaneous crimes against society, but some key differences in terms of offence types.

Whilst appeals involving drug offences had the highest increase in the proportion of cases with digital evidence (58% of appeal cases for drugs in 2018), in the case of sexual offences, almost half of appeal judgement summaries (47%) had references to digital evidence in 2018, up from 32% in 2010 (Richardson et al., 2022). Looking specifically at rape cases, the proportion of appeal cases referencing digital evidence almost doubled between 2010 and 2018, from 23% to 45% (Richardson et al., 2022). Through references to existing research on police investigations involving digital evidence (Murphy et al, 2012; Rumney and McPhee, 2020), Richardson et al. (2022) concluded that for those more serious offences where levels of investigative effort are higher, such as sexual offences and drugs trafficking, it is likely the appeal case findings are more in step with the digital profile of police investigations. For example, Murphy et al. (2021) found 27% of the allegations of rape reported to the Metropolitan Police Service referred to 'technological evidence' in the case file. Rumney and McPhee (2020), also looking at rape cases, found digital evidence requests to be 14% in the police case files. A recent rape inspection by HM Crown Prosecution Service Inspectorate (HMCPSI) found that within a sample of 80 investigations into rape, 73% contained digital evidence (HMCPSI, 2019).

# 3. About the CCRC

The CCRC is the official independent body investigating potential miscarriages of criminal justice in England, Wales and Northern Ireland. Created by Section 8 of the *Criminal Appeal Act 1995*, the CCRC was established in 1997. It is independent of the courts, police and the prosecution, and has powers to refer a case back to an appeal court if it considers that there is a real possibility that the court will quash the criminal conviction or reduce the sentence (Hoyle and Sato 2019). Anyone convicted of an offence can apply to the CCRC, whether they are legally represented or not, if they have exhausted their rights of appeal but believe that they were wrongly convicted or incorrectly sentenced.

When deciding whether a case should be referred to the Court of Appeal, the CCRC applies a threshold, or "real possibility test", as set out in section 13 of the *Criminal Appeal Act 1995*. A case can only be referred for appeal if:

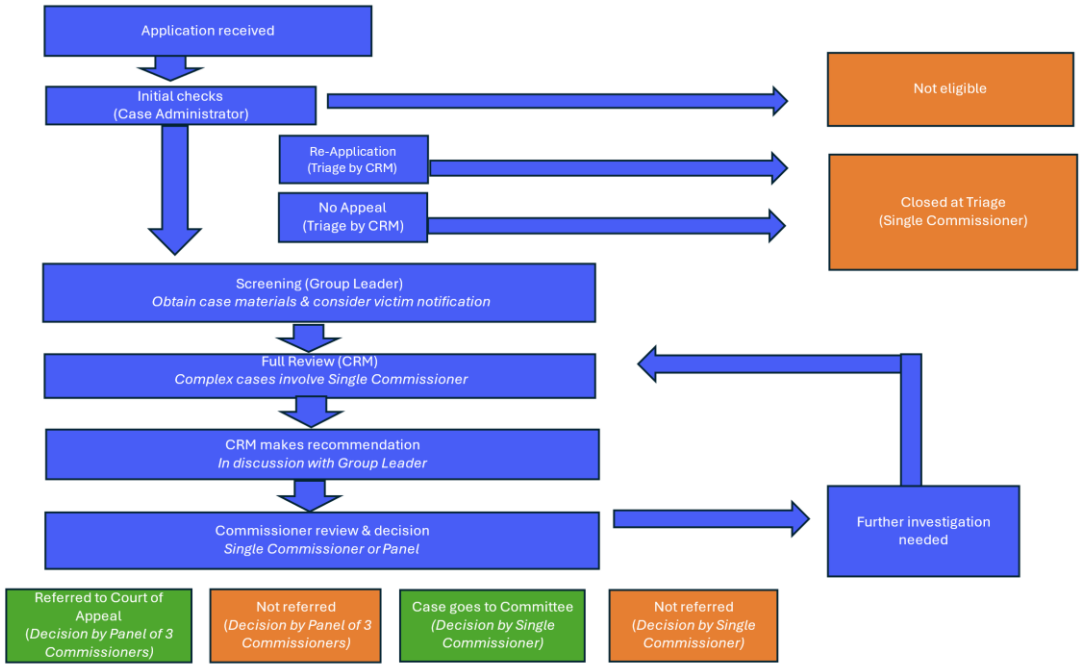
a) there is new evidence or a new argument (here, 'new' means not used at the time of conviction or appeal)

   and

b) with this new information, there is a real possibility that any subsequent appeal would succeed (i.e. that the conviction would be quashed, or the sentence changed).

As Chart 1 below shows, there are effectively three main stages at which an application outcome is decided. After initial checks by a Casework Administrator, it may be deemed ineligible e.g. because an appeal is ongoing. If initial checks show that it is a re-application or 'no appeal' case, one of the Case Review Managers (CRMs), of which there are currently 39.7 fulltime equivalent, will further triage the application to check for fresh points or exceptional circumstances respectively. In re-application cases, the CRM will also look for anything that may have changed since the CCRC last looked at the case, such as any legal or scientific developments. For all other cases, or re-applications / 'no appeal' cases deemed in need of review, a Group Leader conducts initial screening to prepare the case for review, before assigning it to a CRM. Once the CRM has completed their review or investigations, they make a recommendation to refer or not refer back to the Crown Court or the Court of Appeal. Depending on the recommendation, the case is then reviewed and a decision made by either a Single Commissioner (out of the 9 currently available), who consider recommendations to turn a case down, or by a Committee of three Commissioners, where a case has the potential to be referred for an appeal. The Single Commissioner can accept the turn-down recommendation, ask for further work to be done, or decide that the case should go to a Committee.

*Chart 1. Criminal Cases Review Commission Process*




Under section 17 of the Criminal Appeal Act 1995, the CCRC can compel other public bodies to provide documents and information, such as those held by the police, prosecution or the courts, when it is thought that they may assist the CCRC exercise its functions. This covers materials held by the police and the Crown Prosecution Service (CPS), government papers, and social services files. Under section 18A of the Criminal Appeal Act 1995, the CCRC can compel private bodies or individuals to supply documents and information in order to perform their duties. The role of these documents in CCRC reviews is usually to examine what issues were addressed (and how) in the original investigation, trial, and appeal.

# 4. Methodology

The research team analysed 119 applications made to the CCRC between 2019 – 2021 where at least one of the offences was rape[2]. Before obtaining CCRC data on applications involving sexual offences, all members of the research team underwent a lengthy security clearance by the Ministry of Justice and the signing of a non-disclosure agreement (NDA) between the PI and the CCRC to safeguard confidential data. Data was provided in an electronic and encrypted format, with two-factor authentication. It is view-only and cannot be copied or amended in any way.

The CCRC provided the team with access to all applications received during the years of 2018, 2019, 2020 and a small number from 2021 where at least one of the offences was rape. The first step for the research was to develop a means of extracting relevant data which complied with the NDA while allowing us to pursue the second step of analysing the sample (primarily through descriptive statistics, but with thematic analysis of supplementary qualitative data from relevant cases). It became clear that including all of the applications provided would not be feasible with our resources, so the most recent cases were prioritised, and the 2018 applications were excluded. Data were therefore extracted from all applications submitted in 2019, 2020 and 2021 (N=119), as shown in Table 1.

***Table 1. Numbers of applications involving rape and sexual offences in case sample, by year***

| Year of Application | Number in Sample |
|---|---|
| 2019 | 74 |
| 2020 | 42 |
| 2021 | 3 |
| **TOTAL** | **119** |

Application case files range widely in size, consisting of varying numbers of sub-folders, each containing differing numbers of sub-files. Common to all case files is a) an Easy Read application form completed by the applicant; b) a Case Record containing details of the application, decisions taken during the investigation and an associated timeline; and c) a Statement of Reasons, wherein can be found the outcome of the case and a rationale for the decision taken. We therefore focused our analysis on these three files.

An excel spreadsheet was used to record (anonymised) data from each of the 119 applications, using the following fields:

- Year of application
- Case number
- Offence(s)
- No. of complainants
- No. of defendants
- Complainant(s) sex
- Complainant under 16 at time of offence?

[2] The CCRC receive around 1,000-1,400 applications per year, though this number is growing, with 1,600 applications received in 2023-2024.

- Applicant relationship to complainant (related, partner, ex-partner, acquaintance, stranger)
- Plea (guilty, not guilty)
- Sentence
- Conviction date
- Time between conviction and application to CCRC
- Status (in prison, at liberty)
- Brief case synopsis
- Appeal date
- Appealed against (sentence, conviction, both, none)
- Grounds of appeal
- Appeal outcome
- CCRC application (sentence, conviction, both)
- Reason(s) for application
- Legal representation or assistance (lawyer, family member, friend, none)
- CCRC application outcome (ineligible, closed at triage, not referred, referred)
- CCRC decision and rationale
- DCE as part of the discussion (e.g. as part of appeal, CCRC application)?
- Is the evidence of DCE 'new'?
- Type of DCE (e.g. social media posts, call logs, WhatsApp and other messages, videos/images)
- Sexual history/sexual character as part of CCRC application?
- Victim credibility check decision
- Victim notification decision

# 5. Findings

The findings outlined below present statistics and illustrative case examples that address key characteristics of the case files analysed, and the frequency, nature, and use of DCE within them. Data on two further areas of interest that emerged during analysis are also discussed: victim credibility checks and victim notification.

## 5.1 Characteristics of the applications

Whilst our proposal focused on adult sexual offences, the data we received contained some applications relating to child sexual offences. We have included these in our analysis to understand any potential differences in the use of DCE according to victim/offence types. There were 57 applications (47%) where at least one of the victims was aged 16 or under at the time of the offence(s).

All applications in the sample involved male applicants; and the vast majority of cases involved female victims, although there were nine cases (7%) with at least one male victim. Thirty-one application cases (26%) involved two or more victims.

All except one applicant made their application to the CCRC whilst they were in prison. Eighteen applicants (15%) said they had legal support to make the application, although this sometimes involved providing contact details of their trial solicitor who subsequently informed the CCRC they had not been instructed to support the application. A further 52 applicants (44%) stated they were being supported by a family member, friend, or fellow prisoner.

The average time between conviction and making an application was 1 year 10 months, although this ranged from just 3 months to 5 years. The most common timeframe (mode) was 1 year. The sentence being served by the applicants ranged from 18 months to 32 years, with an average (mean) of 12.73 years imprisonment.

Almost half (n = 57; 48%) of the 119 applications resulted in a full investigation by the CCRC but were ultimately not referred to the Court of Appeal. Ten of these 'not referred' cases had appealed neither conviction nor sentence (n= 5) or appealed their sentence only or requested a review of their sentence only (n=5), and so had not appealed a conviction. For the analysis, the ten 'no conviction appeal' cases were excluded if 'closed at triage' cases were excluded (as indicated in each table), because they were closed at triage for the conviction aspect of the application.

Forty-eight cases (40%) were closed at triage, and nine cases (7%) were deemed ineligible. Of the nine ineligible cases, seven were still awaiting the outcome of an appeal and two did not include any details about why the applicant wanted a review. Of the 48 cases that were closed at triage, 42 were because there had not been an appeal for the conviction, and it was considered that there were no exceptional circumstances. Another four were re-applications where nothing new had been added, and two were fresh applications but nothing new had been added since the appeal.

## 5.2 DCE in CCRC Case Files

Of the 119 applications, just over half (n=61; 51%) of the Case Records mentioned DCE; either as the reason for making the application, as part of the appeal, and/or because it was dealt with pre-conviction. This rose to 62% when excluding ineligible, closed at triage, and 'no conviction appeal' cases (see Table 2).

DCE which was available to one or more of the parties in the past but not heard in evidence at trial or on the appeal would be 'new' for the purposes of the 1995 Act. Only two cases featured DCE that could be considered 'new', as most DCE had either been discussed at trial or considered by the police and CPS. Of the two cases where the DCE might have been genuinely new, one concerned sexual activity on dating apps (and it was unclear from the form whether this was actually new) and the other was a vague claim that the victim visited a 'hate website'.

As Table 2 shows, DCE was most likely to be mentioned by the applicant, as well as earlier in the criminal justice process (e.g. the police and CPS files, or trial transcripts). This is because the DCE raised by applicants was not new in most cases, and several other issues of digital evidence were usually raised at trial. Cases that were closed at triage featured slightly more DCE from trial without it being raised by the applicant, because corroborative digital evidence from the prosecution was more often noted when determining whether a need for victim credibility checks amounted to 'exceptional circumstances'. Even when excluding 'no appeal' cases, DCE was less likely to be the basis for appeal than the basis for a CCRC application. While we do not know the reasons for this, it could potentially be related to the increased likelihood that an applicant would have sought legal advice and/or representation ahead of an appeal.

***Table 2. Numbers of cases involving DCE, by case outcome***

| | All cases (N=119) | Excluding ineligible cases (N=100) | Excluding ineligible, closed at triage, & 'no conviction appeal' cases (N=52) |
|---|---|---|---|
| **ANY MENTION** | **61 (51%)** | **57 (57%)** | **32 (62%)** |
| Raised in application | 48 (40%) | 44 (44%) | 26 (50%) |
| Raised at appeal | 10 (8%)* | 9 (9%)* | 9 (17%) |
| Raised earlier in CJS | 48 (40%) | 45 (45%) | 26 (50%) |

* There was no conviction appeal in most ineligible and closed at triage cases, hence the lower numbers

Where DCE is raised by the applicant as part of the reason for requesting a CCRC review, this was done for four main reasons:

1) DCE not having been accessed or fully investigated by police/lawyers at an earlier stage of the criminal justice process;
2) DCE not being used at trial as the applicant thought it should have been;
3) Requesting a review of the DCE used at the trial;
4) Requesting CCRC carry out a speculative investigation of DCE (see Section 5.3).

Another notable pattern in the data is that cases involving at least one victim aged 16+ were almost twice as likely to feature DCE as those with at least one victim aged U16 (see Table 3). For example, the issue of DCE was raised in the application in half of 'adult' cases (N=33, 50%) while it was raised in just over a quarter of cases featuring child victims (N=15, 26%). The samples become notably smaller when broken down by age, which limited further analysis, but the trend seemed to be broadly similar even when excluding ineligible, closed at triage, and 'no conviction' cases.

***Table 3. Numbers of cases involving DCE, by age of complainant***

| | Cases with at least one victim under 16 years* | Cases with at least one victims 16 years plus* |
|---|---|---|
| **ALL CASES** | | |
| *Number of cases* | *57* | *66* |
| Any mention | 20 (35%) | 43 (65%) |
| Raised in application | 15 (26%) | 33 (50%) |
| **EXCLUDING INELIGIBLE, CLOSED AT TRIAGE & 'NO CONVICTION' CASES** | | |
| *Number of cases* | *20* | *33* |
| Any mention | 9 (45%) | 24 (73%) |
| Raised in application | 7 (35%) | 20 (61%) |

Note: N's add up to more than 119 because some cases had both a victim U16 and 16+.

Applicant age also appeared to be associated with different levels of DCE. Table 4 provides a breakdown of applications involving DCE, by applicant age. It shows that while almost two-thirds (62%) of applications were made by those aged under 45, these cases made up almost three-quarters (73%) of the applications that raised DCE (and 68% of the cases where DCE was mentioned anywhere).

Conversely, while applicants aged 45 and over comprised 38% of the sample, their cases made up only 27% of applications which raised DCE. Notably, we have not run inferential tests to check for significance and so cannot make robust claims about difference, but there does appear to be a slight pattern whereby younger applicants are more likely to raise the issues of DCE than older applicants. This may be due to the increased likelihood that older applicants were convicted of historic child sexual abuse, or because of a higher adoption of digital communications amongst younger people, indicating that the number of applications containing DCE is likely to increase in future.

***Table 4. Numbers of cases involving DCE, by age of applicant***

| Applicant Age | N | Any Mention of DCE in Case Files | DCE Raised in Application |
|---|---|---|---|
| 17 - 24 | 10 (8%) | 7 (70%) | 5 (50%) |
| 25 - 34 | 34 (29%) | 18 (52.9%) | 15 (44%) |
| 35 - 44 | 30 (25%) | 18 (60%) | 15 (50%) |
| 45 - 54 | 20 (17%) | 10 (50%) | 7 (35%) |
| 55 + | 25 (21%) | 8 (32%) | 6 (24%) |
| **TOTAL** | **119** | **61 (51%)** | **48 (40%)** |

We also explored the number of cases involving DCE by complainant-applicant relationship, as it would be expected that a closer relationship might lead to more matters of DCE. Table 5 shows the frequency counts and suggests that the picture is actually quite complex. Cases involving some kind of parent-child relationship had the lowest frequency of DCE, and this is likely because this category featured many more historic cases of child sexual abuse where contemporaneous DCE was less common. The slightly lower frequency in the 'friend / family friend' category also appears linked to an increase in historic cases.

***Table 5. Numbers of applications involving DCE, by complainant-applicant relationship***

| Relationship between applicant & victim (if known)* | N | Any Mention of DCE in Case Files | DCE Raised in Application |
|---|---|---|---|
| Partner / Ex-partner | 22 | 16 (73%) | 13 (59%) |
| Family member / Partner of parent | 38 | 13 (34%) | 9 (24%) |
| Friend / Family friend | 12 | 6 (50%) | 4 (33.3%) |
| Acquaintance / Position of power | 21 | 13 (62%) | 12 (57%) |
| Stranger (met within 24 hours) | 25 | 12 (48%) | 9 (32%) |

*For multiple victims, we listed a) the most common relationship type in that case, or b) the most intimate relationship type if there was no majority.

What is perhaps most notable in Table 5 is that cases where the applicant and complainant met within 24 hours of the offence still contained significant amounts of DCE both in the case files (48%) and presented as an issue in the application itself (32%). However, the sample numbers here are small, so these findings are tentative and require future exploration, but they are important because they suggest that cases involving relative strangers are not exempt from issues of DCE.

## 5.3 The Types & 'Uses' of DCE in CCRC Case Files

The type of DCE referenced in the applications were mostly derived from mobile phones and/or social media (e.g. Facebook, Instagram) and can be broadly categorised as per Table 6. Several cases referenced multiple forms of DCE, so the numbers add up to more than the 61 cases where DCE was mentioned in the Case Record.

***Table 6 Numbers of applications involving DCE, by victim age and type of DCE***

| | All Cases | At least one victim <16 | At least one victim 16+ |
|---|---|---|---|
| **General 'phone not accessed'** | 13 | 2 | 11 |
| **Texts / DMs on social media** | 38 | 14 | 26 |
| **Public social media posts** | 14 | 1 | 13 |
| **Videos / Photos** | 9 | 3 | 6 |
| **Other*** | 14 | 5 | 9 |

* 'Other' includes variety of DCE such as phone GPS data; Amazon purchase data; web downloads (e.g. 'daddy's girl' porn sites); call records; dating apps; and computer passwords.

The use and potential relevance of DCE varied across all cases, with different impacts on victim credibility. Many applicants argued that phone data would undermine a victims' credibility, while in other cases the reviewer noted that victim credibility checks were unnecessary because digital evidence provided compelling 'corroboration' for the prosecution. A small number of applicants also stated that it was simply unfair that the prosecution adduced compelling DCE that contradicted their defence.

In 13 application forms (27% of the 48 DCE mentions in an application form), applicants simply expressed discontent that potentially relevant evidence from mobile phones had not been fully disclosed, such as: *"Complainant refused to hand over her phone… Did the phone hold the missing piece of the puzzle?" (Application Form, Case 1).* In these cases, the reviewers noted that police and prosecutors had indeed considered all relevant evidence on the phone, or that there was no evidence of relevance (e.g. it was a historic allegation from before the complainant had a mobile phone).

In historic cases with multiple complainants, there were 8 cases where social media evidence was sought to argue that there might have been collusion between witnesses. For example, Case 35 involved a request for:

> *"Facebook posts which show how close his sister and ex-wife are / suggests collusion. [Applicant] argued that there will be more evidence of contact between the two of them which the police have failed to disclose." (Case Record, Case 25)*

However, the applicant had not yet appealed his conviction, and after significant review it was decided that there were no exceptional circumstances that meant the applicant needed CCRC's powers to access information before he could appeal.

Sometimes the applicant's request for consideration of DCE came despite the evidence appearing to support the prosecution case. For example, Case 41's applicant argued that:

> *"I had evidence that my barrister did not use at court... Jury ignored Facebook messages to me and was proven to be sent by complainant they later confessed and sent more messages to my wife after I was sentenced which barrister possibly didn't send to appeal court" (Application Form, Case 41)*

However, the Facebook messages in question were the complainant asking the applicant not to cover for the co-defendant (albeit in offensive and racist language). As the reviewer commented, the messages *"did not contradict her account as to the alleged offending and could be seen to be strong support for her account"* (Case Record, Case 41). Additionally, while the complainant had initially denied sending the messages, she had then accepted that it was her and the issue was discussed extensively at trial and in the appeal.

### 5.3.1 DCE presented as undermining the victim's credibility

Several cases involving partners or ex-partners featured claims about the nature of social media posts by the victim and/or suggesting that social media posts undermined the victim's credibility. For example, one applicant had been in a relationship with the victim two years prior to the sexual assault and claimed that her social media posts show her *"socialising and uploading promiscuous images of herself"*, and that *"in the space between the arrest and trial, my accuser has been very active on Tinder and would frequently meet up with strangers" (Application Form, Case 51)*. He also claimed that her posts were *"not the actions of a victim"* and hence she was not credible. The CCRC reviewer noted that these were not new arguments nor had relevance to his conviction.

Case 89 also involved the applicant arguing that the victim's social media posts did not display sufficiently traumatised behaviour and so his sentence should be reduced because *"the complainant had been untruthful and misled the court in her VPS [Victim Personal Statement]" (Case Record, Case 89).* The victim said in her VPS that she had stopped going out much with friends and mostly went out with her mother, so the applicant pointed to undated social media posts of the victim socialising with and without her mother, in both public and private settings. The application therefore requested that the CCRC access the victim's phone and see if anything else undermined her account. Ultimately, the CCRC's review showed that police had thoroughly reviewed the victim's phone and the reviewer agreed with the comments provided by the judge at appeal that*, "a photograph of a [young person] out socialising may hide many problems, it proves little really".* Indeed, the applicant's points reflect assumptions about the 'typical' or 'appropriate' demeanour of a victim, which have been widely debunked (Daly, 2023).

Another way that DCE was presented by applicants as undermining the victim's credibility was to show that the victim and applicant had maintained a relationship for a period after the offence(s), with the implication being that this would be inconsistent with a true allegation. For example:

> *"[Applicant] also says that his partner, [X], has his phone and it contains messages to show that the complainant was sending him messages to say how much she loved him just 4 weeks before he made her homeless and then she made the allegations." (Case Record, Case 86)*

These messages had all been discussed, or were available to discuss, at trial. The arguments also link to wider myths and stereotypes about how 'real' victims react after sexual violence, particularly the

idea that a victim would typically cut off all contact after rape, a claim which is known not to be the case (see for example: Smith & Skinner, 2017; Lodrick, 2007).

Finally, some applicants (n=7) sought to use DCE to raise issues relating to the previous sexual history of the victim. For example, the Applicant in Case 62 repeated claims from the trial that *"[Complainant 2]'s Instagram account shows her interest in submissive sexual behaviour and fetishist Daddys Girl images*". In Case 73, the Applicant argued that a sex tape with the complainants' mother might have been viewed by the child complainants, explaining how they knew he had a mole on his penis. The Commissioner noted in their decision letter to the applicant that:

> *"In the context of the case, the only potential importance of this videotape would have been if it had depicted the mole on your penis, as an alternative explanation of how [complainants] could have known that it existed and how it appeared.... However, both yourself and [complainants' mother] agreed that your mole was not in fact visible on the recording." (Case 73)*

Questions of DCE use therefore regularly interlinked with questions of victim credibility, with applicants frequently drawing on myths and assumptions about sexual offences that earlier stages of the criminal justice process are working hard to tackle (Stanko, 2022; CPS, 2019). It is important for CCRC reviewers to maintain a focus on relevance and proportionality, so that improvements to police and CPS practice are not undermined by a misled consideration of rape myths post-conviction.

## 5.4 Victims' Rights: Credibility Checks & Notification

While undertaking this research, two unexpected areas of interest were repeatedly flagged by the research team. Although not the primary focus of this project, we outline them here to highlight potential avenues for consideration by the CCRC: victim credibility checks and victim notification.

### 5.4.1 (Victim) Credibility Checks

Victim credibility in rape cases is a critical component in police investigations, prosecutorial decisions and in criminal trials and can determine criminal justice outcomes. It is also a key factor in CCRC reviews. The CCRC's policies and procedures in reviewing sexual offence applications have shifted in recent years, particularly on the issue of 'witness credibility checks' (see CCRC, 2023). Witness checks are primarily about the 'character' or 'credibility' of key witnesses, whose evidence is central to the prosecution case. According to the latest CCRC casework policy (CW-POL-23):

> *"Enquiries relevant to witness credibility will always be considered in cases where the conviction rests principally upon the credibility of one individual ('one person's word against another's). These are often, but not always, sexual offences."* (CCRC, 2023, p.2)

This represents a change from the previous wording in 2021, which focused attention solely on sexual offence cases (without adequate justification).[3] Similarly, the policy states that "*any suggestion of a false allegation will be fully investigated*" (CCRC, 2023, p.2). The use of the phrase "*one person's word against another's*" and the focus on 'false allegations' have particular connotations in sexual offences, where rape myths and misled beliefs about the prevalence of false allegations historically led to

[3] Therefore, for the period that our analysis took place, the CCRC's guidance stated: "*Enquiries relevant to witness credibility will always be considered in sex offence cases because convictions of that nature are a category of offence where witness credibility will often be of real significance*".

substantial under-reporting and under-investigation of these crimes (see, for example, Smith 2021 on the legacy of gendered stereotypes).

When conducting witness checks, the CCRC can review several types of third-party material (e.g. social services records, education and health files, and family court proceedings), as well as considering the CPS files in relation to disclosure of DCE and third-party material. Where deemed appropriate checks may involve PNC and PND searches, e.g. to look for post-trial allegations or convictions (CCRC, 2023). Between 2006 and 2017, victim credibility checks were routine in sexual offence claims, largely due to a trend in post-trial compensation claims that contained significant inconsistencies to the account given at trial (Hoyle and Sato, 2019). In 2017, victim credibility checks returned to being a *potential avenue* of investigation rather than routine, largely because compensation claims began to use criminal justice testimonies as their basis and so fewer new inconsistencies are produced by these applications.

Hoyle and Sato (2019) argued that the reduction in credibility checks was justified around compensation claims but caused concern more widely because post-trial false or exaggerated allegations might not be identified under the regime of fewer checks. These fears were repeated in a report by six members of the All-Party Parliamentary Group on Miscarriages of Justice (Westminster Commission, 2021), which called for more intensive review of undisclosed materials and credibility checks. In response, the CCRC (2021) requested further reasoning for the recommendation and highlighted that cases where potential non-disclosure is an issue already involve obtaining the disclosure schedules and cross-referencing with police and CPS files without need for a full 'credibility check'.

Indeed, the current protocol (CCRC, 2023) on considering disclosure and credibility checks, both of which may feature DCE, reflect the balance of rights discussed earlier. Enquiries should only be made where they are "*necessary, reasonable, proportionate, strictly limited to what is required and in no way arbitrary*" (p.3). Particular types of credibility checks are more common in certain contexts, for example, the protocol notes that social services files "*are generally only relevant to sexual and/or physical offences committed against children or vulnerable adults…*" (CCRC, 2023, p.5), while medical records require higher standards because they "*are highly confidential and must not be examined without very good reason*" (CRCC, 2023, p.8). These differences reflect the elevated status of medical records in privacy debates, because of the need to maintain trust between patients and healthcare providers (see Kulakiewicz and Powell's 2022 briefing for the House of Common Library for more).

In our sample, PND/PNC searches were conducted in 9 cases, plus three that were re-applications where the checks were done in the first review (12% of the 100 cases eligible for review). None of these searches raised anything of relevance or unknown to the reviewer.

In just over half of the eligible applications (n=51, 51%), CPS files were reviewed for victim credibility; sometimes by checking what documents were disclosed but usually by looking in-depth at sensitive material (e.g., health and counselling records, social services files, compensation claims, and other legal proceedings). CPS files also usually contained evidence from police PNC and PND searches on the victim, including any previous or subsequent sexual allegations. There was inconsistency over how these checks were recorded in the Case Record, with some reviewers stating that credibility checks should be conducted via review of CPS files while others would read the full CPS files and then state that no checks were needed.

In line with CCRC's guidance, consideration was given to VCCs in cases where: the applicant suggested that the complainant made a false allegation or had made a previous allegation against someone else, the complainant had a previous conviction, corroborating evidence was thought to be limited, and where information about the complainant might not be known by the applicant.

The reason that ideas of victim credibility checks are especially sensitive in sexual offences cases is that there is a now discredited legal history of assuming that women regularly make false allegations. For example, judges in England, Wales and Northern Ireland were obliged to warn the jury about trusting a complainant's testimony without independent corroboration long after corroboration warnings were abolished for other crimes (Sheehy 2002). False accusations by 'vengeful mistresses' were thought to be common (Wigmore 1940), and women were considered intrinsically deceitful (see, for example, Pollak 1950). Now infamous, Sir Matthew Hale's 1736 edict that rape '*is an accusation easily to be made and hard to be proved*' (cited in Russell 2017: 278) remains a frequent part of defence closing speeches (Smith 2018). To put this in some historical context, the rape conviction rate was half that of other crimes in Hale's time (Walker 2013), and despite charge rates doubling since 2019, only 6% of rape investigations in 2022/23 resulted in a charge, let alone conviction (Ministry of Justice, 2024).

### 5.4.2 Victim Privacy Rights

It is important for CCRC reviewers to acknowledge that police and CPS access to digital evidence and third-party material about sexual offence complainants is currently under significant scrutiny (Ministry of Justice, 2023). It is recognised that investigations in the recent past have been too intrusive and breached privacy rights in ways that were not justified for the purposes of law enforcement (Ministry of Justice, 2021). Work is therefore underway to ensure that investigations and prosecutions are more proportionate (National Police Chiefs Council, 2023). As some of these cases inevitably filter through into CCRC applications, it will be important that reviewers do not undo these improvements by expecting the same disproportionate levels of investigation when considering future credibility checks. We are aware that the CCRC has faced pressure to increase credibility checks in sexual offence cases, and we would strongly advise that credibility checks already appear to be a significant part of CCRC reviews and that any moves to increase these should be carefully considered in relation to victims' rights.

The level of access to victims' sensitive data via CPS files also has implications for the information that should be given to victims when police seek a) consent for digital devices, and b) victim's views on third-party material. Currently, it is not made clear to victims that their data may still be accessed and considered post-conviction, so this should be stated in the relevant police forms.

### 5.4.3 Victim Notification

The CCRC Case Record has a section in which to consider whether the victim(s) should be notified of the application, in line with the Victims Code of Practice for England and Wales.[4] The factors for consideration are outlined in casework policy CW-POL-09 (CCRC, 2021), which states that they include: (i) likelihood of media attention, (ii) likelihood of the victim becoming aware of the review, (iii) whether the case is likely to be referred, and (iv) whether an approach from CCRC might cause distress. The

[4] The Code of Practice for Victims of Crime (Victims' Code) sets out the minimum standards that must be provided to victims of crime by organisations, including the CCRC, in England and Wales.

policy states that there is a presumption that victims will be informed of a referral to the Court of Appeal, irrespective of whether they were notified about the application.

In the examined case files, only one victim was notified (and it is important to note that this may be explained at least in part because there were no referrals in the sample). In this case, the victim had ongoing contact with the Applicant and Applicant's partner, meaning that she was likely to become aware of the CCRC review. The victim was informed by letter and answerphone message from police, but she did not reply or acknowledge the CCRC's notification, and the case was closed without referral around 2 months later (the victim was again informed by letter and police phone call).

The considerations as to whether a victim should be notified of the CCRC's review closely followed the guidance prompts in the Case Record (which mirror CW-POL-09). Table 7 outlines the frequency with which each of the key considerations were explicitly mentioned in the Case Record. The victim notification section was empty or missing from the Case Record in 35 cases. As would be expected, this was most common in 'ineligible' and 'closed at triage' cases.

***Table 7. Factors considered in the Victim Notification part of the Case Record, by case outcome***

| | All applications (N=119) | Ineligible (N=9) | Closed at Triage (N=48) | Not Referred (N=62) |
|---|---|---|---|---|
| **Likelihood of media coverage** | 50 (42%) | - | 12 (25%) | 38 (61%) |
| **Ongoing contact / connection** | 68 (57%) | - | 16 (33%) | 52 (84%) |
| **Chances of referral** | 33 (28%) | - | 17 (35%) | 16 (26%) |
| **Risk of distress** | 59 (50%) | - | 17 (35%) | 42 (68%) |
| **If doing enquiries that would raise attention** | 36 (30%) | - | 7 (15%) | 29 (47%) |
| **No VN record** | 35 (29%) | 9 (100%) | 26 (54%) | 0 (0%) |

In terms of the considerations about whether to notify victims, there was often good awareness about the likely impact on victims:

> *"The complainant in this case is [a child] and faced cross-examination at trial which would have been traumatic. Her guardian will fall to be notified but given the unlikelihood that the complainant and guardian will come to learn of [sic] this review I do not agree that notification should take place. This can be reviewed after analysis if further review is necessary." (Case Record, Case 25)*

> *"She is unlikely to become aware of our review via any of the above. The case is unlikely to be referred and an approach by us would likely cause distress given her mental condition (she's autistic) and the seriousness of the offence" (Case record, Case 6)*

Research by Burman and Brooks-Hay (2021) highlights the potential distress caused by prolonged legal proceedings, so recognition of the risk of trauma if victims are unnecessarily informed about a CCRC review is welcome.

We are not advocating for more frequent victim notification, however some of these records felt cursory and could be better considered. For example, whilst *current* media interest is considered when determining the risk that the victim will become aware of the review sometimes discussion of potential media interest was quickly dismissed, despite there being coverage of the case at trial (and even appeal). For example, Case 24 featured consideration of victim notification that said: *"An internet search reveals a number of articles at the time of the conviction and also in 2018 when Tommy Robinson was convicted following his reporting details of the app's trial. Nothing more recent." (Case Record, Case 24*).

Whilst the risk is more acute where there is recent media coverage, cases with a past high media profile may be more likely to see renewed media interest. The likelihood of the victim finding out about an application to the CCRC was also centred on whether there was awareness by the reviewer of any direct contact between the applicant and victim, but this sometimes ignored the risk of indirect contact and mutual contacts. It was also sometimes based on the assumption that, given the nature of the offence, there would be no contact with the applicant, which ignores the risk in domestic and family contexts. However, some good practice was observed. In Case 18, for example, where the complainant was the daughter of the applicant, the reviewer checked with the Applicant whether he had contact with his other children to check whether indirect contact may occur. This could be done more often in cases where there is a familial connection, or the case involved domestic abuse.

The casework policy on medical records CW-POL-18 (CCRC, 2021) states that the victim should give informed consent for the CCRC to access their medical records. An exception to this could be that gaining consent would risk disproportionate distress or harm, and there is a real possibility that the CCRC's review would be significantly compromised without the records (section 3.3; CW-POL-18). Nevertheless, victim notification sections (nor the credibility checks sections) did not record any discussion of victims' rights beyond a handful of reviews that noted they would only access existing files:

> *"There is an identifiable victim but nothing to raise a reasonable prospect that she will become aware of the review no media interest, investigation is currently limited to obtaining files, no continuing connection, no immediate prospect of a reference. Notification is likely to cause distress to the victim and is not necessary at this stage." (Case Record, Case 29)*

While victims do not legally need to be made aware of the CCRC reading their sensitive and private data where it features in CPS or defence files, it should be recognised that victims have never been informed about all of the people who will be able to see their information. It would be reassuring to see more explicit consideration of victims' privacy rights under victim notification and credibility check notes. One way to achieve this would be to conduct a Rape Victim Impact Assessment of policies (McGlynn, et al, 2024).

# 6. Conclusions

This research study set out to examine the extent to which DCE may feature in CCRC cases where it is alleged by an applicant that there has been a miscarriage of justice. The objectives were to: describe the frequency and nature of CCRC applications involving DCE in rape and sexual offence cases; identify whether any types of DCE are associated with particular CCRC outcomes; and, develop recommendations for CCRC.

After reviewing all 119 rape applications to the CCRC between 2019 and early 2021, it is clear that DCE appears in a significant proportion of conviction reviews (both as part of an application and the background evidence). This is particularly true in cases with at least one victim aged over 16 and, to a lesser extent, where the applicant is under 45. Contrary to expectations, DCE and other forms of digital evidence are a feature in a significant number of 'stranger' cases, although DCE was slightly more common in cases where the victim and applicant were partners/ex-partners, friends, or acquaintances. None of the cases reviewed were referred.

Unless DCE is mentioned as part of the appeal or CCRC application, it is not easy to determine whether or how DCE was used in earlier stages of the criminal justice process.

Many applicants are unspecific when raising DCE in their applications, which makes it difficult for CCRC to investigate. As such, CCRC's reasoning in some cases suggests a reluctance to conduct further exploration of DCE without direction from the applicant as to what new evidence they think there is and what relevance it might have to the case. Another reason for that reluctance may be a recognition that the privacy rights of the victim (discussed earlier in this Report) should be respected unless there is a good reason to justify the intrusion in the interests of justice (referring here to the rights of the applicant under Article 6 of the Human Rights Act 1998).

Where applicants do raise DCE in their applications it is usually framed as:

- DCE not having been accessed or fully investigated by police/lawyers;
- DCE not being used at trial as the applicant thought it should have been;
- Requesting a re-hashing of the DCE used at trial;
- Requesting CCRC carry out a speculative investigation of DCE.

DCE was most referenced in terms of generic 'look at her phone' claims that is, implicitly or explicitly suggesting that there 'may be something' on a phone or on social media that undermines the credibility of a complainant. Claims are framed as potentially relevant in a variety of ways, from challenging the victims' credibility on the basis of victim demeanour (as not acting like a 'real victim') reflecting (widely debunked) rape myths to corroborating the applicant's evidence that she contacted him after the assault. In a substantial minority of cases, DCE was closely linked with sexual history evidence about the victim.

In addition, the review of cases highlighted two unexpected areas of interest where victims' rights could be more explicitly considered in the Case Record: (Victim) credibility checks and victim notification. While the decisions appeared largely appropriate overall, these issues may present potential risks for CCRC in future if there is a shift towards more scrutiny on victims. Where the CCRC faces pressure to conduct more wide-reaching or more frequent credibility checks, this in particular should be contextualised in terms of rape myths, victim-blaming, and privacy rights.

# 7. Recommendations

In light of the findings within this Report, we make the following recommendations:

1. That the CCRC consider the implications of the Policing, Crime, Sentencing & Courts [PCSC] Act 2022 which introduces requirements around the extraction of digital data and in particular s. 39(3) of that Act which states that complainants must receive notice in writing about what information is being sought, why it is being sought, and how the information will be dealt with.
2. That consideration is given by the CCRC to include information about the CCRC in police Data Processing Notices (DPN) which state that the complainant will be informed about sharing their digital data with others.
3. That CCRC reviewers are mindful of victim's privacy rights when it comes to digital evidence and third-party material (as recognised by the MoJ 2023) and do not endorse disproportionate levels of investigation when conducting future credibility checks which appear to be a significant part of CCRC reviews.
4. Whilst not advocating for more frequent victim notification, consideration of the likelihood that victims would become aware of a CCRC application sometimes appears inadequate; hence we recommend that victim notification is carefully considered, particularly where there is a familial connection or the case involved domestic abuse, and clear justifications for decisions are provided.
5. That more explicit consideration of victims' privacy rights under victim notification and credibility check notes are undertaken. One way to achieve this would be to conduct a Rape Victim Impact Assessment (RVIA) of policies (McGlynn, et al, 2024).

# References


Baird, V. (2022) 2021/22 Annual Report Victims' Commissioner for England and Wales. Available form: https://victimscommissioner.org.uk/document/annual-report-of-the-victims-commissioner-2021-to-2022/ [Accessed 02.03.2024]

Biedermann, A. and Vuille, J. (2016) 'Digital evidence, "absence" of data and ambiguous patterns of reasoning', Digital Investigation, 16, pp. S86–S95.

Big Brother Watch (2019) Digital Strip Searches: The police's data investigations of victims. Available at: https://bigbrotherwatch.org.uk/wp-content/uploads/2019/07/Digital-Strip-Searches-Final.pdf (Accessed: 14 February 2024).

Bluett-Boyd, N. et al. (2013) The role of emerging communication technologies in experiences of sexual violence. Australian Government. Available at: https://aifs.gov.au/sites/default/files/publication-documents/rr23.pdf

Boux, H.J. and Daum, C.W. (2015) 'At the intersection of social media and rape culture', University of Illinois Journal of Law, Technology & Policy, 2015(1), pp. 149–186.

Browning, J.G. (2011) 'Digging for the digital dirt: discovery and use of evidence from social media sites', SMU Science and Technology Law Review, 14(3), pp. 465–496.

Burman, M. and Brooks-Hay, O. (2021). Delays in Trials: the implications for victim-survivors of rape and serious sexual assault: an update. SCCJR Publication. December 2021.

Carimico, G., Huynh, T. and Wells, S. (2016) 'Rape and Sexual Assault. T-E Georgetown Journal of Gender and the Law , 17 (1) pp. 359–410.

Crimmins, D.M. (2021) Lawyers' knowledge of, attitudes towards, and experience with digital evidence. Purdue University.

Crown Prosecution Service (2021) CPS updates rape legal guidance to reflect rapid growth in digital evidence, Crown Prosecution Service. Available at: https://www.cps.gov.uk/cps/news/cps-updates-rape-legal-guidance-reflect-rapid-growth-digital-evidence (Accessed: 28 February 2024).

Daly, E. (2021) 'Making new meanings: The entextualisation of digital communications evidence in English sexual offences trials', Crime, Media, Culture: An International Journal, p. 174165902110482. doi:10.1177/17416590211048251.

Daly, E. (2022) Rape, gender and class: intersections in courtroom narratives. Cham, Switzerland: Palgrave Macmillan. Available at: https://doi.org/10.1007/978-3-030-93925-0 (Accessed: 1 March 2022).

Dewald, S. and Lorenz, K. (2022) 'Lying about sexual assault: a qualitative study of detective perspectives on false reporting', Policing and Society, 32(2), pp. 179–199. doi:10.1080/10439463.2021.1893725.

Dodge, A. (2018) 'The digital witness: The role of digital evidence in criminal justice responses to sexual violence', Feminist Theory, 19(3), pp. 303–321. doi:10.1177/1464700117743049.

Dodge, A. et al. (2019) '"This isn't your father's police force": Digital evidence in sexual assault investigations', Australian & New Zealand Journal of Criminology, 52(4), pp. 499–515. doi:10.1177/0004865819851544.

George, R. and Ferguson, S. (2021) Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales. London: HM Government. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994817/rape-review-research-report.pdf (Accessed: 25 February 2024).

Goodison, S.E., Davis, R.C. and Jackson, B.A. (2015) Identifying Technology and Other Needs to More Effectively Acquire and Utilize Digital Evidence. Available at: https://www.ojp.gov/pdffiles1/nij/grants/248770.pdf.

Hlavka, H.R. and Mulla, S. (2018) '"That's How She Talks": Animating Text Message Evidence in the Sexual Assault Trial', Law & Society Review, 52(2), pp. 401–435. doi:10.1111/lasr.12340.

HM Crown Prosecution Service Inspectorate [HMCPSI] (2019) Rape Inspection 2019: A thematic review of rape cases by HM Crown Prosecution Service Inspectorate. Available from: https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2019/12/Rape-inspection-2019-1.pdf [Accessed 02.02.2024]

HM Crown Prosecution Service Inspectorate [HMCPSI] and HM Inspectorate of Constabulary and Fire & Rescue Services [HMICFRS] (2017) Making it Far: The Disclosure of Unused Material in Volume Crown Court Cases. Available from: https://www.justiceinspectorates.gov.uk/cjji/inspections/making-it-fair-the-disclosure-of-unused-material-in-volume-crown-court-cases/ [Accessed 02.02.2024]

Hohl, K. (2023) The impact of Covid 19 on police recorded domestic abuse: Empirical evidence from seven English police forces. Criminology and Criminal Justice, First published online November 17, 2023.

Hohl, K., Reid, A-K., Molisso, S. (2023). Rape and sexual assault survivors' experience of the police in England and Wales. Survey Report I: January – June 2023. London, UK: City, University of London.

Insert HMCPSI and HMIC, 2017

Howell, B.A. and Herberlig, B.M. (2007) 'The Lamar Owens Case: How Digital Evidence Contributed to an Acquittal in an Explosive Rape Case', The Computer & Internet Lawyer, 24(12), pp. 1–4.

Hoyle, C. and Sato, M. (2019) Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission. Oxford: Oxford University Press.

Information Commissioner's Office (2020) Mobile phone data extraction by police forces in England and Wales. Information Commissioner's Office.

Jordan, J. (2019) Policing Sexual Violence: Key Informants' Report: Women, rape and the police investigation process. Wellington, NZ: Victoria University of Wellington. Available at: https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/8841/Report.pdf (Accessed: 21 February 2024).

Kulakiewicz, A. and Powell, T. (2022) Patient health records: Access, sharing and confidentiality. HM Government: House of Commons Library.

Lodrick, Z. (2007) Psychological trauma – what every trauma worker should know. The British Journal of Psychotherapy Integration. Vol. 4(2). Available from: https://rockpool.life/wp-content/uploads/2019/07/What-every-trauma-worker-should-know-Zoe-Lodrick.pdf [Accessed: 02.03.2024]

Long, J. (2022) Police backlog of over 20,000 digital devices awaiting examination, Channel 4 News. Available at: https://www.channel4.com/news/police-backlog-of-over-20000-digital-devices-awaiting-examination (Accessed: 3 March 2024).

Maras, M.-H. and Miranda, M.D. (2017) 'Overlooking forensic evidence? A review of the 2014 International Protocol on the Documentation and Investigation of Sexual Violence in Conflict', Global Security: Health, Science and Policy, 2(1), pp. 10–21. doi:10.1080/23779497.2017.1281088.

Markey, J. et al. (2021) 'Sexual assault investigations and the factors that contribute to a suspect's arrest', Policing: An International Journal, 44(4), pp. 591–611. doi:10.1108/PIJPSM-03-2021-0051.

May, T. et al. (2022) 'Appendix 12: Pillar Six Findings', pp.178-190 in Stanko, B. et al. (2022) Operation Soteria Bluestone: Year One Report. London: Home Office.

McGlynn, C., Friskney, R. and Johnson, K. (2024) RASSO victim impact assessment (RVIA): Template. CCJR. Glasgow: SCCJR. Available from: https://www.sccjr.ac.uk/wp-content/uploads/2024/01/RVIA-Sep-2023-Web.pdf [accessed 03.03.2024]

Metropolitan Police and CPS (2018) A joint review of the disclosure process in the case of R v Allan: Findings and Recommendations for the Metropolitan Police Service and CPS London January 2018. Available from: https://www.cps.gov.uk/sites/default/files/documents/publications/joint-review-disclosure-Allan.pdf [Accessed 02.03.2024]

Ministry of Justice (2021) End-to-End Rape Review. Available: https://www.gov.uk/government/publications/end-to-end-rape-review-report-on-findings-and-actions [Accessed: 27 August 2023].

Ministry of Justice (2023) Rape Review Progress Update. HM Government.

Molina, J. and Poppleton, S. (2020) Rape survivors and the criminal justice system. Victims' Commissioner. Available at: https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2020/10/OVC-Rape-Survivors-and-the-Criminal-Justice-System.pdf.

Muir, R. and Walcott, S. (2021) Unleashing the value of digital forensics. London: The Police Foundation. Available at: https://www.police-foundation.org.uk/2017/wp-content/uploads/2010/10/value_of_digital_forensics.pdf (Accessed: 14 February 2024).

Murphy, A. et al. (2021) 'Lessons from London: a contemporary examination of the factors affecting attrition among rape complaints', Psychology, Crime & Law, pp. 1–33. doi:10.1080/1068316X.2021.1880584.

Murphy, E. (2014) 'The Mismatch between Twenty-First-Century Forensic Evidence and Our Antiquated Criminal Justice System', Southern California Law Review, 87(3), pp. 633–672.

National Police Chief's Council (2023) Tackling Violence Against Women and Girls –Policing Performance and Insights Publication. Insights Report. March 2023. Available from: https://www.npcc.police.uk/SysSiteAssets/media/downloads/our-work/vawg/tackling-vawg-policing-insights-report---policing-insights-report.pdf. [Accessed 03.03.2024].

Novak, M. (2020) 'Digital evidence in criminal cases before the U.S. Courts of Appeal: trends and issues for consideration', Journal of Digital Forensics, Security and Law, 14(4), pp. 1–42.

Pollak, O. (1950). The criminality of women. University of Pennsylvania Press

Powell, A., Henry, N. and Flynn, A. (eds) (2015) Rape Justice: Beyond the Criminal Law. London: Palgrave Macmillan UK. doi:10.1057/9781137476159.

Ramirez, F. et al. (2021) '"But her age was not given on her Facebook profile": minors, social media, and sexual assault trials.', Information, Communication & Society, pp. 1–17. doi:10.1080/1369118X.2021.1934065.

Ramirez, F.A. and Denault, V. (2019) 'Facebook, female victims, and social media evidence in sexual assault trials', in. 10th International conference on social media & society, Toronto.

Regehr, C., Regehr, K. and Birze, A. (2022) 'Traumatic residue, mediated remembering and video evidence of sexual violence: A case study', International Journal of Law and Psychiatry, 81, p. 101778. doi:10.1016/j.ijlp.2022.101778.

Regehr, K., Birze, A. and Regehr, C. (2021) 'Technology facilitated re-victimization: How video evidence of sexual violence contributes to mediated cycles of abuse', Crime, Media, Culture: An International Journal, p. 174165902110503. doi:10.1177/17416590211050333.

Richardson, V., Hanway, P., Baxter, R. and McMillan, J. (2022) Using appeal judgement transcripts to assess changes in the presence of digital evidence in police investigations Home Office Research Analysis. London: Home Office. Available at: https://www.gov.uk/government/publications/digital-evidence-in-appeal-judgement-transcripts/using-appeal-judgement-transcripts-to-assess-changes-in-the-presence-of-digital-evidence-in-police-investigations (Accessed 08.03.2024)

Rumney, P. and McPhee, D. (2020) 'The Evidential Value of Electronic Communications Data in Rape and Sexual Offence Cases'. Available at: https://dora.dmu.ac.uk/handle/2086/19594.

Russell, Y. (2017). Woman's Voice/Law's Logos: The Rape Trial and the Limits of Liberal Reform. Australian Feminist Law Journal, 42(2), pp.273-296

Sholl, E.W. (2013) 'Exhibit Facebook: The Discoverability and Admissibility of Social Media Evidence', Tulane Journal of Technology and Intellectual Property, 16, pp. 207–230.

Silk, K. (2023) Formal support needs of adult victim-survivors of sexual violence: Summary of research findings and recommendations from the Ministry of Justice's Programme of Research. Ministry of Justice Analytical Series. Available from: https://assets.publishing.service.gov.uk/media/63d0fb4dd3bf7f3c3e1c08b2/formal-support-needs-of-adult-victim-survivors-of-sexual-violence-summary-report.pdf [Accessed : 02.03.2024]

Slane, A. (2015) 'Motion to Dismiss: Bias Crime, Online Communication, and the Sex Lives of Others in NJ v. Ravi', in Bailey, J. and Steeves, V. (eds) eGirls, eCitizens: Putting Technology, Theory and Policy into Dialogue with Girls' and Young Women's Voices. Ottawa: University of Ottawa Press, pp. 253–280.

Smith, O. (2018) Rape Trials in England and Wales: Observing Justice and Rethinking Rape Myths. Palgrave MacMillan.

Smith, O. and Daly, E. (2020) Evaluation of the Sexual Violence Complainants' Advocate Scheme. Loughborough University.

Smith, O., & Skinner, T. (2017). How Rape Myths Are Used and Challenged in Rape and Sexual Assault Trials. Social & Legal Studies, 26(4), pp. 441-466.

Spencer, D.C. et al. (2019) 'Cynicism, dirty work, and policing sex crimes', Policing: An International Journal, 43(1), pp. 151–165. doi:10.1108/PIJPSM-07-2019-0123.

Stanko, B. et al. (2022) Operation Soteria Bluestone: Year One Report. London: Home Office.

Turner, J.I. (2019) 'Managing Digital Discovery in Criminal Cases', Journal of Criminal Law and Criminology, 109(2), pp. 237–311.

Uncel, M. (2011) '"Facebook Is Now Friends with the Court": Current Federal Rules and Social Media Evidence', Jurimetrics Journal, 52, pp. 43–69.

Walker, G. (2013) Rape, Acquittal and Culpability in Popular Crime Reports in England, c.1670–c.1750, Past & Present, Volume 220, Issue 1, pp.115–142

Watson, C. and Huey, L. (2020) 'Technology as a source of complexity and challenge for special victims unit (SVU) investigators', International Journal of Police Science & Management, 22(4), pp. 419–427. doi:10.1177/1461355720962525.

White, D. and McMillan, L. (2020) 'Innovating the Problem Away? A Critical Study of Anti-Rape Technologies', Violence Against Women, 26(10), pp. 1120–1140. doi:10.1177/1077801219856115.

Wigmore, J.H. (1940) A treatise on the Anglo-American system of evidence in trials at common law : including the statutes and judicial decisions of all jurisdictions of the United States and Canada . 3rd edition. Boston: Little, Brown.

## Legal cases

Bater-James & Anor. V R. [2020] EWCA Crim 790

Bater-James & Mohammed v R [2020] EWCA Crim 790

R v Allan [2017

R v H and C [2003] UKHL 3, para.35

Riley v California 573 US 373 2014