A STUDY OF ATTRITION IN RAPE CASES.

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ABSTRACT

The present study investigated the attrition process of rape allegations. The study adopted a multi-method research approach incorporating quantitative and qualitative data to reveal the factors that influence the processing of rape and the degree to which stereotypical notions, or 'rape myths', can still be held responsible for the poor outcome of so many cases.

Analysis revealed that the majority of rape allegations did not proceed beyond the police stage of proceedings, complainant withdrawals accounting for the majority of these. Just 21 per cent of the original sample reached the Crown Court, resulting in a final conviction rate of six per cent.

The research established that the views of those involved in investigating and prosecuting rape cases were often based on stereotypical views of 'genuine' rape, usually rooted in notions of appropriate female behaviour. Thus, cases approximating the 'classic rape' – involving stranger perpetrators, virginal victims, the use – or threat - of a weapon, and evidence of injury to the complainant – were those most likely to proceed. However, in a climate where the nature of rape has changed to include more allegations involving complainants and perpetrators who are known to one another, physical evidence is often lacking and the issue becomes one of 'consent' and whether the complainant willingly engaged in sexual relations with the alleged perpetrator. In this case, the focus turns increasingly to the character and the credibility of the complainant and whether she will present as a strong witness in court. Indeed, what is found to be at the centre of the debate is not necessarily whether there is a 'genuine rape' or even whether there is a 'credible victim', but, more usefully for the purposes of the criminal justice system, whether there is a convincing witness to put before a jury - a consideration that was found to affect decision-making throughout the system.
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Finally, I would like to thank my partner Arun, my family and my friends for their support and for putting up with me – particularly in the last few months of writing the PhD!

This thesis is dedicated to my mum.

Jessica Harris.
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1. INTRODUCTION

Aside from murder, rape is perhaps the crime that horrifies most. As well as being a physical assault, rape is a violation of "personal, intimate and psychological boundaries" (Kelly et al., 2005) that sets it apart from most other crimes in terms of the devastating and long-term effects it can have on a victim's life. The crime of rape has been the subject of most attention in relation to the ever-increasing attrition rate of reported allegations, something that has been a source of particular concern to academics and practitioners across a range of disciplines over the last two decades (Wright, 1984; Chambers and Millar, 1986; Morris, 1987; Temkin, 1987; Grace et al., 1992; Lees and Gregory, 1993; Jamieson et al., 1998; Harris and Grace, 1999; Lea et al., 2003; Kelly et al., 2005); in fact, this was highlighted as a concern in the media as recently as July 2005 with the Observer newspaper headline: "50,000 rapes each year but only 600 rapists sent to jail"¹ (The Observer, Sunday, July 31st 2005). The most recent Home Office figures of recorded rape allegations reveal an ongoing decline in the rate of convictions for rape in England and Wales, with an all-time low of just 5.4% of cases in 2003/04 (see Appendix A).

Attrition can occur at a number of points throughout the criminal justice process: at the investigation stage, once an allegation has been reported to the police, they might choose to record that allegation as a 'no-crime' - this decision strictly-speaking only being an option if the complainant retracts completely and admits that the allegation was false. If the police decide to 'crime' an allegation (i.e. to record it as an offence), they might still choose to take no further action in the event of insufficient evidence, if the offender is not detected or if the complainant retracts her allegation. If they decide to charge a suspect, then the case is passed to the Crown Prosecution Service (CPS) for a decision on whether to proceed with a prosecution. The CPS must decide whether prosecution is appropriate applying the evidential and public interest criteria set out in the Code for Crown Prosecutors. At this stage, the CPS might decide to discontinue proceedings. If they decide to prosecute the offender, then the case is passed to the courts where attrition can occur in the form of an acquittal of the offence

¹ This article estimated that in 2003 about 50,000 women were raped in the UK, although just 11,867 went to the police. Of those cases, 1,649 went to trial.
of rape or a conviction for a lesser offence. It is with reference to this attrition process that Bryden and Lengnick make the following observation:

“The average citizen may suppose that when a serious crime occurs the victim reports it to the police, who verify the report, try to identify and arrest the perpetrator and turn the case over to a prosecutor...In practice the system does not work that way. The justice system has been likened to a giant sieve, filtering out cases at every stage of the process”. (Bryden and Lengnick, 1997:1208)

Although all crimes are subject to attrition to some degree – where, for example, complainants decide not to proceed or there is insufficient evidence - the particularly high rate of attrition for rape cases has attracted much concern and criticism (Morris, 1987; Temkin, 1987); indeed, rape allegations are revealed as having the lowest conviction rate of all serious crimes (Philips and Brown, 1998).

Rape is a unique offence in several ways: most usually, the victim knows her perpetrator, with his usually being an ex-partner or an acquaintance. In such cases, the issue usually comes down to whether the complainant had willingly engaged in sexual relations with the alleged perpetrator; it is for this reason that the most likely – and successful – defence to rape is that the complainant consented. To complicate issues further, the only direct witness to a crime of rape is usually the victim herself. For this reason, in no other crime is the credibility of the victim subject to so much scrutiny (Archambault and Lindsay, 2001) which can lead to the complainant often feeling that she is the one who is on trial and must disprove her responsibility for the rape. As a result of this, many complainants report insensitive treatment by the police and a lack of encouragement throughout the process (Holmstrom and Burgess, 1983; Maguire and Pointing, 1988; Lees and Gregory, 1993) – something that has received a great deal of attention, particularly by women’s groups in the 1970s. The 1980s saw some changes in style and procedure introduced by the Metropolitan Police Service in response to critics and policy bodies including the Women’s National Commission (1985). However, despite an apparent shift, or an attempted shift, towards more sensitive treatment of rape complainants, various studies have revealed that these changes have had little effect in terms of victim satisfaction which remained low and
attrition rates which remained high (Adler, 1987; Gregory and Lees, 1996; Temkin, 1997). Different authors have tried to explain the difficulties in achieving convictions in rape cases as being due to the prevalence of ‘rape myths’ (Smart, 1977; Wilson et al., 1983; Hall, 1985; Smith, 1989; Torrey, 1991). Such myths are seen as not reflecting the reality of rape but as being based on stereotypical principles that define a genuine rape according to a ‘classic’ scenario: a stranger rapist who leaps from a bush, perpetrates a violent attack, involving the use - or threat - of a weapon that leaves the victim with serious injuries as proof of her ordeal (Estrich, 1987; Du Mont and Myhr, 2000; Myhill and Allen, 2002). Indeed, many of these authors go on to claim that, if the criminal justice system continues to fail to challenge these stereotypes so that only cases fitting the genuine rape template result in a conviction, then these myths will continue to be reinforced and the conviction rate will not improve.

The present study set out to explore further the difficulties involved with processing rape allegations and to investigate the possible reasons for the high attrition rate and consequent low conviction rate. The main body of the fieldwork was conducted between January 1996 and April 1997. Based on a study of 483 case files containing data from the time that an allegation was recorded by the police through to its eventual outcome, the pattern of attrition was explored and the factors associated with ‘good’ case progress and ‘bad’ case progress were identified. Qualitative interviews allowed for a deeper exploration of the reasons behind these patterns and the importance behind these factors with an in-depth look at the decision-making process of the police, prosecutors and judges – as well as complainants who must decide whether to report - and, if so, pursue - their allegations. Of particular interest were the issues that appear to affect how credible an allegation is perceived to be and the degree to which stereotypical notions, or ‘rape myths’, can still be held responsible for the poor outcome of so many cases. To this end, the present research sought to examine explanations for whether the high rate of attrition in rape allegations is due to:
1. discriminatory practices and procedures at various stages of the criminal justice process based on stereotypical beliefs and interpretations of what genuine rape is;

2. genuine evidential difficulties with processing rape allegations that result in weak cases and poor chances of conviction, having nothing to do with discriminatory practices and procedures.

The next chapter locates the present study in a legal context, with a review of legislation and legal developments that have taken place over the last two decades – often in response to criticism about the way that the criminal justice system handles rape cases. An appreciation of these developments, as well as an understanding of the reasoning behind their advancement, enables an informed judgement of whether they have, in fact, had the desired effect. Chapters three and four are review chapters that present and describe the existing literature on rape – the first dealing with the issue of attrition and the second focusing on the response of the criminal justice system. Several studies have embarked on a similar purpose to this thesis, seeking to reveal what lies behind attrition and what informs the judgements of practitioners – although few have based their research on as large a sample size or have combined quantitative with qualitative data involving all the main stakeholders to present a fuller picture, as the present study has. An appraisal of these studies, however, serves to situate the present research in the relevant context and raises some important questions and issues to be explored further.

Chapter five, the methodology chapter, sets out the way in which the research was conducted for this thesis and how the data were subsequently analysed. The study adopted a multi-method research design incorporating both a quantitative and a qualitative approach, and therefore this chapter is broadly divided into two sections dealing with how, and why, these two methods were employed.

Chapter six reports the key empirical findings emerging from the quantitative study. The analysis presents a description of the case characteristics of the sample and identifies the main points of attrition for rape allegations. This is followed by a
examination of the factors associated with allegations that appear to influence the decision-making process of the police, the CPS and the courts.

Chapters seven and eight present the results of the qualitative analysis incorporating discussion in relation to the literature on theory and research. Chapter seven presents an analysis of the police investigation of rape allegations, identifying the sort of factors and details about a case - or about a complainant - that were perceived to give legitimacy to a rape allegation. The degree to which myths and stereotypes underpin police decision-making is explored and the impacts that this can have on complainants in terms of police practice is revealed. Chapter eight presents issues concerning the prosecution stage of proceedings, focusing on the importance of a complainant's appearance in court and the implications that this has for her, as well as for those tasked with handling her case throughout the criminal justice process. The focus remains on what lies behind decisions that are made and the tactics that are used by the prosecution and the defence in preparing and presenting rape cases in a court setting.

Finally, the conclusions chapter draws together the various themes revealed by the analysis and considers the main issues arising from the research.
2. A HISTORY OF RAPE LAW REFORM

2.1 Introduction

The central focus of this thesis is on attrition in rape cases which will touch upon various issues concerning the handling of cases by criminal justice personnel and a consideration of complainants' experiences of the process. To put the thesis into a wider context, it is necessary to understand the development of legislation in this area as well as recent legal changes dealing with process issues and evidential issues. This chapter therefore provides a review of the history of rape law reform. After an initial look at changes that have been targeted at police practice, the review goes on to consider the reform of the law in terms of the statutory definition of rape and how defences to the charge of rape have evolved in respect of this. The chapter goes on to reflect on changes in the rules of evidence over the years, concluding with a review of sentencing guidelines.

The basic underlying premise of the British adversarial system is to protect the rights of the defendant. It might be argued that, in the case of rape allegations, the protection of the defendant from the tarnish of false allegations predominates over the rights of the victim to obtain justice. Conflict of interest is at the core of rape trials and processes within the police, the CPS and the courts are, arguably, weighted in favour of men (Gregory and Lees 1999) – although whether the favouritism is targeted at men or simply at defendants who happen to be men continues to be a subject of debate. It is with a view to redressing this imbalance of power that many have campaigned for legislative reform.

As growing evidence comes to light of the inadequacy of the current criminal justice system in relation to rape (Smart, 1989; Temkin, 1999; Kelly et al, 2005), advocates of law reform point to the low conviction rate for rape, the likelihood of convictions for lesser offences, and the perceived lenient sentences associated with this offence which all send negative messages out to victims who have been raped. In addition to campaigning to change the public's perception of rape and the victims of this crime,
groups promoting general ‘law and order’ focus on modifying existing criminal justice practices (Bachman and Paternoster, 1993).

In highlighting the ineffectiveness of the criminal justice system in relation to rape, the media has been one of the most vocal groups in favour of rape law reform. The press have given widespread publicity over the years to highlighting the low conviction rate for rape and the inadequacy of the criminal justice system to protect the interests of victims and witnesses. Television programmes have highlighted a number of issues around which feminists have campaigned including the issue of rape within marriage (World in Action, 1989), date rape (BBC News, May 2000) and lenient sentences imposed in rape cases (BBC News, September 4 1993). Outrage has been expressed at how victims’ dress codes can affect the outcome of rape trials (Guardian, February 16 1999) the unsympathetic manner in which the police deal with victims (BBC, Police, 1982) and how the criminal justice system serves to harass and belittle rape victims (Guardian, March 8 2000), as well as the question being raised as to whether sexual history is ever relevant in rape cases (The Times, July 13 1999).

The judicial treatment of rape has undergone several changes in the last 20 years or so, mainly in response to the campaigning of groups such as Rights of Women, the Women’s Aid Federation, Women Against Rape and Rape Crisis Groups (Gregory and Lees, 1999). To some extent, rape law reform has been a “product of a fragile alliance amongst feminist groups, victims’ rights groups and organisations promoting more general law and order themes” (Bachman and Paternoster, 1993:554). Indeed, different reform groups tend to have different agendas and the intended goals of rape law reform for those different parties may not always be clear.

In encouraging a greater focus on the seriousness of the crime of rape, feminist groups are motivated in part by ideological issues arising from societal perceptions of rape and rape victims. Such perceptions include the belief that rape is not a serious or a violent offence and that stranger rape is by far worse than a rape occurring between intimates or acquaintances – views which are usually based on rape myths about what constitutes a ‘real’ victim. Arguably, for feminist groups, an important consequence of rape law reform is largely symbolic and ideological, in that the public and the
criminal justice system are educated about the seriousness of rape so that the stigma experienced by victims, and rape myths and stereotypes, are neutralised.

Legislative change has touched upon practice in the police, the CPS and the courts. Indeed, rape law reform can only be most effective if it concerns the whole criminal justice process. In the words of Williamson (1996), if we leave the lawyers to “slog it out in adversarial combat” while confining reform initiatives exclusively to the police, progress will be severely limited, as Gregory and Lees observe (1999). At best, this might serve to encourage more victims to report rapes to the police given improvements in the way they handle allegations only for the system to fail them later on (Gregory and Lees, 1999); at worst, police practice would still be influenced by the CPS and the courts so that, despite improvements at the police stage of proceedings, anticipation of the later stages would cause a certain amount of negative attitude and discouragement for complainants to report, or proceed with, their allegations.

2.2 Improvements in police practice

A television documentary in the early 1980s which showed fly-on-the-wall footage of the ‘intimidating’ interviewing technique of Thames Valley police officers speaking to a woman who claimed she had been raped provoked a massive public outcry (BBC documentary: ‘Police’, 1982). This brutal exposure of a system which was, at best, inadequate caused the Prime Minister at the time – Margaret Thatcher – to publicly criticise the police treatment of women reporting rape. This, and other calls for reform to the way the police handle rape allegations, has resulted in some progress.

At around the same time, Home Office Circular 25/1983 was released offering advice to Chief Constables on the handling of investigations into offences of rape and the treatment of victims. This was met with a positive response and, in 1984, the Women’s National Commission set up a working group on violence against women to monitor developments in light of the circular, resulting in a report responding to the new policy guidelines which was issued to the Home Secretary and all police forces in England and Wales (Women’s National Commission, 1985). The report recommended that the Home Secretary issue a further circular to include discussion of
the continued problem of under-reporting of rape, calling for new police training, the appointment of female police officers and better facilities for medical examinations.

In response to the report from the Women’s National Commission, Home Office Circular 69/1986 was issued to police forces in England and Wales, encouraging them to have a more sympathetic approach to rape victims and taking on board recommendations made in the report. It also resulted in a commitment on the part of the Metropolitan Police to make improvements in relation to sexual assault cases, which included the establishment of dedicated rape suites where complainants could be medically examined in comfortable surroundings.

Addressing police practice in this way and sending out a message that the police dealt more sympathetically with rape is thought to have accounted for much of the rise in the reporting and recording of rape offences. Something that Home Office Circular 69/1986 also drew particular attention to was police practice when it came to recording crime to eliminate any existing confusion between false or unsubstantiated allegations and allegations withdrawn because the victim was too afraid to pursue them or there was a lack of evidence. It was stated that only complaints where “the complainant retracts completely and admits to fabrication” should be classified as a ‘no-crime’ - unsubstantiated complaints were not to be recorded as such. The degree to which this has been adhered to is questionable and is something that will be explored in the present research.

Changes to rape legislation over the years have generally taken the form of widening both the definition of rape and the circumstances in which it is recognised to have occurred. This chapter will now go on to consider the statutory definition of this offence and how it has been modified over the years in response to issues concerning rape within marriage and male rape. Defences to the charge of rape will then be considered where the issue of consent is in the spotlight and circumstances exist in which this might be disputed. The chapter will then turn to reflect on changes in the rules of evidence over the years and how these have evolved as far as the admission of sexual history evidence is concerned, the cross-examination of victims in court and the corroboration ruling given by a judge. Finally, the issue of sentencing guidelines
will be considered and how these fit in terms of relevance to the crime of rape in modern day society.

2.3 The statutory definition of rape

The beginning of the 21st Century saw a major overhaul of the legislation concerning sex offences in England and Wales. Prior to this, the law on sex offences was based on legislation implemented in 1956 with some parts dating as far back as the 19th Century. It is in this context that cases in the present study were dealt with and therefore the section will start with a review of the law based on this legislation.

2.3.1 Actus Reus

Before 1994, the definition of rape was peculiar in that it was gender-specific - at common law it could only be committed through sexual intercourse involving penetration of the vagina by the penis and therefore could only be perpetrated by a man upon a woman. It was not necessary for ejaculation to have occurred, proof of any amount of penetration without the woman’s consent constituting rape.

2.3.2 Mens Rea

Mens Rea – the literal Latin translation of which is ‘guilty mind’ - refers to the intent required for an offender to commit a crime. Actus Reus and Mens Rea are essentially components of all crimes, but Mens Rea only really becomes relevant when the conduct that is in question involves some level of ambiguity – as with the crime of rape.

The Sexual Offences Amendment Act 1976 established recklessness as part of the mens rea of rape. Section 1(1) of the Sexual Offences Act 1956 clarified that a defendant could be found guilty of rape if he was aware that the other person was not consenting to sexual intercourse or was reckless as to whether or not she was. The term ‘recklessness’ covers a range of circumstances including not caring less as to whether a victim consented to sexual intercourse or not – as was interpreted in the
case of *Satnam and Kewal*. Amendments to legislation have since sought to address the confusion that can arise from a defence of subjective belief in consent as opposed to an objective belief. Hence, in the Sexual Offences Act 2003, the mens rea of rape has been redefined, setting down for the first time a clear definition and new responsibilities surrounding consent so that a defendant can be held culpable for a rape if “[the victim] does not consent to the penetration, and [the defendant] does not reasonably believe that [the victim] consents” (Section 1(a)(b), Sexual Offences Act 2003). This issue will be returned to later in the chapter.

2.3.3 The exemption of rape within marriage

Before 1991, there was no such crime as rape within marriage. To that end, if a husband forced his wife to have sexual intercourse against her will it was not recognised as an offence.

In 1736, Chief Justice Hale wrote:

“but the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract...” (Hale 1736)

This view suggested that, in common law, a married woman had no capability or authority to ‘not consent’.

Over two hundred years passed after the publication of Hale's work before there was any substantive challenge to his principle. Indeed, the law reflected the state of society at that time where the status of women was less than equal to that of men. A wife then was expected to be subservient to her husband and to give her unconditional consent to sexual intercourse with him under all circumstances irrespective of her health or of her own personal needs and desires. In fact, before the criminalisation of

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marital rape, a man's immunity remained intact not only in the case of rape but also in the case of indecent assault on his wife (R v Caswell2).

Despite this, even when rape within marriage was not recognised as an offence, it appears that evidence of injury or violence was starting to have a bearing on the degree to which an act could be criminalised. This can be seen in the case of R v Miller3, a husband who was charged with rape and Actual Bodily Harm of his wife after she had left him and had filed for divorce. Thus, whilst married men were exempt from liability for raping their wives before 1991, they could be prosecuted for accompanying assault or violence. Indeed, today, it appears that evidence of injury or use of a weapon certainly carries some weight in strengthening the credibility of a woman's allegation when she reports rape. In fact, in terms of sentencing, such factors count as aggravating evidence.

Since the crime of rape was first defined in statute, allegations of rapes between intimates, including married partners, have increased. Furthermore, the status of women, and particularly married women, has changed considerably to what it was. Marriage is now recognised both legally and socially as a partnership of equals in which a woman has her own needs and desires and in which she cannot be compelled to succumb to the needs and desires of her husband simply by virtue of being his wife if she does not want to. It therefore became increasingly clear that, on grounds of principle, there was no justification for marital exemption to remain when it came to rape and, in modern times, this forms no part of law in England and Wales. Indeed, despite the fact that forced sexual intercourse within marriage was not deemed to be an offence, the immunity of a husband being found guilty of raping his wife was gradually eroded over the years. Several cases came to light which showed that, if there was a separation order in force (R v Clarke4), a decree nisi (R v O'Brien5) or a non-molestation order (R v Steele6) spousal immunity ceased. Hence, the law slowly evolved and reformed in light of social, economic and cultural developments which all had some influence on the perception of rape.

2 [1984] Crim LR 111.
4 2 All ER 448.
5 3 All ER 663.
6 65 Cr App Rep 22, CA
The pivotal case responsible for the change in the law to finally include rape within marriage was *R v R* where an alleged victim's husband had attempted to have sexual intercourse with his estranged wife without consent resulting in his physically assaulting her by trying to strangle her. The question posed to the courts in the case of *R v R* was whether this act fell under the legal definition of ‘unlawful’ sexual intercourse, despite the fact that, with reference to Hale, the defence argued that the acts could not be classed as unlawful because they were against his wife. The judge in the case, Mr Justice Owen (1990), considered the defence and came to the conclusion that Hale's comment was no longer valid as it was “a statement made in general terms at a time when marriage was indissoluble”. Mr Justice Owen therefore ruled that the act could be classed as attempted rape and sentenced the defendant to 3 years imprisonment. The defence appealed, arguing again that the judge was wrong to rule rape within marriage as being against the law when the marriage had not been revoked. However, this was dismissed unanimously by the Court of Appeal in *R v R* when a ruling finally overturned hundreds of years of precedent and a man was found guilty of raping his wife, a judgement which was confirmed in statute in the Criminal Justice and Public Order Act 1994. Towards the end of the judgement in the Court of Appeal, Lord Chief Justice Lord Lane was recorded as saying:

“...This is not the creation of a new offence, it is the removal of a common law fiction which has become anachronistic and offensive and we consider that it is our duty having reached that conclusion to act upon it.”

(Lord Chief Justice Lord Lane, 1991)

Despite the fact that the abolition of the marital exemption gave a clear message that wives have a right to self-determination (Gregory and Lees, 1999), it is surely remarkable that it took that long before rape within marriage was deemed an offence. By 1991, women were empowered in most arenas of their lives in terms of rights and legal positions – for example, women have won significant rights to maternity benefits or more equal divorce settlements in recent decades. However, gaining convictions in rape cases is fraught with difficulties, where sexuality - even in this day

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7 All England Law reports, 747.
8 All England Law Reports, 257
and age - is still perceived as appropriation and possession of a woman by a man, where a woman’s active sexuality is denied and where negotiated consent is not considered necessary (Naffine, 1994). It could be argued that it is because of these very attitudes that the rape immunity law proved so difficult to abolish, where its abolition is symbolic in challenging the view of women as possessions and passive objects of their husbands’ desires (Gregory and Lees, 1999).

To take this further, Easteal (1998) raises the concept of ‘masculocentrism’ – the male nature of rape reform and its interpretation - around which the problems and pitfalls of reform are centred. In this sense, Easteal claims that, because the law has developed through male dominated processes of reasoning and standard setting, the result is a legal system that ultimately still fails to recognise women’s experiences. Taking, for example, ‘marital’ or ‘spousal’ rape, Easteal suggests that the wording or terminology used does not capture the gendered nature of this crime – after all, it is only possible for a husband to rape his wife, not vice versa. This is quite apart from the masculocentrism mirrored in the mythology surrounding how husbands and wives relate to sex and rape.

2.3.4 Male rape

At the same time as rape within marriage being included in the legal definition of rape, a similar amendment to the Criminal Justice and Public Order Act 1994 declared that the definition should also be widened to include non-consensual buggery and, therefore, rape of a male. Legally, it is not possible for a woman to commit rape because the proof of the offence specifically involves penetration. Having said this, a woman who acts as an accomplice of a man who commits rape can be convicted of that offence (Home Office, 2000b).

2.3.5 Age of offender

In England and Wales, the presumption that a boy under the age of fourteen is incapable of sexual intercourse, and therefore of rape, was abolished in the Sexual Offences Act (1993). This ruling consequently meant that any boy over the age of ten-years-old could legally be charged with rape.
Various piecemeal changes over the years meant that the law in respect of sex offences emerged as seeming somewhat complex and confusing. Indeed, the Home Office acknowledged that this had effectively resulted in a 'patchwork quilt of provisions' (Home Office, 2000a) that needed to be addressed. Therefore the Sex Offences Review was initiated in 1999, resulting in a Sex Offences Bill before the Sexual Offences Act 2003 which finally came into force in May 2004. This Act widened the definition of rape by determining the Actus Reus as penetration by a penis of a vagina, anus or mouth of another person without their consent.

2.4 Defences to the allegation of rape

The key to proving an offence of rape is to establish that it was committed without the victim’s consent, something that is almost invariably difficult to prove or disprove. Other defence arguments such as ‘it did not happen’ or ‘it happened but it was not the defendant’ are less common since the development of DNA testing (Lees, 1996).

The Sexual Offences (Amendment) Act 1976 was the first to use the term ‘consent’ in statute – previously, force had been the relevant factor. However, absence of consent was not always easy to establish in situations where force - threats or the fear of - was absent, if the victim had been asleep or intoxicated or where fraud was involved - including the impersonation of the victim’s husband. The Sexual Offences Act 2003 therefore brought some clarification to the situation by defining the issue as:

"a person consents if he agrees by choice, and has the freedom and capacity to make that choice.” (Section 74, Sexual Offences Act 2003)

However, determining whether a person consented to sexual intercourse is still very hard to prove or disprove since there is usually very little evidence to confirm the argument of either party.
2.4.1 Fraud or impersonation to obtain consent

Section 142(3) of the Criminal Justice and Public Order Act 1994 served to confirm existing law that a man could be held liable for rape if the victim’s consent to sexual intercourse had been secured by fraud or impersonation. Consent cannot be true if the victim was deceived as to the identity of a man with whom she has sexual intercourse. For example, in the case of *R v Elbekkay*\(^9\), a couple had been out with a friend of theirs and upon returning home the woman went to bed. The friend, who the woman at first believed was her boyfriend, later got into bed with her and proceeded to have sexual intercourse. The defendant in this case was convicted of rape.

Fraud as to the *nature* of the act where the true purpose of the sexual intercourse is concealed from the woman can also call into question how ‘true’ consent was. For example, in the case of *R v Williams*\(^10\) a singing master obtained the consent of a 16-year old girl by claiming that sex with him would improve her breathing control. A more recent example of deception that did not relate to the nature of the act concerns *R v Linekar*\(^11\). However, in this case, consent obtained by the defendant conditional on his false promise to pay a prostitute £25 in advance, and use a condom, was held not to vitiate consent as it was not fraud as to the actual act of sexual intercourse. In this sense then, consent might arguably be conditional.

It was in response to the confusion caused when fraud or impersonation is used to obtain consent that the Sexual Offences Act (2003) stated that a victim is conclusively presumed not to have consented where:

- the defendant intentionally deceived the complainant as to the nature or the purpose of the relevant act; or

- the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

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\(^10\) [1923] 1 KB 340.
\(^11\) [1995] 3 All ER 370.
2.4.2 Mistaken belief in consent

A separate defence to rape might be 'mistaken belief in consent'. This is where, even if the complainant can prove that she did not consent to sexual intercourse, the defendant 'honestly believed' that she was consenting and this subjective belief counts as a defence. This has been referred to by some as the 'rapist's charter' seeing it as essentially more favourable towards a rape defendant than a rape complainant. A significant case here is illustrated by **DPP v Morgan**, the case that established the 'honest belief' principle. In that case, Morgan invited three men home with him to have sex with his wife. According to these men, Morgan had told them not to be surprised if his wife struggled and appeared not to like it as it merely heightened her enjoyment and turned her on. When the case came to court, they admitted that she had struggled and screamed for help, but insisted that they had honestly believed that she had been consenting – the belief needed not even to have been reasonable. The House of Lords ruling in **DPP v Morgan** established a subjective test of belief in consent for rape claiming that, however unreasonable the defendant's belief in a victim's consent, if honestly held this would entitle him to an acquittal. In fact, in the case of Morgan, the defendants were ultimately convicted of rape, their convictions subsequently upheld on appeal. However, it was still held by the Lords that there could be no conviction for rape where a man honestly believed that a woman consented to sexual intercourse and that that belief need not even to have been reasonable. Since then, the responsibility is placed back on the defendant under section 1 in the Sexual Offences Act 2003, where he must have taken reasonable steps to establish whether or not consent was present and not just have 'honestly believed' that it was. Honest beliefs, however unreasonable, as in the case of **DPP V Morgan**, are no longer a defence and so the prosecution need only show that a reasonable person would have realised the lack of consent.

Arguably, advocates of law reform maintain that this latest ruling closes the 'date rape loophole' (as claimed in the Observer, October 27 2002), denying alleged rapists the opportunity to rely on a defence of honest belief where they can get away with

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12 [1976] AC 182, HL.
claiming that they believed that a complainant wanted sexual intercourse when she quite clearly did not.

2.5 Rules of evidence

Goldberg-Ambrose (1992) suggests that, to be most effective, law reform should focus on the trial process, particularly on how rules of evidence and the ways in which rape cases are constructed relate to social perceptions of gender, coercion and sexuality.

Rules of evidence in rape cases have been modified to some extent over the years in response to various concerns, including that court proceedings are very often unfair and damaging for the victim. Criticisms have centred around the admission of a woman’s sexual history in court as evidence of her sexual character, the nature of cross-examination a complainant must endure from the defence - or even from the defendant himself - and the warning the judge gives a jury about the danger of convicting a defendant on the basis of the victim’s evidence alone, in the form of a corroboration warning.

2.5.1 Sexual history evidence

Section 2 of the Sexual Offences (Amendment) Act 1976 sought to protect a complainant of rape from the unrestricted admission at trial of evidence relating to, or cross-examination about, her previous sexual experiences. The Act stipulated that the defence must apply to the judge for permission to cross-examine a complainant about her sexual history, and for the decision as to whether it was fair to exclude it to rest with that judge. However, various concerns were raised doubting the effectiveness of section 2 (for example, Lees, 1996:251) resulting in the publication of “Speaking Up for Justice”, sexual history constituting a small part of this report of the interdepartmental working group set up by the Home Office in 1998. That report testified to there being “overwhelming evidence that the present practice in the courts is unsatisfactory and that the existing law is not achieving its purpose” (para 9.64) leading the group to propose a change in the law (para 9.70). Subsequently, sections 41 to 43 in the Youth Justice and Criminal Evidence Act (1999) gave further
restrictions upon what evidence of an alleged victim's sexual behaviour can be considered relevant in an attempt to control sexual history evidence more rigorously.

However, the extent to which judges have truly restrained defence barristers from resorting to sexual history evidence unnecessarily is debatable. Other jurisdictions, including Australia and the US state of Michigan, have seen the complete abolition of judicial discretion regarding sexual history evidence – something that the Youth Justice and Criminal Evidence Act (1999) has attempted to do - and, as a result, have seen increases in the rate of convictions and a greater willingness of victims to come forward (Adler, 1987; Hess Allen, 1990).

2.5.2 The rights of defendants to cross-examine witnesses

The press have given widespread publicity to cases where defendants dismiss legal representation and have decided to undertake their own defence and cross-examine their victims in a rape trial. One case involved Julia Mason whose assailant Edwards cross-examined her for six days, wearing the same clothes he had worn when he had attacked her (Telegraph, 18 May 2001). Shortly after this case, a Japanese woman who had been gang-raped by five men was also subjected to twelve days of cross-examination by her assailants. Despite the Home Secretary at the time, Michael Howard, claiming that he would abolish a defendant’s right to undertake his own defence, several more similarly shocking cases came to light before something was done, including the case of Floyd Bailey who left his victim in tears after making her describe his genitals in graphic detail to the courtroom and the case of Milton Brown who was also allowed to cross-examine his victims for five days in the witness box.

Following these cases, the new Labour Home Secretary, Jack Straw, announced that there would be ‘a swift change to the law’ to take forward the previous government’s proposal (BBC News, May 6 1998). Straw declared that:

“Women who have been raped should not be victims twice over. I set up an urgent review to identify ways to improve the treatment of vulnerable witnesses at every stage of the criminal justice process.” (Jack Straw, 1988)
In this respect, Straw was referring to the concept of ‘secondary victimisation’ that complainants can endure as a result of insensitive treatment at the hands of the criminal justice system (Maguire and Pointing, 1988). Straw maintained that he planned to put “the interests of victims, not criminals, first” (Lees, 1997). Finally, as part of the raft of measures introduced in the Youth Justice and Criminal Evidence Act (1999), an absolute ban was put on defendants being allowed to cross-examine their alleged victims where they had chosen to legally represent themselves.

2.5.3 The corroboration ruling

Under old common law, a judge was required to warn the jury of the dangers of convicting a defendant upon the uncorroborated evidence of a complainant - despite there being no legal requirement for corroboration in the case of rape allegations under English law. This was criticised for being superfluous and likely to raise unnecessary doubts in the minds of jurors. Since a judge was compelled to warn a jury against convicting in every rape case, cases involving rape between intimates or acquaintances which were inherently weak evidentially would be those most likely to suffer. Following recommendation by the Law Commission\(^\text{13}\) that the law on corroboration be changed, section 32(1)(b) of the Criminal Justice and Public Order Act (1994) abolished the requirement that a judge should warn a jury about the dangers of convicting on the uncorroborated evidence of a complainant. In accordance with this change, the Home Secretary at that time, Michael Howard, claimed that the warning was “outdated and demeaning to women” (The Times, November 10 1993). The case of \(R\ v\ Makanjuola\(^\text{14}\) demonstrated the Court of Appeal’s support for the purpose of legislation that abolished the requirement for a corroboration warning strengthening the argument that this should be seen as a feature of old law. To this end, Lord Taylor LCJ claimed that there would need to be an evidential basis for suggesting that evidence pertaining to a witness might be deemed unreliable, something that should go beyond a mere suggestion from the defence counsel.

\(^{13}\) Law Comm No. 202, Corroboration of Evidence in Criminal Trials (Cm 1620, 1991)

\(^{14}\) [1995] 3 All ER 730.
2.6 Sentencing in rape cases

Concerns have been voiced that sentences given for rape indicate a lack of understanding of the impact that this crime can have on a victim’s life and a general failure to take rape seriously. In response to these concerns, there has been some activity around the issue of sentencing in accordance with changes to the definition of rape that have extended the focus of the offence.

The Billam\(^{15}\) (rape) guidelines state that:

"Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence." (Lord Chief Justice Lord Lane).

In England there is no mandatory minimum sentence for rape as there is in other countries. English case-law provides that the sentence for most rapes should be between five and seven years and an immediate custodial sentence is almost invariably required. Moreover, recent legislation (Crime (Sentences) Act 1997) provides for mandatory minimum sentences for those convicted twice of rape. In his summary to the \(R v \) Billam\(^{16}\) case, Lord Lane set out the following sentencing guidelines which establish four starting points for a rape committed by an adult, after a contested trial:

- 5 years imprisonment for an offence with no aggravating or mitigating factors;
- 8 years imprisonment for case where certain aggravating factors are present;
- 15 years plus imprisonment for an offender who has carried out a campaign of rape;

\(^{15}\) [1986] Cr App R 347
\(^{16}\) [1986] 1 All ER 985
• life imprisonment where the offender’s behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time.

2.6.1 Aggravating factors in sentencing

The Billam guidelines go on to recommend specific aggravating factors that warrant ‘a substantially higher sentence’. These include cases involving the use of violence or of a weapon to wound or frighten a victim, evidence of premeditative behaviour or of a victim being particularly young. However, whilst the use of violence or of a weapon to wound or frighten a victim counts as aggravating, in the majority of cases of rape the issue is one of consent and evidence to corroborate an allegation in the form of injury is usually non-existent. Evidence of premeditative behaviour or of a victim being particularly young is perhaps also less representative of an acquaintance or date rape scenario.

There is some support for the view that judges have somewhat sexist attitudes to rape and that the courts still tend to consider a stranger rape as the worst category of rape, where, it could be argued, aggravating factors such as those set out in Billam, are more likely to occur. This attitude can be seen in judgements as recent as the 1980s, as in the following case of Berry\(^\text{17}\), where the court said:

"...To our mind...in some instances the violation of the person and defilement that are inevitable features where a stranger rapes a woman are not always present to the same degree when the offender and the victim had previously had a long-standing sexual relationship."

2.6.2 Mitigating factors in sentencing

Billam sets out mitigating factors in cases of rape which might be interpreted as being more in favour of the defendant than of the complainant. A guilty plea on the part of the defendant is mitigating in all case trials, as is a defendant’s good character.

\(^{17}\) [1988] 10 Cr App R (S) 13
although the Court of Appeal said in Billam that the latter was of only minor relevance in relation to such a serious offence as rape. What is surprising, then, is the fact that the victim's behaviour can be called in to mitigate an offender's actions in a case of rape. The relevance of a victim's behaviour to the seriousness of an offence of rape is a difficult and highly sensitive issue. Although Billam states that just because a victim may have been naïve, unwise or careless in her actions, this cannot be seen to affect the seriousness of the attack upon her, the guidance also goes on to say that if she behaved in a manner which was calculated to the extent that the defendant believed that she would consent to sexual intercourse there should be some mitigation of the sentence.

The sentencing guidelines for rape as set out in Billam were drawn up prior to several amendments and modifications to rape law, including a recognition of male rape, anal rape of a woman and rape within marriage. These guidelines were criticised for being somewhat out-of-date and out of touch with the true, more modern nature of rape with a greater proportion of cases involving acquaintances and intimates rather than strangers. Therefore, following the inclusion of rape in the Sexual Offences Act 2003, new guidelines were produced based on advice from the Sentencing Advisory Panel (2001) report of the Home Office. These guidelines retain the structure established in *R v Billam* (1986) but take into account changes in the legislation since those guidelines were first issued. In addition, there has been an attempt to account for the existence of a relationship between the offender and victim given that the guidelines apply to intimate, acquaintance and stranger rapes, and similarly to male and female rape cases. Although it is still too early to know what effect the new guidelines are likely to have, in practice, evidence has indicated that overall sentencing severity has been lower in cases where parties are known to one another and, in some cases, a relationship might even be treated by the courts as a mitigating factor which can lower the sentence imposed.

2.7 Conclusion

Changes to rape legislation over the years have generally taken the form of widening both the definition of rape and the circumstances in which it is recognised to have occurred. This has been with a view to responding to change in the understanding of
the nature of rape in modern times and bringing practice up-to-date. Whether it has worked remains to be seen. It is too soon for this study to know how the Sexual Offences Act 2003 will be interpreted and what impact, if any, it will have. Whilst there has been a widening of the definition of rape to include, for example, male rape and marital rape, cases involving intimates or acquaintances still prove problematic and difficult to convict and it is not easy to see how rape law reform will truly deal with reflecting the changes in circumstances in which rape is recognised to have occurred. It is important to realise that, whilst 'consent' is now defined in statute, this does not solve many of the related issues since passivity or non-resistance is often equated with consent (Henning, 1997) especially when there is no evidence of any physical violence or the complainant had consented in the past (Harris and Weiss, 1995).

There have indeed been some positive changes in the law in relation to rape. The abolition of defendant’s right to take over his own defence in rape trials, for example, prevents victims from having to face the horror of being cross-examined by their own attacker; the removal of 'honest' or 'mistaken' belief in consent as a defence puts the onus on the defendant to have taken reasonable steps to establish that consent was present; and the aim to eliminate discretion in terms of the admission of sexual history evidence takes the focus away from a woman’s previous sexual experiences in deciding on the case in question - although the level of restriction a judge places on this in practice is still questionable. However, it is desirable for training, monitoring and accountability to be written into any reforms if implementation of law reform is to be a reality. Without adequate training and monitoring, it is unlikely that such restrictions will be any more successful than the Sexual Offences (Amendment) Act 1976. Effective reform of the criminal justice system depends heavily on the provision of adequate training and retraining of those involved, on the provision of adequate support services and on ensuring that the perpetrators of rape are brought to justice and that victims are protected and cared for. Rape law reform has only as much impact as the procedures and people in the criminal justice system permit.

Finally, it is worth bearing in mind that the reason for which the processing of rape has received so much criticism - the high attrition rate - is not solely related to how rape is defined in law. Jeffreys and Radford (1984) argue that reforms can only ever
be effectively implemented alongside a transformation of men’s attitudes. Perhaps this is easier said than done given that Gans (1997) claims that laws are less difficult to change than prejudiced attitudes. An examination of prejudices and stereotypical views about rape is therefore of utmost importance to a study such as this.

Having placed the present study into some legal context, the following chapter provides a review of the literature concerned with the attrition of rape cases.
3. UNDERSTANDING RAPE AND ITS ATTRITION: A REVIEW OF THE LITERATURE

3.1 Introduction

This chapter is divided into five main parts. It will start by looking at some of the theoretical explanations that have been put forward to explain the existence of rape in society. Following this, the nature and prevalence of rape is discussed to reveal the extent of the problem and provide some context to the thesis. The main body of the chapter contains a review of the studies that have examined the attrition of rape cases, drawing primarily on research from England but also referring to work from Scotland and America which is relevant and useful to the debate. The chapter will conclude with a closer look at what factors appear to influence the attrition process and, according to particular details about the alleged incident or about the complainant, contribute to notions about genuine rape or a credible victim.

3.2 Theoretical explanations for rape

In order to investigate the ways in which the criminal justice system responds to rape, it is important to understand the different accounts of why this crime occurs in the first place. Research on rape is primarily concerned with criminal etiology, although psychological explanations were most common before the 1950s. Psychopathological models tend to explain rape individualistically as a ‘disease’ - as a rare, random act committed by an abnormal group of males suffering from uncontrollable sexual impulses and requiring psychiatric treatment (Johnson, 1980; Scully, 1990; Matoesian, 1993). Such views were, and still are in some quarters, perhaps more palatable to the public since rape is not presented as a widespread social problem but as an isolated act among a few apparently sick individuals. However, since the 1970s, feminist scholars have risen to the challenge of dispelling this original rape myth by claiming that rape is not simply a disease affecting a small minority of men and nor is it an inevitable result of men’s uncontrollable sexual need. Indeed, if rape can be explained this way “…why (are) women in some societies...the targets of so much uniquely male ‘disease’?” (Scully, 1990:46). Thus, the contribution of psychological
theories to explaining and understanding the incidence of rape has been limited. Rather, feminist studies on sexual violence and aggression have tended to move in a radically sociological direction with a greater focus on patriarchy and the origins and maintenance of women’s subordination. The incidence of rape in society is broadly explained in terms of four overlapping dimensions.

First, the incidence of rape is believed to vary with the structure or cultural organisation of society (Sanday, 1981; Schwendinger and Schwendinger, 1983; Baron and Strauss, 1989; Matoesian, 1993). For instance, Baron and Straus (1989) found the rate of rape to vary inversely with the degree of gender equality in society whilst Schwendinger and Schwendinger (1983) maintain that rape is interconnected with sexual inequality and capitalism. Indeed, research has shown that when economic or political power is concentrated amongst men, violence against women is high (Collins, 1975:230, 1988) – although the difficulty of such macro theories is in operationalising them – how, for example, does one measure sexual inequality?

Feminist studies have also sought to explain rape in terms of differential sex-role socialisation that generates male personality traits of aggression, force, dominance and competitiveness while women simultaneously exhibit traits of passivity, dependence and acceptance (Russell, 1975; Adler, 1985; Scully and Marolla, 1985; Baron and Strauss, 1989). Thus, Russell comments that:

"Rape is a logical consequence of a lack of symmetry in the way women and men are socialised in this society". (Russell, 1975:274)

Russell goes on to discuss rape in terms of the ‘male mystique’ as compared to the ‘female mystique’: whilst men are brought up to be sexual and to satisfy their needs with whomever they want, women are discouraged from being sexual but are encouraged to be virginal or at least to confine their sexual relations. Women are taught to be passive and submissive – traits that are often necessarily exhibited by a rape victim (Russell, 1975). Therefore, the different ways in which men and women are socialised in society is put forward to provide some explanation for the incidence of rape in society.
Smart (1989) pursues this notion that males and females inhabit different worlds in terms of their (hetero)sexualities, something which she claims is reflected in magnified proportions in the treatment of rape. Smart introduces the concept of ‘phallocentrism’ – a culture that is structured to meet the needs of the masculine imperative and which has resonance in feminist psychoanalytic work (Duchen, 1986). Here, women are excluded from the Symbolic Order which is always patriarchal, serving to give insight into the prevailing dominance of the masculine experience of, or meaning of, sexuality. Smart argues that the treatment of rape equates with the disqualification of woman on the one hand but the celebration of phallocentrism on the other. In this way, therefore, rape might not be perceived as a violation of the social order but as an enforcement of it (Connell, 1987:107). Echoing the views of Russell (1975), Smart (1989) considers that, whilst the rape trial might not celebrate random rape, it might be said to celebrate the deep-seated notions of natural male sexual need and female sexual capriciousness. According to Smart, feminist legal victories in this area might therefore be pointless “until we can address the fundamental problem of phallocentrism which disqualifies women’s experience of sexual abuse” (p.49).

A third explanation that is put forward by sociological feminists is that rape and sexual violence against women is reproduced and legitimated through culturally mediated interpretative devices for assessing a rape incident (Burt, 1980; Burt and Albin, 1981; Scully and Marolla, 1984; Adler, 1985; Lottes, 1988; Schur, 1988; Herman, 1989; Scully, 1990). In other words, rape myths, techniques of neutralisation or more general patriarchal ideologies provide the interpretative frameworks for assessing a rape incident (Matoesian, 1993). More specifically, it is claimed here that patriarchal myths serve to constrain the contextual discovery and reporting of rape by essentially blaming the victim, by limiting perceptions of genuine rape to the ‘classic’ rape scenario and by rationalising rape by defining males as inherently aggressive and females as passive (Wilson, et al., 1983:244; Herman, 1989). In terms of myths surrounding rape, Torrey (1991) summarises ‘classic’ rape myths into four categories: only women with ‘bad’ reputations are raped; women are prone to sexual fantasies; women precipitate rape by their appearance and behaviour; and women, “motivated by revenge, blackmail, jealousy, guilt or embarrassment falsely claim rape after
consenting to sexual relations” (p.1014). However, none of these myths, according to Torrey, survive scrutiny.

Finally, it is claimed that male violence against women is instituted and legitimated through the *criminal justice system* whereby the state fails to intervene against sexual violence (Russell, 1984; Adler, 1987; Smart, 1989; Matoesian, 1993). This position is buttressed by evidence of high rates of attrition and low rates of conviction for rape cases. Here, it is argued that the law operates not as a gender-neutral institution but as a socially structured and gendered component of patriarchal domination (Smart, 1989; Matoesian, 1993). In this way, the combination of rape as a mechanism of social control and male ideology (Brownmiller, 1975:5; Kelly, 1988:20-42; Gordon and Riger, 1989; Scully, 1990) is perceived to result in legislation and policy that legitimates and conceals this mode of domination.

Explaining rape in a social context therefore forms the basis of various feminist theories and is an important grounding for understanding rape in a legal context. In terms of the culture of the criminal justice system, this organisation continues to be largely male-dominated and it has been criticised for reflecting societal norms as a system which recognises male sexual dominance as the normal model of sexuality while disqualifying the female’s individual and cultural experience of rape (Smart, 1989; Smith, 1989). This idea goes to the very heart of the notion of rape myths and stereotypes and what this thesis seeks to explore.

Thus, it is an objective of the present study to examine the degree to which male-centred values and norms, as found in society, are reflected in the decision-making of police and practitioners so that violence against women is essentially condoned and discrimination against women is also accepted (Gregory and Lees, 1999). An exploration of when, and in what sorts of cases, the criminal justice system *does* intervene will shed more light on how patriarchy can be seen to be embodied in the process and how it, in fact, is systematically structured to apparently fail to intervene against rape.
3.3 The nature and prevalence of rape

Survey data have uncovered that women are far more worried about violent crime than men (Hough and Mayhew, 1983, 1985; Dodd et al., 2004). In fact, rape has been found to be a major source of anxiety amongst women - the British Crime Survey (BCS) 2002/03 (Dodd et al., 2004) found that 23 per cent of women were very worried about being raped with a further 20 per cent being fairly worried. The figure was found to be greater amongst younger women – 30% of women aged 16 to 29 years of age feared being raped more than being burgled, mugged or physically attacked. Such fears have obvious bearings on how women lead their lives and, indeed, can inhibit social life.

Just one study conducted by Painter has sought to shed some light on the extent of unreported rapes in England and Wales (Painter, 1991). Painter conducted a survey of 1,007 women in 11 cities with the following results:

- one in four women had experienced rape or attempted rape in their lifetime;
- the most common perpetrators were current and ex-partners; and
- the majority (91 per cent) told no one at the time.

In addition to Criminal Statistics, the majority of information on the incidence of rape in England and Wales comes from large-scale surveys such as the BCS which tend to focus on the wider issue of crime. The BCS is a national victim survey which includes crimes which may not have been reported to the police, or recorded by them. It provides a very important source of information about levels of crime and public attitudes to crime, as well as other Home Office issues. The results play an important role in informing Home Office policy. The survey method, however, which is the most common record of victimisation, is limited in its concern with the public sphere to the exclusion of crimes which go on behind closed doors - such as domestic violence, rape and partner abuse. The feminist concern is, therefore, that little information about crime such as rape actually comes to the attention of the authorities – as recorded in the national crime surveys or by official agencies.
Further weaknesses of using the crime survey to assess victimisation of women who experience rape concern the methodology used. Information is taken from interviews with victims or from questionnaires, an approach which in itself selects out those who are willing, and able, to take part. Rape victims might feel unable to recount their experiences which could be compounded by the presence of the perpetrator who may be a current partner. Structured interviews or questionnaires constrain the participant in recounting details and neglect the need for flexibility or sensitivity which is usually required in these cases. In addition, the victim crime survey essentially ignores social or geographical differences with a danger of overstating, or understating, the risk of victimisation.

Nevertheless, despite the drawbacks of the crime survey, information on crime such as rape is still more readily available and accurate in England and Wales compared to many other countries and recording practices are always being improved. The 1998 and 2000 versions of the BCS included a computerised self-completion module which was designed to provide a more accurate estimate of the extent and nature of sexual victimisation (Myhill and Allen, 2002). In 2001, the BCS included another computerised self-completion module to capture data on interpersonal violence including domestic violence, sexual violence and stalking (Walby and Allen, 2004). Findings from the 2001 BCS interpersonal violence module indicated:

- a prevalence rate of 0.3 per cent for rape of women over 16 in the year prior to interviews being conducted in 2001 – this equates to an estimated annual incidence of 47,000 adult female victims of rape;

- that women are most likely to be raped by men they know and a considerable proportion report repeat incidents by the same perpetrator.

Whilst there is some disparity between the BCS and Painter’s study (1991) in terms of numbers, results are similar in terms of the contexts in which rapes take place and the likelihood of repeat victimisation by the same perpetrator.
Figure 3.1: Rape offences recorded by the police: 1993 - 2003
According to Home Office figures, the total number of rape offences recorded by the police as rape rose more than two and a half times between 1993 and 2003 (see figure 1). As a result, particular concern has been expressed about the incidence and nature of rape offences.

There are three possible reasons for the increase in the number of recorded rapes in England and Wales over the past decade:

• first, it is possible that there has been a real increase in the incidence of rape and attempted rape and therefore an increase in reporting;

• a second possibility might be that women are prepared to report acquaintance or intimate rapes more now than in the past;

• a third possibility, and one that is favoured by the police, is that there have been improvements in the way that the police classify rape allegations.

Taking the second of these possible reasons for the increase in the number of recorded rapes, Lloyd and Walmsley (1989) conducted a UK study comparing all cases leading to a conviction for rape in 1973 with all cases leading to a conviction in 1985 to examine how the relationship profile of rape convictions had changed over the years. Information was obtained from police crime reports, complainant statements, medical reports and court papers. Perhaps the most striking finding from this study was that a far greater proportion of offenders in 1985 were intimately known to their complainant than those in 1973 - they were relatives, friends or previous partners of the complainant. The authors also found from the more recent data that offenders and complainants appeared to be older; more attacks took place indoors, often at the home of the complainant; more rapes were completed, as opposed to attempted; and offenders were found to have longer criminal records, although not always for sexual offences.

In addition to this, Lloyd and Walmsley looked at how the offence of rape might have changed, in terms of ‘‘nastiness’’...with victims suffering more violent and humiliating
attacks” (Lloyd and Walmsley, 1989:1). They found that three main aspects of rape had become more severe: there was an increase in the use of violence, especially knife threats; complainants were suffering an increasing number of sexual practices in addition to rape; and complainants were subjected to a greater length of time under the coercion of offenders.

This study throws some light on how rapes might have changed over the years. However, Lloyd and Walmsley looked at all cases which were convicted of rape. Since only a small proportion of all cases recorded as rape proceed to conviction, these findings can only be seen as being representative of a small proportion of all rapes committed.

3.3.1 Issues of reporting

The single most important reason why most rapists are never punished is the failure of complainants to report their attacks to the police, or their later refusal to cooperate as a prosecution witness. In 1982, the London Rape Crisis Centre conducted a study of all women who attended the centre between 1976 and 1980 revealing that only one quarter of women actually reported the offence to the police (London Rape Crisis Centre, 1982). Hall conducted a further survey at around the same time in London with a view to obtaining information on women’s safety in relation to transport, housing, child sexual abuse and the law. As a part of the overall study, Hall examined the high numbers of women who experienced sexual violence and found that less than one in ten women had reported rape to the police (Hall, 1985).

Estimates of non-reporting in other countries also suggest high levels of attrition as far as rape is concerned: in 1984, Russell conducted a survey of 930 adult women in San Francisco. After carrying out detailed interviews with these women, Russell found that one in four had experienced a rape, one in two had experienced an attempted rape but less than one in ten had reported their rapes to the police (Russell, 1984). Indeed, according to research in this area, the message that few women report appears to be clear.
A closer look at the literature identifies various reasons why complainants of rape decide not to report the offence. Perceived attitudes amongst the police appears to be a major factor. In England, a study carried out by Women Against Rape in the summer of 1982 found women’s perceptions as to how they were likely to be dealt with by the police was enough to put them off reporting an incident. A questionnaire was distributed to a sample of women asking questions about women’s safety in general and rape in particular. Out of 145 respondents, 55 per cent of those women who did not report the attack believed that the police would be unsympathetic whilst 79 per cent of the women did not report the incident as they felt that the police were likely to be both unhelpful and unsympathetic. Thirty-one per cent of the women were too traumatised to face the inevitable police interrogation. Whilst this research would have been before the introduction of rape suites and other police initiatives, there has been little robust empirical research since.

American research also sheds some light on what features about a case might increase a victim’s propensity to report a rape (Bachman, 1998). In this study, factors related to the probability of a rape being reported to the police and the subsequent probability of an arrest being made were examined using data from the American National Crime Victimization Survey (NCVS) between 1992 and 1994. Bachman concluded that physical injuries incurred by the alleged victim during the assault and use of a weapon by the offender significantly increased a complainant’s likelihood to report an assault to the police.

Further research suggests that the likelihood of a complainant reporting a rape incident might also vary directly with the amount of danger to her during the attack, the social distance between her and the offender and the degree to which she can expect support from friends and family in making the allegation (Smith and Nelson, 1976).

An important reason why many women choose not to report a rape relates to their own perceptions of what constitutes a genuine rape allegation. Myths and shared cultural definitions of ‘real’ rape combine to incite fear in victims that they will not be believed (Stewart et al., 1996), meaning that many complainants of rape do not proceed with their allegations. Since the majority of rapes do not involve a stranger jumping
out from a bush and causing the victim obvious injuries (what might be termed a ‘classic’ rape scenario), alleged victims might feel that their complaint lacks credibility and is not worth reporting. Indeed, research shows that, in many acquaintance rape cases, the victims often blame themselves or do not even regard the crime as one of rape (Klemmack and Klemmack, 1976; Calhoun and Townsley, 1991), an issue which is covered in much feminist work. It is for these reasons that non-reporters may in fact include a higher number of victims (Block and Block, 1984).

Overall, the review of the literature seems to reveal a recurring message: the more closely the circumstances of an alleged incident resemble stereotypical views about genuine rape, the more inclined a complainant will be to report it. The low levels of reporting to police by complainants of rape is well documented. The attrition of cases after the alleged rape has been reported, however, is not so well documented.

3.4 Attrition - a review of the research

In 1996, 14 per cent of recorded cases of rape were proceeded against at the Crown Court resulting in a conviction rate of 10 per cent. By 2003, 13 per cent of recorded cases were proceeded against at the Crown Court but the conviction rate had dropped to just 5 per cent. During the same period, the number of recorded offences had risen almost three-fold. Hence, the process of attrition by which many cases do not go to trial, and even fewer reach a conviction, is a subject of much concern and criticism (Morris, 1987; Temkin, 1987).

Attrition is the process by which cases drop out of the criminal justice process based on a variety of reasons. The focus of the current research is on the attrition of cases from the time that they are recorded by the police as rape. Cases can be lost from the system at several different points following this:

- once an allegation of rape has been made to the police, there are circumstances in which the case can subsequently be ‘no-crimed’;
• if the police do decide to treat the case as a crime, they may nevertheless decide not to pursue it if they feel the chances of a successful prosecution are slight;

• if the police decide to charge a suspect, the case is passed to the CPS for a decision on whether to proceed with a prosecution - a case might be discontinued at this point; and

• if a case goes to court, there might be attrition in the form of acquittals or convictions for lesser offences than rape.

Figure 3.2 contains a flow-chart illustrating the various stages that constitute the criminal justice process and, demonstrated by the dashed arrows, the points at which attrition can occur.
Figure 3.2: Flowchart illustrating the criminal justice process

1 No Further Action by the police
Whilst research looking at the attrition process from recording onwards is limited, the following studies have made some contribution to this area.

Wright conducted one of the earliest studies into attrition which examined incidents involving a solitary offender recorded by the police as rape or attempted rape between 1972 and 1976 in six English counties (Wright, 1984). This comprised a total sample of 204 suspects. A specific area of concern was the point at which a large proportion of offences were ‘written off’ as ‘no-crimes’ by the police. Wright estimated that almost a quarter of cases in his sample were classified by the police as a ‘no-crime’.

Considering the attrition of rape offences beyond this point, Wright went on to discover that 39 cases never reached court - 31 of these being due to the decision of criminal justice practitioners and eight due to complainant withdrawals. Attrition continued at court with 63 defendants being acquitted of rape. Forty-two defendants pleaded guilty to a lesser offence whilst 23 defendants were found guilty of a non-sexual offence. Twenty-two defendants were found guilty of rape (11 per cent of the initial sample) and 13 of attempted rape (six per cent).

Despite 11 per cent of cases resulting in a conviction for rape, Wright went on to discover that nine of the offenders were not incarcerated but received a conditional discharge (one), a fine (two) or suspended sentences. These cases were found to involve a juvenile, an intimate acquaintance such as an ex-husband or a step-father, a woman who had accepted a lift from her assailant and a woman who was walking home late at night. In this sense, Wright’s research echoes other studies that have also revealed that the degree of intimacy between a complainant and perpetrator or consensual contact prior to the attack appear to have a bearing on cases proceeding. Taking into account his findings, Wright therefore claimed the following:

“Given the attrition of rape cases at every stage from the attack onwards, the rapist who receives a stiff fine must consider himself extremely unlucky. And the rapist who goes to the gaol must believe that he was doubly unfortunate - the odds weigh heavily against that happening.” (Wright, 1984: 400)
It is important to realise one weakness of this study which is its geographical limitation: the research focused only on cases in the east of England and therefore cannot be seen as nationally representative. Furthermore, although Wright's figures alert us as to the extent of attrition of rape cases, he did not go into any detail about the characteristics of the alleged offences in his sample and therefore his research does not shed any light on the reasons for attrition at each stage.

Further research was conducted by Smith into the level of attrition between the reporting and recording of alleged rape offences (Smith, 1989). A study was set up to look at how many reported rapes were actually being recorded by the police as crimes. The research also addressed the formulation of preventative strategies as regards rape as well as an investigation as to how far the profile of rape corresponded with, or differed from, the stereotypical view of rape. The research was carried out investigating the pattern of reporting and recording of 447 rape cases in two London boroughs between 1984 and 1986. It was at around this time that the Home Office issued two circulars to all Chief Officers of Police in England and Wales offering guidance on the treatment of rape complainants (Home Office Circular 25/1983) as well as informing police practice in respect of ‘criming’ allegations (Home Office Circular 69/1986). Examination of police records was undertaken to obtain as much information as possible about the characteristics of the cases.

Smith found there to be a 50 per cent increase in the number of reported alleged rapes recorded by the police as a crime in this study. However, the number of alleged attacks actually reported to the police was shown to have fallen over that period: this suggested that the increase in those cases recorded as rape might have been attributable to changes in police recording practices as recommended in Home office circular 69/1986. Indeed, the proportion of alleged offences that were ‘no-crimed’ continued to fall from 61 per cent in 1984 to 44 per cent in 1985 and then to 38 per cent in 1986. However, despite this fall in the rate of ‘no-criming’, Smith found that, in 1986, “insufficient evidence was the major reason for ‘no-criming’” (p.25) suggesting that some police officers were still not complying with Home Office advice on ‘criming’ allegations which stated that allegations should only be classified as such in the event of a complainant withdrawing her allegation and admitting to fabrication.
Smith went on to consider the decision to 'crime' in relation to a number of variables identified by other research as important to decision-making as regards rape. The study found that certain factors were indeed associated with the decision to record reported rapes as crimes and, over the total period studied, it appeared that the classic stereotypical rape (violent rape by a stranger) was that most likely to be officially recorded as a crime. Smith also revealed in her research that police processing of alleged rape complaints was affected by factors not just associated with the nature of the offence but also with the characteristics of the complainant (p.25).

A strong point about this research is that it was not confined to recorded crimes but looked at alleged rapes or attempted rapes reported to the police over a three year period. In this way, it was able to overcome some of the bias found in recorded offences. However, a methodology based entirely on the analysis of police records can only provide limited information. As always, there is the danger of under-reporting and therefore the risk of probable bias towards certain types of rape being included in the research.

In 1992, the Home Office carried out research in response to policy concerns about the low conviction rate for rape cases. This study focused on attrition of cases from recording to conviction and sought to identify factors which appeared to influence the 'success' or 'failure' of cases in reaching a conviction. (Grace et al., 1992). The sample consisted of just over 300 alleged rape offences recorded by the police during the second quarter of 1985. Information was taken from all police forces in England and Wales included in the monthly statistical returns to the Home Office (with the exception of the Metropolitan Police District). The study was intended to provide a benchmark against which to assess change and, therefore, scope for a further study in this area - the second Home Office rape research (Harris and Grace, 1999).

For the Grace et al. (1992) study, police files were obtained and information was collected from complainant, police and medical examiners' statements about the alleged offender, the complainant and the offence. The research found there to be three key attrition points where most cases failed:
• when the police decided whether or not to ‘crime’ an incident reported as rape;
• when the police decided whether or not to proceed to prosecution of the defendant; and
• when the jury decided whether or not to convict the defendant of rape.

Grace et al. found that 45 per cent of all cases were ‘no-crimed’. However, the sample included rape cases that were dispatched in the monthly returns to the Home Office and that were subsequently ‘no-crimed’, therefore excluding the majority of cases that were ‘no-crimed’ within the same calendar month and thus were never included in the monthly returns to the Home Office. This means that the true ‘no-crime’ figure is likely to be significantly higher. Analysis revealed a further 13 per cent of cases in which the police decided to take no further action with just 40 per cent of cases resulting in a conviction of some kind in the Crown Court or magistrates’ court, a quarter of these being for rape or attempted rape. This conviction rate was somewhat higher than that found in Wright’s study, possibly reflecting some changes to policy and practice. However, any positive suggestion that police practice might have improved was off-set by the fact that, in court, a conviction appeared only likely in cases approximating a stereotypical rape: involving strangers (where identified), young complainants, complainants who were not married, where there was no degree of prior consensual contact and where the complainant had suffered violence or injury at the hands of the offender.

A draw-back to this research was that the sample did not include all of those cases that would have been ‘no-crimed’ due to a reliance on Home Office returns. It was also a purely quantitative study.

Lees and Gregory (1993) combined a quantitative and a qualitative approach to study the processes at work when cases of sexual assault and rape are reported to the police. The research was based on an analysis of police report forms of cases of rape, attempted rape, indecent assault and attempted indecent assault over a two year period (1988 to 1990) at two London police stations – resulting in a total sample size of 310 cases. Interviews with complainants and an investigation of the role of different statutory and voluntary agencies supplemented the statistical exercise. The aim of the
study was to consider ways in which complainants of rape might be encouraged to report incidents and how service delivery to those who do come forward might be improved. The research was designed to follow the progress of cases through the criminal justice system and also to identify factors associated with a high attrition rate.

Lees and Gregory identified a ‘no-crime’ rate of 43 per cent of all allegations of rape or attempted rape – a higher figure than had been identified by some previous research (for example, Wright, 1984). This might be partially explained by the fact that Lees and Gregory considered cases that had been ‘no-crimed’ within the first month (which were not accounted for in the study by Grace et al. (1992)) and this figure therefore offers a more realistic assessment of this point of attrition. However, Grace et al. found an almost equivalent ‘no-crime’ rate despite the fact that ‘no-crimes’ within the first month were excluded from that study. Lees and Gregory also found that, contrary to Home Office guidance, cases were ‘no-crimed’ for reasons other than a complainant having retracted her allegation or admitted that it was false. Instead, researchers claimed that the justification for ‘no-crime’ cases normally centred around "the complainant's failure to substantiate the allegation" (Lees and Gregory, 1993:5), this category functioning as “something of a ‘dustbin’” according to Kelly et al (2005:38). Interviews with police officers led the authors to suggest that “old attitudes die hard” and that this “helps to explain why the service has been so slow to respond to new policy guidelines on ‘no-crime’” (Lees and Gregory, 1993: 6).

Only 29 per cent of all cases in this study were referred to the CPS. Interviews also revealed that the police felt very strongly that the CPS were reluctant to proceed with sexual assault cases. In fact, in 19 per cent of the cases referred to them the CPS decided not to proceed. Only 41 cases, which represented 14 per cent of the original sample, resulted in a conviction.

This research identified four major points in the judicial process at which cases are lost:

- when the police ‘no-crime’ a complaint;
- when the police fail to refer a case for consideration by the CPS;
• when the CPS do not proceed or reduce the charge; and
• when defendants are found not guilty by a jury.

Cases were found to drop out at stages similar to those in the Grace et al study (1992), although the decision to prosecute was taken by the CPS in the Lees and Gregory (1993) study, as opposed to the police prior to 1986 in the study by Grace et al (1992). Since the CPS started operating in 1986, this introduced an additional filter to the system.

Lees and Gregory (1993) found that the relationship between the complainant and offender had a bearing on the likelihood of conviction: stranger rapes comprised the majority of cases that came to trial and all of those resulted in a conviction. Compared with the study by Grace et al (1992), Lees and Gregory demonstrated a greater proportion of cases that were filtered out after the CPS started operating in 1986. In short, it was found that, whether due to an actual increase in the number of rapes or a greater willingness of women to report incidents, more women were coming forward and were, on the whole, being treated with greater sensitivity by the police in terms of the support they were getting. However, the attrition of cases from this point onwards had certainly increased and the possibility of gaining a conviction had diminished.

The Home Office conducted a second study later in the 1990s in response to the continuing low conviction rate in rape cases. Some comparisons were possible with the earlier Home Office study (Grace et al., 1992) which drew on rape cases taken from 1985. This study examined 483 incidents initially recorded as rape by the police in 1996 and followed their progress through the criminal justice system. Information was extracted from police and CPS files, using the complainant's account of the incident as the basic source of information, supplemented by police, medical and witness statements. Interviews were also carried out with police officers, CPS staff including barristers, judges and complainants.

Harris and Grace found that the nature of rape cases had changed since the first Home Office study with more allegations involving people who were known to one another: stranger rapes formed just 12 per cent of the sample compared to 30 per cent of cases in
the first study. A further change was found in the 'no-criming' rate with a reduction since 1985 in the proportion of cases that were 'no-crime' – from 45 per cent to 25 per cent. Cases involving acquaintances were the most likely to be 'no-crime' and the most common reason was that the complaint was believed to be false or malicious. Harris and Grace noted that a decrease in 'no-criming' in the 1990s was compensated for by an increase in the rate at which police decided to take no further action – 10 per cent according to Grace et al. (1992) compared to 31 per cent in the later study. Cases involving intimates were most likely to be lost at this stage with the main reason being complainant withdrawals. The strongest predictors of whether cases would proceed were the age of the complainant and whether violence was evident – cases were less likely to proceed if the complainant was older or there was no evidence of violence having been used. Where the police chose to take no further action, the additional evidence of consensual contact between the alleged victim and perpetrator prior to the attack was also influential. In terms of outcomes at court, two-thirds of defendants reaching the Crown Court were convicted of an offence – but only 27 per cent of defendants were convicted of rape or attempted rape, just 6 per cent of the original sample.

It is this later Home Office study that forms the basis of the present thesis. The original Home Office research was conducted in response to policy concerns about the low conviction rate for rape, resulting in a purely descriptive and a-theoretical account of the stages at which attrition occurs in the system. The PhD develops this work to pioneer a theory to explain in more detail what lies behind this process of attrition in terms of decision-making amongst criminal justice personnel and the potential for stereotypical views of rape to be influential in determining cases that are genuine and those that are not.

More recent research has been conducted by Lea et al. (2003). This study sought to develop a profile of rape cases within a Constabulary in the South West of England and also aimed to identify factors associated with attrition. Researchers looked at all cases of rape or attempted rape of a female or male over the age of 16 over a four-year period – 1996 to 2000. This gave a sample size of 379 cases. Using quantitative and qualitative methods, the study revealed that attrition was still very high – just 5 per cent of cases resulted in a conviction – but it followed a slightly different pattern to that identified by
previous research. A fall in the ‘no-criming’ rate had been off-set by an increase in the propensity for police to take no further action – this had also been identified by Harris and Grace (1999); but, Lea et al. found the ‘no-criming’ rate to be quite a lot lower than previously recorded at just 11 per cent. This led the authors to suggest that reforms that had been introduced, particularly within the police force, had been having some effect. However, further analysis revealed that a significant minority of police officers were still ‘no-criming’ allegations for reasons other than those recommended by Home Office guidelines, echoing inaccurate recording practices also revealed in studies by Smith (1989) and Lees and Gregory (1993). In addition, the rate at which the police chose to take no further action was much higher at 61 per cent of cases – lack of evidence being the primary reason for this course of action, especially where complainants and suspects were known to one another. The study also uncovered a high proportion of complainants who were reluctant to pursue their allegations due to being in an (often abusive) relationship with the perpetrator, leading the authors to highlight a need to examine rape within a theoretical framework that takes account of social, political and economic factors.

Lea et al. (2003) only found one factor to be related to attrition in their sample – that of the relationship between the alleged victim and perpetrator. However, this time there was a difference to its significance: this study found a higher than expected rate of conviction in allegations where the perpetrator was a partner or a male relative of the complainant. Consequently, the authors suggested that, although the existence of a relationship appears to be implicated in attrition, it is not necessarily clear precisely how it is implicated.

An even more recent study was carried out by Kelly et al. (2005) looking at the process of attrition in reported rape cases, with a specific focus on early withdrawal by complainants. Conducting an evaluation of three Sexual Assault Referral Centres (SARCs) and three comparison areas, data were collected over the period October 2000 to December 2002 on 3,527 cases that were tracked prospectively through the criminal justice system. Interviews were also conducted with 228 alleged victims as well as 143 ‘experts’ including key informants and police officers.
Echoing research conducted over twenty years earlier by Wright (1984), Kelly et al. identified a 26 per cent 'no-crime' rate. The study also revealed a high degree of inconsistency in police classification of case outcomes, particularly in the case of allegations that were 'no-crimed'. Most cases in the sample did not go beyond the investigation stage, more than one-third having been stopped for evidential reasons. One-third of allegations were also lost due to complainant withdrawals which was most common in areas where there was no SARC. The resulting conviction rate was just eight per cent. In terms of reporting rates, three-quarters of allegations in this study had been reported directly to the police whilst cases involving known perpetrators were found to be the least likely to be reported.

Drawbacks to this study included a difficulty encountered recruiting research participants in comparison areas which meant that more was in fact known about complainants in areas which had a SARC. In addition to this, information on case outcomes was not always obtainable meaning that final outcome data were available for just two-thirds of the sample.

Research has also been carried out in Scotland examining the process of attrition in serious sexual assault cases – including rape, attempted rape and assault with intent to rape or ravish (Chambers and Millar, 1986). The authors selected 196 incidents of serious sexual assault reported to the police in Glasgow and Edinburgh during a fifteen month period in 1980 and 1981. Their progress was tracked through the system to final court disposal and individual case characteristics were explored. The researchers were also interested in identifying who made the decisions about allegations and the basis of information on which such decisions were made.

Chambers and Millar (1986) relied on documentary analysis of crime reports, witness statements, medical reports, court papers and sometimes trial transcripts. A qualitative study was also carried out to supplement the first stage of the research: some observations of court trials were carried out and interviews were conducted with police and some of the women from the sample.

Chambers and Millar found that just 21 per cent of the original sample reached the final stage involving trial by jury and only 9 per cent of defendants were found guilty.
In a further 16 per cent of cases, the defendant pleaded guilty resulting in an overall conviction rate of 25 per cent. Again raising the possibility that stereotypical judgements have an influence, the researchers suggested that the reasons for attrition may be due to the possibility that “criminal justice officials process sexual assaults on the basis of a unique set of attitudes or criteria” (Chambers and Millar, 1986:44). They suggested, as have other studies (Adler, 1987; Smith, 1989), that these criteria may include value judgements about a complainant regarding her relationship with the defendant and her perceived blameworthiness, for example.

Unlike other studies on attrition in this review, Chambers and Millar focused more on the court stage of proceedings rather than police practice. It is important to note that convictions were often for lesser charges than rape, and some were not for any type of sexual offence. The data is also somewhat out-of-date since the research relies on cases reported in 1980 and 1981. Furthermore, valuable though this study is, it is not directly relevant to the legal system in England and Wales and therefore the attrition of rape in this country remains a relatively little explored area.

Although an unpublished study, Jamieson et al. (1998) set up a pilot to explore the feasibility of a large scale tracking project for the whole of Scotland looking at all sexual offences, including rape, reported in two police areas from 1996 to 1997. Jamieson et al. found a greater proportion of their sample proceeded to prosecution when compared with English studies. The study by Lees and Gregory is the most comparable here since their research included other sexual offences as well as rape: however, Lees and Gregory found that 57 per cent of cases were lost at the police stage of proceedings compared to just 36 per cent in the Jamieson et al. study. In fact, along with Chambers and Miller (1986), Jamieson et al. were able to demonstrate higher levels of prosecution and conviction in Scotland compared with England and Wales (Jamieson et al., 1998). One factor which might have played a part was the significant proportion of cases involving children which were automatically more likely to be prosecuted and result in convictions. However, one third of the sample of cases in the Harris and Grace (1999) study involved complainants who were under 16 years of age. Some comparative research is clearly needed to clarify these different outcomes.
Unfortunately, as a result of the pilot exercise, Jamieson et al. concluded that a similar study tracking all sexual offences across Scotland would prove extremely expensive and therefore proceeded no further with this research.

In terms of studies on rape, American research is also limited in scope. Holmstrom and Burgess (1983) provided some contribution with a study investigating how relevant institutions respond to alleged rape victims and the impact that that response has on the complainants. The research was conducted amongst complainants who were referred to a hospital in Boston between July 1972 and July 1973. The purpose of this research was not to look at the attrition process of these cases specifically and therefore little was covered about cases dropping out in the early stages. However, the authors did find that those rape cases that approximated the ‘ideal case’ were more likely to lead to a conviction. Departures from the ‘ideal case’ included those where there was some prior relationship between the complainant and offender or where the complainant could be shown to have a ‘poor reputation’. In this way, Holmstrom and Burgess agreed with Weis and Borges (1973) and Wright (1984) in that rape complainants are not perceived to be a threat to perpetrators since just a minority of rapists are actually convicted.

Of the 109 cases reported to the police in this sample (some of the cases being self-referrals), just 24 got sufficiently far through the criminal justice system to be tried or for the defendant to have the opportunity to plea. Of the 18 tried cases, just four defendants were found guilty of rape, three were convicted of lesser offences and ten were found not guilty. Of those where plea-bargaining took place, a further four were convicted of rape and three of lesser offences.

Their research caused Holmstrom and Burgess to go on to suggest the need to *delegitimise rape* - to make it be seen as unacceptable behaviour. By this, the authors meant that there was a need to change the social definition of rape and make people see that rape *can* occur when there is some prior consensual contact between the complainant and offender, when the complainant is not a virgin, when there is no evidence of any injury and so on. The main drawback to this study was that it only captured complainants who had fallen into the institutional network that was being studied which would have been unrepresentative of complainants as a whole.
The following table has been adapted from that developed by Kelly (2001), in order to illustrate the attrition process for those studies considering rape from recording to conviction. Due to the fact that studies presented data in different ways and some data are missing, figures are not always available for each stage of the attrition process.
Table 3.1: Research findings on attrition in reported rape cases

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<tr>
<td><strong>Grace et al. 1992</strong></td>
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<td><strong>Lees and Gregory 1993</strong></td>
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<td><strong>Harris and Grace, 1999</strong></td>
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<td><strong>Lea et al. 2003</strong></td>
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<td><strong>Chambers and Millar 1986</strong></td>
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<td><strong>Jamieson et al. 1998</strong></td>
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1 Data limited to the rape and attempted rape cases in the sample.
2 This figure might contain some cases that were unsolved.
3.4.1 Is attrition unique to rape?

To date, then, although they are limited in scope, several studies have established high levels of attrition for rape cases and have pointed to a number of factors that are associated with allegations not being pursued. This leads feminists and other scholars to see the criminal justice system as a discriminatory organisation based on a system of male-centred values and patriarchal ideology. However, these conclusions are not necessarily self-evident from the attrition statistics (Myers and LaFree, 1982; Steffensmeier, 1988; Bryden and Lengnick, 1997). In fact, it has been suggested that the levels of attrition of rape offences is comparable or lower to that of other crimes such as robbery, assault or burglary (Bryden and Lengnick, 1997) leading researchers to claim that “[r]ape has no unique pattern of attrition.” (Galvin and Polk, 1983:74). Indeed, Galvin and Polk identified a common weakness in arguments regarding the treatment and attrition of rape within the criminal justice system (Galvin and Polk, 1983). They criticised research in this area, claiming its limitations in focusing only on rape and suggesting that attrition is not necessarily something that is exclusive to this offence. To this end, they set out to compare attrition rates for homicide, rape, robbery, assault and burglary. These offences were chosen since they were perceived to exhibit a comparable level of seriousness.

The methodology for Galvin and Polk’s research was based on the analysis of three separate data systems in California relating to the mid-1970s. The sources of information included victimisation data, offence and arrest data and arrest disposition data. Galvin and Polk concluded that rape does, in fact, have a high conviction rate when compared with their other study offences. The percentage of cases known to police which led to a conviction were 28 per cent for homicide, seven per cent for rape, six per cent for robbery, two per cent for assault and one per cent for burglary. However, seven per cent is still a very low conviction rate, which is arguably of particular concern with an offence of rape which is more significantly serious and damaging to the victim involved than offences with lower conviction rates. The data used in this study was only descriptive and did not identify those factors which influence attrition at various points in the criminal justice system.
Researchers who question whether attrition in rape cases is particularly high compared to other offences often cite reasons such as false reporting, unidentified strangers and complainant retractions as justifications for attrition that have nothing to do with official bias. According to the research that has been reviewed in this chapter, it might be argued that attrition statistics are amenable to less confident interpretations but are instead based on stereotypical beliefs and interpretations of what genuine rape actually is (Bryden and Lengnick, 1997).

Various studies have therefore identified levels of attrition associated with rape allegations and throw some light on reasons for cases not proceeding through the process. For instance, some of the studies seem to suggest that attrition is tied to evidence. Evidence, as might be expected, is most complex in situations where a complainant and perpetrator are known to one another, there is some degree of consensual contact prior to the attack or there is little evidence of any violence or injury, to provide three examples (Wright, 1984; Chambers and Millar, 1986; Grace et al., 1992; Lees and Gregory, 1993; Harris and Grace, 1999). Several studies have suggested that allegations approximating the 'ideal' case or the stereotypical rape appear more likely to be officially recorded and proceed to court (Holmstrom and Burgess, 1983; Smith, 1989).

However, just seven studies have been carried out looking at the attrition of rape in England: one considered the broader issues of sexual assault (Lees and Gregory, 1993) whilst six looked specifically at attrition in the case of rape (Wright, 1984; Smith, 1989; Grace et al., 1992; Harris and Grace, 1999; Lea et al., 2003; Kelly et al., 2005); five considered the process from recording to conviction (Wright, 1984; Grace et al., 1992; Harris and Grace, 1999; Lea et al., 2003; Kelly et al., 2005) but two were carried out prior to the introduction of the CPS in 1985 (Wright, 1984; Grace et al., 1992). Since the CPS are an additional filter to the processing of cases and seem to affect the attrition rate, just three studies in fact report more up-to-date research on the processing of rape cases by the criminal justice process in this country (Harris and Grace, 1999; Lea et al., 2003; Kelly et al., 2005). Studying attrition in rape cases

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1 This study also contained 19 cases of male rape.
raises various practical, methodological and ethical issues which researchers have to contend with, related to which can be the following concerns.

3.4.2 Shortcomings of studies

- Reported versus recorded crimes

Most of the studies included in this review rely on a selection of allegations that were recorded by the police as rape. With a crime like rape, there is a danger of under-reporting of incidents. Some research has suggested that cases resembling the 'classic' rape (Smith, 1989) - for example involving strangers, evidence of injury and non-consent - are more likely to be reported than more complicated rapes where it might not be so obvious that an attack has occurred. Therefore, selecting recorded cases might result in bias towards certain types of rape being included in the analysis.

- Samples

A common criticism of research which has been carried out looking at the attrition process is sample size. Hardly more than 300 cases have been selected in most of the studies, making it difficult to generalise from a relatively small sample to the wider population. As regards interview data, it must be taken into account that interviewees have a choice about taking part raising the issue of self-selection and the fact that those who come forward might not share the same characteristics as those who choose not to take part.

- Quantitative versus qualitative data sources

Most of the studies rely solely on quantitative data, be it survey or otherwise. Sources include secondary data systems, police files, medical files and court papers. Such records can be limited in detail and present a certain interpretation of reality so that the use of official statistics in social research has been subject to routine questioning and critique (Dorling and Simpson, 1999). Indeed, there is an increasing concern over the Government's control of official information in what has been characterised as the
surveillance society' (Lyon, 2001). Despite the problems, Bulmer (1984) maintains that, official statistics are still useful for research purposes and, if researchers are aware of how errors can occur and can correct for shortfalls, can still contribute high quality data. However, despite possible dangers such as interviewer effects, a greater, or at least supplementary, use of qualitative data can illuminate quantitative information and help shed light on factors which influence case processing and reasons for attrition.

- Geographical limitations and international comparisons

Selection criteria in all of the studies introduces a degree of bias in that samples are selected from specific areas. For this reason, findings cannot necessarily be interpreted as nationally representative. Furthermore, research carried out in Scotland and America has been included for review, but it is important to note the differences between countries as far as the definition of rape and the legal systems are concerned.

- Time

Consideration needs to be given to the state of policy and legislation at the time that research was undertaken: several important legislative changes have occurred over the years in terms of the definition of rape, the introduction of the CPS and changes in recording practices amongst police forces.

3.5 Factors influencing the attrition process

According to the literature, factors seen to undermine the veracity of a 'real' rape include: prior relationship with an assailant, delay in reporting, no evidence of injury, not being a virgin, being a prostitute, being under the influence of drugs or alcohol or having learning difficulties. Research suggests that evidence of a prior relationship between a complainant and perpetrator is, indeed, considered to be problematic. Estrich, an expert in issues concerning violence against women and a rape victim herself, wrote a book entitled 'Real Rape', the title of which referred to acquaintance or intimate rape which she maintained was frequently seen by the courts and the
general public as not being ‘real rape’ (Estrich, 1987). Contributing from an American perspective, Estrich also claims that, whilst it is widely believed that a true rape victim would report her allegation immediately, this is in fact a false impression since many women do not report straight away. Indeed, Jordan’s study of women reporting rape in New Zealand revealed that complainants reported their allegations to the police in the first instance in just 6 per cent of cases (Jordan, 1998). In nearly half of those incidents that were reported, someone other than the complainant made the initial contact with the police. This is a similar result to that of Chambers and Millar (1983) who found that someone other than the complainant made the decision to report in 40 per cent of cases and it also echoes Kelly et al (2005) who revealed that just under half of the complainants in their study made the report themselves. Further to this, if a woman is known to have reported a rape in the past, particularly if that allegation was subsequently retracted, this is something that can apparently be taken to damage to a complainant’s credibility regarding any subsequent allegations (Aiken et al., 1999).

The significance of any evidence of injury to a complainant when it comes to judgements about rape has been highlighted by research in England (Grace et al., 1992), Scotland (Holmstrom and Burgess, 1983) and even as far afield as a study of rape trials in Victoria, Australia (Edwards and Heenan, 1994). Another factor raised in the literature that appears to affect judgements about rape includes the age of a complainant, with younger complainants often considered more likely to have been taken advantage of by virtue of their innocence and immaturity (Clarke et al., 2002).

Smart (1990) goes on to make the observation that, the more an account of rape has resonance with the standard pornographic genre, the less it will be regarded as rape (p.16). Smart draws attention to the existence of several ‘fantasies’ that she maintains affects others’ judgements about rape allegations and are known to be employed by defence counsel in court - for example, the girl who says ‘no’ and tries to resist when she actually means ‘yes’ and the woman who appears demure when she likes to engage in vigorous, rough sex. It is via these alternate pornographic stories that Smart suggests that evidence of violence in the form of injury to a complainant or torn clothes might in fact be interpreted as evidence of consensual sexual relations (Smart, 1990).
Nearly two decades ago, Smith (1989) identified that decision-making was affected not only by factors relating to the nature of the offence but increasingly by those associated with the characteristics of the victim. Indeed, subsequent research goes on to suggest that factors relating to the character of a complainant play a part progressively more in judgements about rape where evidence of an alleged victim's misconduct, for example, could be used to implicate her. Dubious behaviour might include getting into a man's car, kissing in a public place, drinking too much or inviting a man back to a complainant's home (Stewart et al., 1996). In this respect, Larcombe comments that the expectation that a woman should avoid 'risky' situations and the consequent interpretation of her failing to do so being seen as her 'asking for it' naturalises male sexual aggression and puts the responsibility for the assault on the victim rather than the perpetrator (Larcombe, 2002:134).

Taking the issue of drunkenness, various authors have claimed that a woman who is drunk at the time of her alleged attack is particularly at risk of having her credibility undermined (Ettore, 1992; Lees, 1997). However, what is interesting is the double standard that appears to operate which is picked up on in some of the literature: here, it seems that drunkenness is often considered shameful in women generally - and particularly in alleged rape victims who claim that they were taken advantage of; however, drunkenness is not something that would damage the reputation of a man in the same way (Otto, 1981; Ettore, 1992; Schuller and Stewart, 2000; Jordan, 2004a). Being a prostitute is also something that has been identified as seriously undermining a rape complainant's credibility as a strong witness (Wood, 1973). Continuing to focus on the character of the complainant, literature from the mental health field suggests that people perceived as having diminished competency in terms of impaired judgement, difficulty in communication, lack of knowledge about sexual matters and an ignorance of their legal rights, are at a greater risk than others of being sexually victimised (Luckasson, 1992; Hayes, 1993). Unfortunately, the very aspects about their characters that make people with learning difficulties more likely to be victims of rape are also perceived to reduce the credibility of their allegations in the eyes of those judging their allegations (Jordan, 2004a).
The literature suggests that, for a complainant to be defined as a genuine victim, her conduct and character must be always consistent and blameless. In light of this, Stevenson claims that, if it is advantageous for a rape to be seen as genuine, it is arguably even more important for a rape complainant to be seen to be the “unequivocal victim” (Stevenson, 2000:343). In this sense, a complainant’s conduct and behaviour must “conform to prevailing societal expectations, as understood by the legal system” (p.347, emphasis in the original). Stevenson claims that law has generally reinforced “the stereotypical ideal of female vulnerability and the patriarchal concept of woman as property” (p.351). She goes on to locate discrimination against rape complainants in “Victorian stereotypes and expectations of feminine behaviour [which] have had, and continue to have, profound implications for the ways in which women are regarded in the trial process” (p.345).

According to the literature here, then, it comes as no surprise that alleged rape incidents approximating the ‘ideal’ case or those involving complainants resembling the ‘unequivocal’ victim are most likely to lead to a conviction (Holmstrom and Burgess, 1983). In summary, a case appears to be considered stronger if it involves a stranger rapist, force is used, there was no consensual contact prior to attack, no intimacy or prior sexual history, the victim is a virgin, no drinking or drugs were involved, there was no partying and no general violation of traditional female gender role behaviour (Holmstrom and Burgess, 1983; Alder, 1987; LaFree, 1987; Estrich, 1987; Harris and Grace, 1999). However, commenting on this notion, Larcombe (2002) maintains that this person can only be an “imaginary construct” since she “has no life experience” (p.137).

3.5.1 Defining sex as violence

The literature has quite clearly identified the significance of evidence of injury to a complainant when it comes to assessing a rape allegation. Indeed, it might be suggested that steering the emphasis of a rape attack towards violence might make it be taken more seriously. However, MacKinnon (1987) claims that it is a mistake for feminists to put rape, sexual assault and pornography into a single category of violence against women as she believes that this serves to erase the distinction between these different modes of oppression. Indeed, MacKinnon, alongside others
including Scully (1990), maintains that rape is no less sexual for being violent. Nevertheless, where sex is concerned, consent is usually the stumbling block and evidence is often lacking. Arguably, replacing the issue of sex with one of violence (for example, rape with assault) renders consent less easy to dispute. Thus, from this perspective, to recognise rape as a crime is to recognise it as violence.

An example of when rape is readily recognised as violence is when it is defined as a war crime. It is generally understood that war equates to violence and rape within wartime is therefore at odds with the usual interpretation of its being a sexual act. In September 2000, a Serb student was successfully convicted and sentenced for murder and rape committed during the crackdown on ethnic Albanians by Yugoslav forces (The Guardian, 21 September 2000). Indeed, war crimes are high on the agenda of investigators who try to ensure that such atrocities do not go unpunished. In an Albanian culture women are subordinate to men and evidence in relation to rape attacks during war time would be lacking; however, rape in these instances was taken seriously since the crimes reported were part of an overall campaign of ethnic cleansing in what is essentially a macho world.

3.6 Conclusion

The high attrition rate of rape cases revealed in the literature reviewed for this thesis indicates a lack of legal intervention against rape - except in a very narrow range of instances. Factors contributing to attrition rates appear to be where a complainant and perpetrator are known to one another, there is some degree of consensual contact prior to the rape and there is little or no evidence of violence in the form of injury to the complainant. In this way, cases approximating the ‘ideal’ case, or the stereotypical notion of genuine rape, are those that are most likely to proceed.

Feminists argue that the scale of attrition reflects discrimination and bias in the handling of rape cases and the treatment of victims at every stage in the criminal justice process (Brownmiller, 1975; Estrich, 1987). For these reasons, the criminal justice system is seen not as a gender-neutral, unbiased institution but as a socially structured and discriminatory component of patriarchal domination (Matoesian, 1993) – a system in which male power acts as an instrument of social control (Smart, 1989).
As a result, the law has come under much criticism and it is in response to concerns about low conviction rates that the handling of rape and the treatment of alleged victims has come under increased empirical scrutiny in recent years. These issues are investigated through research on how the criminal justice system handles rape and how cases are processed to reveal insight into how satisfactorily the needs of victims are met and where the sources of conflict or discrimination lie. The subject of the next chapter will therefore consider the criminal justice system’s response to rape and how this might go some way towards explaining the patterns of attrition identified in the present chapter.
4. THE CRIMINAL JUSTICE SYSTEM RESPONSE – A REVIEW OF THE LITERATURE

4.1 Introduction

A review of the literature on attrition has indicated that a large proportion of rape allegations do not proceed far through the system. This has attracted considerable attention and it is in response to concerns about low conviction rates that the law on rape and the treatment of alleged victims has come under increased empirical scrutiny in recent years. A number of studies have focused on the criminal justice system’s response to complainants and how service delivery might be improved. Indeed, feminists maintain that it is poor treatment and the lack of a criminal justice response to rape victims that serves to endorse and even legitimate the crime of rape (Mackinnon, 1989; Walby, 1990).

This chapter contains a review of the literature covering the response of the criminal justice system to rape. It is broadly split into four parts. The first section focuses on the alleged victim, charting the emergence of victimology, considering typologies of rape victims in light of what is perceived to be genuine rape and examining complainant satisfaction with the criminal justice system. The chapter goes on to consider how the police go about constructing a narrative with reference to both Innes’s and Goffman’s work. Police practice is then considered in more detail with a look at the cultural make-up of the organisation and how this might impact on discrimination against rape complainants. Finally, some attention is given to research that has examined the court stage of proceedings with regard to rape trials.

4.2 Victimology

On a general level, writing in 1994, Zedner claimed that victims had attracted a level of interest, both as a subject of criminological enquiry and as a focus of criminal justice policy, something that she claims was unimaginable a decade earlier. She claimed that the study of victims had become one of the growth industries of criminology, primarily with the advent of victim surveys which have served to inform
people's views of crime by uncovering a vast array of hidden offences, many of which were against the most vulnerable in society. Further to this, feminist organisations such as Rape Crisis Centres and the Women's Refuge Movement, providing support to sexually assaulted and battered women, have been influential in raising awareness about these specific groups (Corbett and Hobdell, 1988). Indeed, pressure from both voluntary and professional agencies ensured a growing recognition of victims' needs and the importance of victim services. Developments such as these have therefore been instrumental in putting the victim on the agenda causing victimology to become an area increasingly worthy of study. Shared concerns relate to how victims are being harmed, oppressed, neglected, blamed and demeaned and how they might be empowered, strengthened, assisted and rehabilitated (Karmen, 1990). To an extent, the news media can be credited for contributing to the re-discovery of the victim and portraying the victims' plight (Karmen, 1990). Increased social awareness of rape and improvements in police practices might also be seen to put victims' interests on the agenda and therefore encourage victims to come forward. Whatever the reason, studies in victimology have recognised the shift of attention and the re-discovery of the victim in criminal justice policy and criminology:

“In their everyday decision-making, police officers, prosecutors, judges, probation officers and parole boards are frequently enjoined – and, increasingly, compelled – to pay heed to victims’ interests as well as to those of the community and the offender.” (Maguire, 1991:363)

However, victims have only recently become established as objects of intellectual enquiry and, even then, Rock (1994) claims that this is only within criminology and the politics of criminal justice, their remaining invisible to sociology and other social sciences (p.xi). Perhaps at best, victims are taken to be no more than alleged victims, "creatures of uncertain status" (Rock, 1994: xi), until their allegations are put to the test in trials. It is for this reason that alleged victims were referred to by criminal justice respondents in the present study as ‘complainants’, and why they are therefore referred to as such in this thesis.

Rock suggests that, with the rise of the centralised State, victims have lost control of ‘their’ crimes, their role as the injured party having been usurped by the State –
indeed, it is against the State that criminals are deemed in law to have offended, and it is in the name of the State that prosecutions are brought. Thus, despite the apparent move towards a victim-orientated victimology, it is the way in which the victim is presented and accounted for on the agenda that is important since this has a bearing on how she will be treated and her case handled.

Positivist victimology, otherwise known as a conservative (Karmen, 1990) or a conventional approach (Walklate, 1989) has drawn attention to the categorisation of victims of rape. Here, theorists concerned with patterns, regularities and the precipitative characteristics of those who are victimised see the criminal justice system as a network where particulars about the rape incident are assembled and fashioned into powerful blame implicative inferences against the victim. Literature reviewed here has demonstrated how the focus of rape investigations usually turns to the character of the complainant and, in light of what is perceived to be genuine rape, victim typologies are therefore formulated to explain rape based on moral judgements about who can be determined to be an innocent victim. The idealised image of what constitutes the innocent victim is important in understanding both society’s response to victims of rape as well as the response of victimology to the study of victims. Myths and cultural stereotypes determine who the deserving victim is – the victim who conforms to all the criteria that justify a ‘real’ victim. In a climate where the nature of recorded rapes has changed to include more cases involving people known to one another and often intimates (Harris and Grace, 1999), evidence to corroborate a complainant’s allegation of rape is invariably weak: the innocent victim is often harder to prove.

Smart (1989) maintains that, in terms of legal or political discourse, there are certain categories of women who can be classified as ‘privileged’ victims or ‘invisible’ victims. Smart claims that, because of the way in which rape is constructed and perceived, certain women find it particularly difficult to establish that they have been raped – for example, black women and prostitutes - who may, in turn, not be taken seriously. In a similar vein, Stewart et al. founded the principle of the ‘pedestal myth’ whereby a victim is said to be placed on a pedestal by others judging her credibility by virtue of certain characteristics or circumstances – for example, a young, virginal girl is likely to be put on a pedestal in the eyes of police and prosecutors in contrast to the prostitute who alleges rape (Stewart et al., 1996). Smart (1989) goes on to argue that equalisation is possible for all women
vis-à-vis rape. She maintains that differentiation embellishes rather than constructs the
treatment of the victim. Therefore, there is less differential treatment dependent on race,
for instance, but instead there is a category of woman as a ‘unit’. Women, be they black,
poor or indeed a prostitute, all fit the category of capricious, unreliable and promiscuous,
which, Smart argues, serves to explain rape allegations to the male culture.

Various authors have raised the notion of victim precipitation as a tool for explaining
crime (Mendelsohn, 1956; Fattah, 1979). Several studies have undertaken to classify
victims into typologies based on psychological and social variables which result in the
notion that some individuals are victim-prone – some maintain that victims can
provide “guilty contribution to the crime” (Mendelsohn, 1956) or that they might be
“a direct, positive precipitator in the crime” (Wolfgang, 1958). To view crime in
terms of victim culpability or determination is somewhat controversial and might lead
to complainants blaming themselves (Klemmack and Klemmack, 1976; Calhoun and
Townsley, 1991) and victimology as a discipline becoming a weapon of ideological
oppression (Rock, 1986).

Fattah (1991) goes on to defend the idea of victim-precipitation arguing that it is a
sound explanatory tool not necessarily suggesting victim-blaming. He claims that this
approach might lead to a more accurate understanding of crime in recognising that
crime is a transaction in which both an offender and a victim play a role. This
represents a radical shift from recognition of victim-offender interaction as a
precipitating factor to re-ascribing blame to the victim in rape cases. The latter
approach would underlie the tactics of a defence team in court, whose role it would be
to disprove a complainant’s allegation and imply her culpability for the rape.

Indeed, the study of rape represents perhaps the most controversial application of the
model of victim-precipitation (Amir, 1971). Amir studied a sample of 646 rapes
recorded by the police in Philadelphia and concluded that 19 per cent of these could
be classified as victim-precipitated crimes. Amir defines victim-precipitating
behaviours through acts of ‘commission’ and through acts of ‘omission’. Commissive
behaviour includes “last moment retreating from sexual advancement” or “agreeing
voluntarily to drink or ride with a stranger” (Amir, 1971:155). Acts of omission
include failure to take preventative measures, such as a victim failing to react strongly
enough to sexual suggestions or “when her outside appearance arouses the offender’s advances which are not staved off” (p.155). Under such circumstances, Amir claims that “the victim becomes functionally responsible for the offence by entering upon and following a course that will provoke some males to commit crimes” (p.155). However, Amir’s study can be criticised on both methodological and ideological grounds. As is worth bearing in mind with all rape studies, it is known that only a small number of rapes are ever reported to the police (Temkin, 1987:9), and reliance for information on police records provides only part of the picture. In addition, Amir’s definition of the term ‘precipitation’ is very broad, encompassing those cases where “the victim actually – or so it was interpreted by the offender – agreed to sexual relations but retracted… or did not resist strongly enough when the suggestion was made by the offender. The term also applies to cases in which the victim enters vulnerable situations charged sexually” (Amir, 1971:262). Amir infers that those victims who accord with his definition are essentially ‘asking for it’: this attitude has been criticised by Larcombe (2002) as naturalising male sexual aggression, thus putting the responsibility for the assault on the victim rather than the perpetrator (p.134) and has been condemned for ignoring the profound and long-term negative effects suffered by victims of rape (Morris, 1987).

Studying the extent and nature of victim precipitation in crime therefore raises emotive connotations of victim blaming which has received much criminological attention: little can be more controversial than blaming a victim for her own rape. Perhaps unsurprisingly, this view has also received much criticism from feminist criminologists who condemn the tendency for victim-precipitation studies to push forward value laden notions of victim blaming (Morris, 1987: 173–4; Walklate, 1989: 4–5).

The fact of the matter is that a narrow concentration of early victim studies on re-assigning responsibility for crime has led to few new, coherent theoretical insights (Rock, 1986). Studies have uncovered findings which seem to say that some victims bear some responsibility for some crimes (Miers, 1989) which means that, in effect, the focus of mainstream criminology has remained primarily on offender-orientated studies.
4.3 Complainant satisfaction

Once an allegation of rape has been made to the police, it is their role to take a statement from the complainant and arrange for a medical examination so that they can assimilate all evidence relating to the incident in order to start their investigation. There are circumstances in which they will decide to ‘no-crime’ the allegation or choose to pursue it no further, reasons for which have been explored in previous research, and will be further explored in the present study. Police officers are those members of the criminal justice system who come into contact most with complainants of rape and it is for this reason that the way in which they choose to treat an alleged victim and the degree of support that she is given will be crucial to her experience of the process.

Stereotypical notions about rape potentially have an influence on decision-making throughout the criminal justice system – and even have an impact before a complainant enters the system when she is deciding whether or not to report an attack. The initial stage of proceedings is very important: the police are essentially the gateway to the criminal justice system and their response can make the difference between a thorough and an ineffective investigation – as well as the difference between whether a complainant decides to pursue her allegation or withdraw her complaint. Literature reviewed in the previous chapter indicated quite clearly that this is also the stage at which the greatest rate of attrition takes place. This has resulted in police practice becoming the focus of much attention, particularly in the 1980s, following the broadcast of a fly-on-the wall television documentary focusing on Thames Valley Police: this documentary showed a rape complainant being bullied by three male officers during a police interview who dismissed her story out of hand (BBC documentary: ‘Police’, 1982). The documentary prompted public outrage and fuelled subsequent changes in policy and practice within the police designed to improve the system for victims.

Several years later, Adler (1991) conducted a study to assess whether the reforms of the early 1980s had made any difference: she surveyed 103 women who reported rape in London between May 1990 and February 1991. It was found that 89 per cent of respondents were satisfied or very satisfied with their treatment by women police officers.
officers and 76 per cent were satisfied or very satisfied with the male detective investigating the case. Adler concluded:

“Attitudes to victims of rape in the Met are now overwhelmingly caring and sympathetic. The vast majority of women speak very favourably indeed of their experience of reporting.” (Adler, 1991:1115)

However, Adler did also find that respondents’ satisfaction tended to have diminished over the course of their cases demonstrating that complainants’ satisfaction does not necessarily exist as a linear concept but can change over time, possibly relating to prior expectations before they enter the criminal justice system. Studies carried out by Lees and Gregory (1993) and Temkin (1997) revealed less favourable responses. In the former, 24 women were interviewed who had reported sexual assault in North London between 1988 and 1990 – one in four had been involved in cases of rape or attempted rape. Lees and Gregory reported that, whilst 75 per cent of women were generally satisfied with their treatment by the police, several were not satisfied and few were told of the outcome of their cases – a problem that is not necessarily confined to rape cases. Temkin’s study cast even more doubt on any optimistic assumptions about new police regimes: 23 women who reported rape to the Sussex police between 1991 and 1993 were interviewed in depth. Overall, the majority of women (57 per cent) were fairly positive about the service provided by the police, while 43 per cent expressed more negative views. One conclusion drawn in this study was therefore that:

“Old police practices and attitudes, widely assumed to have been vanished, are still in evidence and continue to cause victims pain and trauma.” (Temkin, 1997: 527)

Temkin reported on this issue again in 1999, having interviewed 17 women whose cases were recorded as rape between 1993 and 1995, and 21 police officers – eight having been involved in cases in the victim sample (Temkin, 1999). The study revealed that, although police guidelines provide a framework for a system of care for victims, in practice they are not always followed. Temkin reported a mix of positive and negative views about police responses to rape allegations. For example, some
complainants who were interviewed were found to be mainly positive about their first encounters with the police, remarking on their relief that they used unmarked cars, were not in uniform and a female officer had attended. Some also spoke of being grateful for the believing attitudes of the police and for the reassurance that they received. Conversely, others were shocked to find uniformed officers arrive at their homes and complained of disbelieving attitudes and insensitivity (Temkin 1999:23). Temkin concluded that any problems were essentially down to the perspectives, experiences and resources of individual police officers and that sometimes they became simply ‘burnt out’. Interviews in Temkin’s study revealed a desire among several police officers for specialist teams to deal with rape rather than the somewhat uncoordinated system that was actually in place, a system that was seen not only to fail victims but also the police themselves.

More recently, research by Kelly et al (2005) reported from the perspectives of complainants in their study that service provision and the behaviour of personnel do not create a context of support and confidence in the process. Analysing responses to service user questionnaires and interview data, involving a sample of 228 complainants, Kelly et al revealed problems including the absence of female doctors which might result in complainants refusing a forensic examination, a lack of trained female police officers and aggressive questioning or even active discouragement towards complainants by police officers investigating their allegations. Kelly et al conclude that, while there might be many reasons why complainants are ambivalent about being involved in a rape investigation, the fact that so many lose confidence so quickly, not believing that the criminal justice system is capable of recognising their needs or delivering justice, provides some indication of the serious gaps in how reported rapes are currently responded to (p.68). It is important to note that conclusions from these studies would have been based on the views only of those women who chose to participate in the research.

Research from other jurisdictions has been mixed. An Australian study conducted by Heenan and McKelvie (1993) observed that, despite improvements, complainants often protested that their needs took second place to administrative priorities, that they were often not believed and that they felt that they were treated simply like a piece of evidence rather than as a human being. In spite of this, just two years later, another
Australian study detected an *increase* in complainant satisfaction with police responses (Bargen and Fishwick, 1995:50-51) which was associated with a higher number of cases proceeding, a greater use of female police officers and the formation of specialist units. However, in 1998, Jordan conducted a study in New Zealand specifically to assess the extent of change since a similar project carried out a decade earlier. Reflecting the conclusions of the Heenan and McKelvie study, Jordan reported that, despite various reforms to police training and procedures, the proportion of rape complainants who reported being satisfied with the police response had not actually changed much (Jordan, 1998).

The Sturman report (2000), published by the Metropolitan Police Service, attempted to address the issue of inconsistency in the police response to rape complainants. The Sturman Report was a major milestone in establishing facts about drug assisted sexual assault and the need for developing a proper police response. Amongst other issues, Sturman recommended a comprehensive, integrated blueprint for all agencies involved in the treatment, investigation and prosecution process to ensure a more complainant-driven approach.

According to the literature, then, inadequacies in police response to rape is a central concern. This might result from stereotypical notions about genuine rape that tend to pervade the criminal justice system, affecting how cases are dealt with throughout the process (Holmstrom and Burgess, 1978; Chambers and Millar, 1986; Smith, 1989; Lea et al., 2003). Police practice has been the focus of much attention given that this stage demonstrates the greatest attrition of cases. The following section will consider the impact that this has on rape complainants in terms of 'secondary victimisation', rape trauma syndrome and the withdrawal of allegations.
4.3.1 Secondary victimisation

“Rape does not end with the departure of the assailant. Instead, the institutional processing that occurs can be equally devastating for the victim.” (Holmstrom and Burgess, 1978:vii).

As they are dealing with the impact of the crime, victims too often then have to endure insensitive treatment at the hands of the criminal justice system – what has come to be referred to in the literature as ‘secondary victimisation’ (Maguire and Pointing, 1988:11). Indeed, poor treatment is often the reason for complainants of rape withdrawing their allegations and contributing to the attrition of rape cases throughout the system (Harris and Grace, 1999).

To investigate this, Holmstrom and Burgess (1983) carried out a study that looked at how various institutions responded to rape complainants - including the police, hospitals and the courts - and the impact that this response had on the complainants. The researchers gained access to a sample of complainants of rape through a nursing hierarchy at Boston City Hospital to which a high percentage of complainants of rape were referred. Those admitted to the hospital between July 1972 and July 1973 with an allegation of rape were included in the study sample. Using interviews and observation techniques, the researchers followed the cases of the complainants all the way to court where they observed the trials. Supplementary information was taken from medical records and interviews with professionals including hospital staff, lawyers and psychiatrists.

This study found that, whilst these institutions may help rape complainants, in many ways they further harm them. It seemed that staff from all of these institutions could react with bureaucratic impersonality and professional neutrality. Rape complainants told researchers that communication was poor and that they were rarely told about what was going on. In fact, any contact that there was was sub-standard - interviews with complainants were often carried out in intimidating or suggestive ways and, indeed, statements often were not recorded in the complainants’ own words. A further criticism was that complainants were given little privacy. In addition to these findings,
there were severe delays in the institutional response to complainants’ dilemmas which could only result in their further suffering.

Lees and Gregory (1993) in England and Wales also examined how the criminal justice system responds to rape complainants and the impact that this response has on them. Based on an analysis of 310 cases of rape, attempted rape, indecent assault and attempted indecent assault over a two year period, they concluded that there was a serious need for improved treatment of victims and that complainants should be provided with greater encouragement throughout the process. Although this research focussed on sexual assaults in general, issues concerning the need for sensitivity on the part of police officers and the difficulties complainants might face in pursuing their allegations are likely to be similar to those experiencing rape.

The more recent study by Lea et al. which considered 379 cases of rape or attempted rape within a Constabulary in the South West of England reported similar poor attitudes amongst those responsible for handling rape allegations (2003). Aside from the fact that police were found to be ‘no-criming’ allegations for reasons other than those recommended by Home Office guidance, analysis of interviews revealed that police, barristers and judges still hold traditional, stereotypical attitudes towards rape victims that make them less sympathetic to their cause.

4.3.2 Rape Trauma Syndrome

Obvious concern has been expressed regarding the nature of rape and the devastating effect it can have on women’s lives. Complainants of rape can find their lives turned upside down even several years after the attack (Young, 1983; Maguire and Corbett, 1987). Complainants’ own accounts of the physical and mental suffering attributed to cases of rape have contributed greatly to discourse on the subject of the long-term effects of rape. There is some misunderstanding, however, about the short-term effects of rape and what is perceived to be appropriate behaviour of a victim in the immediate aftermath of an attack. For example, it is commonly expected that, following a rape, a victim’s trauma will be reflected in their being hysterical and tearful which is often not the case. Instead, Holmstrom and Burgess (1983), for example, found many complainants to exhibit a controlled response and in fact mask
their feelings, therefore appearing calm and composed. Indeed, such an appearance might be interpreted in a way that counts against a rape complainant when she is being dealt with by police and prosecutors who are considered to abide by stereotypical rape principles. Holmstrom and Burgess (1983) went on to confirm the existence of what is termed 'Rape Trauma Syndrome', a condition whereby the emotional and physical after-effects of a rape might cause a victim to exhibit a range of different behaviour from fear, anger or crying through to unexpected behaviour such as laughter, for instance.

4.3.3 Complainant withdrawals

According to some of the literature, the justification for high levels of attrition at the police stage of the process normally centres around "the complainant's failure to substantiate the allegation" (Lees and Gregory, 1993:56). Indeed, Lees and Gregory identified this to be the main reason for police no-criming allegations whilst Harris and Grace (1999) found it to most likely affect the police decision to charge a suspect. The previous review chapter has already considered some of the factors that appear to shape the decision-making of practitioners when it comes to processing rape allegations. Factors that influence the decision-making of complainants in terms of whether they decide to pursue or withdraw their allegations are also important to consider and have been explored by various studies. Steffensmeier (1988) suggested that the unwillingness of complainants to pursue allegations is 'voluntary attrition' and therefore not attributable to systematic bias. Given the large number of cases that do not proceed due to complainant withdrawal, Steffensmeier's claim would seem to suggest that the criminal justice system cannot therefore be held responsible for much of the attrition that occurs in rape cases. However, he did acknowledge that the police or others might discourage complainants from pursuing an allegation, something that is explored in the present study through analysis of interviews with rape complainants.

As part of a large study of rape in New Zealand, Jordan (2001) examined reasons for complainants deciding to withdraw their allegations, reporting factors that tended to influence decisions as being: practical issues such as relocation; being questioned when they were exhausted, in shock or hung-over; fear of the perpetrator; despair at the process; and pressure from family members. Jordan makes the important point
that complainant withdrawal signifies a withdrawal of trust and confidence in the police and the criminal justice system. Jordan also discovered an inclination for some complainants to cover up aspects of their allegations that they thought might reduce their credibility:

“Fearing disbelief and judgement, victims of rape may try to embellish their accounts, or conceal wrong doing, in order to make themselves appear more ‘believable to the police’”. (Jordan, 2001:93)

However, Jordan found that the outcome of this usually had the opposite effect, with any inconsistencies or lack of honesty ultimately causing damage to a complainant’s credibility.

In summary, reforms of the early 1980s appear to have had limited effect (Lees and Gregory, 1993; Jordan, 1998; Temkin, 1997, 1999; Kelly et al., 2005). Whilst some research has reported medium to high levels of complainant satisfaction with treatment by police officers (Adler, 1991; Bargen and Fishwick, 1995), more usually complainants report low satisfaction or satisfaction that diminishes over time. Disbelieving attitudes and insensitive treatment, including misconceptions about how a victim would appear and behave after a rape, result in a form of ‘secondary victimisation’ whereby the institutions set up to help complainants can end up further harming them (Holmstrom and Burgess, 1983). Indeed, it seems that, although in theory police guidelines provide a framework for a system of care for victims, in practice they are not always followed (Temkin, 1999) often resulting in complainants withdrawing from proceedings.

4.4 Constructing a narrative

Several of the studies reviewed in this thesis have identified that stereotypical principles about genuine rape often come into play to assist police in meeting the necessary criteria to ‘get the job done’ (Holmstrom and Burgess, 1983; Chambers and Millar, 1986; Smith, 1989). A variety of studies have also revealed that the perceived character of a complainant, aside from the facts about an alleged incident, usually becomes pivotal in affecting judgements about rape allegations (Smith, 1989; Stewart
It is therefore clear that several, often competing, factors are significant to the police investigation of rape allegations and must be taken into account.

It is with a view to the investigative context that Innes (2003), in his research into murder investigations, proposes that police officers assign individuals to particular roles in order to construct a narrative to explain and connect actors, actions and their causes and effects. These roles have 'legal identities' so that, via the interpretative framework of the police, a character can be defined as a victim or as a suspect: allied to these 'legal identities' are moral characteristics. Innes talks about the police deliberately 'working up' these moral roles as a reflection of the politics of the criminal justice system seeking to provide further moral clarity to the narrative by determining the victim, for instance, as 'deserving' and as someone who did not deserve for the crime to happen to them. Essentially, in constructing a narrative of a crime, the police dramaturgically construct victim roles and suspect roles to which they can assign participants. Moral identities are not static but are altered and built up as the investigation proceeds. In this way, Innes - drawing on the work of Goffman (1959b) who in turn developed the original idea from Hughes (1958) - talks of a victim's 'career' which is made up of three stages: first, where they are perceived as a physical object – in body, second, where they are deemed as an individual subject – as a person, and third, where they become a moral object – whereby they are determined as 'worthy or 'deserving' and are shaped further to support the case against the suspect. Innes suggests that, in this way “the identity of the murder victim is essentialised and poetically reconstructed in the terms of the politics of adversarial justice” (p.170). Despite the fact that Innes writes about investigations in relation to murder offences, the construction of the moral career of a victim by the police can be related to the symbolic content of this type of investigative work with regard to rape allegations. In constructing a narrative, the police focus their work towards certain 'cues' which cohere around various facts that have to be proven to meet requirements and definitions established in law (p.172).

Innes goes on to talk about 'moral tainting' as a form of stigmatisation (p.167) which impact on how the police aim to refigure moral identities of some victims and suspects. In this way, according to the values of police culture, there are good or
worthy victims who do not deserve for the crime to have happened to them and there are ‘tainted’ victims whose deviant lifestyles render them ‘police property’ (Reiner, 1992). Distinguishing between types of victim in this way, Innes claims, can result in subsequent tension as to how much effort the police are likely to put in to the investigation.

Of relevance to the debate about how the police go about constructing a narrative is Goffman’s analysis of the means by which people present themselves to others with a focus on the complexities around social interaction (Goffman, 1959a). Introducing a sociological stance, Goffman writes from a symbolic interactionist perspective, emphasizing a qualitative analysis of the component parts of the interactive process.

Goffman describes the ways in which people interact as being a ‘drama’ whereby actors give meaning to themselves, to others and to their situation by delivering impressions. Goffman refers to this as ‘dramaturgical analysis’. Facilitating the delivery of impression is a person’s ‘front’ which Goffman terms ‘expressive equipment’, and which he defines as:

“that part of the individual’s performance which regularly functions in a general and fixed fashion to define the situation for those who observe the performance.” (Goffman, 1959a:22)

According to Goffman, various signs and signifiers are used in projecting the front. First, these include the social setting. Individuals are said to enter, reside in, perform in and leave settings – for example, the office, a restaurant or a party. Added to this can be speech, clothing or pictures. Goffman suggests that people assemble ‘sign-equipment’ in their settings of interaction and that their projection of impression may be turned on or off according to the setting that they find themselves in. Some impressions in a particular setting may be seen as disrespectful (for example, a Page-3 pin-up displayed in the workplace) depending on the significance of the symbols to the actors and the audience. Second, ‘front’ is comprised of a persons’ appearance and manner. Goffman regards appearance as an element of ‘front’ or ‘role’ which, by virtue of a person’s clothes, house or body posture, for example, serves to communicate information about them such as their gender, status, occupation or age.
Manner is how a person plays that role. A manner is expected according to a person’s given role and this serves to inform others of how that person will seek to act.

Goffman’s discussion about credibility is of particular interest to this thesis. Here, he suggests that, to be perceived by others as credible, a person’s behaviour must be convincing and ‘in-line’ with expectations about those duties and mannerisms that are associated with their particular role. The aim of the person is for the performance to be believed – something that is a primary objective of rape complainants. Credibility is also won by a person being consistent in communicating their activities and traits, any inconsistencies serving to confuse the audience and hence reducing that person’s credibility.

In order for someone’s behaviour to be ‘in-line’ with expectations, Goffman goes on to suggest that aberrant values and actions that others might perceive as being out of line with their expectations may be withheld; in this way, only approved traits are actually presented in public in order to legitimate that person’s social role. Information dealing with unacceptable or unexpected behaviour is concealed from an audience in what Goffman terms a process of ‘mystification’. It is suggested in this thesis that this attempt to present an ‘idealised’ version of a front that is consistent with the norms and values of society is something that a rape complainant would strive for, as would those responsible for processing her case to achieve a successful conclusion.

Goffman’s introduction of the term ‘impression management’ will, therefore, be interesting to explore in the present thesis. ‘Impression management’ is used to refer to the control and communication of information through performance. According to Goffman, it is with the aim of being believed that a person’s front is constructed and controlled to effectively convince an audience of the appropriateness of that person’s behaviour and consonance with the role that they assume. Indeed, Goffman claims that the demand for idealised conduct pressurises the impression management activities of those at the margin – those who deviate from the ideal. It is interesting here to review a later piece of Goffman’s work which focuses on ‘stigma’ (Goffman, 1963). Stigma serves to push those people who deviate from the ideal towards marginalised, ‘discrediting’ or ‘discreditable’ groups, based on the nature of their
stigma. These people would be termed the ‘morally tainted’, according to Innes (2003:168). This particular analysis will be applied in the present context to study complainants who might feel marginalised by virtue of being a prostitute, for example, or as a result of having a drink or a drug problem. People who possess ‘discredited’ or ‘discreditable’ identities must attempt to manage and control social information about themselves, thus actively engaging in ‘impression management’. The importance of impression management is seen as being most obvious with those people who struggle to present an idealised image (Goffman, 1963).

Innes puts forward some interesting ideas about how the police construct a narrative by assigning individuals to particular roles in order to assist them with their investigation. Goffinan presents some original concepts about the way in which people, or ‘actors’, present themselves and give meaning to interactions. A sense of drama and a notion of constructing a witness is therefore conveyed, ideas that might go some way towards explaining how the police go about presenting a credible rape complainant to the criminal justice system and the complexities behind this task.

4.5 Belief in false allegations

Suspicion, or scepticism, towards alleged rape victims is evident in the degree to which police officers believe that many allegations are false, something which is understood to be at the forefront of their minds at the time of an initial report of rape (Wilson, 1978; Lees and Gregory, 1993; Jamieson et al., 1998; Temkin, 1999;). Studies in England and Wales, Australia, New Zealand and the USA all report high levels of disbelief of rape complaints (Campbell, 1995:251; Department of Justice, 1996:13; Jordan, 2001).

Given the proportion of rape cases that the police proceed no further with on the basis that the allegation is thought to be false, it is surprising that more research has not been conducted to investigate the issue of false allegations. Several authors have challenged the concept that false rape complaints are particularly common: in one of their later studies, Gregory and Lees (1999), for example, questioned why a woman would subject herself to the process that follows reporting rape if it was not genuine and the authors expressed surprise that so many police officers seemed to believe that
they would (p.61). Gilmore and Pittman (1993) conducted a study examining the propensity of alleged victims of any crime to make false complaints, concluding that fabrication was, in fact, no more common for rape than it was for other crimes. Furthermore, in her book “Carnal Knowledge: Rape on Trial”, Lees cites what she believed to be the only methodologically sound study into the incidence of false allegations of rape carried out by the New York Sex Crimes Analysis Unit which reported an incidence of 2 per cent (Patullo, 1983; Lees, 1996). This rate of false reports is apparently no higher than that of any other type of crime (Adler, 1987:53). Kelly (2002) even speculates that false reporting might be considerably higher for some other crimes - such as theft, for example, where a false report might be made in order to secure an insurance claim.

A few studies have explored the sort of complainants most commonly recorded by the police as apparently making false allegations of rape. Some have suggested, for example, that complainants who have serious problems, be they mental health problems or issues with domestic violence, are more likely to have their allegations classified as false (Theilade and Thomsen, 1986). For example, Kelly et al (2005) reported that those cases involving complainants with a disability in their study were almost twice as likely to be recorded as false than those where the complainant had no disability (51 per cent compared with 28 per cent respectively), and in 19 of these cases mental health and learning difficulties were evident (p.48). Kelly et al conclude that there is an over-estimation of the scale of false allegations by police officers and prosecutors which feeds into a culture of scepticism, resulting in poor communication and loss of confidence between complainants and the police (p.xii). Jordan’s detailed analysis of police rape and sexual assault files found that police tended to classify an allegation as false where they believed that the complainant had a motive for lying – such as: “a woman scorned” (Jordan, 2001:45). In addition, a complainant was less likely to be believed where she was found to have concealed some aspect about the incident, she was perceived to have learning disabilities or if she had been on record for having made previous allegations of rape that had not resulted in a prosecution. Jordan concluded that, while false complaints do occur, about three-quarters of the incidents classified by the police as false in her study appeared to have been judged, to some extent, on the basis of stereotypes regarding the complainant’s behaviour, attitude, demeanour or possible motive.
Perhaps unsurprisingly, according to research that has been conducted in this area, it is those complainants in cases that most closely resemble stereotypical notions about genuine rape who have the least difficulty in being believed. The propensity of police officers to believe in false reports is an important issue since a preoccupation with false complaints is likely to lead them to focus overly on the complainant and her character rather than on other aspects of evidence gathering.

4.6 Police practice

Police decision-making takes place within a particular institutional context and it is therefore necessary to gain some insight into the culture of this organisation in order to appreciate the handling of rape allegations. Indeed, the notion that the police possess a distinctive occupational sub-culture is at the root of much research and many theories about how the police operate. The suggestion is that police practice is guided by stereotypical beliefs and values shared by those within the police, and particularly those in the lower ranks who are most likely to encounter members of the public in conditions of 'low visibility' (Goldstein, 1960). Such beliefs and values are perceived to affect police practice adversely leading to routine injustices that are most likely to affect vulnerable people in society.

Reiner’s work: “Politics of the Police” is a key text in this area (Reiner, 2000). Reiner suggests that the core of the police outlook is a combination of themes including a sense of “mission, hedonistic love of action and pessimistic cynicism” (p.90). Each are seen to feed off and reinforce the others resulting in a pressure for efficiency and the need to get the job done as the basic motivating force within the culture of the police. Indeed, Reiner supports the idea presented by Skolnick (1966) that police officers are under a constant pressure to produce, which results in their exhibiting a particular ‘police personality’. A detailed examination of police practice was undertaken by Kerstetter (1990) in the late 1970s/early 1980s. Based in Chicago, this study involved intensive participant observations of police officers followed by in-depth interviews with twenty detectives and supervisors about the decisions made during a sexual assault investigation. In addition, Kerstetter went on to conduct a secondary analysis of two data-sets of cases taken from 1979 and 1981, comprising
1,530 cases of rape and 671 cases of sexual assault, respectively. Kerstetter concluded that attrition at the investigative stage of proceedings is largely due to administrative factors including routine elements of policing that support officers in ‘no-criming’ allegations – including having less unsolved crimes on one’s record, for example.

Reiner argues that the job of policing produces a general culture of policing in which officers have a strong sense of mission and orientation towards action, isolation which results in solidarity amongst the group, a general conservatism, machismo, racial prejudice and pragmatism. Such traits of ‘cop culture’ can result in sexist, racist and homophobic attitudes and behaviour. A further important facet of cop culture is ‘suspicion’ (Reiner, 2000:91). Suspicion breeds stereotypical principles and discrimination, the subject of which has been covered by various literature in relation to police attitudes towards criminals. Although less has been written about police discrimination towards victims, some of the same principles might be applied to help explain the way in which alleged victims of rape are treated.

The masculine ethos of police organisations is bound to compound the issue of discrimination towards certain types of suspects and therefore certain types of complainants – including rape complainants. Several writers have described the police world as being one that is based on old-fashioned machismo (Fielding, 1994; Crank 1998). Interestingly, ‘machismo’ is defined in an online dictionary as meaning “a strong or exaggerated sense of masculinity stressing attributes such as physical courage, virility, domination of women, and aggressiveness” (www.dictionary.com – emphasis added). It is perhaps no surprise, then, that, in an organisational context characterised by adherence to masculine values and shaped by historical and cultural beliefs regarding the crime of rape (Brownmiller, 1975; Jefferson, 1997; Lees, 1997), sexist attitudes arise towards complainants of rape and the deserving victim is less easily defined. This sort of conduct gives rise to what Reiner (2000) terms “canteen culture” (p.85) which is frequently used to refer to the values and beliefs of police officers that are exhibited in off-duty policing and that operate as an important function of tension release, often resulting in ‘gallows humour’ (Young, 1995).

Chan (1997) goes on to offer the view that police occupational culture influences their action. She suggests that “not only is the police culture responsible for racist attitudes
and abusive behaviour, but it also forms the basis of secrecy and solidarity among police officers, so that deviant practices are covered up or rationalised” (p.225). Again, much of what Chan talks about refers to deviant practices concerning offenders, but there is no reason why the same argument about discrimination and subsequent ‘cover up’ cannot apply to the handling of certain categories of victim. Chan does go on to admit that the traditional police researchers’ view of cop culture is too deterministic, failing to allow for differences between officers and forces and failing to allow for the possibility of change in the culture.

An ongoing argument in this area has centred around the degree to which police culture actually defines police action. Waddington (1999) has more recently challenged the idea that what passes for police culture, or canteen culture, is appropriate to explain police behaviour. Instead, he points to various research that supports a separate argument - that police behaviour relies on contextual variables, such as the seriousness of the offence, and talk and behaviour between police officers in the ‘canteen’, in the police station or the police car remains there and is not taken out onto the street (Black, 1970, 1971; Rubin and Cruse, 1973; Coates and Miller, 1974; Friedrich, 1980; Sherman, 1980; Smith and Gray, 1983; Sykes and Brent, 1983; Smith et al., 1984; Worden, 1995, 1989; Locke, 1996).

Waddington also goes on to question the idea that particular stereotypical beliefs and attitudes are distinctive to the police as a group, as the term ‘culture’ implies. He warns of the danger that, just because the police might exhibit a common trait, it is too readily interpreted as a distinctive characteristic attributable to their culture. Using the example of sexism, Waddington claims that this is something that is often assumed to be an expression of police officers’ particularly ‘macho’ sub-culture (Martin, 1979; Brown and Campbell, 1991; Brown et al., 1992; Brown, 1995). However, sexism is not restricted to the police (Bucke, 1994) but the police are likely to be influenced by patriarchal beliefs shared by a wider society of which they are a part. In this context, Chan (1997) remarked that “Police culture has become a convenient label for a range of negative values, attitudes and practice norms among police officers” (p.110). Waddington suggests that it is the quest for reform within the police that justifies this attribution of an apparent police culture as distinctive to them. For example, Waddington refers to Holdaway’s research on the police which he claims was not
conducted just to describe and analyse but to reform, as suggested by the following quote:

“If I desire anything for this book, it is that it may make a small contribution to our search for a more loving and just society and therefore a more loving and just police” (Holdaway, 1983:vi).

Much has been written about police accountability in relation to discriminatory practices, stigmatisation and the criminalisation of vulnerable groups of suspects (Matza, 1969; Young, 1971), reflecting the crime-fighting, offender-orientated nature of policing. Whilst less material can be found on police accountability in relation to victims, some of the same ideas and concepts might be applied when thinking about discrimination against complainants. The following categories have been identified to help explain different forms of discrimination directed at offenders; it is intended that these might be explored to go some way towards explaining discrimination against rape complainants in the current thesis.

Categories of discrimination proposed by Banton (1983) and Reiner (2000) are useful to consider here. Banton (1983) initiates the term ‘categorical discrimination’ which refers to the invidious treatment of certain people who belong to a particular group or category of person, purely on account of their belonging to that group or category. Undoubtedly, much discriminatory use of police powers is a reflection of categorical bias of the kind found in police culture (Reiner, 2000). Reiner goes on to identify ‘transmitted discrimination’ whereby the police are seen to be a “passive conveyor-belt for community prejudices” (p.126). Reiner uses an example referring to suspects, whereby racial prejudice amongst a white community causes people in that community to label attackers as disproportionately black, leading the police to search for more black suspects. Reiner also identifies ‘interactional discrimination’ as a form of discrimination whereby the process of interaction with the subject leads to a differential outcome. Various research suggests that black men, for example, have more negative attitudes towards the police than other groups (Waddington and Braddock, 1991; Skogan, 1994; Bucke, 1996, 1997), something which mirrors long-standing police prejudices towards this group of people. The result of this is that many police encounters with black males escalate into hostilities which culminate in arrests.
(Brown and Ellis, 1994). Finally, Reiner (2000) refers to ‘institutionalised discrimination’ which might be seen in how the police deal with suspects and victims, “whereby the consequences of universalistically framed organisational policies and procedures work out in practice as discriminatory due to the structural bias of an unequal society” (p.126). Reiner gives the example of the way in which institutions of privacy make certain actions (such as drinking) actionable by the police only in a public context (such as in the street or in bars) to which the poorer classes are disproportionately restricted (Stinchcombe, 1963).

4.7 The presentation of the victim in court

In the 1970s, considerable concern began to be expressed about the conduct of rape trials and the treatment of complainants in court. Despite various reforms in legislation since then (in the form of the Sexual Offences (Amendment) Act 1976, S.2 and the Criminal Justice and Public Order Act 1994, S.32, for example), these concerns are still in existence today. Criticism has centred around the cross-examination of complainants in court, the manner in which prosecuting and defending barristers handle cases and the degree to which judges exercise control over them.

In order to gauge the attitudes and perceptions of barristers about the complexities of rape trials, Temkin (2000b) conducted in-depth interviews with a sample of ten highly experienced barristers who had both prosecuted and defended during their careers. Whilst Temkin’s study did not include a quantitatively representative sample, it raised some interesting questions about the sorts of issues that are important to decision-making in court, as perceived by barristers. Respondents in her study revealed several issues that added to the intricacy of rape trials: a lack of supporting evidence in the form of injury to a complainant was felt to be a particular drawback. Further to this, delays in reporting, the character of the complainant and their previous relationship with the accused were raised as issues that made rape allegations difficult to prosecute. There was also a strong feeling amongst some of the respondents that inexperienced barristers were often chosen to prosecute rape cases. Notions about a genuine rape victim’s normative conduct and response to rape inform all levels of a rape trial - indeed, these arguably inform all levels of the investigation and prosecution stages as well - but they are raised with particular intent and purpose by
the defence as a standard means of discrediting the complainant and her story. Defence barristers in Temkin’s study had, essentially, normalised this process in setting what they referred to as “foolish behaviour against behaviour which conformed to common sense” (p.232).

In terms of defending rape, Temkin’s study revealed that it is frequently part of the defence strategy to appoint a female barrister to represent a defendant since it sent out a message to the jury that this woman was not afraid of this man but believed in him. A further important tactic was exploiting inconsistency to suggest fabrication. It will be interesting to consider Goffman’s concept of dramaturgy here (Goffman, 1959a) and the presentation of a witness in the context of the court. Discrediting the complainant was reported by Temkin (2000b) to be the central strategy in the defence armoury, involving several different tactics: criticising the complainant’s behaviour, criticising the complainant’s clothes and criticising the complainant’s sexual character. In relation to the final tactic, exploration of a complainant’s sexual character and the introduction of sexual history evidence to this end, is something that distinguishes rape trials from almost any other criminal case (Kelly, 2001) - likened by Larcombe (2002) to something of a “fishing expedition – with the sanction and the assistance of the judiciary and the police” (p.136). Indeed, in no other crime is the credibility of the victim concerned subject to so much scrutiny (Archambault and Lindsay, 2001), raising notions of victim-precipitation as cited at the beginning of the chapter (Von Hentig, 1948; Mendelsohn, 1956; Amir, 1971). Over the years, policymakers and women’s groups have campaigned to limit the admissibility of sexual history evidence, and therefore the Sexual Offences (Amendment) Act 1976 was passed. This sought to protect a complainant of rape from the unrestricted admission at trial of evidence relating to her previous sexual experiences, stipulating that the defence must apply to the judge for permission to cross-examine a complainant about her sexual history. However, the Act was considered by many to be ineffective (Temkin, 1993) since sexual history evidence was revealed as still being admitted extensively in rape trials (Adler, 1987; Lees, 1997; Ferguson, 2000). Adler (1987), for example, conducted the only systematic research in England and Wales studying 82 rape trials. Of these, she found three-quarters of applications to be successful with sexual history evidence being present in 60 per cent of trials. Meanwhile, Brown et al. (1993) tracked 379 trials in Scotland revealing there to be applications in over one-
third of High Court cases, one half referring to prior relationship, one half concerning the complainant’s sexual reputation and one-third relating to both of these issues. Applications were granted in 85 per cent of cases, although sexual history evidence was also shown to be introduced without any application in about 24 per cent of cases. Brown et al. considered sexual history evidence to be something that was used “to create a smokescreen of immorality” (p.26) which served to hide those facts about a case that did not serve the interests of the defence – a process likened to Goffman’s concept of ‘mystification’ whereby unacceptable or unexpected behaviour is concealed from an audience whilst only that which is perceived to be consistent with the norms and values of society is presented (Goffman, 1959a). Sexual history evidence was considered by most of the barristers in Temkin’s study to be an important defence tool (Temkin, 2000b). Indeed, the introduction of sexual history evidence in a trial has been claimed to have a significantly prejudicial impact in increasing the chances of an acquittal (Kelly, 2001).

With reference to a sample of successful Australian prosecuted rape cases, Larcombe (2002) demonstrates the variability and complexity of factors that contribute to, and complicate, the legal construction of genuine rapes and credible victims. Writing about a selection of incidents that included a woman who had accepted a lift in the car of her rapist, another where a complainant had been willingly dancing and kissing her alleged attacker prior to the rape and another in which a woman had been very drunk at the time of her attack, Larcombe presents examples that do not embody judicial stereotypes of genuine rape victims but that were nevertheless successful in being prosecuted. Larcombe argues that this is because, whilst the cases do not accord with stereotypical notions about rape, important elements of conformity could be seen in relation to stereotypes that were still evident through the prosecution process and the discourse of the courtroom: in this sense, a complainant’s moral character is assessed according to her verbal abilities and self representation, and especially her ability to deal with harsh questioning by the defence. Larcombe makes these observations with reference to Matotesian (1993) and his claim that the “control and manipulation of silence constitutes a critical power resource in courtroom talk” because “it embodies the inferential basis for assessing the credibility of testimony and character of witnesses” (Matotesian, 1993:135). Therefore, Larcombe (2002) concludes that “the ‘successful rape complainant’ is not necessarily one with an unblemished sexual
history. Rather, she has a strong sense of herself and takes overt offence at...alternative or derogatory constructions of her character and credibility” (p.144).

Many studies that have examined decision-making about rape cases have tended to focus on the police stage of proceedings. However, some of the factors identified by the police in various studies as having a bearing on whether allegations are considered credible or not have also been raised by barristers in Temkin’s study (Temkin, 2000b). This indicates that, despite the fact that a relatively small proportion of rape allegations reach court, a study of the court process is just as important as an assessment of the investigation and prosecution stages. Reflecting on this fact, Jamieson et al. (1998) comment:

“...It is worth noting that, at each level the decision-makers anticipate and are influenced in their own decisions by their judgement of the decisions that are likely to be taken at the next level of decision-making.” (Jamieson et al., 1998: 60).

4.7.1 Courtroom talk

It is in the court setting particularly that a rape complainant can feel that she is ‘on trial’ and might be found “guilty of consent” (Smart, 1989; Lees, 1996). Sometimes, it appears that the lines can become blurred between who is actually on the side of the complainant. For instance, Soothill (1993) conducted a study of the reporting of barristers' comments in rape cases, concluding that the prosecuting counsel themselves bore some responsibility for portraying sexist attitudes in the rape trial. Furthermore, other studies have revealed that complainants sometimes find it difficult to distinguish between barristers who are prosecuting their case and those who are defending (Lees and Gregory, 1993; Victim Support, 1996).

Despite various statutorial changes to provide safeguards for victims during cross-examination¹, these appear to have had limited effect. Part of the research

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¹ At the time of this research, measures were being introduced in the Youth Justice and Criminal Evidence Act Bill, covering issues such as physical measures to reduce the stress of giving evidence in
methodology in the present study will be to conduct court observations of rape trials to assess, for example, the level of access a defence barrister has to a complainant’s sexual history, in light of statutory changes.

Matoesian (1993) studies courtroom talk that is fashioned in such a way as to attribute blame against the victim and reinforce the patriarchal interpretation of rape as consensual sex. He explains that the “blame work” is performed by the defence in cross-examining complainants in rape cases which inevitably involves “categorisation work specifically designed to create a disjuncture between the victim’s actions on the one hand, and the requirements of normative and socially structured incumbency in the category victim on the other” (p.30). This relates back to the views of the barristers interviewed by Temkin (2000b) who were reported to set ‘foolish behaviour’ against that that might be expected of a genuine rape victim. Matoesian (1993) claims that rape is, in effect, reproduced or ‘discovered’ during a defence lawyer’s cross examination of a complainant (p.1) and rape testimony is systematically discredited by making it appear that the complainant did not do what the simultaneously constructed, valourised victim would have done (Larcombe, 2002:134). Matoesian (1993) therefore concludes that patriarchy is drawn upon and reproduced as a resource of symbolic domination in courtroom talk.

Taslitz (1999) also locates the cause of rape reform failure in the language lawyers use and the culture on which they draw to dominate rape complainants in the court room. Taslitz maintains that cultural stories about rape – such as the provocatively dressed woman – are at the root of many unconscious prejudices that determine the views of jurors. Indeed, the very details that affect police decision-making and reduce the credibility of complainants during the investigation stages are raised and, if a case gets that far, actively focused on in court. Taslitz goes on to argue that such stereotypes are used by defence lawyers to gain acquittals for their clients. He also seeks to demonstrate how the choice and tone of words that they select is used to undermine the confidence and credibility of complainants.

court, restrictions as to what relevance an alleged victim’s sexual history is to the case and restrictions on the freedom of defendants to personally cross-examine alleged victims.
Schulhofer (1998) contributes to this debate. Along with Taslitz (1999) and Matoesian (1993) who examined the construction of courtroom talk, Schulhofer also seeks to demonstrate that it is how rape narratives are, and are not, constructed as 'believable' in the courtroom that ultimately has more influence than any legal or evidential requirements. In his work, Schulhofer incorporates a critique of rape law within a larger framework of human sexual interaction and "unwanted sex," of which rape is a part. Like many others, Schulhofer maintains that, despite the extent of statute and procedural reform in many jurisdictions, little progress has actually been made and the traditional treatment of rape in the judicial system has served more to protect perpetrators than victims.

4.8 Conclusion

The high levels of attrition in rape offences have led feminists and scholars to conclude that the criminal justice system discriminates against rape victims based on a number of factors. It has been argued that the low conviction rate of offences and the reluctance of victims to report, and pursue, allegations of rape can be attributed to the poor handling of cases and treatment of victims within the criminal justice system. Indeed, whilst victim interests have, to some extent, been put on the agenda and reforms have been put in place to improve service delivery for complainants, it appears that little has changed in terms of complainant satisfaction. Stereotypical principles are shown to come into play throughout the criminal justice system when police and practitioners are making judgements about genuine rape victims, resulting in a propensity to believe that more allegations are false than is likely to be the case. Furthermore, a 'masculine' police culture is likely to compound the problem of discrimination against rape complainants. Looking to the court stage of proceedings, stereotypical principles continue to affect judgements with issues being raised to discredit allegations on the grounds that they do not conform to notions of appropriate female conduct and behaviour.

A review of the history of law in respect of rape and consideration of the literature regarding attrition and the criminal justice response to allegations has provided the present study with some context. The following chapter documents the methodology that was employed to undertake the research for the present thesis.
5. METHODOLOGY

5.1 Introduction

This chapter outlines the methodology that was used for the present study. The research design is described and the strategies employed in order to gain access to the research sources are summarised. This is followed by a look at the quantitative and the qualitative elements of the research in more detail, explaining why these particular methods were chosen in relation to theory and practice, and according to the questions that needed to be answered. The chapter will review the ways in which the data were analysed, concluding with a consideration of the ethics of the research.

This study focuses on factors responsible for attrition in rape cases. It seeks to explore what factors appear to influence the processing of allegations and the extent to which the criminal justice system can be shown to be inherently patriarchal and discriminatory. In addressing these issues, the research will identify the main points of attrition for rape cases and explore what lies behind this phenomenon by focusing on decision-making amongst criminal justice personnel — the police, the CPS and the courts, as well as complainants who choose to report rape.

The data on which this thesis is based was originally collected as part of a Home office study which aimed to identify what factors influence whether or not a recorded rape leads to a conviction for rape and whether such factors had changed over the period 1985 to 1996. Considering this period allowed the study by Harris and Grace (1999) to be compared with the previous Home Office study by Grace et al. (1992) which had been based on 1985 data. The data for the Home Office study were analysed as far as was necessary to answer the research question to meet policy requirements, resulting in a Home Office Research Study report (Harris and Grace, 1999). However, it was felt that the wealth of data available to the project leant itself to deeper analysis and further independent critical thought. The project was considered worthy of development into a PhD and this was
therefore pursued as part of the Collaborative PhD programme at the University of Surrey. Additional analysis was subsequently conducted for the present study in order to develop a theoretical framework to attempt to explore in more detail what lies behind the high rate of attrition for rape cases. It is hoped that a presentation of this material in light of research and theory on rape – much of which has helped inform the research questions of the present study - might go some way towards an original contribution of knowledge in this area.

5.2 Research design

To investigate the mechanisms by which rape is defined and dealt with within the criminal justice system, it was felt that a variety of methods would elicit the greatest range of information and contribute to the richest picture. Indeed, Webb et al. (1966) suggest that social scientists like to exhibit greater confidence in their findings when these are derived from more than one method of investigation. For this reason, the present study adopted both a quantitative and a qualitative approach, the quantitative research to a large extent informing the qualitative research.

Quantitative research is useful for demonstrating the process of attrition in charting the incidence of rape and the stages at which cases are lost from the process. However, sensitive topics such as rape are often ill-suited to study purely by means of quantitative surveys, interviews providing better means to get at the reasons behind sensitive issues (Lee, 1993; Brannen, 1988).

"Interviews provide a means of getting beyond surface appearances and permit greater sensitivity to the meaning context surrounding informant utterances. This is particularly so when sensitive topics are studied" (Lee, 1993).

In this vein, quantitative research has received criticism for what it fails to address: for example, this method of research fails to understand ‘meanings’ that are brought to social life (Silverman, 2000:4). This belief is often associated with critics who label quantitative
research as ‘positivistic’ (Filmer et al., 1972). Arguably, qualitative research is better for looking at process issues – to understand meaning, look at or describe and understand experiences, ideas, beliefs and values – to understand what lies behind attrition. Therefore, the value of qualitative methods lies in their ability to pursue systematically the kinds of research questions that are not easily answerable by survey methods. Thus, the multi-method approach emerges as a suitable solution since qualitative researchers often assume that a dependence on purely quantitative methods may neglect the social and cultural construction of the ‘variables’ which quantitative research seeks to correlate (Silverman, 2000).

Various authors have gone on to praise the purposeful combination of different methods which is seen to add depth and breadth to analysis (Fielding and Fielding, 1986) although supporters of this view are compelled also to acknowledge that combining approaches does not necessarily ensure data validity (Atkinson, 1983; Fielding and Fielding, 1986; Hammersley and Atkinson, 1983; Bryman, 1988). The use of different methods provides a possibility of triangulation, a term originally invented by Denzin in 1970. This approach offers more than one type of method and, therefore, more than one type of data (Bryman, 1988). To this end, Denzin (1978) identified four basic types of triangulation:

- **Data triangulation** – the use of a variety of data sources in a study;

- **Investigator triangulation** – the use of several different evaluators or social scientists;

- **Theory triangulation** – the use of multiple perspectives to interpret a single set of data;

- **Methodological triangulation** – the use of multiple methods to study a single issue or problem.
In order to combine approaches of a quantitative and a qualitative nature, the present study adopted a *methodological* form of triangulation, thus comprising three main elements:

- a statistical analysis of a main sample of finalised cases which were initially recorded by the police as rape. The sample comprised all cases recorded, regardless of the final outcome of the case;

- a qualitative element involving interviews with criminal justice practitioners: this included focus groups with police officers and prosecutors and one-to-one interviews with barristers and judges, as well as one-to-one interviews with rape complainants who had withdrawn their allegations; and

- observations at the Central Criminal Court of on-going rape trials.

### 5.3 Gaining access

Gaining access to confidential police and CPS case files is restricted under the Data Protection Act and the Official Secrets Act 1989. All researchers participating in the research were required to sign forms granting access to files and criminal justice system staff confirming obligations regarding the protection of official information. The fact that the project was being conducted for the Home Office gave some credibility to the research enabling easier access to files than would otherwise have been the case.

The Association of Chief Police Officers Crime Committee was approached for its support to the project. Following this, the individual agreement of each of the Chief Constables in the study areas was also sought so that researchers could have access to both official files as well as police staff for interviews. CPS headquarters also gave its approval to the study and the individual agreement of the Chief Crown Prosecutors in each of the selected areas was obtained. Local agreement allowed researcher access to files as well as prosecutors and caseworkers; CPS assistance was additionally useful in contacting prosecuting counsel.
Finally, the Lord Chancellors Department and the Lord Chief Justice's Secretary were consulted about interviewing judges.

In terms of organising court observations, the permission of the Lord Chancellor's Department and the Courts Agency was sought for agreement to contact listings officers about pending rape trials in order that visits might be arranged to the Crown Court. Permission was also requested to approach judges for interview. The bar's professional bodies were additionally notified about the intention to approach prosecuting counsel for interview.

The study was carried out by Jessica Harris. The main body of the fieldwork was conducted between January 1996 and April 1997 with the majority of the quantitative research being completed before interviews were set up. In many ways, the quantitative study informed topics for exploration in interviews; in fact, some of the early interviews - with the police, for example - informed questions for later interviews with prosecutors or judges. Patton's views on inductive and deductive analysis might go some way to explaining the benefit of this approach (1987): indeed, the research in the present study tended to graduate from inductive research in discovering what the important questions and variables were (exploratory work, using quantitative and early qualitative methods) to deductive research which sought to confirm some of the exploratory issues that had been raised.

A small pilot study, focusing on the main quantitative component of the project, was undertaken at the start of January 1996. Alternatively referred to as a feasibility study, this was a "small scale version, or trial run, done in preparation for the major study" (Polit et al., 2001: 467). The pilot study also took the form of pre-testing or 'trying out' a particular research instrument (Baker, 1994: 182-3). It was conducted in one study area only and took about one month. The pilot exercise had two main purposes:

- to devise the best system for drawing the samples and tracing cases through the criminal justice process; and
Mock interviews were also conducted with work colleagues in order to test out the topic
guides for interviews with criminal justice personnel and complainants. This was not a true
pilot study in the sense that it was not conducted among volunteers who were similar to the
target population. However, the exercise served to identify the best approach to interviews
in terms of a suitable structure for discussions, offered the chance to rectify any repetition or
leading questions within topic guides and also to identify any further issues that should be
included.

5.4 The quantitative study

Once agreement had been secured both centrally and with individual areas via Chief
Constables and Chief or Branch Crown Prosecutors, officers were appointed as contacts
with whom to liaise in setting up fieldwork.

The main sample of alleged rape cases was drawn from crime report forms completed by the
police. Five forces were asked to participate in the study. These forces were chosen to
represent a mixture of urban, rural and metropolitan areas and because they had sufficient
numbers of recorded rape cases each year to allow for the required sample to be obtained
relatively easily. Aiming for a sample size of 500 cases, recorded allegations of rape were
retrospectively purposively sampled from each force starting from February 1 1996. Files
were identified locally and were usually collected at a central location for inspection by
the researcher. Details about the characteristics of each case were recorded, using the victim
statement as the main source of information, backed up by police, witness and medical
examiners' statements.

Information on the case's progress through the criminal justice system was subsequently
recorded. CPS files were used to record the processing of those cases which were forwarded
to the CPS for a decision on prosecution and information was collected on their progress
from that point onwards. Contacts at each of the CPS offices were notified about those cases in the sample which had been inspected at the police stations that had been submitted to the CPS so that they could arrange for the files to be collected for inspection. A lot of information on police files was duplicated on CPS files, although additional data pertaining to discontinuances, prosecutions and court appearances was sometimes only available from the latter. It was also useful to take notes from letters of correspondence between the police and the CPS which were occasionally found on file and which sometimes indicated how certain decisions had been reached or how particular cases had proved problematic. The sample was drawn from a relatively recent time period overcoming any risk that the CPS might have destroyed files (as is common practice after about 5 years with rape files) before they could be reviewed.

It is accepted that a reliance on police and CPS records can provide only part of the picture since only a small number of rapes are ever reported to the police (Temkin, 1987:9). However, the quantitative study provided a good illustration of the extent and nature of recorded rapes and the scale of attrition associated with these. A supplementary qualitative approach was undertaken to add further credence to the research.

5.5 The qualitative study

5.5.1 Interviews

_Police and prosecutors_

With the assistance of liaison officers from the five police forces and CPS areas, interviews with police officers and CPS staff were set up towards the end of the quantitative study, providing the opportunity to engage with subjects of the research. It was decided to conduct two focus groups of police officers and two of CPS representatives, in each area. This was because it was felt that a group discussion would elicit more information since people tend to 'spark' off each other. Indeed, focus group interviews provide an opportunity for the researcher "to get high quality data in a social
context where people can consider their own views in the context of the views of others" (Patton, 1987).

The groups included at least five people in each, and effort was made to include respondents with good experience in dealing with rape cases as well as those with a range of different experiences. Focus groups involving the police included different ranks of officers whilst CPS focus groups comprised both prosecutors and caseworkers. Interviews were of an informal nature with open-ended lists of questions and issues to be covered in order to gain as much information as possible. Indeed, Lofland and Lofland (1984) summarise the objective of the non-standardised interview as eliciting richer, more detailed material. However, a topic guide and some form of semi-structure to the interviews addressed the need for comparable responses between focus groups whilst allowing for the need for discussions to develop and provide rich data. All interviews were conducted by Jessica Harris. Although the focus group interviews were tape recorded, notes were also taken as a precautionary measure in case the tape recorder did not work. It also provided a means to note down who had said what for when the tape recordings were later transcribed as this information might get lost on a tape with several people contributing to a discussion.

Arranging the focus group interviews was quite straightforward. The only complication arose with an occasional difficulty working around the timetables of police officers and prosecutors, particularly since it was necessary to find a time and a place that was convenient for several people at once. The majority of interviews lasted for about an hour-and-a-half.

Essentially, the interviews comprised free-ranging discussions focusing on the perceived difficulties with rape allegations, why respondents thought that cases failed or why they succeeded (see Appendix C1). Comparisons could then be drawn between the issues raised by interviewees and those that had been highlighted by the quantitative analysis in order to obtain a fuller picture of the processing of rape cases.
In order to facilitate conversations, vignettes of cases were used in this study (see Appendix D). This technique has been employed in numerous studies researching people’s perceptions of rape. Rape scenarios in the form of vignettes have been used by researchers to investigate a variety of issues such as the assessment of blame in cases of date rape (Sheldon-Keller et al., 1994; Clarke et al., 2002) and male rape (Whatley and Riggio, 1993); the role of personal and situational factors in attributing responsibility to the victim (Anderson, 1999; Workman and Freeburg, 1999) and marital rape (Ewoldt et al., 2000). In terms of date rape, vignettes have been used to investigate the nature and interpretation of behavioural cues in intimate encounters (Langley et al., 1991) and the impact of alcohol on male perceptions of female sexual arousal (Gross et al., 2001). For the present study, brief descriptions of cases based on different scenarios arising out of the files research were sent to selected participants one week prior to the interviews taking place. Vignettes were found to be useful in generating discussions and prompting respondents to talk about specific aspects or problems associated with rape cases.

Barristers

After informing the Bar Council and the Criminal Bar Association about the research and the intention to conduct interviews, a contact at the Central Criminal Court was enlisted to identify barristers to approach at two London chambers.

Four one-to-one interviews were carried out with barristers who had experience in both prosecuting and defending rape cases that reached court. Two of the barristers were female and two were male; when Temkin (2000b) came to interview barristers about prosecuting and defending rape in her study, she found that most of the names supplied to her were of female barristers causing her to comment that women now play a greater role in prosecuting and defending rape. In the present study, it was necessary to fit around court duties when fixing up appointments with barristers and interviews were often conducted late in the day in their chambers (see Appendix C2).
All interviews were tape recorded with the agreement of those involved. In addition, field-notes were made immediately after each interview regarding the context of the meeting and summarising the key issues arising from discussions.

**Judges**

The presiding judge in each of the five study areas nominated a judge who could be approached to talk to. There was a sense of interviewing the ‘powerful’ in these cases, or ‘elites’. Odendahl and Shaw (2002) define elites in the following terms:

> “Elites generally have more knowledge, money, and status and assume a higher position than others in the population. The privileges and responsibilities of elites are often not tangible or transparent, making their world difficult to penetrate.” (Odendahl and Shaw, 2002:299)

Dexter, however, rejects this notion of ‘hierarchical superiority’ to define ‘elite’ interviewing through the *purpose* of the interview as opposed to the *status* of the interviewee (1970). For Dexter an ‘elite’ interview is one in which the interviewer is looking for instruction, thus the interview is framed with reference to the interviewee’s knowledge which the interviewer is trying to access. This is perhaps the definition that most closely reflects the experiences in the present study of interviewing judges as elites.

Researchers conducting interviews with elites are often faced with the ‘double trouble’ of mastering the interview situation and balancing the power of the elite interviewee (Czudnowski, 1987). Within elite studies it has been accepted, although rarely illustrated, that the research relationship “...is also a power relationship between the researcher and the subject. In the actual act of studying elites the ethnographer cannot ignore the elite's power and he must not ignore his or her own power in the relationship” (Hunter, 1995:151). It was partly for this reason that Jessica Harris was accompanied by a colleague to the interviews with judges, thus retaining some leverage over the direction of the interview in the face of a ‘powerful’ interviewee. Judges were also sent a copy of the
topic guide in advance of the interview so that they knew what they were going to be asked and so that they could tailor their responses to what the interviewers were interested to know (see Appendix C3).

Judges’ times were limited due to court duties and therefore interviews had to be completed within a fixed period, usually taking place early in the morning or late in the evening. Two interviewers also better ensured that everything was covered in the given time.

Complainants

In order to fully explore the reasons behind attrition in rape cases, it was important to also study those who make the decision to report rape and, if they do, to subsequently pursue their allegations through the criminal justice process - complainants. Therefore, a small sample of complainants whose cases were subsequently ‘no-crime’, or in which the police chose to take no further action, were interviewed.

Complainants interviewed for this study were selected from one of the study areas. Manchester has a dedicated Sexual Assault Referral Centre - St. Mary’s Centre – which is a unique collaborative venture between Central Manchester Healthcare NHS Trust, Greater Manchester Police and the Greater Manchester Police Authority. Established in 1986, this Centre provides a comprehensive and coordinated forensic, counselling and medical aftercare service to adults in Greater Manchester who have experienced rape or sexual assault (whether recently or in the past). The centre has a large database of both police- and self-referrals which could be accessed to obtain a sample of rape complainants. It was therefore agreed to adopt a collaborative approach with the Centre to this stage of the research.

As Lees (1996) comments in her book “Carnal Knowledge: Rape on Trial”, a number of researchers have interviewed women about their experiences of rape (for example, Kelly, 1988) but few have enquired into their views of the police and the courts (Lees, 1996:2).
The delegated contact at St. Mary’s Centre selected a retrospective sample of complainants from their database who had reported allegations from the 1st of February 1996. Ten complainants were contacted and invited for interview. The Centre made the initial approach by letter, enclosing a note from the Home Office explaining the research (see Appendix E). Just four complainants who had retracted allegations were interviewed. It is appreciated that this is a very selective sample since those who were eventually interviewed involved complainants who were willing and able to take part. The response rate from rape complainants to requests for interviews is liable to be small since talking about their experiences is likely to be upsetting. Indeed, one of the effects of sexual violence is a decrease in trust towards others so it is therefore not surprising that women who have been raped in the past are wary of taking part in a project about which they know very little (Kelly, 1988:9).

Each of the complainants in the present study were visited at their homes where open-ended interviews were conducted (see Appendix C4). The interview schedule was designed to uncover information about how the complainants had found the police response on reporting their allegations; it did not require them to talk about their rape incidents although each of the complainants interviewed chose to talk about their attacks, all maintaining that they found it therapeutic to do so. Indeed, other researchers have discovered that, whether anticipated or not, the depth interview can often be a cathartic experience for interviewees (for example, see Lees, 1981). Complainants in the present study were also interested in the research and how their experiences compared with other complainants who had been interviewed. This reflects Kelly’s study where respondents had also been interested to know whether their experiences were typical compared to others who had experienced sexual assault (Kelly, 1988).

In order to put them at their ease, each complainant in the present study was invited to see the interview schedule before the interview started so that they could see what would be asked of them. Several sociologists stress the importance of establishing and maintaining trust when conducting sociological research (Williams and Holmes, 1981). Interviews with complainants in the present study had to be conducted with sensitivity. In terms of
interview style, it was important to establish a rapport with the interviewee whilst not undermining the neutrality of the stance of the interviewer. Oakley (1981) takes the view that a formal, survey-type interview is unsuited to producing good sociological work on women, preferring a less structured approach which avoids the hierarchical relationship that can develop between the researcher and the interviewee. Oakley goes on to suggest that, in this way, the paradigm of the ‘proper’ interview appeals more to the masculine social or sociological vantage point than the feminine one. In her study, Kelly (1988) rejected ‘objective’ aloofness whilst also refusing to enter into dialogue (p.11). However, Patton (1987) maintains that, “Rapport is a stance vis-à-vis the person being interviewed. Neutrality is a stance vis-à-vis the content of what that person says” (p.127). With this in mind, it was possible to conduct interviews with complainants in the present study by remaining impartial and objective but at the same time being sympathetic and sensitive to what they were saying.

Finch (1984) maintains that women respondents more readily respond to female interviewers, suggesting that one’s identity as a woman provides the entrée into an interview situation with another woman (p.74). Finch goes on to claim that a female sociologist who is capable of qualitative research and semi-structured interviewing, will usually find it very easy to get another woman to open up to them. She suggests that, in the setting of an interviewee’s own home, an interview can be conducted in an informal way by another woman who can act as a ‘friendly guest’ rather than an official inquisitor. Interviews that were conducted under these circumstances in the present study were, indeed, successful and yielded rich results. This was also aided by the presence of a counsellor from the St Mary’s Centre who accompanied the interviewer to all meetings with complainants.
5.5.2 Court observations

"Participant observation, field observation, qualitative observation, direct observation or field research. All these terms refer to the circumstance of being in or around an ongoing social setting for the purpose of making a qualitative analysis of that setting." (Lofland, 1971:93)

One of the key difficulties with rape cases that are prosecuted is the rate at which they fail at court. Research has criticised the ways in which rape victims are cross-examined and the ways in which their sexual history is used against them (Temkin, 1993; Adler, 1987; Lees, 1997; Ferguson, 2000). This appears to be particularly true when the issue is one of consent and thus most commonly occurs in acquaintance rapes (Lees, 1996). Court observations for the present study therefore offered the opportunity to conduct first-hand research from empirical data – data coming from personal experience rather than from a second-hand source. Indeed, information that is collected in the field where the action can be captured, at it happens, is praised by Patton (1987) as a particular strength in research, allowing a more inductive, or discovery-orientated, approach. Observations were conducted in an attempt to make an assessment of the ways in which rape cases are tried and, in particular, how a defence of consent is constructed and how sexual history evidence is used. Attempts were also made to record instances where judges warned juries about convicting on the uncorroborated evidence of a complainant. As rape trials often do not go ahead at the last moment, if, for example a late guilty plea is entered by the defendant or the CPS is waiting on some additional evidence, it was not thought to be cost-effective to conduct this part of the research in all of the study areas. This part of the research therefore took place in the Central Criminal Court in London (the Old Bailey).

Observations were conducted from the public gallery at the Crown Court where it was possible to remain unobtrusive. Thus, any difficulties that can be experienced in studies employing observation techniques whereby the presence of a researcher can affect proceedings, were not experienced here. No problems were encountered with being able to hear proceedings from the public gallery, something that Lees (1997) reported as an
difficulty when she had adopted this approach. However, this might have been because Lees had been taking full transcripts of trials which was likely to have required significantly more concentration in order to catch every word.

Listing officers at the Crown Court were asked to notify the researcher about forthcoming rape trials so that visits could be arranged. It was usually possible to find out at the beginning of the week about any cases that were listed for the week, although it was sometimes more difficult to find out which trials were going to be heard – another difficulty that was also encountered by Lees (1997) when she was setting up court observations of rape trials.

Seven trials were observed at the Old Bailey. Whilst this was not a high number, the trials that were observed were quite varied. Unfortunately, regular adjournments and much waiting around meant that this stage of the research was often quite frustrating. It was therefore not possible to follow one trial all the way through, but it was possible to observe each of the various stages of the court process for different trials: these included observing the opening of cases, cross-examinations of witnesses including the complainant, barristers summing up the evidence, verdicts and sentencing decisions. For trials where it was not possible to observe the conclusion, a telephone call was made to the court to enquire about the final outcome. Extensive field-notes were taken in the public gallery recording as much about the process as possible.

5.6 Analysis

5.6.1 Quantitative analysis

Data were coded and entered using the Statistical Package for the Social Sciences (SPSS) and analysis was carried out moving between univariate, bivariate and multi-variate techniques.
Univariate analysis was used to describe the sample of cases in the study. Bivariate analysis was employed to investigate the relationship between variables. The primary task of the quantitative study was to identify the characteristics of cases associated with decision-making in the criminal justice system. Bivariate analysis allowed the cross-tabulation of case characteristics with outcome variables at the various stages of the process. Case characteristic variables included: relationship between complainant and suspect, location of attack, degree of consensual contact prior to the attack, place of first contact, degree of injury resulting from the attack and time of reporting. Outcome variables included: whether the police chose to no-crime the incident, whether they charged a suspect, the CPS decision to prosecute and results of proceedings at magistrates' courts and Crown Courts. In order to identify which factors were independently associated with an outcome variable, multivariate analysis was also used. However, it was only possible to explore this association as regards police decisions to crime a case or to charge a suspect, since the numbers became too small to render findings significant beyond this stage.

5.6.2 Qualitative analysis

All of the interviews were transcribed fully by Jessica Harris. In addition to the interview transcripts, qualitative data also included field-notes that had been made following interviews as well as the records of the court observations. Primarily, the qualitative data was used to illustrate information arising from the statistical exercise and therefore material was coded in a quest to identify common themes and patterns. It was decided not to use a qualitative analysis computer package as this would have been time consuming and more detailed than was required. Of course, there is an advantage in using software when analysing qualitative data since it would pick up everything and strengthen confidence in the retrieval of data, decreasing the problem of selective analysis (Richards and Richards, 1991). However, at this stage it was perceived as too detailed a method for the purposes of this research, something which can also be seen as detracting from seeing the data as a whole and in the context of the interview (Dey, 1993).
5.7 Ethical considerations

Throughout the project, this research was conducted with regard to the British Sociological Association Ethical Guidelines (http://www.the-sra.org.uk/index.htm) as well as the British Society of Criminology Code of Ethics for Researchers in the Field of Criminology (http://www.britsocc crim.org/ethics.htm), to ensure fair and just practice.

Research in the social sciences is less perceptibly harmful to its participants than taking part in clinical trials, for example, might be for the purposes of medical research (Miller and Brewer, 2003:97). However, interviewing about a sensitive subject, such as rape, might cause anxiety or distress for some. For this reason, all participants were informed that the research was voluntary, that they could refuse to answer any of the questions during the interviews and that they could stop the interview at any time. Furthermore, the anonymity and privacy of all of those who participated in the research was respected and any guarantees that were made to them to this effect were honoured. All focus group interviews and one-to-one interviews were tape recorded and fully transcribed, and then all tapes and transcripts were anonymised and stored in a secure location so that no individuals could be identified. Additionally, respondents were informed about the overall research objectives and were told that, when the findings were published, individuals would not be able to be identified in the final report. All respondents were sent a copy of the Home Office report.

The need for sensitivity was particularly pertinent in the case of complainants who were asked to relay information about their own personal rape allegations. Interviewing about a sensitive topic can, naturally, cause distress in a respondent which must be managed during the course of the interview. Brannen (1988) argues that, faced with a distressed interviewee, interviewers may wish to help but should question the motives for their doing so, maintaining that such feelings on the part of the interviewer “often have more to do with helping the helper than those who are in need” (p.559). Therefore, the presence of a counsellor in the present study complied with the British Sociological Association Ethical Guidelines that state that researchers should recognise the boundaries of their
professional competence and not conduct work of a kind that they are not qualified to carry out. Thus, someone qualified was on hand to deal with the situation in case a complainant became upset during the interview – as happened on two occasions. Following the interviews, the counsellor also offered complainants contact details in case they should they want to talk in the days following. From a safety point of view, being accompanied by a counsellor also overcame the problem of vulnerability faced by many researchers going alone into peoples’ homes.

Finally, observations of rape trials were carried out from a public gallery of a Crown Court. In this respect, the fieldwork was conducted in accordance with British Sociological Association Ethical Guidelines since it did not violate principles of informed consent or invade the privacy of those being studied.

5.8 Conclusion

This chapter has outlined the methods used to carry out the research for this thesis. The research design includes a quantitative methodology as a means of assimilating recorded data contained in official files and identifying the attrition process. The design also involves a supplementary qualitative approach, encompassing the need for methods that can reveal more about the processes behind the figures, and also allowing for more appropriate data collection in the form of interviews and observations when the topic of interest is of a sensitive nature, such as rape. A multi-method approach therefore provided the opportunity for a rich and detailed data-set. Whilst no attempt is made to claim that individuals who were interviewed are based on quantitatively representative samples of respondents, the research nevertheless includes data from all the main stakeholders which was sufficient to reveal a number of important issues about the investigation and prosecution of rape cases.

The following chapter presents emerging findings based on the statistical element of the research. The analysis opens with a consideration of the characteristics of the sample and identifies the main points of attrition for rape allegations in the criminal justice process.
The chapter then proceeds to consider individual factors which appear to influence the processing of rape cases from decision-making at the police stage of proceedings through to court.
6. THE QUANTITATIVE STUDY

6.1 Introduction

This chapter presents the key empirical findings of the research, relating this to feminist theory and other research in exploring some of the emerging issues. The aim of the statistical exercise was to collect details about recorded rape cases and identify factors that were associated with allegations proceeding through the system and those associated with attrition.

The first part of this chapter will present a description of the case characteristics of the sample. This will be followed by an analysis of decision-making by the police, the CPS and the courts.

6.2 Characteristics of the sample

6.2.1 The relationship between the complainant and suspect

The present study drew attention to the widely different circumstances in which rape occurs. As such, it identified three main relationship categories:

- 'stranger' cases comprised those where the suspect had had no contact with the complainant prior to the alleged attack;

- 'acquaintance' cases were those where the complainant and suspect were casually known to one another, e.g. the complainant had accepted a lift from the suspect, they had a prostitute-client relationship or they had met at a party within 24 hours of the alleged rape; and
• 'intimates' covered those where the suspect was having, or had had, a relationship with the complainant, was a friend or was a member of her family - such cases often involving children. There were 22 cases of marital rape.

Clearly, there are different ways of categorising relationships between alleged victims and suspects for the purposes of this sort of study. Part of what this thesis is looking at is how rape is categorised differently in different contexts and in different reaches of the criminal justice system. It is not a concept that is fixed but is open to interpretation. Whilst the 'acquaintance' category in the present study included those cases where the alleged victim and perpetrator had met within 24 hours of the attack, some have argued that this group might be better included in the 'stranger' category given the level at which they are acquainted. Gregory and Lees (1999), for instance, argue that, since advances in DNA now precludes the defence that it was not the suspect, several rapists have changed their targeting strategy using pubs, clubs and bars to meet women who they then go on to rape. Indeed, a 'legal' definition of rape and relationship categories is likely to differ from operational or police definitions which in turn will be different to public conceptions. However, including in the 'acquaintances' category those people who had met within, say, 24 hours allowed an exploration of how cases where there had been some degree of consensual contact - however small - were treated differently to those involving total strangers. Whilst this might be criticised for effectively colluding with stereotypes within the criminal justice system, it was felt necessary to adopt this approach to indeed explore and understand how such stereotypes impact on, and are driven by, decision-making amongst criminal justice personnel.
Table 6.1  
Relationship between complainant and suspect: recorded rapes

<table>
<thead>
<tr>
<th></th>
<th>%</th>
<th>n=</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stranger</td>
<td>12</td>
<td>(52)</td>
</tr>
</tbody>
</table>

Acquaintances

<table>
<thead>
<tr>
<th>Relationship</th>
<th>%</th>
<th>n=</th>
</tr>
</thead>
<tbody>
<tr>
<td>Met within 24 hours</td>
<td>45</td>
<td>(194)</td>
</tr>
<tr>
<td>Met more than 24 hours before</td>
<td>45</td>
<td>(194)</td>
</tr>
<tr>
<td>Known vaguely</td>
<td>10</td>
<td>(40)</td>
</tr>
<tr>
<td>Prostitute and client</td>
<td>12</td>
<td>(48)</td>
</tr>
</tbody>
</table>

Intimates

<table>
<thead>
<tr>
<th>Relationship</th>
<th>%</th>
<th>n=</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relative (not father)</td>
<td>10</td>
<td>(35)</td>
</tr>
<tr>
<td>Parental figure</td>
<td>32</td>
<td>(112)</td>
</tr>
<tr>
<td>Current husband</td>
<td>22</td>
<td>(82)</td>
</tr>
<tr>
<td>Former husband</td>
<td>8</td>
<td>(28)</td>
</tr>
<tr>
<td>Current co-habitee</td>
<td>2</td>
<td>(6)</td>
</tr>
<tr>
<td>Former co-habitee</td>
<td>1</td>
<td>(1)</td>
</tr>
<tr>
<td>Current boyfriend</td>
<td>40</td>
<td>(113)</td>
</tr>
<tr>
<td>Former boyfriend</td>
<td>44</td>
<td>(108)</td>
</tr>
<tr>
<td>Work colleague</td>
<td>3</td>
<td>(3)</td>
</tr>
<tr>
<td>Friend</td>
<td>34</td>
<td>(10)</td>
</tr>
<tr>
<td>Family friend</td>
<td>8</td>
<td>(1)</td>
</tr>
</tbody>
</table>

TOTAL (n=) 100 (450)

Note: n=450 of 483 initially recorded rapes for which relationship is known

6.2.2. The changing nature of rape allegations

In support of other research, the present study found that the majority of cases involved acquaintances or intimates (45 per cent and 43 per cent respectively) and that just 12 per cent involved strangers. Table 6.1 gives a more detailed breakdown of the relationship between complainant and suspect. This finding is echoed by other research - Lloyd and Walmsley (1989) found that rapes committed by someone known to the complainant formed the majority of their study sample.

However, it seems that allegations involving people who are known to one another have not always been as common. One of the most striking findings of the present research is the way that the nature of initially recorded rapes has changed over the years. Home Office figures show that, between 1985 and 1996 (1996 being the date that the present sample was taken
from) the total number of recorded rape offences increased more than three-fold. However, in comparison with the above mentioned Home Office research based on 1985 data (Grace et al., 1992), findings from the present study indicate that the proportion of all rape cases categorised as stranger rapes dropped from 30 per cent in 1985 to 12 per cent in 1996 (Harris and Grace, 1999). As the total number of recorded offences increased more than three-fold, so the number of stranger rapes has not changed significantly during this time (see figure 6.1). By contrast, the number of acquaintance and intimate rapes has increased enormously: Lloyd and Walmsley (1989) also found that more offenders were intimately known to their complainant in 1985 than those in 1973, being relatives, friends or previous partners of the complainant.
The changing nature of rape allegations, including the rise in acquaintance and intimate rapes, has implications for how allegations are handled. For this reason, rape is unique in that it can raise a number of evidential difficulties:

- with most other crimes it is clear that a criminal act has occurred. With sex offences involving those over 16 the issue commonly turns on the issue of consent – simply his word against hers;

- given the difficulties in establishing consent where parties are known to one another, the complainant’s sexual history is sometimes an issue;

- a prior relationship between the victim and offender can test the victim’s willingness to give evidence – for example, a complainant may not wish to pursue an allegation against a partner in the event of a reconciliation;
• allegations often involve vulnerable victims, including children and those with mental health problems or learning disabilities.

The following section puts forward an overview of some of the case characteristics of the sample. These are presented in association with the complainant-suspect relationship.

6.2.3 Case characteristics

Table 6.2. Marital status of complainant

<table>
<thead>
<tr>
<th></th>
<th>Stranger</th>
<th>Acquaintance</th>
<th>Intimate</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Single</td>
<td>55</td>
<td>74</td>
<td>61</td>
<td>66</td>
</tr>
<tr>
<td>Cohabitng/long-term relationship</td>
<td>19</td>
<td>12</td>
<td>18</td>
<td>16</td>
</tr>
<tr>
<td>Married</td>
<td>14</td>
<td>8</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Separated</td>
<td>5</td>
<td>2</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Divorced</td>
<td>7</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Widowed</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL (n)</strong></td>
<td><strong>100 (42)</strong></td>
<td><strong>100 (167)</strong></td>
<td><strong>100 (193)</strong></td>
<td><strong>100 (402)</strong></td>
</tr>
</tbody>
</table>

Notes:
1. N=402 of 483 initially recorded rapes for which complainant’s marital status and relationship were known.
2. Percentages do not always add up to 100 due to rounding.

Table 6.2 shows that over three-quarters of complainants were either single or no longer in a relationship. In a third of cases where the complainant was in a relationship, the allegation was against their partner.
Table 6.3
Age of complainant by complainant/suspect relationship

<table>
<thead>
<tr>
<th>Age</th>
<th>Stranger</th>
<th>Acquaintance</th>
<th>Intimate</th>
<th>Total % (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 and under</td>
<td>3</td>
<td>30</td>
<td>67</td>
<td>100 (33)</td>
</tr>
<tr>
<td>13-15</td>
<td>12</td>
<td>52</td>
<td>37</td>
<td>100 (87)</td>
</tr>
<tr>
<td>16-25</td>
<td>11</td>
<td>46</td>
<td>43</td>
<td>100 (164)</td>
</tr>
<tr>
<td>26-35</td>
<td>15</td>
<td>34</td>
<td>52</td>
<td>100 (95)</td>
</tr>
<tr>
<td>36-45</td>
<td>9</td>
<td>51</td>
<td>40</td>
<td>100 (43)</td>
</tr>
<tr>
<td>Over 45</td>
<td>21</td>
<td>25</td>
<td>54</td>
<td>100 (24)</td>
</tr>
<tr>
<td>TOTAL (n=)</td>
<td>12 (52)</td>
<td>43 (191)</td>
<td>45 (203)</td>
<td>100 (446)</td>
</tr>
</tbody>
</table>

Notes:
1. N=446 of 483 initially recorded rapes for which age of complainant and complainant/suspect relationship were known.
2. Percentages do not always add up to 100 due to rounding.

The age make-up of the complainant sample was similar to that of previous research (Grace et al., 1992), although slightly more complainants (just over a quarter) were under 16. Most of the rest (58 per cent of the total) were aged 16 to 35. Only five per cent were over 45. Lloyd and Walmsley (1989) found that suspects and complainants were apparently older in 1985 than in 1973. Analysis of the present sample revealed that:

- complainants under the age of 12 were the most likely of the age categories to have reported being raped by someone they knew well and least likely to have been raped by a stranger;

- complainants between 13 and 15 years of age were the most likely to have reported being raped by an acquaintance;

- a large proportion of girls under 16 are raped by acquaintances whom they have often met within 24 hours. A quarter of suspects in these cases were also under 16 and just over a quarter between 16 and 25. They usually met at a public outdoor place and attacks were likely either to take place in the suspect’s home (30 per cent) or some other private indoor place (26 per cent);
complainants over the age of 45 were the most likely to have reported being raped by a stranger.

No analysis was carried out on ethnicity in the present study. Although data were collected on ethnicity, detailed analysis was not possible due to the small numbers on which this information was available.

6.2.4 Circumstances surrounding the attack

Circumstances surrounding rape incidents were found to bear out the finding that the majority of the sample comprised parties who were acquaintances or intimates. Such cases invariably present evidential difficulties.

Consensual contact

Consensual contact was defined as the degree of contact immediately prior to the attack. This was recorded as none if, for instance, a complainant woke to find the suspect in her bedroom - a scenario that might involve intimates.

As might be expected, given the large proportion of allegations involving intimates and acquaintances, there was some degree of consensual contact immediately prior to the attack in 82 per cent of cases. Table 6.4 provides a breakdown of the nature of the contact revealed by the analysis.
### Table 6.4
Degree of consensual contact prior to rape

<table>
<thead>
<tr>
<th></th>
<th>Stranger %</th>
<th>Acquaintance %</th>
<th>Intimate %</th>
<th>All %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Had sexual intercourse with suspect</td>
<td>-</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Had sexual contact (not intercourse)</td>
<td>-</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Had prior sexual relationship with suspect</td>
<td>-</td>
<td>1</td>
<td>48</td>
<td>23</td>
</tr>
<tr>
<td>Voluntarily kissed with suspect</td>
<td>-</td>
<td>10</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Allowed suspect to put his arm around her</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Accepted invitation into suspect’s house</td>
<td>-</td>
<td>17</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Accepted a lift with suspect</td>
<td>-</td>
<td>17</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>Walked home with suspect</td>
<td>-</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Danced with suspect</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Case of child abuse</td>
<td>-</td>
<td>-</td>
<td>16</td>
<td>7</td>
</tr>
<tr>
<td>Other</td>
<td>-</td>
<td>29</td>
<td>11</td>
<td>18</td>
</tr>
<tr>
<td>No consensual contact immediately prior to attack</td>
<td>100</td>
<td>10</td>
<td>4</td>
<td>18</td>
</tr>
</tbody>
</table>

**TOTAL (n=)**

- Stranger: 100 (47)
- Acquaintance: 100 (174)
- Intimate: 100 (197)
- All: 100 (427)

1. Notes:
2. N=418 of 483 initially recorded rapes for which consensual contact and relationship were known; consensual contact was known for 427 in total.
3. Degree of consensual contact in the context of child abuse is a proxy for some form of intra-familial relationship, which is involved in most child abuse cases.
4. Percentages do not always add up to 100 due to rounding
5. 'Other' covers a range of circumstances: for example, where the complainant woke up in the suspect’s bed, she gave him directions or he showed her round a house.

The results of the present research can be compared with research carried out on recorded rapes in 1985 by Grace et al. (1992) in which there was prior consensual contact in far fewer incidents – just 37 per cent of cases. The differences apparent over the years will partly reflect the growth in the proportion of acquaintance and intimate rapes. Almost a quarter of complainants had had a prior sexual relationship with the suspect in the present study – as against three per cent in the Grace et al. study. All cases of child abuse involved intimate relationships, usually involving a parental figure. In many cases involving acquaintances, the complainant went back home with the suspect, having met him at a public venue, as reflected in their accepting a lift from, or an invitation to the home of, the suspect.
Location of attack

Table 6.5  
Location of attack

<table>
<thead>
<tr>
<th></th>
<th>Stranger %</th>
<th>Acquaintance %</th>
<th>Intimate %</th>
<th>All %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workplace</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>&lt;1</td>
</tr>
<tr>
<td>Home of victim</td>
<td>6</td>
<td>16</td>
<td>32</td>
<td>22</td>
</tr>
<tr>
<td>Home of suspect</td>
<td>-</td>
<td>26</td>
<td>24</td>
<td>22</td>
</tr>
<tr>
<td>Home of complainant and suspect</td>
<td>-</td>
<td>1</td>
<td>30</td>
<td>13</td>
</tr>
<tr>
<td>Other indoor/private place</td>
<td>14</td>
<td>24</td>
<td>7</td>
<td>16</td>
</tr>
<tr>
<td>Park/green site in town or built up area</td>
<td>14</td>
<td>3</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Field/countryside</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>&lt;1</td>
</tr>
<tr>
<td>Suspect’s car</td>
<td>2</td>
<td>14</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Complainant’s car</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>&lt;1</td>
</tr>
<tr>
<td>Public area</td>
<td>55</td>
<td>14</td>
<td>2</td>
<td>13</td>
</tr>
<tr>
<td>Waste ground</td>
<td>4</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL (n=)</strong></td>
<td>100 (51)</td>
<td>100 (185)</td>
<td>100 (199)</td>
<td>100 (462)</td>
</tr>
</tbody>
</table>

Notes:
1. N=435 of 483 initially recorded rapes for which location of attack and relationship were known; location was known for 462 in total.
2. Percentages do not always add up to 100 due to rounding
3. Including alleyway, street area, railway station, bus stop
4. Including building sites, rubbish dumps, disused areas of land

Almost three-quarters (73 per cent) of alleged offences took place in a private setting, as illustrated by Table 6.5. Cases of child abuse involving intimates invariably took place at a private indoor place which was usually the home of the complainant and/or suspect. Just 18 per cent of alleged attacks occurred outdoors with a further seven per cent in the suspect’s car. Public areas included pub car parks or footpaths.

The fact that the majority of attacks took place indoors is a finding that is borne out by other research (Lloyd and Walmsley, 1989; Grace et al., 1992). However, whilst these studies identified the home of the complainant as the usual location for an attack, the present study identified the suspect’s home as being the more likely setting.
Violence and injury

In over three-quarters of 'crimed' cases (279) there was some indication on file about whether or not violence had been used. It is likely that such details would have been recorded more often where there was violence than where there was no violence, so it is not surprising that cases where no information was recorded were much more likely to have been 'no-crimed'.

Violence was recorded in respect of 45 per cent of 'crimed' cases. Perhaps unsurprisingly, cases involving strangers were the most likely to be violent, as well as those involving complainants between 16 and 25. Mostly this amounted to rough treatment such as pushing but sometimes involved beating, punching and kicking. Three-quarters of stranger attacks involved violence. In 11 of these incidents the attacker threatened the complainant with a weapon, usually a knife, and in four other cases he threatened to kill her.

Of those women for whom some level of violence was recorded:

- nearly 100 received physical injury (other than the alleged rape) including mild bruising, scratches or bite marks;

- 34 suffered vaginal or anal cuts or hymenal tears;

- 31 suffered more severe bruising including black eyes and lacerations; and

- four women suffered fractured or broken bones or cuts requiring stitches, and four women, including two of these, were hospitalised.

6.3 The processing of rape cases by the police

So far, this chapter has presented the characteristics of cases making up the study sample. The following sections will now turn to examine those characteristics which influence the
processing of rape and therefore impact upon attrition at the police, CPS and court stages of the process.

6.3.1 Overview of police decision-making

Once an allegation of rape has been made to the police, there are circumstances in which the case can subsequently be ‘no-crime’. If the police do decide to treat the case as a crime, they may nevertheless decide not to pursue it if they feel the chances of a successful prosecution are slight – classified as ‘no further action’ (NFA). The relationship between a complainant and suspect had a strong bearing on decision-making at this stage, as Table 6.6 illustrates.

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Stranger</th>
<th>Acquaintance</th>
<th>Intimate</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>'No-crime'</td>
<td>28%</td>
<td>30%</td>
<td>16%</td>
<td>25%</td>
</tr>
<tr>
<td>Undetected</td>
<td>48%</td>
<td>13%</td>
<td>2%</td>
<td>11%</td>
</tr>
<tr>
<td>No further action</td>
<td>4%</td>
<td>24%</td>
<td>45%</td>
<td>31%</td>
</tr>
<tr>
<td>Cautioned</td>
<td>-%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Charged</td>
<td>20%</td>
<td>32%</td>
<td>36%</td>
<td>31%</td>
</tr>
<tr>
<td>TOTAL (n=)</td>
<td>100 (n=52)</td>
<td>100 (n=194)</td>
<td>100 (n=204)</td>
<td>100 (483)</td>
</tr>
</tbody>
</table>

Note:
1. N=450 of 483 initially recorded rapes for which both relationship and outcome prior to court were known.
2. Percentages do not always add up to 100 due to rounding.

Table 6.6 indicates that ‘no-crime’ rates for alleged stranger and acquaintance attacks were quite similar – close to 30 per cent, compared with 16 per cent of cases involving intimates. The latter often involved children and unlawful sexual abuse where consent was therefore not always in question. These were consequently more likely to be ‘crimed’ although they were also more likely to result in no further action.

A suspect was cautioned in four cases – two involving rape and two involving Unlawful Sexual Intercourse involving very young suspects.
The bearing that a complainant-suspect relationship has on the success of rape processing is identified similarly in other studies (Grace et al., 1992; Lees and Gregory, 1993; Harris and Grace, 1999). Indeed, where both parties are known to one another there is invariably little evidence to corroborate a complainant’s story and therefore attrition is more likely.

Table 6.7 provides more details about the relationship between police decision-making and the nature of the case.

**Table 6.7**

<table>
<thead>
<tr>
<th></th>
<th>No-crime (n=124)</th>
<th>No Further Action (n=151)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>n=</td>
</tr>
<tr>
<td><strong>Relationship</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stranger</td>
<td>28</td>
<td>(14)</td>
</tr>
<tr>
<td>Acquaintance</td>
<td>30</td>
<td>(59)</td>
</tr>
<tr>
<td>Intimate</td>
<td>16</td>
<td>(33)</td>
</tr>
<tr>
<td><strong>Age of complainant</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 and under</td>
<td>6</td>
<td>(2)</td>
</tr>
<tr>
<td>13-15</td>
<td>23</td>
<td>(22)</td>
</tr>
<tr>
<td>16-25</td>
<td>26</td>
<td>(46)</td>
</tr>
<tr>
<td>26-35</td>
<td>29</td>
<td>(29)</td>
</tr>
<tr>
<td>36-45</td>
<td>35</td>
<td>(17)</td>
</tr>
<tr>
<td>over 45</td>
<td>28</td>
<td>(7)</td>
</tr>
<tr>
<td><strong>Degree of consensual contact</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>some</td>
<td>22</td>
<td>(78)</td>
</tr>
<tr>
<td>none</td>
<td>23</td>
<td>(17)</td>
</tr>
<tr>
<td><strong>Use of violence</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>some</td>
<td>15</td>
<td>(37)</td>
</tr>
<tr>
<td>None</td>
<td>23</td>
<td>(20)</td>
</tr>
</tbody>
</table>

Notes:
1. ‘no-crimes’: the %s refer to the number of initially recorded rapes. No further actions: the %s refer to the number of ‘crimed’ and detected rapes.
2. All associations were significant at the 99 per cent level.

Multivariate analysis revealed that violence and age were found to predict ‘no-criming’ decisions and violence, age and consensual contact were found to predict the police taking
no further action (see Appendix B). Different variables are now considered in turn in terms of police decision-making.

**Violence**

- When controlling for other factors, the lack of evidence of violence by a suspect was a strong predictor of cases being ‘no-crimed’ or the police choosing to take no further action.

The existence of corroborative evidence is usually crucial in determining the outcome of rape cases since, by its very nature, a rape is rarely witnessed by a third party. Where a complainant suffers injuries as a result of the attack, the police are more likely to proceed as consent is less of an issue (Clarke and Lewis, 1977). Evidence of violence has also been identified by other studies as a factor which strengthens the prospects of a case (MacKinnon, 1989; Grace et al., 1992; Harris and Grace, 1999) since it is usually taken to suggest that a woman did not consent to sexual relations with the perpetrator.

**Age of complainant**

Table 6.8 shows how the attrition process operated for different age groups.

<table>
<thead>
<tr>
<th>Age of complainant and case outcome (pre-court)</th>
<th>12 and 13-15</th>
<th>16-25</th>
<th>26-35</th>
<th>Over 35</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>No further action</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Caution</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Charged</td>
<td>67</td>
<td>50</td>
<td>29</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>TOTAL (n=)</td>
<td>100 (29)</td>
<td>100 (88)</td>
<td>100 (165)</td>
<td>100 (94)</td>
<td>100 (68)</td>
</tr>
</tbody>
</table>

Note: N=298 of 305 'crimed' and detected rapes for which complainant's age and case outcome were known.

Cases where the complainant was under 16 at the time of the alleged attack were most likely to proceed to court. Allegations involving complainants under 16 were the most likely to be
proceeded with by the police and, ultimately, had the highest conviction rate. One compelling explanation for this is that, even if lack of consent cannot be proved, intercourse with a girl under 16 is illegal, and therefore a charge of Unlawful Sexual Intercourse is likely to be substituted - as happened with three cases in the present study.

**Consensual contact**

- No further action was most common with intimate rapes, where complainants were aged between 26 and 45 and where there had been some degree of consensual contact.

Intimate cases with complainants of middle-age often involved current or ex-partners and therefore parties who came to the situation having had a relationship and prior sexual contact with each other. Naturally, such history can undermine the veracity of a rape allegation (Wood, 1973). In addition, some degree of consensual contact immediately prior to an alleged attack makes it more difficult to prove that a woman’s consent did not follow through to the sexual act, and under these circumstances, a case was more likely to be ‘no-crime’ in the present study. Previous authors have claimed that, when a woman agrees to intimacy, this can be taken to mean that she, in essence, agrees to intercourse and that the act was therefore consensual (Smart, 1989). Indeed, in more than half of the cases in this study, the main defence given by the suspect was one of consent. This was found to be argued in 62 per cent of cases between acquaintances and in half of those involving intimates. In one-quarter of cases, the suspect totally denied the offence – these instances usually involving stranger attacks or intimates, with over a third of cases evident in each category.

**Group attacks**

Twenty-seven cases involved group rapes with two or more suspects: the majority of these cases were ‘no-crime’. In three cases suspects were not identified, in three the police chose to take no further action and in one case the CPS decided to discontinue proceedings. Almost all were acquaintance attacks occurring indoors with some degree of consensual contact prior to the attack and little evidence of violence. Evidential difficulties are inherent
in group attacks: a complainant might find it difficult to remember the sequence of events, including who allegedly raped her and in what order. This makes the job of preparing a watertight case difficult and the police will be all too aware that, if the case does get to court, the defence will exploit any inconsistencies.

In 10 cases, one suspect raped two or more complainants. In just two of these cases the police chose to take no further action.

_Vulnerable adults_

Forty cases in which the police decided not to bring charges involved complainants who had learning disabilities or were mentally disordered. Twenty-two cases involving women suffering from mental disorder or learning disabilities were ‘no-crimed’, usually because their allegations were believed to be false, and in 18 the police chose to take no further action. Sometimes it was thought that the complainant would not make a convincing witness. In addition, allegations of rape by complainants suffering from mental disorder were sometimes considered to be a “cry for help” or “attention-seeking”. Often, these women had made similar allegations in the past. Despite the police sometimes believing that the complainant had probably been raped, they were concerned that the stress of a trial might damage her health.

Various factors have presented themselves as influential when it comes to police decision-making. Based on these case circumstances, the _reasons_ for not taking a case forward were most commonly revealed to be where a complainant withdrew an allegation, there was insufficient evidence to proceed or an allegation was perceived to be false. These will be considered in the next section.
6.3.2 Reasons for attrition at the police stage

Several reasons were given by the police to justify why some cases were not proceeded with. An understanding of the rationale behind police decision-making reveals the emphasis or importance officers place on certain characteristics and therefore the distinctions that are made when assessing a rape allegation.

Figure 6.2 indicates the different reasons for police decisions to ‘no-crime’ an incident or to take no further action.

![Figure 6.2](image)

Complainant withdrawals

- The main reason for cases not proceeding to a charge was withdrawal by the complainant – the police chose to take no further action in more than half of the cases for this reason.

Previous studies have discovered that many complainants of rape do not proceed with their allegations. Research by Lees and Gregory (1993) identified this to be the main reason for
the police no-criming allegations whilst Harris and Grace (1999) found it to most likely affect the police decision to charge a suspect. The practice of ‘no-criming’ when there was no apparent evidence of violence was mainly determined through complainant withdrawals. It therefore appeared from the quantitative analysis that, aside from the fact that stereotypical notions about genuine rape are likely to influence police decision-making, they might also enhance victims’ fears of being disbelieved when their circumstances do not reflect this (Stewart et al., 1996). It is for that reason that evidence of injury, for instance, might both strengthen a case in the eyes of the police and make the complainant more determined to persevere. The incidence of violence has also been identified by other research as likely to encourage a complainant to report (London Rape Crisis Centre, 1982; Russell, 1984; Hall, 1985; Lees and Gregory, 1993).

Arguably, the police effectively have little choice when a complainant withdraws her allegation (although the degree to which they might influence that decision was explored in the present study via qualitative interviews). Cases where a complainant withdrew her allegation tended to be those where there was perceived to be a high degree of consensual contact; even where a complainant did not withdraw her complaint, the chances that such cases would succeed in court were usually relatively poor.

Insufficient evidence

- Police officers chose to take no further action in 37 per cent of cases on the grounds that there was insufficient evidence to proceed.

Once an allegation of rape has been made, the police must establish the facts of the case reliably before proceeding and, following charge, the CPS are bound by the Code for Crown Prosecutors only to prosecute where there is sufficient evidence to proceed. Attention has already been drawn to the difficulties in establishing consent in rape cases where there is often little corroborative evidence. It is perhaps no surprise, therefore, that insufficient evidence is often a reason for not being able to proceed.
False allegations

- The main reason for a case being 'no-crime' by the police was where the allegation was taken to be false or malicious.

Lees and Gregory (1993) claim that officers still believe that false allegations are a frequent occurrence which will inevitably influence the ways in which cases are processed. However, the fact that so many allegations are classed as false by the police has been challenged by several authors (Patullo, 1983; Adler, 1987; Gilmore and Pittman, 1993; Lees, 1996; Gregory and Lees, 1999; Kelly, 2002). Interviews with police officers in the present study provided the opportunity to explore the reasons behind the propensity to classify cases in this way.

The key issues of 'no-crime' and whether to take further action are considered in more detail below.

6.3.3 'No-crime'

Although one-quarter of all cases in the present sample were 'no-crime', the level is much lower than it used to be. In studies based on 1985 data, Lloyd and Walmsley (1989) found the average 'no-crime' rate during the second quarter of 1985 to be 45 per cent, exactly the same as that reported by Grace et al. (1992). Furthermore, Lees and Gregory (1993) also reported a higher no-crime rate compared to the present study, of 43 per cent. The fall in the practice of 'no-crime' since these studies is consistent with guidance given to the police in Home Office Circular 69/1986, which states that this option is only appropriate where 'the complainant retracts completely and admits to fabrication'. However, despite apparent improvements in the present study, substantial variation was evident between forces with rates ranging from 14 to 41 per cent; Table 6.9 shows that reasons for 'no-crime' were not confined to complaints being false.
Table 6.9
Reasons given for 'no-criming' according to relationship between complainant and suspect

<table>
<thead>
<tr>
<th>Reason</th>
<th>Stranger</th>
<th>Acquaintance</th>
<th>Intimate</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaint withdrawn</td>
<td>14</td>
<td>42</td>
<td>33</td>
<td>36</td>
</tr>
<tr>
<td>False/malicious complaint</td>
<td>64</td>
<td>37</td>
<td>52</td>
<td>43</td>
</tr>
<tr>
<td>Insufficient evidence</td>
<td>21</td>
<td>15</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>Unwilling to testify</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>-</td>
<td>5</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td><strong>TOTAL (n=)</strong></td>
<td>100 (14)</td>
<td>100 (59)</td>
<td>100 (33)</td>
<td>100 (123)</td>
</tr>
</tbody>
</table>

Note: N=106 of 483 initially recorded rape cases for which both relationship and reasons for no-criming were known.

Although the single most important reason for the police ‘no-criming’ an allegation was because it was classified as being false or malicious, many cases were also ‘no-crime’ here for evidential reasons or because of complainant withdrawal - circumstances that fall outside of those officially sanctioned in Home Office guidance (Home Office Circular 69/1986). Previous research has also identified this anomaly: Smith (1989) identified a fall in the rate of ‘no-criming’ by the police, although she also found that, in 1986, “insufficient evidence was the major reason for ‘no-criming’” (p.25); Lees and Gregory (1993) claimed that the justification for ‘no-criming’ cases normally centred around "the complainant's failure to substantiate the allegation" (p.5); and, more recently, Lea et al. (2003) also revealed that a significant minority of police officers were still ‘no-criming’ allegations for reasons other than those recommended by Home Office guidelines. The message appears to be clear – rape allegations are still being ‘no-criming’ for reasons other than those where the allegation can be proved to be false or malicious.

Whilst one single reason for ‘no-criming’ was usually recorded on the police file, in practice there might have been several reasons for the police choosing to deal with a case in this manner. For example, the main reason might have been that a complainant decided to withdraw her allegation, but it was clear from the files that, in some instances, the police also suspected the allegation to be false or thought that the evidence was weak.
6.3.4 Detection

In 15 per cent of ‘crimed’ rapes no suspect was caught and therefore the police could take the case no further. This was so in 66 per cent of stranger cases compared with 17 per cent of acquaintance attacks and just three per cent of incidents involving intimates. Forensic testing was used in 108 ‘crimed’ cases - taking the form of DNA profiling in just over half of these. In three of the 13 stranger rape cases, forensic testing was used to establish identity. However, it appears that detection rates for stranger rapes continue to be poor despite advancements in forensics, including DNA profiling: of those cases that were ‘crimed’ by the police, two thirds of stranger rapes remained undetected in the present study. This is quite high in comparison to other research – Grace et al. (1992), for example, reported just one third of stranger rapes to be undetected in their study, involving a sample that was taken from a period eleven years previously when DNA was less advanced.

Once detected, attacks by strangers were least likely to be classified as cases in which the police chose to take no further action. However, the relatively low detection rate for these cases means that, in practice, they are the least likely to be prosecuted.

6.3.5 No further action

In considering the further progress of cases through the system, it is helpful to discard the 25 per cent of cases which were ‘no-crimed’ and focus on those that survived this initial filter. Figure 6.3 illustrates what happened to these cases. Perhaps the most striking feature of this flow-chart is that it shows that one half of all ‘crimed’ cases that were counted as detected resulted in no further action. For practical purposes, cases were still being lost since it appeared that a reduction in ‘no-criming’ was largely offset by an increase in cases in which the police chose to take no further action – something that has also been revealed by Lea et al. (2003).

Incidents involving acquaintances normally involved some degree of consensual contact between the complaintant and suspect prior to the attack. More than three-quarters of
these cases involved complainants and suspects who had met within 24 hours of the attack. This is the term used to define incidents involving parties of casual acquaintance who arrange to meet up in a consensual setting, such as a bar, and where contact is apparently consensual. In 51 per cent of acquaintance cases where there had been some prior consensual contact the police chose to take no further action, compared to half of his number where there had been no prior consensual contact.

6.3.6 CPS advice

The police sought CPS advice on whether to charge in 63 cases - 20 per cent of cases in which there was a detected suspect. Where the police sought advice, the CPS recommended no further action in two-thirds of cases. Additional information was requested in ten cases, all of which involved younger complainants. In these cases, eight suspects were subsequently charged and, whilst proceedings against four were later discontinued by the CPS, two were convicted - one for rape. The rate at which the CPS recommended no further action - at 66 per cent - may seem high. However, the police seek advice mainly where the evidence is problematic, and the CPS may simply, therefore, confirm that the prospects of success are low.
Figure 6.3
Flowchart: The attrition process of rape cases (percentages)
(base = overall sample of 'crimed' cases, n=360)
Note: Percentages do not always sum to 100 due to rounding or missing information

`'Crimed' cases: 100`

- Detected cases: 85
  - Caution: 1
  - NFA-ed: 42
- Defendant charged: 42
- CPS review
  - CPS discontinuance: 11
- CPS prosecute: 29
  - Committal proceedings at magistrates' court: 27
  - Defendant convicted at magistrates court: 1
  - Case discharged at committal: 1
  - Case committed to Crown Court: 26
  - Case discharged: 1
  - Defendant acquitted: 6
  - Defendant convicted of other offence: 9
  - Defendant convicted of rape: 9

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6.4 CPS decision-making

If the police decide to charge a suspect, the case is passed to the CPS for a decision on whether to proceed with a prosecution. The CPS must decide whether prosecution is appropriate by applying the evidential and public interest tests set out in the Code for Crown Prosecutors. First, they must decide whether there is enough evidence to provide a 'realistic prospect of conviction': whether a jury, properly directed, would be more likely than not to convict a defendant - if there is insufficient evidence, the case cannot proceed. Second, if there is sufficient evidence, they must determine whether it is in the public interest to proceed. It is highly unlikely that it would not be in the public interest to prosecute a rape case because rape is a serious offence, likely to result in a significant sentence, where the complainant is likely to be vulnerable, put in considerable fear and attacked – all factors in favour of prosecution set out in the Code. Figure 6.4 shows what happened to those cases that were submitted to the CPS.

Half of the cases 'crimed' and detected by the police were submitted to the CPS for prosecution. The CPS discontinued just over a quarter of these cases - this compares with the national discontinuance rate of 12 per cent at the time that this sample was collected in 1996. About half of the cases in the present study were discontinued at, or before, the first court hearing, 16 per cent before the second hearing and the remainder at, or after, the second court hearing.
Figure 6.4
Flowchart: the attrition of rape cases from charge to conviction (percentages)
(base = defendants charged, N=140)
Note: Percentages do not always sum to 100 due to rounding or missing information

Defendant charged - 100

CPS review

CPS discontinuance - 29

CPS prosecute - 71

Defendant convicted at magistrates court < 1

Committal proceedings at magistrates’ court - 71

Case discharged at committal - 4

Case committed to Crown Court - 67

Case discharged - 4

Case to lie on file - 2

Defendant acquitted - 16

Defendant convicted of other offence - 26

Defendant convicted of rape - 19
The research examined the link between CPS decision-making and particular features of the rape case coming before them. There was found to be a significant association between the age of the complainant and whether a case was discontinued (see Table 6.10).

### Table 6.10
**Age of complainant and CPS action**

<table>
<thead>
<tr>
<th></th>
<th>12 and under</th>
<th>13–15</th>
<th>16–25</th>
<th>26–35</th>
<th>36–45</th>
<th>Over 45</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discontinued</td>
<td>14</td>
<td>34</td>
<td>33</td>
<td>29</td>
<td>17</td>
<td>-</td>
<td>28</td>
</tr>
<tr>
<td>Prosecuted</td>
<td>86</td>
<td>66</td>
<td>67</td>
<td>71</td>
<td>83</td>
<td>100</td>
<td>72</td>
</tr>
<tr>
<td>TOTAL (n=)</td>
<td>100 (21)</td>
<td>100 (44)</td>
<td>100 (49)</td>
<td>100 (14)</td>
<td>100 (6)</td>
<td>100 (7)</td>
<td>100 (147)</td>
</tr>
</tbody>
</table>

Note: N=141 of 147 rapes where a suspect was charged for which age of complainant was known.

No significant association was found between other case circumstances, such as consensual contact, and the CPS decision to discontinue cases.

Two alleged acquaintance rape cases and four involving intimates were dropped on public interest grounds. During interviews, it was stressed that it is rarely in the public interest to drop a rape case. In the cases that were discontinued for this reason, the complainants often knew their attackers very well (current partners and cases involving young children) and it was thought that they would be unwilling to attend court unless compelled to do so. Indeed, withdrawal in such cases might be taken to mean stopping the case on grounds of insufficient evidence rather than public interest grounds. Three cases involving intimates were discontinued due to an inability to proceed, although reasons were not recorded.
6.5 The progress of rape cases through the courts

6.5.1 Magistrates’ courts and the Crown Court

Rape is an indictable only offence and therefore must be tried at the Crown Court. All cases start off in the magistrates’ court but can only be finalised there if they are reduced to lesser offences such as indecent assault or Unlawful Sexual Intercourse or if they are discontinued prior to, or at, committal. Court proceedings were brought against 100 defendants. Of the initial sample of ‘crimed’ cases, just 26 per cent reached the Crown Court. One defendant was convicted and sentenced at the magistrates’ court for Unlawful Sexual Intercourse.

When cases were first heard at a magistrates’ court, 88 defendants were charged with rape and five with attempted rape. A further three defendants were charged with Unlawful Sexual Intercourse and another two with indecent assault. Two defendants were charged with non-sexual offences including false imprisonment. Sixty-six defendants faced additional or alternative charges, 43 of which were sexual offences.

Figure 6.5 gives an overview of what happened to the 100 defendants who were prosecuted.
Figure 6.5
Flowchart: the attrition of rape cases from prosecution to conviction (percentages)
(Base = prosecuted cases, n=100)

Prosecuted cases - 100

Committal proceedings at magistrates’ court - 99

Defendant convicted of USI at magistrates court - 1

Case discharged at committal - 4

Case committed to Crown Court - 95

Not known - 5

Case discharged - 2

Case to lie on file - 3

Defendant acquitted - 22

Defendant convicted of offence other than rape - 36

Defendant convicted of rape - 27
6.5.2 Case outcomes

Table 6.11 shows convictions for both rape and alternative charges as well as details of acquittals, according to nature of the complainant-suspect relationship.

<table>
<thead>
<tr>
<th></th>
<th>Stranger (n=)</th>
<th>Acquaintance (n=)</th>
<th>Intimate (n=)</th>
<th>All (n=)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convicted of rape</td>
<td>2</td>
<td>13</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td>Convicted of attempted rape</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Convicted: USI under 16</td>
<td>-</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Convicted: USI under 13</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Convicted: indecent assault</td>
<td>2</td>
<td>8</td>
<td>7</td>
<td>17</td>
</tr>
<tr>
<td>Convicted: incest</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Convicted: other non-sexual offence</td>
<td>1</td>
<td>-</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Jury acquitted</td>
<td>2</td>
<td>8</td>
<td>6</td>
<td>16</td>
</tr>
<tr>
<td>Judge ordered acquittal</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Judge directed acquittal</td>
<td>-</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>-</td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Not known</td>
<td>-</td>
<td>3</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>TOTAL (n)</td>
<td>8</td>
<td>43</td>
<td>44</td>
<td>95</td>
</tr>
</tbody>
</table>

Note: N=95 (Crown Court defendant sample)

In all, 63 offenders were convicted of an offence at the Crown Court. Of these, 25 were convicted of rape and two of attempted rape. These findings are similar to previous research carried out by Grace et al. (1992) and Wright (1984) finding that 25 per cent and 21 per cent of cases going to court (respectively) were convicted of rape or attempted rape.

Just nine per cent of the original sample of 299 suspects for 'crimed' rapes were convicted of rape or attempted rape. This compares with the national conviction rate of 10 per cent at the time of the research in 1996. Among the remaining 36 offenders, 17 were convicted of indecent assault and 12 for Unlawful Sexual Intercourse (USI).

Table 6.11 shows that a number of defendants in cases involving acquaintances or intimates were convicted of Unlawful Sexual Intercourse but (as one would expect) no defendants who had been strangers to their victims were. A significant minority of defendants in all
three relationship groups were convicted of indecent assault. One stranger was convicted of assault occasioning grievous bodily harm. Four intimates were convicted of other non-sexual offences which included assault or affray: this might indicate that these incidents were associated with domestic violence.

![Figure 6.6. Defendant pleas at the Crown Court](image)

6.5.3 Plea

Figure 6.6 shows defendant pleas at the Crown Court.

Three-quarters of those defendants who pleaded guilty to a lesser charge were convicted only of those charges. (In the remaining cases the plea was not accepted and the case went to trial). Interviews with judges and barristers confirmed that plea-bargaining, or “horse trading” [Judge 3] as one judge called it, often takes place. Relative certainty of a conviction for a lesser offence and the chance to spare a complainant from having to give evidence can be persuasive factors when considering whether to persevere for a rape conviction or proceed on a lesser charge.

Defendants in both alleged acquaintance and intimate rapes were more likely than strangers to plead guilty to an alternative offence. Intimate cases often involve children and it may be
difficult to establish whether all the legal components of a rape charge have been made out. In these circumstances, a charge of indecent assault is often substituted.

Age

Cases involving particularly young complainants (especially under 13 years of age) were more likely to result in conviction, with:

- 88 per cent of cases reaching the Crown Court being dealt with in this way;

- three-quarters of cases involving complainants aged 16 to 25 leading to a conviction; and

- just half of cases involving women over 25 reaching the Crown Court resulting in a conviction.

6.5.4 Acquittals

A quarter of all cases reaching the Crown Court resulted in an acquittal, usually by a jury. There was no significant variation in the acquittal rate between the three relationship groups or between age groups, although cases involving older complainants (over 26) were more likely to lead to an acquittal at court than those involving younger complainants. However, a few cases where the complainant and suspect were known to one another resulted in:

- judge directed acquittals - where, after hearing the prosecution evidence, the judge decided that the prosecution had not presented sufficient evidence to prove its case (four cases); or

- judge ordered acquittals - where the prosecution offered no evidence at the outset of the trial because the key witness did not appear (two cases).
6.5.5 Sentencing

Table 6.12 shows the sentences given to those convicted of rape or other offences.

<table>
<thead>
<tr>
<th></th>
<th>Rape N=</th>
<th>Attempted rape N=</th>
<th>Other offences N=</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 12 months</td>
<td>1</td>
<td>-</td>
<td>8</td>
</tr>
<tr>
<td>1-2 years</td>
<td>1</td>
<td>-</td>
<td>7</td>
</tr>
<tr>
<td>&gt;2-4 years</td>
<td>4</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>&gt;4-6 years</td>
<td>7</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>&gt;6 years</td>
<td>9</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Life</td>
<td>3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Community service</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Probation</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Supervision order</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Conditional discharge</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>25</strong></td>
<td><strong>2</strong></td>
<td><strong>36</strong></td>
</tr>
</tbody>
</table>

Note. N=63 (those defendants who were convicted at Crown Court).

All of those defendants convicted of rape or attempted rape were imprisoned, in most cases for more than four years and in three cases for life. Among the 36 defendants convicted of offences other than rape, 29 were imprisoned, and the remaining 7 received community sentences or conditional discharges.

Figure 6.7 gives an indication of national sentencing figures for rape and attempted rape at the time of the research. It indicates that, where a defendant is convicted of rape, the sentence is likely to be severe and the severity has increased since 1980. In the present study:

- half of those convicted of rape incurred custodial sentences of over six years up to life; and
- just under 30 per cent incurred sentences of between four and six years.
The relative severity of sentencing in rape cases has stimulated debate as to whether rape should be graded in some way. If acquaintance rape, for example, attracted a lesser penalty than stranger rape, the idea is that juries might be more likely to convict a defendant. The Home Office Consultation Paper "Setting the Boundaries: Reforming the Law on Sex Offences" (Home Office, 2000a; Home Office, 2000b) studied this possibility, concluding, however, that acquaintance rape should not be created as a separate offence to the existing offence of rape. In the present study, only 43 per cent of convictions in the present study were for rape or attempted rape. Therefore, in effect, a significant proportion of offences that were initially recorded by the police as rape were subject to being reclassified as they progressed through the criminal justice system. It is also worth noting that 'lesser' offences occasionally attracted more severe penalties than some rapes. Therefore, while rape might have the most severe maximum penalty, there is considerable overlap in sentences imposed for different offences.
6.6 Conclusion

The present study identified the widely different circumstances in which rape occurs, with 12 per cent of the sample involving ‘strangers’, 45 per cent involving ‘acquaintances’ and 43 per cent involving ‘intimates’. It was also noted that, whilst the number of recorded rapes has increased more than three-fold over the period 1985 – 1996, the proportion of stranger rapes has not changed significantly, indicating a much greater number of reported rapes involving parties who are known to one another – however brief their acquaintance might be. Such cases pose evidential difficulties given that they usually involve some degree of consensual contact prior to the alleged rape and often occur at a private location such as the home of the alleged victim or the suspect. Arguably these are also the cases most likely to invoke stereotypical notions about whether an allegation is genuine or not.

Sixty-nine per cent of recorded rapes in the present study proceeded no further than the police stage of proceedings with one quarter of allegations subject to being ‘no-crimed’ and the police deciding to take no further action in respect of a further half of ‘crimed’ allegations. Variables including evidence of violence and age of the complainant were found to affect the police decision to ‘no-crime’ an incident, whilst evidence of violence, age and degree of consensual contact had a significant effect on the choice to take no further action. Complainant withdrawal was the single most common reason for cases not proceeding beyond this stage. The CPS discontinued just over one quarter of cases that were forwarded to them for a decision on prosecution, the complainant’s age having a significant bearing on this decision. Ultimately, 63 defendants were convicted of an offence at the Crown Court: 25 of these were for rape and two were for attempted rape: thus, nine per cent of ‘crimed’ allegations in the present study resulted in a conviction for rape - six per cent of all recorded rapes.

Chapter six has pointed to various factors that appear to influence decision-making in the criminal justice system and that therefore have a bearing on the attrition of rape cases. The following chapters present analysis of the qualitative data, including interviews with criminal justice personnel and complainants, along with results of the Crown Court
observations of rape trials. Thus, a fuller picture is provided on the processing of rape and what lies behind the attrition rate that has been identified in this chapter.
7. THE POLICE INVESTIGATION OF RAPE ALLEGATIONS

7.1 Introduction

This chapter presents the qualitative analysis pertaining to the police investigation of rape allegations. Two focus groups per area were conducted with police officers responsible for investigating rape allegations, to explore attitudes and beliefs about rape. Interviews were also carried out with complainants who had reported rapes and had subsequently withdrawn their allegations. To re-cap, this research set out to examine explanations for whether:

1. the high rate of attrition in rape allegations is due to discriminatory practices and procedures at various stages of the criminal justice process based on stereotypical beliefs and interpretations of what genuine rape is;

2. the high rate of attrition is down to genuine evidential difficulties with processing rape allegations that result in weak cases and poor chances of conviction, having nothing to do with discriminatory practices and procedures.

This chapter is divided into sections presenting the core thematic issues emerging from the research. It starts by a consideration of what factors about a case or information about a complainant were perceived to give legitimacy to a rape allegation, according to police officers working in the criminal justice system as well as complainants themselves. This information was analysed to reveal the degree to which myths and stereotypes still play a part in judgements about rape incidents.

The chapter goes on to consider how notions about genuine rape actually impact on rape complainants, with reference to issues such as secondary victimisation where, arguably, the line becomes blurred as to who has to disprove responsibility for the rape – the suspect or the complainant. In this context, attention is also drawn to the misunderstanding among police officers about the effects that the trauma of rape can have on a complainant’s demeanour or behaviour - reflecting Rape Trauma Syndrome - and how this can be used to discredit her. With reference to Goffman’s work
(Goffman, 1959a), concepts within the Goffman framework are also applied to explore the idea of a person's 'front' and the importance of the impression that a complainant must convey to her audience (the police in this context) in order to be believed.

Having identified the basic factors that appear to be associated with genuine rape and how these impact on complainants in practice, the chapter goes on to consider police decision-making in more detail analysing the 'interpretative framework' within which they must operate and demonstrating how they go about constructing a narrative.

In an attempt to explain why the police often resort to putting an interpretative gloss on the facts of a rape allegation, the chapter concludes with some theories as to the driving force behind investigative policing and what actually determines the 'story' that they want to tell.

### 7.2 Perceptions of Genuine Rape

In the present study, the majority of rape allegations were filtered out at the police investigation stage, with just 31% of suspects being charged and proceeding to the CPS stage. Much research about rape has focused on the low conviction rape in rape cases and has centred around criticism about how cases are handled by the courts. Indeed, in some cases these criticisms have prompted legal reform initiatives usually directed at the court system and aimed at improving the ways in which rape victims experience trial procedures (Lees, 1996, 1997; Harris and Grace, 1999). However, given that just under one-third of the cases in the present study resulted in a suspect being charged and proceeding to the CPS, it is perhaps the low prosecution rate that deserves more attention. To this end, it is conceivably more meaningful to try to understand the high attrition rate by focusing on the investigation stage of the process, exposing the perceptions and beliefs existing among police officers that inform decision-making and that ultimately determine the fate of rape cases here.

Various research has revealed stereotypically-based judgements that continue to impact negatively on police perceptions about rape and consequent decision-making about how to proceed with allegations (Holmstrom and Burgess, 1978; Smith, 1989;
Interviews with police officers therefore sought to explore some opinions and perceived difficulties associated with the investigation of rape cases and to throw some light on what lies behind the decision-making process.

Two focus groups of police officers were carried out in each of the five study areas; each focus group comprised at least five respondents with a mix of both senior and junior ranks. In order to facilitate discussion, vignettes of cases (see Appendix D) based on some of the scenarios discovered in the files research were sent to selected participants a week prior to the interviews taking place. Reference to these within a semi-structured interview framework elicited a range of enlightening views about investigating rape allegations.

As well as considering the perspectives of those responsible for investigating rape complaints and exploring notions of genuine rape and credible victims, it was important to also consider the views of complainants here. Various research has cited the way that the police perceive and deal with complaints as the reason why many victims of rape do not report, or subsequently pursue, an allegation (Holmstrom and Burgess, 1983; Mackinnon, 1989; Walby, 1990). It therefore seemed relevant to explore the views of complainants as to what they believed would be judged as a genuine allegation and the extent to which shared cultural definitions about this had made it difficult, in their experiences, to prove that they had been victims.

A small sample of four women who had withdrawn their allegations during the police investigation stage of proceedings were interviewed to discover their experiences of being complainants and the reasons behind their decisions not to proceed. Despite the fact that just four complainants were interviewed, two of these had been raped three times previously and therefore had experienced being a rape complainant – and any judgements that came with it – on three separate occasions.

All of the complainants that were interviewed for this study were conscious of what were referred to by one as “extra-legal” factors [Complainant 1] relating to rape that they believed would influence the perceived credibility of a complaint and would consequently affect how a case would be handled. These perceptions in the
complainants' minds served to influence their decisions to report rape in the first place as well as their eventual decisions to withdraw their allegations.

7.2.1 Factors constituting genuine rape

Interviews were conducted to consider how assumptions and beliefs about what constituted a legitimate rape allegation were used to justify decisions made by those investigating cases, and how this might go some way to explaining attrition.

According to police officers who were interviewed, the fundamental issue when it came to the investigation of rape allegations was that of physical evidence. Unmitigated proof that an offence has taken place provides important corroboration of a complainant's story. However, as this research has indicated along with many other studies, reported rapes rarely involve complete strangers, however briefly they might have know one another, and evidence to prove that a woman did not consent is therefore often lacking. As the following quote shows, two cases can pose very different challenges when it comes to the presence of evidence to corroborate an allegation:

“Well, the two extremes are the woman who comes in with clothes torn, with injuries, with a medical examination that recovers semen, that tells you there's been violent entry, all that sort of thing, plus someone seeing her dragged into a bush or something... and the worst scenario is somebody coming in and saying "when I was 15 my mother had a new boyfriend and he raped me."”

[Police Officer, Focus Group 2]

7.2.2 The rape incident

Two examples of primary evidence raised by police respondents thought to strengthen the credibility of a rape allegation were that of injury to the complainant and also eye witnesses to the crime or to the state of the victim immediately after the alleged attack.
In terms of what might improve the chances of a rape allegation being classed as genuine, police respondents suggested that evidence of violence in the form of injury to the complainant was particularly compelling. Indeed, other research supports the argument that serious, physical, visible injuries are usually taken by the police as proof that a rape has occurred acting as necessary corroboratory evidence (Kennedy, 1992; Edwards and Heenan, 1994; Harris and Grace, 1999). This sort of evidence would count strongly against the claim that the act was with the consent of both parties, as suggested by the following quote:

"I remember one case where the woman suffered horrendous external and internal injuries ... she was raped vaginally and anally, he bit her nipple almost off...tried to strangle her and pushed her into a mirror which broke and lacerated her body. Now, if that's not pretty strong proof that she didn't consent then I don't know what is."

[Police Officer, Focus Group 4]

All of the complainants interviewed also believed that evidence of injury was something that would improve the credibility of an allegation, although only two had actually sustained any injuries as a result of their alleged attacks. In the case of one complainant, it was only the fact that she had sustained cuts and bruises to show for her ordeal that she had found the confidence to report her attack. She had been violently raped by an ex-boyfriend whom she had willingly let into her home earlier in the evening and she did not feel that her case would have been taken seriously had she not sustained injuries to show for her attack. In fact, in the end, even evidence of injury was not enough for her case to be taken seriously by the police. The fact that the perpetrator had been an ex-boyfriend of hers was ultimately powerful enough rationale to count against her allegation that this alone apparently outweighed anything else about the attack in the minds of the police, according to her. This case therefore lends support to the claim by Harris and Weiss (1995) that the law tends to equate passivity or non-resistance (in this case, the fact that she had willingly let the perpetrator into her home) with consent especially when the complainant had consented in the past (Henning, 1997).
What is clear from the present research, as well as from previous studies, is that corroboration in terms of evidence of violence is often not observable in rape allegations. Just over one third of the files observed for the present study revealed complainants who had sustained some degree of injury, the majority of these being mild bruising or scratches. As physical evidence is often lacking, police respondents maintained that they almost always find that they have to look elsewhere for evidence to substantiate a rape complaint.

Eye witnesses

A second convincing source of proof that an alleged rape had taken place raised by some police officers was that of eye-witness evidence. Obviously, eye-witnesses to rapes are very rare given that it is invariably a crime that occurs in private and this was therefore a less significant issue that was raised by police respondents in the present study. However, two officers recalled cases where there had been independent witnesses to a complainant’s physical and emotional state in the immediate aftermath of an alleged rape and these people had been able to provide valuable evidence to substantiate the allegations in question.

Turning to complainants’ views, one of the respondents interviewed had been one of two victims involved in the same alleged attack and she had believed that the existence of a second complainant, and therefore potential corroboration for her story, might add credibility to her complaint. Unfortunately, this was not the case. Instead, the credibility of both of the teenage girls had been questioned by the police on the grounds that they had been witnessed enjoying, and then leaving, a party with the two suspects resulting in both girls ultimately withdrawing their allegations.

7.2.3 The alleged victim

Given that it is the duty of the police to fully investigate an allegation of rape, it is no surprise that factors casting doubt on the veracity of a complaint usually centred around a lack of physical evidence. Rape allegations pose evidential difficulties given that, according to the quantitative analysis in the present study, they usually occur in
private, often involve parties who are known to one another and do not always result in obvious injury – which means that the matter usually becomes an issue of consent and whether the complainant willingly engaged in sexual relations with the alleged suspect. In this case, the focus of the police tends towards an assessment of the complainant’s credibility which might result in the police categorising them according to their perceived legitimacy. Indeed, several authors have found that police officers often determine which cases deserve most attention according to the characteristics of the alleged victims involved (Smith, 1989; LaFree, 1989:80). It is on this premise that Smart (1989) developed the categories ‘privileged victims’ and ‘invisible victims’ to make the distinction between credible witnesses who fit with cultural assumptions about rape victims and those who find it difficult to make their complaints heard. The classification process also reflects the rationale behind the ‘pedestal myth’ developed by Stewart et al. (1986) whereby alleged victims who most closely conform to stereotypical notions of appropriate behaviour are effectively put on a pedestal in the minds of those judging allegations of rape. Furthering the notion that attention turns increasingly to details concerning the complainant, Stanko (1981) and LaFree (1989) also report that it is frequently the victim, not the facts of the case, the seriousness of the crime or the dangerousness of the defendant upon whom the prosecutor focuses for the prediction of an assured conviction. Indeed, whilst the focus still remains on determining whether it was a genuine rape in terms of the act itself, from the interviews in the present study it soon became clear that, when consent is at issue, questions about a complainant’s credibility and character become increasingly pivotal in establishing whether she is, in fact, a legitimate victim. It is in this context that notions of victim blaming or victim ‘proneness’ might be raised in assessing a complainant’s “guilty contribution to the crime” (Von Hentig, 1948; Mendelsohn, 1956).

Aside from physical evidence pertaining to the rape incident, then, police respondents suggested that several issues might affect how seriously a rape allegation would be taken. Factors affecting the perceived credibility of a complainant included: the age of the complainant; whether she was suffering from any form of mental impairment; her perceived character including the involvement of drugs and/or drink at the time of the alleged incident; her perceived morality with particular reference to prostitution; if she was known to have made previous allegations of rape; the existence of a prior
relationship between the complainant and suspect; a delay in reporting the attack; and her demeanour on reporting the allegation. Each of these aspects will be explored in turn.

Age:

In the present study, multivariate analysis revealed age to be a strong predictor of the police decision as to whether or not to 'crime' an allegation of rape and also whether or not to subsequently charge a suspect. Younger complainants, particularly those under the age of 16, were the most likely of the age groups to see their allegations taken seriously and pursued by the police. Indeed, the quantitative analysis revealed that cases involving complainants under the age of 13 were most likely to result in a conviction. Police respondents in interview defended this idea claiming that particularly young or particularly old complainants often make good witnesses, as a jury will tend to judge them as unlikely to lie:

“If you’ve got a child under ten and ...she says you know, ‘this man put his penis in my vagina’, you think well it’s more likely they are telling the truth because a child under ten wouldn’t know that grown-ups do that sort of thing.”

[Police Officer, Focus Group 5]

Three of the complainants spoken to also raised age as an issue that they felt influenced the perceived credibility of a victim. One of the respondents had apparently been raped on three separate occasions in her life, once as a young girl and twice as a teenager. Her experiences had been different each time, only her first case having resulted in a conviction. This respondent believed that the reason that she had been taken seriously on that occasion was because she had been a young girl raped by her step-father:

“I was only eleven when [the first rape] happened...and I ended up pregnant so I had a hell of a lot of belief and support through that. That was a one-off though. I was special then.” [Complainant 1]
Although other factors are bound to have had an influence on how each of her allegations had been handled by criminal justice personnel, this complainant clearly believed that the fact that she had been a young girl on the first occasion had made her a strong witness and therefore more able to be perceived as a legitimate victim.

In terms of how alleged rape victims might be categorised according to their perceived legitimacy, the complainant as a young girl in the above example would undoubtedly have been classed as a 'privileged victim' according to Smart (1989). Furthermore, the fact that her case resulted in a conviction confirms the 'pedestal myth' developed by Stewart et al. (1996) in that she would have been effectively placed on a pedestal in the minds of those handling her case with regard to her perceived culpability for the alleged attack.

Despite a general view that young complainants made good witnesses, police respondents were not always in agreement when it came to an assessment of teenage witnesses. On the one hand, one respondent classed a complainant of 13 or 14 years old who alleged being raped as being of an age where she was likely to have been taken advantage of and who therefore should be perceived as a deserving victim. This notion is reflected in a study by Clarke et al. (2002) which found a consensus among respondents taken from the general public that young victims might be targeted in this way “because of their lack of worldliness or their innocence which would make it easier for the perpetrator to take advantage of them” (p.52). This also supports the 'pedestal myth' developed by Stewart et al. (1996) whereby virtuous women who are not sexually active, who do not tell dirty jokes or get drunk are, in effect, put on a pedestal in the minds of those judging their behaviour – arguably younger complainants are more likely to fit into this category. However, giving voice to an alternative perspective, teenage complainants were felt to be more problematic in the views of some other officers in the present study. According to one respondent, teenage girls have been known to make allegations as a way of attention-seeking. It was also alleged that sometimes young girls indulging in sexual activities might claim that it was without consent when confronted by a parent.
Rape is one of a number of offences which can involve especially vulnerable victims, by virtue of age, mental illness or learning disabilities. Indeed, it has been well documented that people perceived as having diminished competency are likely to have enhanced vulnerability to sexual victimisation arising from a number of factors including impaired judgement, difficulties in communication, lack of knowledge regarding sexual matters and an ignorance of their rights within the law (Luckasson, 1992; Hayes, 1993). Unfortunately, it seems that the very factors that have been identified as enhancing such a person’s vulnerability to being raped in the first place can then be taken to reduce the veracity of their allegations. In the current study, 40 cases in which the police decided not to bring charges involved complainants who had learning disabilities or were mentally disordered and whose allegations were usually perceived to be false. In support of the theory that the focus of police investigation tends towards an analysis of the complainant, some of the notes that were recorded on files by police officers suggested that decisions usually centred around complainants’ characters rather than being based on physical evidence (or lack thereof):

“She’s confused, doesn’t know quite what happened or how it happened... Something might well have taken place but with a witness [with this degree] of learning difficulties it’s not likely to be a runner...”

[Police officer’s note on Advice File to CPS]

Complainants of this type would almost certainly be categorised as “invisible victims” according to Smart (1989). In fact, none of the cases involving vulnerable adults in the present study reached court. The main feeling that emerged from interviews was that such a complainant would not make a convincing witness. Despite the police sometimes believing that the complainant had probably been raped, they were usually apprehensive about the vulnerability of an alleged victim with any form of mental impairment to the defence cross-examination that she would have to face in court. However, sometimes it was actually felt that complainants who were vulnerable in this way were more likely to make false allegations: reports of rape by complainants suffering from mental disorder were considered by some police respondents to be a
“cry for help” or “attention-seeking”. Three police officers claimed that, often, these women had made similar allegations in the past.

Complainant’s behaviour:

Data emerging from interviews with police officers continued to support the idea that judgements about the character of the victim were key in determining how seriously allegations were viewed. “Risky behaviour” was an informal category used by several police officers alluding to conduct such as drinking or taking drugs, going willingly to the home of someone they did not know very well or accepting a lift in a stranger’s car. Such behaviour was perceived to cast doubts on the credibility of a rape complainant implying that she should have avoided certain situations. In this way, interviews with police officers were found to reflect notions of victim-precipitation, as raised by Amir (1971), with judgements focusing on ‘commissive’ and ‘omissive’ behaviour (p.155). In this sense, failing to take preventative measures to avoid risky situations were perceived to enhance the degree to which a complainant could be held culpable for her rape. The result of this sort of attitude is that the act of assault is, in effect, naturalised, thus putting the responsibility for the incident onto the complainant rather than the perpetrator (Larcombe, 2002:134). To take the concept of drunkenness, one police officer saw this as likely to cause major doubts about a complainant’s credibility since a jury would then be more likely to place the responsibility for what had happened on her shoulders:

“I wouldn’t necessarily say that she therefore wasn’t raped, individual jurors probably wouldn’t want to say that she wasn’t raped, but the fact of the matter is that if she was inebriated at the time, a lot of people would be thinking that she probably doesn’t know whether she consented or not.”

[Police Officer, Focus Group 7]

This view echoes that of previous studies which claim that a woman who was under the influence of alcohol at the time of her alleged attack might be blamed for losing her inhibitions, supporting the possibility that she consented to intercourse (Ettore, 1992; Lees, 1997). Interestingly, research has revealed that, in the minds of police officers as well as the wider society, alcohol consumption tends to be perceived as a
discrediting factor *only* in the case of the victim and not in the case of the suspect (Schuller and Stewart, 2000; Jordan, 2004). In fact, the prospect of a suspect being drunk at the time of an alleged rape has received little attention and certainly did not appear to be a defining factor amongst police officers who were interviewed for the present study. On the contrary, comments voiced by respondents such as “[she was] not exactly a lady” (Police Officer, Focus Group 3 - referring to a complainant who had been reported as being very drunk at the time) and “there but by the grace of God go I” (Police Officer, Focus Group 1 - referring to a suspect who had been drinking at the time that he was alleged to have raped a complainant) support the double standard that considers a drunken woman more reprehensible and further from the notions of appropriate behaviour than a drunken man (Otto, 1981; Ettore, 1992).

*Morality*

Three police officers who were interviewed used the phrase “complainants of ‘questionable character’” (Police Officer, Focus Groups 2, 5 and 7) to refer in this instance to a complainant’s perceived *morality*. In the views of some officers, perceptions of dubious morality tended to reduce the credibility of a complainant in their eyes and also affect their assessments as to the likely responsiveness of a jury to the allegation. Echoing these views, three of the complainants who were interviewed also raised the morality of a victim as being perceived by them as likely to have a bearing on whether she would be taken seriously. One respondent admitted in her interview to having had “something of a history” in that she had been a prostitute and a drug addict in the past. Although she had moved on from this way of life at the time that she had been raped, she claimed that it had delayed her reporting the attack to the police as she had thought that it was bound to compromise her perceived credibility as a rape victim (she was already known to the police because of her history). In effect, she was drawing upon the same cultural imagery in determining whether or not to report the allegation as the police subsequently drew upon in determining whether or not she had been raped, since they apparently did not believe her. In fact, in the same way as complainants might try to conceal some aspect of their alleged attack that they feel might count against them, the fact that she had *delayed* reporting the attack appeared to cause the police to question the veracity of her allegation anyway. Subsequent to her reporting her attack, she had been actively encouraged by them to
withdraw her complaint and two weeks later she had been sent to a hospital for mentally disturbed patients. Continuing to identify with others' views of her behaviour, she admitted in her own words during an interview for the present study that she had “lost it” and had “gone mad” [Complainant 4].

On the subject of complainants' morality, issues around prostitute rapes were raised frequently. This was probably because two of the study areas had large red-light districts and the police in those areas had had a lot of experience of, and particular views on, dealing with prostitute rape allegations. According to Wood (1973), the fact that a complainant is a prostitute is something that is highly likely to undermine the veracity of an allegation. Indeed, prostitution might be seen to represent a fairly powerful violation of perceived traditional female gender role behaviour rendering prostitute complainants 'invisible victims' according to Smart (1989). Being a prostitute also represents a form of 'omissive' behaviour, to use Amir's conceptual terminology, in assigning blame to the complainant where she is not perceived to have taken necessary preventative measures (Amir, 1971). According to Amir, in the case of prostitutes “when her outside appearance arouses the offender’s advances...” (p.155), it might be more easily argued that a complainant precipitated in her own rape.

In fact, in the present study, police officers were quite divided on their views about whether a prostitute would make a good or a bad witness. On the one hand, prostitutes were said to be strong witnesses. In this sense, it was felt that, given the nature of a prostitute’s work, these complainants are unlikely to 'cry rape' for no reason. In addition, rapes of prostitutes were said to be often quite violent and evidence of injury would usually count in support of an allegation. As one police officer said:

“I regard them as business people. Why would they want to take God knows how many hours out of their tour of duty when they could be making money to make up a spurious story...and most prostitutes you know they’re pretty strong people and unless there is an overt weapon that can do them harm, they’re not going to let somebody get the better of them... so you usually find some supportive evidence of violence.”

[Police Officer, Focus Group 3]
On the other hand, some police officers and barristers believed that a jury would see a prostitute in a negative light as violating notions of appropriate female behaviour, and she would therefore not present as a good witness in court.

One focus group discussion centred around the jeopardy of complainants who try to conceal something about the facts of their case that they believe might compromise their credibility as a victim. Still on the subject of the character of complainants, police respondents thought that it was probably quite common for a woman who had been drunk at the time of the alleged incident, had gone home willingly with a stranger or had been working as a prostitute to try to cover up this fact when making her allegation. This relates to Goffman (1959a) commenting on incidents where performers seek to conceal from audiences those activities that are seen as being out-of-line with an "idealised front". In this way, aberrant values and actions (discrepancies between appearances and overall reality) may be withheld whilst only approved traits are presented in public to legitimate an individual's social role. However, it was the opinion of several police respondents that, if a complainant were found out, the fact that she had tried to conceal something was likely to convince the police only of the fact that she was capable of lying. Indeed, prior research by Jordan (2000) has also revealed that complainants embellishing accounts or attempting to cover up any information that they feel might count against them causes more harm than good, often increasing the chances of an allegation being judged as false. Paradoxically, therefore, a complainant's efforts to conceal some aspect of the alleged attack that she feels might lessen her chances of being believed may end up diminishing their credibility even more.

Previous allegations of rape:

Prior research has suggested that complainants are regarded with suspicion if they are on record for having made previous allegations of rape, particularly if those allegations did not result in a prosecution (Jordan, 2004). Two of the complainants who were interviewed for the present study had each made two allegations of rape in the past. One of these women had had her first allegation of rape as a young girl proved and the suspect in the case had been convicted at court. Her subsequent
allegations, and those of the second complainant who had made multiple complaints, had all been classified by the police as ‘no-crimes’ when the complainants had retracted their stories, indicating that they had not been believed. This reflects research suggesting that, if a complainant had decided to retract an allegation on a previous occasion, the police tend to interpret this as proof that the allegation had been fabricated (Aiken et al., 1999). However, all of the complainants who were interviewed in the present study maintained that they had been pressured to withdraw their allegations and that this had not been out of choice. Something that might help explain this belief that repeated allegations cannot be genuine is the commonly held notion that a woman is unlikely to be raped more than once – despite the fact that this flies in the face of an accumulating body of evidence that documents high levels of repeat victimisation (Doerner and Lab, 1995; Morris, 1987). Indeed, despite the fact that only four complainants were interviewed for the present research, two of these reported having been raped twice respectively, on previous occasions.

Interviews with police officers on this subject did not throw much more light on whether the existence of previous allegations of rape affected their judgment about the complaint in question. Generally, it was suggested that each case would be judged on its own merits in light of the evidence at hand, despite the fact that the interviews with complainants suggested otherwise.

Prior relationship:

To add to the categories of “privileged victims” and “invisible victims” developed by Smart (1989), Estrich (1987) focuses attention on the perpetrator in raising the notion of the ‘real rapist’, speculating that the high rate of attrition at the police stage of proceedings is due to the fact that police officers base their decisions on stereotypes of violence that presume that someone who is known to a victim is not a ‘real rapist’. Indeed, it was the view of several police respondents in the present study that, if a complainant and a suspect had previously been in a relationship, this history could serve to undermine the veracity of an allegation and weaken belief in the possibility that, on the occasion in question, the complainant did not consent to sexual intercourse. This concept is supported by others, including Wood (1973) who also detected that a prior relationship would weaken the strength of an allegation. A
stranger rape, on the other hand, where there had been no history of a prior relationship between the complainant and suspect, was thought by respondents in the present study to be more likely to be seen as “your proper rape, no consent, no doubt, a good strong case” [Police Officer, Focus Group 9], to quote one police officer.

To take the views of complainants, all respondents here recognised the difficulties associated with an allegation of rape where a complainant and suspect shared a history of intimacy. One complainant who was raped by her ex-boyfriend had had her fears about reporting such an attack realised when she was questioned by the police about the alleged incident:

“And another thing that they kept going on about was ‘you’ve been out with him, and did you have a sexual relationship?’ and I said ‘Yeah’ and he said ‘Oh well, what was the difference this time?’”

[Complainant 2]

Interestingly, the complainant in this case had sustained serious injuries as a result of the attack - something that has been identified in the present study as representing important corroborative evidence - but this is apparently not what the police officers focused on when making their judgements about her credibility. Likewise, another complainant reported that, when she had been raped by an ex-boyfriend she had sustained injuries that she thought would corroborate her story but was in fact told that the evidence in her case was weak. She commented:

“I showed them my bruises right...and do you know what they said, ‘your bruises are not good enough’. I went ‘well what do you mean my bruises are not good enough, I’ve just been raped for God’s sake, you don’t talk to me like that’ - ‘your bruises ain’t good enough, you’ve got no case.’ ”

[Complainant 1]

In this respondent’s case, whilst evidence of injury has been identified as a factor that would strengthen an allegation of rape, this effect was ultimately negated by the fact that the defendant was an ex-boyfriend of hers. Issues emerging from the present research therefore reinforce those found by Temkin (1997) who studied Sussex police practices during 1991-93 and three areas of the Metropolitan district during 1993-95.
She found that complainants endured harsh and persistent questioning, especially those reporting acquaintance rapes, suggesting that, in the context of the two parties knowing one another, these police “had difficulty interpreting what had happened as rape” (Temkin 1997:516).

What became clear from the interviews was that myths or stereotypes do not only affect the judgements of criminal justice personnel about what constitutes genuine rape; in the context of acquaintance rape, one complainant in the present study also had difficulty perceiving what had happened to her as being rape. Whilst not an ex-partner, she had alleged being raped by a friend who lived in the same hostel as her. Following the incident, she had been reluctant to report it at first as other people in the hostel knew her and the alleged rapist as friends. Effectively drawing on the same assumptions as these other people, she said that she had had trouble herself interpreting what he had done to her as rape:

“I wasn’t even using the word rape at first because it took me a long time to come round to the fact that that’s what he had done to me because he had been a friend for a long time.”

[Complainant 3]

This sentiment is supported by Clarke et al. (2002), who also found that individual circumstances and situational factors can influence whether victims categorise their experiences as ‘actual rape’ (p.26). It is important to acknowledge this view because it shows that beliefs about what constitutes a genuine rape are at work before cases even enter the criminal justice system. A victim has to be convinced in her own mind that what has happened to her is rape before she can even think of starting to convince others of what has happened to her.

The prevalence of the attitude among police respondents that a history of a prior relationship could weaken a case to an extent appears to validate some level of access an ex-partner can have to a person in terms of intimacy. The fact that rape within marriage was not legally recognised as a crime until 1991 suggests that remnants of attitudes endorsing men’s sense of entitlement to sexual intercourse with women are still likely to be in existence (Brownmiller, 1975); according to attitudes that were
revealed in the present study, these appear to be pervasive in police thought and practice as well.

Delayed reporting:

According to police respondents in the present study, investigators attach evidential significance to a victim reporting an allegation of rape as soon as possible whilst any delay is likely to serve to reduce the credibility of a complaint, something that has been reflected in other work (Brownmiller, 1975; Torrey, 1991; Thomas, 1994; Bronnitt, 1998; Freckelton, 1998). Delay in reporting and potential loss of vital medical evidence also leaves the police with little corroboration to work with. Although unsupported by fact, there appears to be a common assumption that the first thing any genuine rape victim would do is to report the attack to the police (Estrich, 1987; Torrey, 1991; Bronitt, 1998; Kelly, 2002). However, despite the fact that it was a relatively small sample, interviews with the four rape complainants in the present study suggested that this is not a valid assumption to make. Only one of the respondents spoken to had reported the incident on the same evening, one having delayed reporting for two days. Two of the respondents had only reported under the encouragement of friends. To complicate issues further, the confusion that one complainant had felt in the aftermath of her alleged rape meant that she had denied the allegation when her friend had called the police on the first occasion only to admit that it had happened to her when she decided to report the attack the following day.

The suggestion that a genuine rape complainant would report the incident immediately to the police has been similarly challenged by other research. Jordan (1998), for example, revealed that complainants in her New Zealand study reported their allegations to the police in the first instance in just 6 per cent of cases whilst Painter (1991) – despite referring to unreported incidents - revealed that 91% of women who were raped had told no one at the time. Jordan (1998) also revealed that someone other than the complainant often made the initial contact with the police, a conclusion echoed by Chambers and Millar (1983) and Kelly et al (2005).

A key issue identified in the present study was how complainants' perceptions of what constitutes a genuine rape in the eyes of others had affected their decisions as to
whether to report their rapes in the first place and then to subsequently withdraw their allegations. Thus, delays in reporting are also likely to be quite common for this reason. In support of this notion, Stewart et al. (1996) found that the majority of women in their study chose not to report their rapes at all, for reasons "relating to their assessment of how others would define them" (p.165). The prevalence of disbelief among police officers towards women who allege rape compounds the difficulty that many experience in coming forward with their complaints.

One of the complainants interviewed for the present research was of Asian origin. She maintained that she had delayed reporting her allegation because she had believed that she would have a harder time being believed than, say, a white woman. Subsequently, however, she did not feel that she had been treated unfairly specifically because of her ethnic origin. It has been documented that certain sections of minority ethnic communities are distrustful of the police, fearing and anticipating racism. Whilst not commonly referring to rape, this has been suggested as a reason for women being reluctant to report allegations of domestic violence (Mama, 1989; Hague and Malos, 1993; Kanuha, 1996), as was certainly found to be a concern of the Asian complainant in the present study. Of course, this mistrust of the police could also affect whether a complainant wishes to pursue an allegation once they have reported an attack.

Having reported their attacks and subsequently experienced what it was like to be a rape complainant, three of the respondents in the present study maintained that, if they were raped again, they would not report it to the police next time. One respondent said that her decision as to whether to report would depend on the degree of social support she felt was available to her at the time. This particular view echoes that found in a study by Smith (1989) whose results suggest that the degree of social support anticipated by a victim may well influence her willingness to report.
Demeanour on reporting:

“When you’ve got someone who comes into the front office, who’s crying, ripped clothes, you know – blood, sweat and tears – then you’re going to sit up and think that something serious has happened here.”

[Police Officer, Focus Group 4]

During interviews with police officers, it became apparent that some respondents had specific ideas about how a genuine victim of rape would appear and behave. One of the vignettes that was used in the police interviews became the subject of discussion here: the complainant in the given scenario had reported an alleged rape by an acquaintance but, during her interview, she had appeared nervous and was even joking about what had happened to her. She demonstrated no obvious feelings of upset or anger towards her alleged assailant. Respondents in the police focus group who were asked to consider this case strongly believed that such behaviour would not be considered appropriate or fitting of someone who had just suffered the trauma of a rape. Torn clothing was confirmed as something that would be taken as positive evidence that a woman had been attacked. However, this assumes that a complainant would report an attack immediately and not choose to go home and wash and change first. Such beliefs amongst police officers, if fixed, have the potential to impact seriously on judgements about complainants (Freckelton, 1998; Aiken et al., 1999).

7.2.4 ‘Real rape’ and ‘deserving victim’

Notional categories of ‘real rape’ and ‘deserving victim’ were developed in the present research on the basis of themes emerging from the files analysis and interviews. The term ‘real rape’ was devised to include those cases that were perceived to be legitimate and which invariably reflected stereotypical notions about what constitutes a genuine rape. The category ‘deserving victim’ was conceived to encompass those complainants who could be judged to be legitimate and therefore deserving of the label ‘victim’. The latter term echoes Smart’s categorisation of ‘privileged victims’ and ‘invisible victims’ to make the distinction between credible witnesses who fit with cultural assumptions about rape victims and those who find it difficult to make their complaints heard (Smart, 1989). This also reflects the
underlying principle of the ‘pedestal myth’ developed by Stewart et al. (1986) whereby complainants whose characters most closely conform to stereotypical notions of genuine rape victims are effectively ‘put on a pedestal’ in the minds of those judging their allegations.

Various factors were identified in the present study that influenced an apparent classification of alleged victims, whether consciously or unconsciously, by those reporting allegations as well as those responsible for processing cases. Considering, for instance, the issue of age, one complainant who had made multiple allegations referred to her example as a young girl when her allegation had been proved and her perpetrator convicted; her subsequent allegations when she was a teenager had been ‘no-crinded’. This complainant would undoubtedly have been classed on the first occasion as a ‘deserving victim’ according to the present study or as a ‘privileged victim’ according to Smart (1989), by virtue of her age and the assumptions that would have been made about her culpability for her attack. Considering other factors, a complainant alleging a rape by a stranger or who had sustained injuries to show for her attack would have a better chance of being classified as a ‘deserving victim’. In contrast, complainants suffering from some form of mental impairment, who were prostitutes or who had made previous allegations of rape that had not been proved might have more difficulty being seen as ‘deserving victims’ according to the present study but would be more likely to be classed as ‘invisible victims’ according to Smart (1989).

In conclusion, it appeared from the interviews that police officers and complainants tended to share views about what would enhance the credibility of a complaint and therefore what determines ‘real rape’. Stewart et al. (1996) refer to these shared notions as ‘taken for granteds’, stereotypes which are embedded in the common culture that shape our world and are accepted as normal. It also appears that police officers tend to make judgements about a victim’s credibility aside from the details of her case and, to some extent, base the merits of her case on that assessment. To this end, Stevenson (2000) is accurate in her claim that, for rape to be seen as genuine, it is even more important for a rape complainant to be the “unequivocal victim” (p.343) whose conduct and behaviour must “conform to prevailing societal expectations, as understood by the legal system” (p.347, emphasis in the original). Stanko (1981-82)
therefore concludes that police take into account victims’ social class, sex, race and lifestyle when deciding whether to charge, which, she maintains, does not necessarily reflect bias but simply the pragmatism of prosecutors intent on maximising convictions (p.237). Pragmatism amongst police respondents in the present study, however, appeared, essentially, to be about ‘getting the job done’ which is arguably not always going to be in the best interests of the complainant.

With reference to Goffman (1963), it seems that rape complainants can experience ‘stigma’ - or find themselves ‘morally tainted’, to use Innes’s conceptual notion (Innes, 2003) - on two fronts: a woman who alleges rape might already find herself in a stigmatised group on the one hand (as a prostitute, for example), or she could end up being stigmatised on account of her apparent behaviour at the time of the alleged attack (if she had been drunk at the time, for instance). What became evident through the interviews with complainants was that, even if a woman does not accept certain cultural definitions about rape and the reality of her being a victim does not fit with commonly accepted stereotypes, she is nevertheless compelled to recognise their power and prevalence if she is to pursue her allegation through the criminal justice system: these notions will ultimately determine whether or not the event is judged to be a ‘real rape’ and/or whether she can be perceived to be a ‘deserving victim’.

7.3 How police practice impacts on complainants

This chapter has so far considered what factors about an allegation cause the police to classify it as a ‘real rape’ and how these notions are shared by complainants of rape. Given the evidential complexities surrounding rape allegations, it is apparent from data emerging in the present study that the focus of investigation falls more and more on the characteristics of the complainant as opposed to the facts about the rape incident itself. In turn, perceptions as to what the police view as a ‘deserving victim’ and how victims feel that they are likely to be treated once they enter the criminal justice process affects their inclination to report allegations in the first place as well as whether to pursue their complaint once reported. Considering the action of complainants, this chapter has shown how a ‘fear’ of not being believed can result in delayed reporting which, paradoxically, can have the effect of reducing a complainant’s overall credibility and reducing their chances of being seen as a
'deserving victim'. Other research has revealed how the manner in which the police deal, or are anticipated to deal, with a complainant is key, having been cited by many as the reason why numerous victims do not report rape or complainants subsequently fail to pursue allegations (Holmstrom and Burgess, 1983; Mackinnon, 1989; Walby, 1990).

7.3.1 ‘Cop culture’

Reiner (2000) suggests that the core of the police outlook is a combination of themes including a sense of “mission, hedonistic love of action and pessimistic cynicism”. Each are seen to feed off and reinforce the others resulting in a pressure for efficiency and the need to *get the job done* as the basic motivating force within the culture of the police. The present study supports this view, also echoing Kerstetter’s conclusions that attrition at the investigation stage of proceedings is due to routine elements of policing that aim for having less unsolved crimes on record (Kerstetter, 1990). It is how police officers go about ‘getting the job done’ to this effect that is of importance to the present research. One important facet of cop culture is ‘suspicion’ which applies when considering likely suspects as well as likely victims, as in the present study. Suspicion breeds stereotypical principles and discrimination, the subject of which has been covered by various literature in relation to police attitudes towards criminals. The present research demonstrates that suspicion about likely or genuine victims also results in stereotypical notions about what constitutes ‘real rape’ which is manifested in discriminatory practices towards complainants.

Much has been written about police accountability in relation to discriminatory practices, stigmatisation and the criminalisation of vulnerable groups of suspects (Matza, 1969; Young, 1971), reflecting the crime-fighting, offender-orientated nature of policing. Although less material can be found on police accountability in relation to complainants, some of the same ideas and concepts can be applied when thinking about discrimination here. Throughout the following sections, categories of discrimination are referred to that have been developed by theorists to explain the differential treatment of offenders but which can also be helpful in understanding the differential treatment of rape complainants in the present context.
Several writers have described the police world as being one that is based on old-fashioned machismo (Fielding, 1994; Crank, 1997). It is perhaps no surprise, then, that the present research identified various forms of discrimination towards rape victims in the form of sexist judgements about the circumstances of an alleged rape offence or the character of the complainant. This sort of conduct gives rise to the term ‘canteen culture’ which can operate as an important function of tension release, often resulting in ‘gallows humour’ (Young, 1995). It was not possible to systematically explore the degree to which ‘canteen culture’ - the values and beliefs of police officers that are exhibited in off-duty policing - played a part, since information was gathered from official files and formal interviews. However, sexist and discriminatory attitudes that were detected from the research leads this thesis to suggest that the masculine ethos of police organisations is likely to compound the issue of discrimination towards rape complainants.

As the following data suggest, judgements that are made about a complainant’s character based on the details of her allegation often translate into the way that she is treated by the police and the degree of support and encouragement that she can expect to receive (Adler, 1987; Heenan and McKelvie, 1993; Temkin, 1997; Jordan, 1998). Before considering what might be the ‘driving forces’ behind police investigation, the next section will continue to assess the evidence by looking at how notions of ‘deserving victim’ serve, in practice, to affect the very person on whom such judgements are based – the rape complainant. It will consider how one by-product of the way in which police officers conduct investigations of rape can be a form of ‘secondary victimisation’ of the complainant involved: in this instance, an alleged victim can be made to feel that she is the one who has to disprove her culpability for the alleged attack, rather than the suspect. Following on from this will be a consideration of how the trauma of rape experienced by complainants can often affect how they feel and consequently conduct themselves, something which is frequently not recognised as credible behaviour that would be expected of a genuine rape victim. Finally, coming back to the question of attrition, this section draws attention to what can frequently be a result of all of the above issues – complaint withdrawal.
7.3.2 Secondary victimisation

As they are dealing with the impact of the crime, victims too often then have to endure insensitive treatment at the hands of the criminal justice system – often referred to as ‘secondary victimisation’ (Maguire and Pointing, 1988:11).

What emerged from the present study was that there are effectively two different forms of secondary victimisation that impact on complainants at different stages of the system. This chapter deals with the beginning of the process, exploring the degree to which an alleged victim has to endure insensitive, and often thoughtless, treatment at the hands of the police who are compelled to question her and elicit details about the crime as quickly as possible. The term ‘covert secondary victimisation’ was developed in this thesis to refer to the harsh treatment of complainants in this context. Later on in the process at court, a more deliberate form of victimisation can be shown to take place with the cross-examination of complainants – which can be suitably termed ‘overt secondary victimisation’. Here, the direct attack by a defence barrister on a complainant’s character is obvious and is intended as a way of discrediting her story. Arguably, both forms of secondary victimisation are interrelated, as the way in which police officers interpret details about an allegation and subsequently treat a complainant during the investigation stage will usually be influenced by the degree of victimisation that they anticipate that she will later face at court.

From the moment that they reported their allegations to the police, the complainants who were interviewed for the present study claimed that they had been made to feel that their allegations were flawed and that subsequently they were under suspicion – that they were not, in effect, ‘deserving victims’. Their principal reasons for believing this centred around the manner in which they were treated and questioned by the police. Research conducted by Jordan (2004b) supports this notion, suggesting that complainants often believe that the police view them suspiciously making them feel as if the onus is on them to prove that their complaint is genuine before an investigation can proceed. Given the typical absence of corroboratory evidence, the belief of a complainant’s word becomes central to the investigation of a rape allegation.
With the complainant's welfare in mind, one issue facing the police is to try and ensure that a female police officer deals with a complainant who has reported rape and takes her statement. Two of the complainants who were interviewed had been visited by male police officers who took their statements and arranged for the medical examinations. Needless to say, both found this to be thoughtless on the part of the police, serving only to compound their distress. The following quote from one of the complainants interviewed indicates how inappropriate she found this to be:

"How dare they... just after me being raped, send two male coppers to deal with my case, 'cos they take yer clothes off you and everything don't they?"

[Complainant 3]

One of these complainants honestly believed that insensitive treatment by the police officers dealing with her case was a sign that the police did not believe her allegation (the alleged assailant was a long-term friend) and that it was all part of a 'campaign' to get her to drop her complaint.

In answer to criticism about how the police treat complainants once they report their allegations, it is important to acknowledge the view of several police officers interviewed who maintained that this practice is usually not intended to traumatise the complainant but is simply a by-product of the way in which the process is handled. As suggested by one police respondent, the thorough questioning which might be taken as 'getting at' the complainant is necessary:

"They don't quite realise the amount of detail that we have to go into and I think sometimes they feel ... that we're sort of having a go at them and it's not that at all...and you try and explain to them that it's very important we get everything down."

[Police Officer, Focus Group 3]

Further to this, several police officers drew attention to some of the unavoidable difficulties they often encountered when it came to finding doctors to conduct medical examinations on complainants. It seemed that it was often difficult to find a female doctor as would always be the preference of the complainant, and, if these could be
found, they were usually not based locally and would therefore require the complainant to travel. The following quote suggests that this police officer acknowledged that it was his duty to care about the welfare of the complainant but that this was sometimes quite difficult when it came to trying to arrange for a medical examination:

“...although our policy is victim care and consideration, that goes out the window when you start dealing with the medical profession. Because it’s at their convenience, and not the victim’s convenience, where you take people.”

[Police Officer, Focus Group 4]

Such frustrations on the part of police respondents partly reflect those studied by Temkin (1999) who reported that problems with handling rape allegations were due, in part, to the lack of resources available to police officers, many calling for specialist teams or a more coordinated system to deal with rape.

One of the negative issues raised by complainants was that concerning some officers’ pessimism about the chances of their case. In response to this point, several police respondents suggested that, if a complainant was not a very convincing witness, they would have to warn her about potential evidential difficulties with her case and what was going to happen if she went to court. It does appear, however, that in the present study this would often make complainants feel that they were not even believed. These issues echo those uncovered by other research, including Stewart et al. (1996) who found that police were likely to tell a complainant that she did not have a “good case” if she had character flaws or had engaged in misconduct herself. With one eye on the welfare of the complainant and one eye on how difficult it was likely to be for her, police in the present study essentially did the same thing:

“We would always explain to them that they are going to get a hard time, we don’t sort of paint a rosy picture especially if...it’s one of consent but we’ll say that we will support them as much as we can and we are behind them. And we sort of prepare them for what they are going to face and a lot of them realise that.”

[Police Officer, Focus Group 1]
"...if you do really think that it is going to be very difficult to prove, is it worth putting the victim through that and going to court and for them to find a jury won’t convict the person and then … they could end up [thinking] ‘well nobody’s believed me at the end of the day’, which is another sort of trauma for her.’"

[Police Officer, Focus Group 2]

Indeed, the police are often criticised for their lack of concern with complainants’ welfare when they are seen as best placed to provide support and encouragement through the process. Police respondents in the present study expressed frustration that their role was not always clearly understood, however, indicating a tension between being seen to care for a complainant’s welfare and concentrating on investigating the facts of the case. This might lend some support to the argument that police officers’ hands are, in effect, tied, and that the perceived poor treatment of complainants is down to genuine evidential difficulties resulting in weak cases that have less to do with discriminatory practices or bias.

However, it seems that, in walking a line between considering the interests of the complainant and investigating the case to strengthen the chances of a conviction, the police might put women off pursuing allegations without meaning to. The four complainants who were interviewed felt that the police had actively encouraged them to withdraw their allegations. In fact, their responses suggested that women who allege rape are often made to feel that they are the ones who are on trial and that the police are on the side of the suspect. Following their initial interviews with the police and any difficulties encountered there, complainants reported an ongoing lack of consideration for their interests. Consideration was often not apparent, for instance, in the form of keeping complainants up-dated as to the progress of their cases or dealing appropriately with the trauma that they might have experienced in the aftermaths of their alleged attacks. In this sense, the present research adds some support to Temkin’s claim that:
“Old police practices and attitudes, widely assumed to have been vanished, are still in evidence and continue to cause victims pain and trauma.” (Temkin, 1997: 527)

Solutions to making complainants feel like they were being believed and respected might be as simple as good communication. Evidence from the present, and past, research suggested that this is vital if cases are to be pursued effectively:

“The main problem for a woman after the initial investigation was undoubtedly the general lack of information resulting in feelings of helplessness and non-involvement.”

(Chambers and Millar, 1986:126)

Temkin (1999) reported that, often, the complainant, having given her statement, never hears from the police again. In her research, she found that some women had to consult a solicitor to find out the outcome of their case and that two others were only contacted in due course after their attackers had been identified as serial rapists and they were required as witnesses. Although the present study was not able to explore this issue systematically, two of the complainants who were interviewed were critical about the lack of communication and the following quote also suggests that support was in place more for the suspect than for the complainant:

“...I had no idea what was going on with the police, what they were doing about it, and really if it was all over, you know...like I had been sent home with a smacked bottom. But they were in touch with [the suspect], telling him what was going on and what was going to happen.”

[Complainant 1]

Furthermore, this complainant also heard a rumour through friends who knew the defendant that the police had apparently assured him that, based on the medical evidence, he ‘didn’t have anything to worry about’. This very much gives the impression of the police taking the side of the accused, allaying his fears about being a suspect in an alleged rape. In effect, this sort of treatment is another form of ‘secondary victimisation’ since the complainant is made to feel, in no uncertain terms,
that she is not telling the truth and therefore does not deserve to receive the support and encouragement that is so important to help her through her ordeal. This, therefore, lends less support to the argument that the treatment of complainants is down to genuine evidential difficulties with rape cases having nothing to do with discriminatory practices. Issues emerging from Temkin’s research as well as the present study indicate a clear need for better follow-up provided by the police and communication to keep victims informed of proceedings.

None of the complainants interviewed in this study had pursued their cases to court, but two had had prior experience of the court process concerning past allegations. In the words of one complainant who was interviewed:

“You’re standing there and you’ve been raped and they make you feel like that big, honest to God they do, they make you feel as if it’s your fault, do you know what I mean, it’s...not nice at all, not nice at all.”

[Complainant 1]

The cross-examination of witnesses and the disclosure of sexual history of victims provides more opportunities for the ‘secondary victimisation’ of rape complainants. This will be covered in more detail in the next chapter which deals with the complainant in court.

Unfortunately, three of the complainants spoken to maintained that, if they were raped again, they would not report the attack to the police. Feminists have suggested that poor treatment and a lack of criminal justice response serves to legitimate rape (MacKinnon, 1989; Walby, 1990) and the fact that most of the complainants interviewed here would not report an allegation again seems to support this idea. Research by Temkin (1999) also echoes this notion, documenting the negative perception of rape victims about the ways in which their cases were dealt with. Complainants in that study, as in the present, were angry about the disbelieving attitudes of the police and the insensitive ways in which their cases were handled.
7.3.3 Rape Trauma Syndrome

One of the compelling factors that appeared to affect police officers' perceptions of who constitutes a 'deserving victim' was a woman's demeanour at the time of her reporting her rape. According to Goffman (1959a), an actor's 'front' must be convincing and be 'in-line' with the expectations of those who are observing their behaviour. In this sense, police respondents believed that someone who had been genuinely raped would most convincingly present as being very upset – "hysterical even" [Police Officer, Focus Group 5] in the words of one officer – and would want to seek help immediately. However, this is likely to say more about the preconceptions of the police officers involved than it does about a complainant's credibility since the police are often blind to the range of possible interpretations of a rape complainant's behaviour. This also represents a form of 'interactional discrimination', as identified by Reiner, whereby the process of interaction with the subject can lead to a differential outcome (Reiner, 2000:126). In terms of interaction with suspects, Reiner suggested that hostility towards the police might subsequently lead to an arrest which might not have been the case had that person remained calm. In terms of rape complainants, a seemingly unaffected, defensive woman who alleges rape might end up being perceived as not 'deserving' which might not have been the case had she appeared distressed and upset at the time.

Various research has documented the 'misunderstanding' about appropriate victims' behaviour following an attack (Holmstrom and Burgess, 1983). 'Rape Trauma Syndrome' has subsequently been identified as a condition to explain the fact that complainants often exhibit a seemingly inappropriate controlled response while in fact masking their feelings which might come out in a different form later on.

In the words of one of the police respondents interviewed in the present study, everyone has a different "shock clock" [Police Officer, Focus Group 3]. By this, the police officer meant that several hours can pass before some people realise what has happened to them whilst for others it can be an instant reaction. Another police officer also acknowledged how the same complainant can demonstrate behaviour several hours after an attack that is quite different compared to how she appeared in the immediate aftermath:
“One girl was so calm once I just couldn’t get out of her what had happened because what she was telling me was so blunt and she was so [withdrawn] from it...but the next evening...you’ve got the same person, totally different, totally broken, so it just depends how they react straight away.”

[Police Officer, Focus Group 2]

In the aftermath of their alleged attacks, two complainants in the present study appear to have demonstrated some form of Rape Trauma Syndrome. On account of how she had been coming across in the police interview, one complainant had been warned by a female officer that she should consider the way that she was behaving or it might affect how she was perceived:

“I mean, at the time I was high as a kite because of the shock...I was laughing and joking and all that and she said to me was ‘just take it easy because it might not look too good, you know...and when you come down from there you’ll be feeling pretty bad.’”

[Complainant 2]

A complainant’s demeanour might not conform to what is commonly accepted as convincing behaviour and the confusion that she feels might well cause her to forget vital details or seemingly change her story. Goffman (1959a) maintains that a powerful element counting towards the credibility of an actor’s performance is that of consistency in the communication of activities and traits. However, symptoms of Rape Trauma Syndrome reflected in the above examples demonstrate that an ‘idealised’ front is not always achievable. Consistency, however, appeared to be an important consideration among those responsible for investigating allegations. It became clear from talking to police officers and prosecutors that evidence that a complainant had apparently lied or been inconsistent in her recounting what had happened to her would have negative implications for her other evidence and for her being perceived as a ‘deserving victim’. Indeed, in an attempt to cast doubt on her complaint and raise evidence to suggest her culpability for the rape, defence counsel would waste no time in court in drawing attention to any discrepancies in a woman’s story. However, after talking to some of the complainants in the present study, it
became clear that it is not always easy for an alleged victim to give an unwavering account of the circumstances of her attack since she is likely to have to provide a statement several times over: to the first person she tells after the attack; to the police; in response to questions from a medical examiner; and during cross-examination at court.

7.3.4 Complainant withdrawals

The ultimate negative implication of police discrimination towards complainants based on stereotypical notions about 'real rape' and 'deserving victims' can be a complainant's decision to withdraw her allegation. Even if the police do not tell her to withdraw her allegation in so many words, the combination of secondary victimisation and ongoing judgements about whether she is in fact a 'deserving victim' might leave the complainant feeling that it is her only option.

Steffensmeier (1988) suggests that the unwillingness of complainants to pursue allegations represents voluntary attrition which is therefore not attributable to systematic bias. However, despite this claim, he also acknowledges that the police or others might discourage complainants from pursuing allegations, something that was systematically explored through interviews with rape complainants in the present study.

As noted in the previous chapter, complainant withdrawal was the single most common reason for cases not proceeding through the system in the present study. It was found to account for the police 'no-criming' 36 per cent of cases and then for deciding not to charge the suspect in a further 53 per cent of 'crimed' cases. Where the complainant did not wish to give evidence, the case could not normally proceed. In the case of intimates, withdrawal sometimes happens because the complainant is reunited with the suspect. In reflection of the fact that rape allegations most commonly involve intimates, emotional and financial dependence was felt amongst police officers and prosecutors to be a common reason for a woman feeling unable to pursue the allegation. In one case, a complainant's statement found on file revealed that she wished to withdraw her allegation, although she still maintained that she had been raped: if her husband went to prison and lost his job, she would lose everything.
Relating the macro to the micro here, this finding echoes an idea put forward by Collins (1975) who found that, when economic or political power is concentrated among men, violence against women is high (p.230). Translating this to the present study, it might be argued that where women have to retract allegations because they rely on the alleged assailant for financial stability, then violence in terms of the rape in this instance is justified – or at least it is more likely to be allowed to happen.

Stewart et al. (1996) suggest that myths and shared cultural definitions of ‘real’ rape combine to incite fear in victims that they will not be believed meaning that many complainants of rape do not proceed with their allegations. An extreme example of this involved one complainant who recalled being taken to the police station where two male CID officers sat with her in a room and questioned her. She claimed that suggestions were made to her that sometimes women allege rape when it is not in fact true, and that her experience was likely to have been consensual given that the suspect was an ex-boyfriend of hers. Further, she alleged that, as far as they were concerned, blood which was found at the scene of the incident was seen as indicative only of ‘rough sex’ having occurred. This reflects the view of Smart (1990) who makes the observation that accounts of rape that resonate with pornographic sexual ‘fantasies’ are less easily regarded as rape (p.16). Indeed, the fantasy involving a woman who appears demure when she likes to engage in vigorous, rough sex is used as an example by Smart who claims that, via such alternate pornographic accounts, evidence of violence in the form of injury to a complainant can indeed be interpreted as evidence of consensual sexual relations. In the present study, at no point did the officers take a statement from this complainant, apart from to record her eventual decision to withdraw:

“They didn’t actually let me speak, I never wrote a statement with them, only to retract my complaint, that’s all I did. And that wasn’t my idea.”

[Complainant 3]

This complainant also maintained that the police lied to her to get her to drop her allegation. Given that she had allegedly been raped by an ex-boyfriend, they felt that her case was evidentially very weak and actively encouraged her to withdraw her complaint - despite the fact that she had incurred injuries and her blood was found at
the scene. When she insisted that she did not want her assailant to get away with it, she was promised two things: that he would automatically have an injunction against him and that the rape charge would be on his record for the rest of his life. Of course, neither of these claims were true, as the complainant found to her cost: in terms of the former, when she called 999 after being followed home by the defendant one evening the police officer she spoke to knew nothing about an injunction.

Another respondent recalled how the police tried to make her feel guilty about how the defendant must have been feeling having to deal with the horror of being accused of rape and detained, in an effort to get her to withdraw her complaint:

“I was confused and said 'I haven't a clue what's going on' and they said to me 'I can tell you what's going on, there's a lad downstairs in the cell crying his heart out.' I mean, who was the victim here?”

[Complainant 2]

This, again, very much gives the impression of the police being on the side of the suspect where the complainant was not considered to be a ‘deserving victim’. Once she had agreed to retract her complaint, the attitude of the police officers to this complainant totally changed. From having made her feel that she was in the wrong and the ‘lad in the cells’ was the victim, they suddenly appeared to be on her side. Apart from adopting a patronising attitude and calling her a ‘good girl’ for dropping the charges, the mood noticeably lightened as they started laughing about the situation, even sharing a joke with her in a conspiratorial sort of way about the medical examination that the suspect would have had to have undergone. According to the complainant’s account, it appeared that once she was not asking to be perceived as a victim by the police anymore, they had less difficulty in treating her with some degree of respect.

Returning, then, to the claim by Steffensmeier (1988), the present study posed little evidence to suggest that complainant withdrawal is a justification for attrition which has nothing to do with to discriminatory practices and procedures. Indeed, it seems clear that attrition statistics are amenable to less confident justifications: they are instead likely to be based on stereotypical beliefs reflecting police interpretations as to
what ‘real rape’ and a ‘deserving victim’ really is, something that results quite clearly in discriminatory practices and procedures.

7.4. Police decision-making in more detail

So far, this chapter has considered what police officers, from an investigative point-of-view, perceive to be genuine rape and what factors they consider help to determine a complainant as a ‘deserving victim’ or, conversely, cast doubt on the veracity of her allegation. Continuing this debate, analysis has examined complainants’ perceptions as to what they think will be accepted by others as ‘real rape’; the research has gone on to consider how stereotypical notions about what constitutes a ‘deserving victim’ impact, in practice, on those women who allege that they have been victims of rape in terms of secondary victimisation and Rape Trauma Syndrome and how this can result in a high rate of complainant withdrawal.

The following section explores police decision-making in more detail, demonstrating how it is, in fact, somewhat more complex than it at first appears.

Key factors identified in the present study that were perceived as denoting credibility to an allegation of rape were founded on the premise that the complainant could not have consented to the act – that is, evidence of violence in the form of injury to the complainant and third-party witnesses to the attack, where this was available. In the absence of such evidence, however, the investigation focuses increasingly on the character of the complainant herself. In this context, the ‘deserving victim’ emerges as being young, virginal, as having had no prior relationship with the alleged suspect, as having reported the attack immediately and as having been apparently distressed at the time of reporting the incident. Something else that also satisfies the rules of this investigative model is consistency in terms of the story that the complainant tells.

A more detailed analysis of the quantitative data and interviews, however, suggests that the situation is not necessarily as black-and-white as it might at first seem: that evidence of injury or prompt reporting, for instance, always equates to a genuine allegation in the eyes of the police and therefore a decision to proceed. Having considered what factors seem to be most compelling in terms of investigation and the
true impact that this can have on complainants, it is significant at this point to draw the emerging themes together to obtain a clearer picture of what it is that the police are actually looking for.

7.4.1 ‘Impression management’

“Are we after the truth or are we after the best argument? Because at the moment we seem to be after the best argument in court, not the truth…”

[Police Officer, Focus Group 3]

As this quote suggests, ‘success’ in terms of police investigation is more often down to how well a case, or a story, is constructed rather than what the bare facts of the case say, at the end of the day. In this sense, police officers are tasked with managing the information that is before them to obtain a satisfactory conclusion – which, this chapter has argued, might result in ‘getting the job done’ but is often at the expense of ‘ensuring that justice is done’. This relates to Goffman’s concept of ‘impression management’ where he refers to the control and communication of information through performance (Goffman, 1959a). In their seeking to construct a convincing witness, the police were found to interpret details about an allegation with reference to ‘social setting’ and ‘appearance and manner’ – those factors that contribute to the nature of a person’s ‘front’, according to Goffman. Forming judgements about complainants, police officers were also found to, for practical purposes, assign individuals to ‘moral roles’ in order to assist them in constructing a narrative to help with the investigation; to these roles, officers, in effect, applied ‘legal identities’ – to use the notion devised by Innes (2003) - so that individuals might be appropriately defined either as a ‘deserving victim’ or not. Police officers therefore, arguably, become most involved in determining the nature of the performance that is conveyed by a complainant to an audience. In this sense, police officers investigating rape allegations essentially become spin-doctors in terms of ‘impression management’.

In terms of the investigation of rape allegations, the police are looking for evidence that a rape has occurred – proof made up of concepts that will fit neatly into their interpretative framework. In the absence of physical evidence, however, it appears that police officers often make decisions that are subject to a degree of ‘contextual
interpretation' that becomes necessary to make a case fit. Referring back to theoretical explanations for rape presented in Chapter three, one explanation that has been put forward is that sexual violence is reproduced and legitimated through patriarchal ideologies that inform interpretative frameworks – such as those identified in the present chapter used by the police - for assessing rape incidents (Matoesian, 1993). With reference to the categories ‘real rape’ and ‘deserving victim’ identified in the present study, the following section demonstrates how an interpretative gloss is often applied by investigators to the evidence at hand which subsequently affects the impression that is conveyed about the seriousness of the rape or the legitimacy of the victim.

‘Real rape’

The present study found that evidence of injury to the complainant was one form of corroboration that was potentially judged differently according to the context of the case in question. On the one hand, injury to a complainant of rape was seen to provide sound corroboratory evidence in support of an allegation in that it proved that the alleged victim put up resistance and was therefore unlikely to have consented to sexual intercourse. On the other hand, one complainant who was interviewed revealed an alternative scenario where she had suffered very serious physical harm as a result of her rape but the police chose to interpret the importance of this evidence quite differently. Instead of her injuries, along with blood found at the scene, counting as corroboration in support of her complaint, it was interpreted as evidence only of rough sex which was judged to have probably been consensual given another important detail about her case – the fact that the assailant had been an ex-boyfriend of hers.

To take the issue of witness evidence or a third party who can corroborate an allegation, the suggestion emerged from one of the complainant interviews that this can depend very much on who that witness is. This complainant had been raped as a teenage girl and a friend of hers had been a witness to the attack and had reported as much to the police. But, the fact that both girls had been to a party prior to the alleged incident having occurred and had been witnessed by others at that party getting drunk and flirting with several men, destroyed the credibility of either of the witnesses in the eyes of the police. In this sense, judgement of the case at hand had turned from a
focus on evidence to prove that the incident was ‘real rape’ to a concern with whether the complainant was, in fact, a ‘deserving victim’.

‘Deserving victim’

Turning more fully to the concept of ‘deserving victim’, it seemed that characteristics about a complainant as well as about the rape incident itself were also subject to differential interpretation according to the context of the case in question. To take the age of a complainant, it became apparent from the present study that teenage witnesses were seen by some police respondents as being immature and as likely to have been taken advantage of - presenting them as ‘deserving victims’. In this sense, police officers might be seen to ‘work up’ moral roles that are assigned to certain complainants – a notion put forward by Innes (2003) – in order to determine those complainants as ‘deserving’. However, police officers in interviews also suggested that teenagers can make problematic witnesses. To this end, teenagers were sometimes believed to use allegations of rape as a way of attention-seeking in certain circumstances. In addition, two police respondents reported that they believed that teenagers sometimes reacted impulsively if they had been indulging in sexual acts and were confronted by a parent, not necessarily realising the gravity of what they were alleging to have occurred.

Focusing on the morality of a complainant, prostitution is something that tends to be perceived by society as a whole as contrary to the idea of appropriate female conduct. Indeed, being a prostitute was seen by several police respondents as a factor that would weaken a complainant’s credibility as a rape victim, by virtue of their belonging to a ‘discrediting’ or a ‘discreetible’ group (Goffman, 1959a) or being perceived to be ‘morally tainted’ (Innes, 2003). This notion demonstrates a form of ‘categorical discrimination’ identified by Banton (1983) which refers to the invidious treatment of those belonging to a particular group or category of person, purely on account of their belonging to that group or category. In the present context, this can be applied to complainants who suffer harsher treatment at the hands of the police by virtue of being a prostitute or having mental health problems, for example. On the other hand, some police respondents suggested that a prostitute would make a good witness. The reasoning behind this was that prostitutes were seen to be quite strong
characters who would be unlikely to take time out from work and incur the potential loss of earnings to make a complaint of rape unless it had really happened:

"I regard them as business people. Why would they want to take God knows how many hours out of their tour of duty when they could be making money to make up a spurious story?..."

[Police Officer, Focus Group 3]

A further complexity in terms of police decision-making was that, in effect, contextual interpretation was found to occur on two levels: first, in relation to other details about the case; and, second, in relation to the particular stage of the criminal justice process at which the complainant was being judged.

Taking the first of these, the examples above demonstrate that evidence connected with rape allegations was often subject to differential explanation according to other details that were attached to the case in that supporting evidence of injury might be negated by the fact that the alleged suspect was an ex-boyfriend; conversely, the negative perception about a woman being a prostitute might be bolstered by the fact that she reported the rape immediately and there were witnesses to her state immediately after the attack. In relation to the ‘second level’ of contextual interpretation, it became apparent that, sometimes, a complainant who was perceived as a ‘deserving victim’ during the early stages of proceedings (by the police) was not necessary perceived to be credible at a later stage where she would be judged in a different context (in front of a jury, for instance). This appears to reflect Innes’s adaptation of the ‘moral career’ of the victim which is made up of three stages (Innes, 2003) and might be applied to consider the fate of the rape complainant. At stage one where a complainant is perceived as a ‘physical object’, she is merely a body of evidence, before proceeding to being seen as an ‘individual subject’, or a person, at which point she might be judged in terms of her culpability for the rape. Finally, she becomes a ‘moral object’ where she is determined as worthy or deserving, and potentially where judgements about her credibility as a complainant in court might come to the fore. Another way of presenting this idea is to see a complainant as being judged on the basis of two ‘performances’ to use Goffman’s conceptual expression (Goffman, 1959a): her performance as a victim whereby the police assemble details
about the incident and the victim at the time of the alleged rape; and her performance as a complainant whereby judgement centres around how effectively she is likely to come across as a witness in court.

The example of prostitute rape is useful again here: as has already been recognised, some police officers who were interviewed often believed that prostitute allegations were likely to be genuine and therefore believed that the woman had been raped. However, with a view to the defence barrister who would cross-examine the complainant about her character in court as well as the jury that would have to judge the facts of the case at the end of the day, a prostitute complainant was not thought to present as a credible witness and was therefore ultimately judged as not being worthy by the police. Complainants who have some form of mental impairment provide another example where the police often believe that a rape has occurred but tend not to classify them as genuine cases. In fact, police officers’ views in the present study as well as in other research (Luckasson, 1992; Hayes, 1993), suggest that these sorts of complainants are often likely to have enhanced vulnerability to sexual victimisation and rape is not necessarily unusual. In this sense, then, the police might see them as ‘deserving victims’ at the investigation stage, but appear to ultimately classify such allegations as false and the complainants as not credible, accepting that they are unlikely to stand up very well to defence cross-examination in court.

In essence, what the present study has revealed is that police decision-making is based on a combination of factors, the balance of which determines whether a complainant can be shown to be ‘deserving’ or not. This has been identified by previous research which has shown that clusters of variables are often at play when police officers are judging a rape allegation (Jordan, 2004b). In fact, Jordan goes on to refer to the ‘scales of justice’ as an analogy in trying to demonstrate how pieces of evidence are weighed up by the police that may either enhance or reduce the credibility of a victim and that will ultimately tip the balance one way or the other. This can effectively count in favour of, or go against, the credibility of an allegation of rape. Under this interpretative framework, file analysis in the present study revealed a prostitute who was drunk at the time of her alleged attack but who had reported it to the police immediately and had sustained injuries to show for her ordeal, resulting in her subsequently being perceived as a ‘deserving victim’. Similarly, as demonstrated by
one of the complainants who had withdrawn her allegation in the present study, a young woman who was badly hurt after being allegedly raped by an ex-boyfriend whom she had willingly allowed into her home earlier that evening was judged as ‘not deserving’. Thus negative attributions associated with certain factors (being a prostitute or an alcoholic) may be compensated for by other factors (such as prompt reporting, co-operation with the police and visible injuries (LaFree, 1980; Gregory and Lees, 1999).

7.4.2 Belief in false allegations

Various research has revealed continuing strong beliefs among police officers that false allegations of rape are a frequent occurrence (Feldman-Summers and Palmer, 1980; Chambers and Millar, 1983; Lees and Gregory, 1993; Temkin, 1997), although false allegations of rape are statistically less prevalent than false allegations of other types of crime, such as vehicle crime (Hunter et al., 2000). Such beliefs will inevitably influence the ways in which the police react to, and handle, rape allegations. Revealing key factors that seem to influence police perceptions of genuine rape allegations, as this study has attempted to do, can provide some insight into what might lie behind an apparent exaggerated belief in the prevalence of false rape allegations.

One quarter of allegations in the present study were ‘no-crimed’ by the police. Guidance provided for the police in Home Office Circular 69/1986 explicitly stated that ‘no-criming’ is only appropriate where ‘the complainant retracts completely and admits to fabrication’. In other words, ‘no-criming’ is only appropriate where the allegation of rape can be proved to be unequivocally false. Analysis of files for the present study, however, established that it was certainly not the case that all of those allegations that were classified as ‘no-crimes’ could be proven to be false allegations, supporting the claim by Kelly et al. (2005) that this category “functions as something of a ‘dustbin’” (p.38).

The propensity of the police to ‘write-off’ allegations of rape as supposedly false is not new. Jordan (2004b) conducted a study of 164 police files and noted cases where the police clearly believed complaints to be genuine where the complainant had
withdrawn the allegation. All but one of these cases had been cleared by the police as ‘no offence disclosed’, despite evidence of victimisation being obvious. Earlier research also by Jordan found that about three-quarters of incidents that the police classed as being false were judged to some extent on the basis of stereotypes “regarding the complainant’s behaviour, attitude, demeanour or possible motive” (1998). More recently, Kelly et al (2005) revealed that those cases involving complainants with a disability in their study were almost twice as likely to be classified as false as those involving complainants with no disability, and in 19 of these cases mental health and learning difficulties were present (p.48). Thus, the view that false allegations of rape are common has been explored before, but the reasons behind why police respondents think that false complaints are such a frequent occurrence has been less well researched and is of particular interest to the present study as it is likely to tie in with views about ‘real rape’ and ‘deserving victims’. To look into this, it is worth considering the views of police officers in a study by Chambers and Millar (1983) revealing the belief that false rape complaints must be common since only one in twenty are in fact ‘real rapes’ (p.85 footnote). Similarly, Temkin (1997) noted that officers often considered rapes reported to be false in light of the fact that there were “few cases of genuine, very genuine rape.” Finally, Hunter goes on to raise the issue that discussion of “so-called false allegations is confused by the confounding of false allegations with cases that are ‘unfounded’” – that is determined by the police as being unverifiable or unprescutable (Hunter et al., 2000).

A running theme, therefore, both in the present research and in these previous studies, is that police investigators often seem to believe that rapes that they classified as false probably had occurred, but, for reasons associated with what constitutes a ‘deserving victim’, choose to dispose of them as fabrications. Perhaps, then, the confusion is in the terminology. Police officers often seem to be inclined to classify a rape allegation as ‘false’ when they in fact mean that it simply does not conform to their standards sufficiently to be classed as ‘genuine’. Torrey (1991) also defends this view claiming that allegations that are classified as false are usually ones in which, although a rape might have occurred, the police have determined too many barriers for it to be possible to obtain a conviction in court. This demonstrates quite clearly that what is at the centre of the debate is not whether a rape actually occurred but whether the police choose to class the victim as likely to come across well in court - none of the cases
involving mentally impaired adults in the present study, for instance, reached court, despite police officers often believing that a rape had occurred. In other words, it is not necessarily a question of whether it was 'real rape' or even whether there was a 'deserving victim' in that she had probably been attacked, but, more usefully for the purposes of investigative policing, whether she can be deemed to be a convincing witness which might be a different consideration altogether. Therefore, Stevenson's claim that a complainant's conduct and behaviour must conform to expectations “as understood by the legal system” (Stevenson, 2000, emphasis in the original) might be extended to mean her conduct and behaviour as an ‘unequivocal witness’ in court as well as an ‘unequivocal victim’ who demonstrates stereotypical notions of feminine behaviour. In this way, she might be judged to a greater extent on her verbal abilities and self representation (Larcombe, 2002). Whilst this is particularly important in the court setting, it will be an important consideration throughout the criminal justice process.

7.4.3 The ‘driving force’

This research has demonstrated various factors that are perceived by the police as denoting credibility to a complaint and hence improve the chances of an allegation being viewed as 'real'. Analysis has shown that, in the absence of convincing evidence, the focus often turns to the character of the complainant and whether or not she can be proved to be a ‘deserving victim’. However, analysis has also revealed that the situation is not necessarily so black-and-white as to suggest that compelling evidence such as injury to the complainant or a young, virginal woman claiming to be a victim automatically indicates a genuine rape allegation. Instead, police decisions tend to be based upon a combination of factors that either support or cancel each other out within the confines of the interpretative framework that the police conform to in order to construct the story that they want to tell. Having therefore shed some light on what police decision-making seems to be comprised of, the remainder of this chapter seeks to use the data to explore the reasons that appear to be behind this way of working.

Several police respondents in the present study expressed a pragmatic attitude towards rape complaints, suggesting that they would be looking for any evidence at all to
prove that an offence had occurred so that it could be dealt with as swiftly as possible. However, suspicion about deserving victims based on stereotypical notions that exist within the police (and, arguably, within the wider society) resulting in discrimination towards complainants of rape can be a by-product of this desire to obtain a rapid conclusion to proceedings. Other research has been identified that points to the pragmatic, but also suspicious, attitude of police officers (Reiner, 1992, 2000; Chan, 1996). Evidence from the present research, therefore, indicated that a pragmatic attitude amongst officers with a view to getting the job done might in fact lead them to ignore the principles of due process in order to attain a swift conclusion to their investigation.

In terms of whose interests were being served, this research also revealed a tension within the police between caring about the welfare of the complainant and ‘getting the job done’. Even where police officers appeared to care about the interests of complainants, they were usually compelled to warn them about the later stages of the system, anticipating the level of ‘secondary victimisation’ that a she was likely to face in court, for example. To some extent, then, pressures seemingly outside the immediate remit of the police bear on how cases are dealt with and how complainants are ultimately treated. These outside pressures are evident also when considering how complainants can be perceived differently according to the stage of the process at which they are being judged – at the investigation and prosecution stage or in the courts. For example, the present analysis demonstrated how a prostitute was often considered to be a deserving victim by the police in that they believed that she was likely to have been raped. However, by virtue of the fact that a prostitute’s lifestyle contradicts stereotypical notions about appropriate female behaviour, this sort of complainant was perceived to present as a less credible witness in court.

In essence, then, various driving forces seem to be at work that impact on police practice: these cause the police to interpret certain factors about a rape allegation to construct a particular narrative; effective investigation is underpinned by a pragmatic desire for a swift conclusion; and this crime-fighting/offender-orientated focus of policing does not serve victims well, often being at the expense of complainants’ interests depending on how deserving a victim she is perceived to be.
In answer to what might be behind police decision-making when it comes to the investigation of rape allegations, two compelling reasons have emerged from the analysis that appeared to have a significant impact:

1. **the need to ‘get results’**: there is pressure on the police to ‘get results’, arguably to get the job done as opposed to ensuring that justice is done. Such practice might end up straining against legalistic principles of due process;

2. **anticipation of the CPS and the jury**: the police are just one part of a wider system – the criminal justice system. This requires them to anticipate what will be perceived as a strong case later on in the process and base their decisions on these predictions.

**Getting results**

Pressure is put upon the police to “produce – to be effective rather than legal when the two norms are in conflict” (Skolnick, 1966:42). Evidence presented in this chapter suggests that, in the case of rape cases, these two norms are in greater conflict than in the context of most other crimes. Indeed, the evidence that is required by law to prove a rape allegation is typically lacking, meaning that proving rape usually rests on a question of consent setting it apart from other offences. Furthermore, stereotypes around what makes a suitable victim and what constitutes appropriate behaviour often serve to compound the problem. Of course, the two motives that appear to underpin police practice are likely to be interrelated to some extent given that success in achieving swift results will entail effectively anticipating what is required later by the CPS and the courts.

**Anticipating the CPS and the jury**

One of the key findings of the present study is that police assumptions of how an allegation will be perceived in the latter stages of proceedings (and ultimately how a complainant will stand up in court) is usually at the root of their construction of a suitable witness. The following quote demonstrates how, in making their decisions, the
police are minded to draw on their experience of what the CPS will support, just as the CPS, in reviewing the evidence, will have regard to how a jury will view it:

"...we tend to work backwards from experience...because when you have had your fingers burned in Crown Court a few times and are asked [the] question 'why didn't you do this', or 'why did you do that', ... you think, 'oh God, I hadn't thought of that'. Those experiences burn on your mind ... so when we come to deal with a case we tend to look at where we are going with it, and work backwards to provide all the issues that will help us to get there."

[Police Officer, Focus Group 5]

"Getting there" or 'getting the job done', is essentially about choosing the course of action that results in the most successful outcome in terms of 'clear-up rates' or ticking the right box - something that is arguably quite distinct from ensuring that justice is done.

The present study therefore confirmed that a degree of 'second-guessing' of what will be required by the CPS and the courts – and ultimately what will be put before a jury - goes on and impacts on police decision-making. This reflects research by Jamieson et al. (1998) who noted that, at each level of the process, decision-makers anticipate, and are influenced by, the decisions that are likely to be taken at the next level of decision-making (p.60).

This idea relates to 'contextual interpretation', which is that part of the investigative process whereby police officers were found to put a 'gloss' on cases according to the narrative that they wished to convey to the CPS and to the courts. In this sense, the police act as 'gatekeepers' to the rest of the criminal justice system. However, it should be noted that not all police respondents believed that officers should act as 'gatekeepers' but that they should, to a large extent, investigate a case and submit it for prosecution regardless of the way in which it is likely to be perceived by the CPS:

"Whatever the CPS think ultimately, it's still our duty to investigate it as thoroughly as possible, and although perhaps in the back of your mind you
might think...really we haven’t got any corroboration, all we’re going to have is his word against hers...it’s still our duty to investigate.”

[Police Officer, Focus Group 3]

Analysis has therefore demonstrated that the judgement of how genuine an allegation of rape is tends to be based on the perceived responsiveness of a jury to a complainant (this theory being supported by Shapcott, 1988; Department for Women, 1996; Lees, 1997; Scutt, 1997) and less on the immediate perceptions of police officers. The present research also accords with other research including that by Bumiller (1990) who similarly found that the police often use as a criterion for determining a ‘good case’ their assessment of how a judge or jury will react to a rape victim. This supports Reiner’s concept of ‘transmitted discrimination’ whereby the police effectively act as a passive conveyor-belt for community prejudices (Reiner, 2000:126). Waddington (1999) also claims that police officers are likely to be influenced by patriarchal beliefs shared by a wider society of which they are a part. This is arguably compounded by their having to anticipate how the ‘wider society’ would react to allegations in the form of a jury potentially leading them to discriminate against certain complainants.

It appears that this anticipation of the later stages of the process and how convincingly a complainant will present as a witness in court is so central to decision-making that, even if she is essentially considered a suitable witness by the police, she might be rejected by them as a suitable witness when they have to consider the later stages. Assumptions about the later stages of the process therefore affect how a complainant is perceived and subsequently how well that she is treated – arguably resulting in a tension between ‘getting the job done’ and ensuring that justice is done. This idea has already been conveyed using the example of a prostitute. As mentioned earlier, prostitutes were often seen by the police as strong witnesses who were unlikely to let a client get the better of them or to take time out of potentially securing work for themselves to make spurious allegations. However, it emerged from interviews that when the police anticipate how a prostitute would be regarded later on in the system and how she would be judged by a jury, she was often no longer considered a particularly good witness:
"She is plying a trade where she consents to sexual intercourse and...whether it is politically correct or not, they are still viewed as dirty women...and if you put a prostitute in front of a court saying that this man here, who probably is a respectable man in society...has gone along and raped her...you are going to take some convincing of 12 people that that actually happened."

[Police Officer, Focus Group 1]

This police officer was quite clearly anticipating how a prostitute would be viewed by a jury when assessing how credible a witness she would be, thus endorsing research by La Free (1989) who states that variables that influence decisions in rape cases do not have the same importance for outcomes at each stage of the criminal justice system (p.126). However, it should be pointed out that police officers’ perceptions of what sort of case or complainant will or will not be received well in court might be based on myth rather than grounded in reality.

The practice of ‘getting the job done’ tends to reaffirm the fact that it is the interests of the police that are being served rather than those of the complainant. Investigative practice can, as has been demonstrated in the present study, negatively affect how the police treat rape complainants, even if it is not really meant to cause them harm.

7.5 Conclusion

This chapter has presented findings arising from the qualitative element of the research which has focused on the police investigation stage of proceedings. Interviews with police officers who handle rape cases and with complainants who had withdrawn their allegations complement some of the themes arising from the quantitative study in providing a fuller picture of the complexities associated with processing rape allegations.

Considering what sort of factors seem to affect perceptions of ‘real rape’ and ‘deserving victims’ in the minds of police officers, this research has shown how the views of those investigating rape allegations are often based on stereotypical notions about what a genuine complaint is. What has also emerged is that, whether or not they want to accept police definitions about genuine rape, complainants must recognise their importance and prevalence as these principles will ultimately determine whether
a complainant will be defined as a 'deserving victim' and therefore how much support and encouragement she can expect to receive.

Due to the evidential complexities surrounding rape allegations, investigative policing increasingly centres on details about a complainant's character as opposed to facts about an alleged attack itself. Decision-making is also more complex than it at first appears, with assessments being based on combinations of factors pertaining to a case that are usually subject to an interpretative gloss according to the particular narrative that the police want to convey. Contextual interpretation determining the credibility of a complainant tends to occur on two levels: according to the context of other details about the case on the one hand, and according to the context of the stage of the process at which the complainant is being judged, on the other. In practice, this tends to mean that an alleged victim is judged on the basis of two performances: her performance as a victim and how deserving she is of that label and her performance as a complainant whereby judgement centres around how effectively she is likely to come across as a witness in court. In fact, the research points to the fact that police decision-making ultimately centres around not whether an allegation can be classified as 'real rape' or even whether a complainant can be defined as a 'deserving victim', but more importantly whether she can be presented as a 'convincing witness' to improve the chances of a conviction at court. Indeed, in response to a pressure to get results and a duty to anticipate what will be required later on in the system by the CPS and the courts, constructing a convincing witness is the most effective way to 'get the job done'.

The next chapter charts the next stage of the process whereby the complainant has to 'take the stage' in her most defining performance of all – in court.
8. ‘TAking the stage’ – the presentation of the witness in court.

8.1 Introduction

The previous chapter tracked the important stages of the police investigation of rape allegations, identifying the sorts of factors that influence police perceptions of what constitutes ‘real rape’ and ‘deserving victims’. It demonstrated how, with a degree of anticipation about what will satisfy the criteria for prosecution, the police are essentially involved in constructing a convincing witness who can ultimately present as a strong complainant before a jury in court. The present chapter continues this process, exploring the court stage of proceedings. CPS representatives and judges were interviewed to shed some light on what they thought would constitute a ‘deserving victim’ and make a strong case.

With its reflection on the court process, this chapter reveals how, at this stage of the proceedings, an alleged victim in fact tends to be judged more on her performance as a complainant giving evidence in court than she is on her performance as a victim – the latter being a greater focus of the police investigation. Here also, some consideration is given to practices employed by the court to help ease the trauma experienced by complainants giving evidence, including the use of live video links.

This chapter goes on to identify and explore the various tactics employed by defence barristers who are intent on drawing attention to aspects about an alleged incident or a complainant’s character that the prosecution would prefer to keep hidden. This includes the often controversial cross-examination of a complainant about her previous sexual history (Adler, 1987; Temkin 1993; Lees, 1997; Ferguson, 2000). This is perhaps the ultimate form of ‘secondary victimisation’ experienced by a complainant – something which was identified at the police stage of proceedings where it existed in a more covert form. The question is raised at this point as to who exactly is on trial, given that the alleged victim herself often appears to be under suspicion, drawing the research back to a consideration of contentious theories of victim precipitation.
Finally, this chapter concludes with a review of the key issues emerging from the interviews and court observations and a consideration of the extent to which patriarchal ideologies persist as far as the court process to provide the framework within which an alleged rape victim is ultimately judged.

Two focus groups of CPS staff were conducted in each area. The CPS focus groups comprised both prosecutors and caseworkers. To get at information on handling rape cases in court, four one-to-one interviews were carried out with barristers who had experience in both prosecuting and defending rape cases that reached court. Finally, a Crown Court judge in each of the five study areas was interviewed. Further to this, observations of contested rape trials provided some illustration to the analytical insights arising from interviews with practitioners concerned with the court stage.

“It’s a matter for the jury. It is not a matter for a police officer, a lawyer, a judge or anyone else.”

[Barrister 2]

As this quote depicts, judgements that are made about the credibility of a complainant at each stage of the criminal justice system should essentially be with a view to the case that will be put before a jury at the end of the day. At every point of the process - involving the police in investigation and the CPS in prosecution through to the court - the question that is being asked is “how would a jury perceive her?” (Stewart et al. 1996).

The previous chapter dealt with the investigation of rape allegations where police officers must consider whether the evidence before them is strong enough to charge the suspect and forward the case to the CPS for prosecution. For their part in reviewing the case, the CPS must decide whether that evidence is likely to persuade a jury. Thus they must consider whether there is proof of violence, whether there is corroboration by way of medical or forensic evidence and if there are any independent witnesses. However, it soon became clear from talking to prosecutors that what might appear on paper to meet the evidential criteria could still not be enough to satisfy a jury, as the following respondent commented:
"We might believe that [a complainant] will come up to proof but convincing a jury is a different thing... at the end of the day the jury in a 95 per cent date rape case will say 'sorry, we are not going to send this guy to jail for seven years because the woman, you know, met him and went with him quite willingly.'"

[Crown Prosecutor, Focus Group 1]

This quote draws quite clearly draws attention to the reluctance of juries to convict in cases which, essentially, hinge on the complainant's word against the defendant's. This sets a tough challenge for the prosecution. As was demonstrated in the previous chapter concerning the police investigation, success is often down to how well a case is constructed rather than the bare facts of the case, at the end of the day.

8.2. 'Real rape' and the 'deserving victim' – the view from court practitioners

In the same way that police officers were shown in the last chapter to anticipate who the CPS are likely to consider a 'deserving victim', this chapter demonstrates that prosecutors and judges involved in the later stages of proceedings drew upon similar common cultural understandings about how members of a jury might perceive different rape complainants. Exploring the opinions of practitioners based on their assumptions and experiences in court was important in shedding light on how juries reach decisions as little empirical research on jurors' is actually available. Given the high attrition rate, these opinions, definitions and assumptions are clearly influential in shaping decisions about the processing of rape cases and determining precisely who barristers and judges believe constitutes a 'deserving victim'.

When considering what would be put before a jury, several CPS respondents were conscious of stereotypical views about 'real rape' in the minds of jurors that would influence their judgements:

"The more natural, normal and understandable it is, the less likely a jury is to convict and there are an awful lot of people on the jury who will be thinking back ten, or five, ten, fifteen, twenty years, to a similar situation."
“Most juries have this idea of rape being somebody who leaps on a girl from a dark bush, in a dark alley and drags them, beats them up, rapes them savagely and if you’ve got lots of DNA linking the defendant to it and he’s got rapist tattooed across his forehead, they will convict, but anything less than that they find ... rather more challenging.”

Reflecting on the existence of stereotypical notions about rape, a common view emerging from the interviews was that the prosecution prefer to see a jury made up predominately of men as it was thought that women tend to be judgmental of their own sex and might have less sympathy for the complainant. On the other hand, a police officer who was interviewed offered a rather different perspective:

“It is a judgement call, these people are sitting in their jury room and they think that some of them are blokes and they have gone out for a night on the town and they have had a few beers and they chatted up a girl and then they have made a pass at her and got a brush off, but thought oh my goodness, what would I have done if... and that is the area where people think do I really put this nice bloke from the Students Union into prison for this for rape when, you know, they were both drunk as skunks, etc. etc.”

Reflecting on this issue, Waddington’s claim that stereotypical beliefs are not distinctive to the police as a group but are likely to be shared by the wider society (Waddington, 1999) receives support from the present study since such views are apparently shared by jurors - who are essentially members of the public. Indeed, it is the anticipation of how a jury will perceive a rape complainant that forms the basis of decision-making throughout the criminal justice system.

The sorts of factors that practitioners who were interviewed believed would strengthen or weaken an allegation were along the same lines as those identified by police officers in the previous chapter. In short, prosecutors would be looking for
evidence to strongly support the fact that an alleged victim had been raped with no room for the possibility that she might have consented. The following quote from a barrister indicates how, without this sort of corroborative evidence, an allegation will be much more difficult to prove:

“In the absence of, I’m afraid to say, injuries, damage to clothing and so on, [which must be] seen very, very quickly, you know...then you’re looking at a weak case. The fact that a ripped pair of tights ... was produced three days later is neither here nor there.”

[Barrister 2]

Injury

Evidence of injury to support an allegation was considered by most respondents to be the strongest indicator that a complainant had been raped against her will. However, given that most rape allegations involve parties who are acquainted or intimates, evidence of extrinsic force or violence is usually absent. Echoing some of the themes identified in the previous chapter, interviews with practitioners suggested that, in the absence of such corroboratory evidence, the focus increasingly turns to the character of the complainant and, arguably, stereotypical notions about what can be judged to be acceptable female behaviour.

“I think the public are still very critical of women and flaws in their character which are played on by the defence. Which can be irrelevant to whether someone’s been raped or not.”

[Barrister 1]

Delay in reporting

Respondents were quite clear that any suggestion that a complainant had delayed reporting an allegation was something that could be used against her in court. In terms of corroboration, several judges and barristers stressed that important forensic evidence would be lost if an alleged incident had not been reported immediately. After the presence of injury, forensic or medical evidence was rated as the most important means of corroboration to support an allegation of rape. Aside from the
practicalities of a recent complaint, some respondents also believed that members of a jury would reflect the assumption that, if a woman had truly been raped, she would report it immediately. However, several studies have challenged this view from America (Torrey, 1991; Estrich, 1995), from Australia (Bronitt, 1998) and from England (Kelly, 2002), revealing how such rape myths make it difficult, if not impossible, to allow complainants to be believed. The CPS case-worker in the following quote was only too aware that a delay in reporting will give the defence something to use to try to discredit the complainant’s story:

“The absence of an immediate complaint gives the defence an angle. Why didn’t you complain if this was so horrific? If this was against your will? Why did you keep quiet about it for five days? One month? Six months? Five years? Whatever it happens to be.”

[CPS Case-worker, Focus Group 8]

Age

Reflecting some of the views raised by police officers in the previous chapter, CPS and judge respondents could see both the merits of younger complainants taking the witness stand as well as the disadvantages of this age group. On the one hand, it was believed that a young complainant was more likely to be telling the truth given her innocence: principally, respondents suggested that it would be more easy to believe that she had been taken advantage of, reflecting the views of Clarke et al. (2002). On the other hand, some respondents thought that young complainants, particularly teenagers, could make problematic witnesses, as depicted by the following judge:

“I think the most difficult witnesses are between about thirteen and eighteen because ... they are at the age when everybody knows...people become attention seekers, girls and boys.”

[Judge 3]
Complainant’s behaviour

It became apparent from interviews with barristers and judges that, just as a complainant’s character - in terms of her behaviour and morality - had usually been the focus of the police investigation, it continued to be of relevance to the prosecution and defence in court:

“[If the complainant’s] a prostitute, you’re going to call a witness who is not a witness of good character by and large ‘cos they’ve probably got convictions...somebody who for a living has sex with strange people saying ‘I’ve been raped’ - in those cases it will be quite difficult to persuade a jury that it happened.”

[Barrister 2]

Discussions about the morality of complainants centred particularly around prostitutes given the high proportion of these cases in two of the study areas. In accordance with the above quote, CPS and judge respondents in the present study did not consider prostitutes to be very strong witnesses. Unlike police respondents, however, they did not have a view as to whether a complainant who was a prostitute was actually likely to have been raped or not and was therefore a ‘deserving victim’. Instead, a prosecutor’s job was to put the case before a jury and prove the case to them and most were in no doubt that a prostitute did not give the impression of being a convincing witness. This view reflects the consideration of police officers who, whether or not they believed that a complainant had been raped, were duty-bound to anticipate how she would present as a witness in court and, ultimately, base their decisions on that.

Relationship

“If there has been some degree of relationship between the complainant and the defendant then you’ve got real problems, real problems if you’re prosecuting.”

[Barrister 3]
As this barrister indicated, allegations involving parties who are known to one another, especially if they had been involved in an intimate relationship, pose a big challenge for the prosecution since it can be more difficult to prove that the complainant did not consent on the occasion in question. This, in turn, gives the defence an angle from which to attack the complainant's story and makes a jury more reluctant to convict. Examples of relationship allegations that presented a problem ranged from those involving people who had been married for years through to parties who were newly acquainted with one another:

“A twenty-five year marriage where somebody says 'no' does not really wash much with the jury and that is reflected in their verdict.”

[Barrister 2]

“Then you've got the date rape set-up where they met for a drink, went to a nightclub, seen kissing in a corner somewhere, nothing apparently untoward to onlookers...[then she maintains] 'but that's the guy who raped me'.”

[Barrister 4]

The latter example presents the difficulties with cases reflecting the 'date rape' scenario – a more recent day variation on the myths and stereotypes that surround rape that Kelly (2001) maintains is not particularly helpful. At odds with the stereotypical model of 'real rape', too many factors point to a consensual situation which many can identify with and recognise as acceptable. Referring back to Amir's notions about victim precipitation (Amir, 1971), a consensual 'date' scenario represents behaviour involving acts of 'commission' whereby a complainant might well be considered not to have rejected the sexual advances of her assailant strongly enough. It was therefore the view of several respondents that, when an accusation of rape is made in this context, the task for a jury in deciding whether the defendant is guilty is much more difficult.

Some CPS respondents felt that a rape case should be given a chance even in court in borderline cases. Indeed, one judge presented the following example to show how, even when a case appears weak on the surface, given a chance in court it might result in a conviction. In this instance, the complainant had returned home with a group of
men intending to have intercourse with one of them but during the journey deciding that she would rather have intercourse with another. However, when the second man had later tried to have intercourse with her she had pushed him off and run out of the flat. The incident was recorded as rape and, as the judge said, there was very little evidence to support the allegation and a conviction appeared highly unlikely. However, the case was proceeded with, the complainant turned out to be an effective witness despite any possible moral interpretations her behaviour might have attracted, and when it went before a jury they found the defendant guilty. In this case, then, the woman’s performance as a complainant was possibly more effective in convincing the jury than her performance as a victim which, on paper, did not necessarily show her to be ‘deserving’. This case echoes some of those examples in Larcombe’s work which far from embodied judicial stereotypes about genuine rape victims but which nevertheless resulted in prosecutions on the basis of the strength of the complainants’ characters in court (Larcombe, 2002).

Despite some respondents believing that all cases should be given a chance, one barrister argued that a case that appeared weak on paper probably was weak and shouldn’t be proceeded with simply for the sake of the complainant to get her day in court:

“I know that a lot of people think that...you should give the victim her day in court, but I don’t think that is right at all...I think if the case looks weak then it probably is and there’s no point in going ahead on an off-chance.”

[Crown Prosecutor, Focus Group 6]

Under these circumstances, a seemingly unconvincing case such as that in the above example would most likely have been discontinued at some point before court. This does raise the question as to how many seemingly weak allegations that end up being discontinued might in fact have resulted in a conviction if the complainant had been given the opportunity to give evidence before a jury.
Demeanour in court

There appeared to be a wide range of views as to what would make a complainant most convincing when she was standing in the witness box. From the prosecution point of view, a witness who breaks down sobbing whilst giving evidence was said to be ‘cosmetically effective’ in some cases. On the other hand, a well-prepared complainant was also considered a strong witness. Indeed, several respondents suggested that there was not necessarily one particular style of presentation that would make a convincing witness, as the following quote implies:

“I’d like to say there was a clear category of witness. I have seen women give evidence very coolly, calmly and perhaps even coldly and impress a jury and impress everybody. I have seen witnesses hardly able to get a sentence out because they are so distressed, asked for frequent breaks and juries convict”.

[Crown Prosecutor, Focus Group 5]

It is useful, in this context, to re-introduce Goffman’s concept of performance as depicted in his analysis of ‘dramaturgy’ (Goffman, 1959a). In the context of the court, interviews with respondents suggested a greater emphasis on an alleged victim’s performance as a complainant taking the witness stand rather than her performance as a victim – the latter of which had been a greater focus of the police investigation. This might simply reflect the fact that the construction of a convincing witness, or a ‘deserving victim’, has all been with a view to her finally taking the stage, as the complainant, in a court setting.

In terms of who would make a good witness at court, the present study adds some support to Larcombe’s claim that a complainant’s moral character is often assessed according to her verbal abilities and self-presentation in court (Larcombe, 2002). Indeed, this is likely to affect the considerations of those who are judging her allegation from the police stage of proceedings through to the courts. In this sense, aside from her sexual history or whether she was drunk at the time of her offence, the ‘successful rape complainant’ can emerge as someone who simply comes across as being strong and consistent in court and who copes well with being cross-examined (Larcombe, 2002:144).
The following example shows that, in terms of historical allegations, the most compelling image of an alleged victim might not always be best conveyed by the witness appearing in person. To illustrate this, one judge recalled a case of a woman who had alleged an historical rape that had occurred thirty years ago. The delay in reporting meant that the case was evidentially very weak and the complainant obviously did not effectively portray the image of a child abuse victim to the jury. However, the use of photographic evidence in this case had a stronger impact:

"The jury couldn't quite see this thirty-seven-year-old lady who was on the witness stand, who had suffered this rape when she was seven. But the prosecutor presented a photo of her [at that age] and said 'that man did that to this little girl, that's what she looked like'. And the photo of a sweet little seven-year-old spoke volumes."

[Judge 5]

Judged on her performance as a complainant, this middle-aged woman with no evidence to corroborate her story had not been considered to fall into the category of 'deserving victim'; however, judged on her performance as the victim who was pictured as an innocent little girl in a photograph, her character had been reassessed or re-evaluated to enable her to become re-categorised as a 'deserving victim'— also confirming the pedestal myth according to Stewart et al. (1996). This example relates back to the case of one of the complainants who were interviewed for the present study who had had her case as a young girl proved in court whilst her two subsequent allegations as a teenager had been 'no-crimed'. On the first occasion, this complainant had been an eleven-year-old girl who was raped by her step-father as a result of which she had fallen pregnant. In view of these details, the girl was undoubtedly put on a pedestal in the minds of those forming a judgement about her allegation: by virtue of her age and innocence and the fact that she had been raped by a person in a position of responsibility her case was strong and, in her words, "I was special then" [complainant 1]. However, her subsequent rape allegations when she was a teenager had been 'no-crimed' — amongst other issues, the fact that she had been older had made it less easy to completely dismiss her culpability for the attacks.
Judges and barristers in the present study confirmed that the types of rape cases reaching court had changed over the last ten years or so. However, they went on to suggest that this was because the filtering of cases by the police and the CPS was less rigorous than it had been in the past. For this reason, attrition at court was explained as being due to the fact that ‘weaker’ cases were coming before the courts in terms of their being less likely to satisfy stereotypical notions about genuine rape, despite the fact that the present study had also revealed that a primary concern of police officers was to filter out cases that they did not think would be perceived as strong cases in court. This view was also identified by Temkin (2000b) where barristers levelled criticism at the CPS for prosecuting ‘unsuitable’ cases, although possible reasons for their lack of ‘suitability’ was not questioned. Temkin identified some barristers who were of the opinion that, in cases where there had been a previous relationship between the complainant and the accused, the complainant should be given some time to reflect before a prosecution was brought.

8.3. ‘Taking the stage’

An interesting finding that emerged from interviews with prosecutors and barristers was how often the ‘court’ scenario was likened to a television show or being on stage. In terms of how a witness comes across to a jury, several barristers and judges made references to her ‘taking the stage’ and ‘playing to an audience’, the more dramatic the performance the better:

“I hate to say it, erm it is a very cruel thing to say but when I am prosecuting and I am told...that the witness is very nervous or distressed...and will have trouble looking at the defendant...I think we’ve got something here because I’ll hopefully get a bit of a drama in front of the jury.”

[Barrister 3]

One barrister said that he sometimes saw himself in the role of a ‘production manager’, claiming that “[juries] haven’t the imagination, you’ve got to bring it alive for them.” [Barrister 2]
However, one judge did not consider the ‘drama’ scenario to be helpful:

“A good witness is someone who doesn’t demonstrate...hasn’t got an axe to grind, someone who tries to give her account as factually as possible. There’s bound to be an emotional input into it but...I think someone who’s not playing to the gallery, [is most effective].”

[Judge 3]

8.3.1 Dealing with ‘stage fright’

Appearing in court is likely to be a very harrowing experience for a rape complainant. She is essentially at a disadvantage in that she is just a witness: whilst the defendant will have advocacy in the form of his solicitor, the prosecution lawyer will be acting on behalf of the Crown, against which the crime has been committed in legal terms. For this reason, the complainant is rarely kept in the loop of discussions, sometimes not meeting the prosecution barrister until the day of the case, and is thus usually unprepared for what is likely to be a very traumatic ordeal

Interviews with practitioners along with observations of court proceedings revealed various options available to the court that might go some way towards easing the trauma of giving evidence for a complainant – or dealing with “stage fright”[Judge 2], as it was referred to by one judge. Appearing in court for a rape trial can be very distressing for a complainant, not least in having to face her alleged assailant for the first time since the reported rape. When a complainant is called to give her evidence in court, the prosecution may therefore ask the judge for a screen to be erected so that she does not have to see the defendant. In the present study, a screen was requested in two of the trials that were observed at court and on both occasions the request was granted. This proved to be effective in shielding each of the complainants from having to see their alleged assailants, although erecting these screens did appear to be a rather cumbersome and protracted procedure.

Two barristers and one judge mentioned the practical solution of one-way glass in the public gallery, whereby the public can watch proceedings but cannot be seen or heard from the court, as another way to make the complainant feel at ease – although this

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was not something that was used in the Central Criminal Court where observations took place. It has also been suggested that having a complainant give evidence via a video-link from a separate room (particularly in the case of vulnerable witnesses) might go some way further towards easing her trauma (Home Office, 1998)¹. However, this was not always considered by respondents in the present study to be the best way of conveying a convincing witness to a jury. In fact, continuing the theme of the court setting being likened to a stage production, some respondents suggested that the introduction of video-links to cross-examine vulnerable witnesses can actually compound the notion of the case being seen as a television drama – especially with the physical presence of a television. On the whole, respondents did not think that this practice was a good idea in the general run of cases, the feeling being that they would like to see the complainant actually appear in court, as implied by one judge:

“In some cases I think that the jury do regard the whole thing as just another television programme...If you can possibly put...flesh and blood on the witness stand you are going to find a much more convincing prosecution case than if you don’t.”

[Judge 3]

Supporting this view that it can take away the reality of the situation, one barrister claimed that he often felt compelled to remind the jury of the real-life case before them whenever he was involved in a case where the complainant was being interviewed via a video-link:

“When prosecuting, I open a case by saying to the jury ‘Just bear this in mind, there’s a TV but you are not watching the TV...twenty yards down the corridor in a room there is a real person.’”

[Barrister 1]

¹ Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System.
One of the court cases that were observed for the present study involved a 13-year old complainant who was interviewed via a video-link. By virtue of her age and the fact that she was apparently very distressed at having to give evidence it had been agreed that she did not have to appear in person in the court room. The overall impression gained from watching the complainant give evidence in this way, however, was that the young girl seemed quite detached from proceedings and that the impact of her evidence was therefore somewhat reduced for that reason. Despite this, each of the jurors involved in the case were observed to appear just as focused on the television screen as they had been on the people who were in court giving evidence in person, although it was not possible to tell what the true impact would have been on their judgements.

Various research has been conducted - on child-abuse cases in particular - on the effects of having evidence presented via a video-link. However, it seems that, in practice, it actually makes little difference to the outcome of a case (Davis and Westcott, 1992) Therefore, any difficulties perceived by respondents to exist where a complainant gives evidence in this way might have been more imagined than real. Indeed, as was the opinion of several practitioners, the answer is probably that different approaches are needed in different circumstances. Some were of the opinion that there is a need to balance the possible (but unproven) risk that the jury will be less directly affected by the victim if she gives evidence through a video-link with the risk that, without this protection, some victims will either not pursue their cases through to court or will be very distressed by the process of giving evidence.

It was a widespread view in the present study that barristers should have several years experience before tackling rape trials, which call for a degree of specialism. Despite this, one barrister criticised the CPS for the level of fees that they attached to rape cases. In general, the more serious the case, the higher the fee and therefore the more senior the barrister who will take the case. However, this barrister went on to suggest that the CPS send rape cases to chambers with small fees attached which would preclude senior barristers from taking them:
“It’s not that the good people and experienced people are holding out for silly money...I mean, we’ll accept the fact that we’ll get paid half what the defence barrister is going to get but just don’t pay us a quarter of what the other guy is going to get, that’s simply insulting and we won’t do it.”

[Barrister 1]

The role of the CPS in selecting counsel in rape cases is also the subject of comment in Temkin’s study where a strong feeling was detected among barristers that their inexperienced colleagues were frequently being picked to prosecute rape cases (Temkin, 2000b).

8.3.2 Who is on trial?

In allegations involving people who are known to one another – however brief their acquaintance might be, the issue invariably comes down to one of consent. In this case, the defence has little choice but to seek to undermine the credibility of the complainant. To this end, they may seek to exploit details of her sexual history or mental health, as indicated in interview by the following barrister:

“If you’re defending you want to have the record of all of those different accounts a complainant will have made and you want to exploit the differences and you also want to know as much as you can about the background of the complainant, any psychological or psychiatric problems in the past, any criminal matters in the past, any similar relationships or allegations of indecent assault in the past.”

[Barrister 2]

According to respondents’ views on what constitutes ‘real rape’ and ‘deserving victims’, it does appear from the present study that, when a complainant’s character and credibility are raised as relevant issues in a courtroom, distinguishing consent from non-consent is often judged according to patriarchal standards (Smart, 1989; Matoesian, 1993; Taslitz, 1999). When turning to consider the cross-examination of complainants in more detail, it is useful to re-introduce Goffman’s theory on performance (Goffman, 1959a). Goffman claims that aberrant values and actions
(discrepancies between appearances and what is, in fact, reality) may be withheld — referred to as a process of ‘mystification’ - whilst only approved traits are presented in public to legitimate an individual’s social role. This is useful in trying to explain how the prosecution essentially goes about concealing certain aspects of a complainant’s character that are seen as being out-of-line with an "idealised front" whilst the defence will seek to exploit these facts in proving her to be an ‘undeserving victim’. The previous chapter revealed how an idealised front was the ‘impression’ that the police sought to construct about a complainant. Continuing this theme, the prosecution would be keen to make prominent to the court those facts about an alleged incident and characteristics about a complainant that would, in turn, be most socially acceptable:

“If I’m prosecuting I want to tell the jurors about the hurt she endured, the fact that she reported immediately, that there were witnesses to her state immediately after the attack…the fact that she was a prostitute as well isn’t something I’d be dwelling on…and it isn’t relevant anyway in my opinion.”

[Barrister 3]

Indeed, interviews with members of the CPS clearly revealed that it is in the interests of the prosecution to present an ‘idealised’ version of a complainant’s ‘front’ that is consistent with the norms and values of society rather than draw attention to aspects of her behaviour that would be perceived as less ‘ideal’. In other words, it is in their interest to, in the words of one barrister, “talk up” the hardship of the victim without drawing attention to any ‘deviant’ details which might be taken to damage her character - such as the fact that she had been drunk at the time of the alleged attack or had been witnessed socialising willingly with a group of strangers, one of whom was alleged to have subsequently raped her, for example.

It then becomes the task of the defence to uncover this process of “mystification” and reveal, for the jury (the audience, according to Goffman, in this instance), those very factors about a complainant’s character that the prosecution would rather not present. Indeed, in the words of the same barrister above:
"If I'm defending, on the other hand, I'd bring up the fact that she was a prostitute right away."

[Barrister 3]

This barrister had said previously that he did not think that the fact that the complainant was a prostitute would be relevant to the case in question, in his opinion. However, as a defence barrister he would raise it to discredit or undermine her which would reflect upon how her story was interpreted by the jury. This supports the notion that, in dealing with rape allegations, the principal aim of practitioners at the end of the day is to construct the best argument and not necessarily to get at the truth. Indeed, by revealing negative issues about a complainant’s character - issues that are not readily apparent to a jury and that contradict stereotypical and socially sanctioned notions about appropriate female behaviour - a defence barrister can build a strong case to damage the reputation of the complainant as a ‘deserving victim’. This process of normalisation echoes barristers’ views in Temkin’s study who set what was referred to as “foolish behaviour against behaviour which conformed to common sense” (Temkin, 2000b:232) Such behaviour would be dwelt on by the defence whereby cross-examination of a complainant centres around the reckless way in which she apparently behaved at the time of her alleged rape suggesting that she might have consented, or the defendant might have thought that she consented, and therefore that she brought it upon herself. A defence tactic would also be to malign the victim’s clothes, maintaining that the way young women dressed was the reason for their rape (Temkin, 1999) as well as maligning their sexual character.

Rape is unique in that the likelihood of a victim’s precipitation in the crime is usually raised to refute her allegation and is used in the construction of a defence. It is useful to refer in this context to Amir’s controversial notions of victim precipitation that might be raised by a defence barrister to suggest that a woman precipitated in her own rape where “the victim becomes functionally responsible for the offence by entering upon and following a course that will provoke some males to commit crimes (Amir, 1971:155). Indeed, the conduct of complainants reported by interviewees in the present study contributed to this notion in revealing examples of behaviour that demonstrated both acts of ‘omission’ in their voluntarily accepting a lift with a
stranger, for example, and acts of ‘commission’ in apparently failing to take preventative measures (Amir, 1971).

8.3.3 The use of sexual history evidence

It is for the above reasons that people often speak of the victim being on trial - the injured party effectively becomes the person whose behaviour is under suspicion and it is she who might be found ‘guilty of consent’ (Smart, 1989) if she is judged to have willingly engaged in sexual relations with the defendant. Again, this is not something that is confined to the court stage of proceedings: as the previous chapter reported, complainants are often made to feel that they are under suspicion and that the onus is on them to prove that a crime took place (Jordan, 2004b). Indeed, the following quote suggests that an allegation of rape is often treated as probably false and a complainant viewed with suspicion until it can be proved otherwise:

“You always have to remember...that this is a complainant, her allegation has not been proved and therefore if she is treated in a particularly soft, gentle, utterly compassionate, totally understanding way, and she’s given great...support facilities in terms of people being there...are you risking the possibility that a fraudulent complainant may be lulled into continuing her complaint?”

[Judge 3]

This judge was also expressing a view as to how much support a complainant should receive, suggesting that this might be prejudicial in some way. It is because of this inclination for practitioners to doubt allegations that complainants are susceptible to ‘secondary victimisation’ throughout the process.
The previous chapter revealed what was termed a ‘covert’ form of ‘secondary victimisation’ experienced by complainants at the police stage of proceedings whereby alleged victims endure insensitive questioning and examinations once they have reported their attack. Perhaps the ultimate form of ‘secondary victimisation’ — and more ‘overt’ in nature - is when a complainant endures cross-examination about her sexual history by a defence barrister in court.

“They were victims once and the defence just makes them victims again, you know, and all they are trying to do is to stand up and be counted.”

[Police Officer, Focus Group 3]

None of the complainant respondents in this study had pursued their cases to court, although two had had prior experience of the court process concerning past allegations. In the words of one complainant who was interviewed:

“You’re standing there and you’ve been raped and they make you feel like [so small], honest to God they do, they make you feel as if it’s your fault, do you know what I mean, it’s...not nice at all, not nice at all.”

[Complainant 1]

As was identified in the last chapter, from the moment that she reports rape, a complainant’s character, relationship to the offender and previous sexual experience can affect the perceived validity of her allegation. It is no surprise, then, that one of the key tactics employed by defence barristers to uncover the process of ‘mystification’ (to use Goffman’s conceptual terminology) is to attempt to reveal information about a complainant’s sexual history as evidence to the case in question. In effect, this is seen to “create a smokescreen of immorality” (Brown et al., 1993:26) which serves to veil the facts about a case that do not support the defence. Up to this point, police and prosecutors have been responsible for constructing a strong witness. Once a defence barrister confronts a complainant with a view to revealing aspects about her character that are intended to damage her reputation as a ‘deserving victim’ then, in effect, a method of destruction of the witness takes place. Indeed, this relates to notions raised by Taslitz (1999) who focuses on the language that lawyers use and
the cultural stereotypes that they draw upon to effectively dominate rape victims in the courtroom. Moving between cultural and linguistic constructions in society and those used by the defence, Taslitz acknowledges the ways in which rape complainants continue to be disempowered in rape trials, maintaining that patriarchal stories and a gendered criminal justice system persistently undermine law reform and act to reaffirm rape myths. Suggestions in the present study that defence barristers seek to exploit the character of a complainant to damage her reputation supports Taslitz who claims that defence practices are used to undermine the confidence and the credibility of a rape victim.

Judges and barristers in the present study were generally of the opinion that the sexual history of a complainant was relevant to a case. This belief endorses the idea that the focus at this stage of proceedings tends to rest more on the character of the complainant rather than the evidential facts of the case which tend to be a greater focus of the police investigation. These respondents felt that blocking such evidence might present a false picture to the jury:

“If you were sitting on the jury and that was the issue - in the back of the car, did she consent or did she not - would you not want to know whether she has slept with the last five men that she went to the dance hall with?”

[Judge 1]

Rather than considering the facts of the case or the seriousness of the crime, this judge perceived the complainant’s sexual history to be relevant to whether she had consented on the occasion in question and therefore the degree to which she could be held responsible for her own rape. Attitudes like this serve to compound notions of victim-blaming or victim precipitation which have been widely covered in the literature (Amir, 1971). In fact, previous research has shown that the degree to which a complainant’s credibility is questioned in court can significantly affect the outcome of a case. Gregory and Lees’s study, which included observations of rape trials at the Central Criminal Court, revealed that where consent was disputed only 32 per cent of cases resulted in a conviction (Gregory and Lees, 1996). They suggested that the complainant's ability to describe what happened is heavily circumscribed:
"Allowing the defence barrister to cross-examine the victim and cast doubt on her credibility with reference to her sexual character and past sexual history acts as a major obstacle to securing a conviction in rape and attempted rape cases."

(Lees and Gregory 1993: 30)

Although it was not possible to explore this idea in detail in the present study, some respondents suggested that, if any question is raised in court as to the credibility of an allegation, this will soon put an element of doubt firmly in the minds of jurors:

“Give them an inch and they’ll take a mile. Especially if they are having difficulty believing that this nice young student who probably just got drunk deserves to go to jail.”

[Barrister 1]

Therefore, it appears that, where any doubt is cast on the credibility of a complainant – which the defence strive to do by raising the issue of sexual history evidence - the sentiment of distrust becomes amplified to quickly discredit her allegation. Indeed, this would also support Kelly’s claim that the introduction of sexual history evidence in a trial can increase the chances of an acquittal (Kelly, 2001), although there are, of course other ways of undermining the credibility of a complainant aside from using sexual history evidence..

Whilst sexual history evidence was perceived by some respondents to be significant to judging a rape allegation, another judge presented an alternative view, suggesting that the relevance of a complainant’s sexual history to a case was questionable:

“Normally, whether a girl has consented with this man has got nothing to do with whether she has consented with another. It is wrong simply to say to a girl ‘you will go with anybody’, because she may go with anybody except him.”

[Judge 2]
In this respect, the judge was suggesting that past sexual experience is not always relevant to the case in question but that other factors should be considered in assessing whether the rape occurred. Two judges thought that sexual history might be relevant if it showed that the complainant was lying: for example, if she claimed that she was a virgin at the time of the alleged attack, and the defence can show her to have slept with someone in the past. Such a revelation would also remove the element of aggravation that the victim was a virgin. This also supports the notion identified in police interviews that a complainant who tries to conceal some aspect about herself or the alleged incident that she believes might damage her credibility might end up seeing it used against her if she can be shown to have lied (Jordan, 2000b).

An interesting theory arising from discussions with two barristers was that proof of having lied about some aspect of an allegation counted against a complainant more than it did against a defendant. Indeed, the following quote shows that jurors tend to err on the side of the defendant in this case, even when he has been exposed as not having told the truth:

“lies told by the defendant ... when they’re confronted with that and the defendant in evidence says, ‘well, I’m so embarrassed and so ashamed of being arrested for rape and I, you know, also I’m a married man ... and I didn’t want to say that I’d had sex with this girl, so I’m afraid I lied hoping the whole thing would go away, it didn’t go away, I’ve been incredibly stupid but, you know, who wouldn’t’. Well juries accept that line very often.”

[Barrister 1]

Sections 41 to 43 in the Youth Justice and Criminal Evidence Act (1999) were designed to eliminate discretion by giving further restrictions upon what evidence of an alleged victim’s sexual behaviour could be considered relevant. However, these reforms have come under criticism from many sources since sexual history evidence is revealed as still being relied on extensively in rape trials (Adler, 1987; Temkin, 1993; Lees, 1997; Ferguson, 2000). In the present study, no requests were made to the judge during the handful of cases that were observed at court and, therefore, the referral to sexual history evidence by defence barristers during cross-examination could not be explored systematically.
8.4. Conclusion

A running theme identified in the present study was that, once a case has reached court, an alleged victim tends to be judged more on her performance as a complainant - giving evidence from the witness stand - than on her performance as a victim. Focus on her performance as a victim had been a key consideration in constructing a convincing witness up to that point. The whole investigation and prosecution process prior to court could be shown to have been conducted with a view to her taking the witness stand as a convincing witness - where her performance is likened to taking the stage. Situations where an alleged victim is clearly judged on her character as a complainant rather than as a victim could be seen in examples of cases which, on paper, did not look like they would be successful but were - such as the case of the girl who went in the car with several men and changed her mind about who she wanted to have sexual relations with. Another example can be seen in the case of prostitutes who appeared to be judged quite firmly on what they represented as a witness rather than what actually might have happened to them. An exception to this rule came in the form of an example of an historical rape, where the complainant was not a realistic depiction of what the alleged victim would have been like because of her age. In this case, the focus of judgement had switched to her character as a victim pictured in a photograph rather than having been on her performance as a complainant in court.

As with the police investigation stage of proceedings, the absence of corroboratory evidence in the form of injury, forensic proof or witnesses, means that the focus turns increasingly to the character of the complainant rather than resting on the evidential facts about the rape incident itself. A complainant’s morality and perceived relationship with her apparent assailant emerge as being the most important variables in the judgement process.

A further issue coming out of interviews was a belief in the propensity of jurors to err on the side of the notion that the complainant is in the wrong and that her allegation is likely to be false. The suggestion raised by several respondents and supported by other research was that any information that is raised in court to doubt a
complainant’s credibility – as will be the objective of the defence – will usually be taken by a jury to be a reliable indication of her allegation being false, particularly if they are going to have difficulty in finding a defendant guilty. Continuing this theme, it also emerged from interviews that a defendant who was drunk at the time of the alleged incident or could be shown to have lied, is likely to be judged differently to a complainant who was drunk or could be shown to have lied – again revealing something of a double standard.

The propensity of jurors to err on the side of the defendant as they have difficulty perceiving him as an actual rapist suggests that stereotypical notions about rape – exacerbated by the defence revealing details about a complainant that are contrary to accepted notions of behaviour - limit their understanding of what ‘real rape’ actually is. Taslitz (1999) argues that cultural stories about rape (such as the impression of a provocatively dressed woman) are at the root of many unconscious prejudices that will ultimately determine the views of jurors. The present study suggests that criminal justice practitioners are compelled to also take on board these prejudices in order to construct a convincing witness and deal with a complainant in court – whether that be as a prosecutor or as a defence barrister. It is for this reason that Smart (1989) sees the rape trial as celebrating notions of natural male sexual needs and female sexual capriciousness and why she maintains that feminist legal victories in this area are pointless “until we can address the fundamental problem of phallocentrism which disqualifies women’s experience of sexual abuse” (p.49).

The final chapter will draw together the various themes emerging from the last two chapters focusing on the investigation and prosecution of rape allegations. It will revisit the initial question about whether the high rate of attrition in rape allegations is due to discriminatory practices and procedures or is in fact down to genuine evidential difficulties with processing rape allegations. A final analysis will be presented in light of how the criminal justice system appears to handle rape allegations which have been the empirical site for pursuing this theoretical enquiry.
9. CONCLUSIONS

9.1. Introduction

The high rate of attrition of rape cases has been a source of particular concern to academics and practitioners across a range of disciplines over the last two decades (Wright, 1984; Chambers and Millar, 1986; Morris, 1987; Temkin, 1987; Grace et al., 1992; Lees and Gregory, 1993; Jamieson et al., 1998; Harris and Grace, 1999; Lea et al., 2003; Kelly et al., 2005) and even as recently as July 2005 with the Observer newspaper headline: “50,000 rapes each year but only 600 rapists sent to jail” (The Observer, Sunday, July 31st 2005). The most recent Home Office figures of recorded rape cases reveal an ongoing decline in the rate of conviction for allegations of rape in England and Wales, with an all-time low of just 5.4% of cases in 2003/04. Much research has focused on the low conviction rate of rape cases and has centred around criticism about how cases are handled by the courts. Indeed, in some cases these criticisms have prompted legal reform initiatives usually directed at the court system and improving the ways in which rape victims experience trial procedures (Lees, 1996, 1997; Harris and Grace, 1999). Concerns about the ways in which the police handled rape complaints led to various changes in style and procedure during the 1980s. This reform was initiated by the Metropolitan Police Service following the broadcast of a ‘fly-on-the-wall’ television documentary focusing on Thames Valley Police which showed a rape complainant being harshly treated by three male officers during a police interview (BBC documentary: ‘Police’, 1982). However the present study, as well as previous research, tend to demonstrate over-optimistic assumptions about improvements in police behaviour as far as the experiences of rape complainants are concerned.

Despite the fact that much concern has been expressed about the low conviction rate of rape cases generating research and enquiry into how cases are handled by the courts, a greater focus on the low prosecution rate might be a better approach to understanding the problem of attrition, given that just over two-thirds of the cases in the present study proceeded no further than the police stage of proceedings. To this end, the present study involved quantitative and qualitative methods to investigate the
processing of rape allegations from recording to conviction, identifying the key attrition points and exploring the decision-making process that underpins police practice, complainant choices and the progress of cases through the courts. The research set out to examine explanations for whether:

1. the high rate of attrition in rape allegations is due to discriminatory practices and procedures at various stages of the criminal justice process based on stereotypical beliefs and interpretations of what genuine rape is;

2. the high rate of attrition is down to genuine evidential difficulties with processing rape allegations that result in weak cases and poor chances of conviction, having nothing to do with discriminatory practices and procedures.

9.2. 'Real rape' and the 'deserving victim'

In order to distinguish between those allegations that fit with cultural assumptions about genuine rape and those that were not perceived to be credible, notional categories of 'real rape' and 'deserving victim' were developed in the present study on the basis of themes emerging from the files analysis and interviews. The term 'real rape' was devised to include those cases that were perceived to be valid and which usually reflected stereotypical notions about what constitutes a genuine rape. The category 'deserving victim' was conceived to encompass those complainants who could be perceived to be legitimate and therefore deserving of the label 'victim'. The latter term echoes Smart's categorisation of 'privileged victims' and 'invisible victims' to make the distinction between credible witnesses who fit with the stereotypical notions about genuine rape victims and those who find it difficult to have their complaints believed (Smart, 1989). This also reflects the underlying principle of the 'pedestal myth' developed by Stewart et al. (1986) whereby complainants whose characters most closely conform to stereotypical notions of genuine rape victims are effectively 'put on a pedestal' in the minds of those judging their allegations. Categorising allegations in this way provided a useful way of directing the analysis to identify the degree to police decision-making was, in fact, based on stereotypical principles.
Rape is a unique offence in several ways. As this research has identified, most usually, the victim knows her perpetrator, with their usually being an ex-partner or an acquaintance. Therefore, the sort of rape allegations coming before police in recent times rarely fit the ‘real rape’ template, revealing that the ‘classic’ rape scenario is still perceived to be of a stranger, leaping from behind a bush, committing a violent rape, involving the use, or threat, of a weapon that leaves the victim with serious injuries to show for her ordeal (Estrich, 1987; Du Mont et al., 2000; Myhill and Allen, 2002). Instead, allegations pose evidential difficulties given that they usually occur in private, often involve some degree of consensual contact prior to the alleged attack and do not always result in physical injury. Quantitative analysis revealed that just 31 per cent of cases proceeded beyond the police stage of proceedings. Allegations involving acquaintances or intimates were the most likely to be ‘no-crimed’ or result in no further action by the police compared to cases where the perpetrator was a stranger, reflecting the evidential difficulties associated with such cases.

Interviews with police officers allowed this to be explored further by revealing their various assumptions and beliefs around what was seen to constitute a ‘real rape’, using the conceptual term developed in this thesis. Certain factors were found to be important in influencing the judgement of police officers when dealing with rape allegations, the most powerful form of evidence being violence in the form of injury to the complainant. Previous research has also identified this view (Kennedy, 1992; Edwards and Heenan, 1994; Harris and Grace, 1999) since evidence of injury to a complainant would count strongly against the argument that she engaged in consensual sexual relations with her assailant. A second convincing source of proof was that of eye-witness evidence, or at least witnesses to a complainant’s physical and emotional state in the immediate aftermath of an alleged rape.

However, in view of the fact that cases increasingly involve parties who are known to one another – however brief their acquaintance might be – and the evidential difficulties that these pose, the matter usually comes down to a question of consent and whether the complainant willingly engaged in sexual relations with the alleged perpetrator. Stanko (1981) and LaFree (1989) report that it is frequently the victim, not details relating to the case or the alleged suspect, upon whom judgement focuses for a prediction of an assured conviction. The present research supports this view: in
this case, the focus of the investigation tends towards an assessment of the complainant's credibility and her character which become increasingly pivotal in establishing whether she is, in fact, a 'deserving victim'. Again, rape is unique since, in no other crime, is the credibility of the victim subject to so much scrutiny (Archambault and Lindsay, 2001) which can lead to the complainant often feeling that she is the one who is on trial, and who might be found “guilty of consent” (Smart, 1989).

Factors about a complainant's character that were perceived to give legitimacy to her credibility were therefore explored. Thus, the ‘deserving victim’ emerged as being young, virginal, well-behaved, having sustained injuries as a result of the attack, who did not know her perpetrator, reported immediately and appeared appropriately hurt and distressed in the immediate aftermath of the alleged rape. A further criterion reported to satisfy the rules of investigation was consistency in terms of the story that the complainant tells – something that the present study revealed was not always possible. However, these factors indicate notions of a stereotypical view of rape that does not, in fact, reflect the reality of allegations. Instead, cases were far more likely to involve one or more of the following factors that were perceived by police officers to count against a complainant's credibility: the complainant having been drunk at the time of the alleged incident, having had a prior relationship with the perpetrator, there having been eye witnesses to her enjoying herself immediately prior to the attack – particularly if this was with the perpetrator, the complainant having been a prostitute, her having learning disabilities, having not reported to the police immediately and being on record for having made previous allegations of rape – especially if these had not resulted in a prosecution (this latter point was also reported by Jordan, 2004). Some ambiguity surrounded the issue of age of a complainant: police officers were divided on whether they thought that teenagers could be credible victims or if teenage complainants made allegations as a way of attention-seeking.

The present study demonstrated how the rape myths and stereotypes that influenced police officers responsible for investigating rape cases were also commonly shared by complainants reporting allegations. All of the complainants who were interviewed for the present study were only too aware of stereotypical notions about genuine rape that they believed would influence the perceived credibility of their complaint and would
consequently affect how their case would be handled. In fact, interviews revealed how individual circumstances and situational factors were found to affect whether complainants themselves even chose to categorise their experiences as rape, reflecting research by Clarke et al. (2002:26). The perceptions of complainants in this respect are important to acknowledge as they demonstrate how beliefs about what constitutes a genuine rape are in operation before cases even enter the criminal justice system. Stewart et al. (1986), for example, found that the majority of women in their study chose not to report their rapes for reasons "relating to their assessment of how others would define them" (p.165). A victim has to be convinced in her own mind that what has happened to her is rape before she can even think of starting to convince others of what has happened to her. Once she is sure in her own mind, she must then persuade others which is perhaps the greater hurdle. However, what the present research shows, supported by previous studies, is that, even if a woman does not accept certain cultural definitions about rape and the reality of her being a victim does not fit with commonly accepted stereotypes, she is nevertheless compelled to recognise their power and prevalence if she is to pursue her allegation through the criminal justice system: these notions will ultimately determine whether or not the event was a 'real rape' and/or whether she can be perceived to be a 'deserving victim'.

Thus, notions about genuine rape emerged as essentially founded on stereotypical principles about appropriate female behaviour, supporting the comment by Stevenson (2000) that a complainant's conduct and behaviour must "conform to prevailing societal expectations, as understood by the legal system" (p.347, emphasis in the original). The prevalence of rape myths has been demonstrated time and again in numerous studies (Smart, 1977; Wilson, 1983; Hall, 1985; Smith, 1989; Torrey, 1991), revealing that the 'classic' rape scenario is still a powerful concept. Since such myths do not accept the reality of allegations – and are essentially 'old-fashioned' – they can only serve to limit the definitions of what is perceived as a genuine rape in terms of the contexts and relationships within which alleged incidents occur. Despite this, such views appeared to be accepted as normal by police officers and complainants in the present study – “taken for granted” according to Stewart et al. (1996).
Stereotypical views were found to manifest themselves in several ways. For instance, the morality of a complainant would be subject to question if she were a prostitute - a powerful violation of the traditional female gender role. Furthermore, it was obvious that, where the two parties involved in a rape allegation were known to one another, the police had some difficulty in interpreting the allegation as rape, a concept that is echoed in other research (Temkin, 1997). Indeed, the fact that rape within marriage was not legally recognised as a crime until relatively recently - 1991 - suggests that remnants of attitudes endorsing men’s sense of entitlement to sexual intercourse with women, especially if they were in - or had been in - a relationship, are still likely to be in existence (Brownmiller, 1975); according to opinions revealed through interviews in the present study, these attitudes appear to be pervasive in police thought and practice as well. The prevalence of sexist attitudes towards rape complainants was also evident in active hypocrisy regarding male and female behaviour. For example, the present research revealed that, whilst a woman who was drunk at the time of her alleged rape is likely to be blamed for losing her inhibitions, supporting the possibility that she consented to intercourse (see also Ettore, 1992; Lees, 1997), a man who was drunk at the time would not necessarily be stigmatised in the same way (Schuller and Stewart, 2000; Jordan, 2004), revealing something of a double-standard.

Stereotypical views about ‘real rape’ were further manifested in evidence of discrimination towards complainants, different forms of which have been posed in this thesis. As an initial example, prejudice towards rape complainants came in the form of “interactional discrimination” (Reiner, 2000) whereby a police officer’s judgement of an alleged victim was influenced by interaction with the complainant and the degree to which her demeanour satisfied that officer’s preconceived idea as to how a genuine rape victim would behave. This is likely to say more about the preconceptions of the police officer involved than it does about a complainant’s credibility, since the police are often blind to the range of possible interpretations of a rape complainant’s behaviour, much of which is governed by Rape Trauma Syndrome. Furthermore, the perception that a woman who had been raped would report her attack immediately has been challenged by various authors (Chambers and Millar, 1983; Estrich, 1995; Jordan, 1998). Indeed, the present study also claims that this is not a valid assumption to make given that only one of the complainants who were interviewed had reported her rape on the same evening.
“Transmitted discrimination” (Reiner, 2000) was also evident whereby, in anticipating what would be a convincing case to put before a jury, the police were effectively acting as a passive conveyor belt for community prejudices. Analysis demonstrated that judgements about how genuine police officers believed an allegation of rape to be was based on the perceived responsiveness of a jury to a complainant and less on the immediate perceptions of police officers themselves — something that receives support from previous studies (Shapcott, 1988; Department of Women, 1996; Lees, 1997; Scutt, 1997).

Further to this, rape complainants are likely to suffer a form of “institutional discrimination” (Reiner, 2000) by virtue of coming into contact with the culture of the police. It was not possible to systematically explore the degree to which ‘canteen culture’ - the values and beliefs of police officers that are exhibited in off-duty policing - played a part, since information was gathered from official files and formal interviews. However, sexist and discriminatory attitudes that were detected from the analysis leads this thesis to suggest that the masculine ethos of police organisations is likely to compound the issue of discrimination towards rape complainants.

As previous research has shown, due to various rape myths, many complainants report insensitive treatment by the police and a general lack of encouragement to pursue their allegations. Evidence from the present study, albeit concerning a small number of complainants, found quite the opposite of encouragement with complainants maintaining that they were heavily discouraged to continue. In actuality, it emerged that the degree to which a complainant’s allegation fits with stereotypical notions about ‘real rape’ and ‘deserving victims’ tends to be inversely related to the perceived sensitivity with which she will be treated and the amount of support and encouragement that she is expected to receive.

Complainants in the present study spoke of various insensitivities that they had experienced during the police investigations concerning their allegations, including being visited or interviewed by male officers, delays in receiving a medical examination, harsh and persistent questioning and a subsequent lack of communication about what was happening with their cases in the days after they had
given a statement to the police - the latter having also been identified by Temkin (1999). As soon as they had reported their allegations to the police, complainants in the present study claimed that they had been made to feel as if they were the ones who were under suspicion, echoing research by Jordan (2004) that revealed how complainants often felt that the onus was on them to prove that their complaint was genuine. Several examples were given by complainants in the present study to suggest that they felt as if they were the ones who were on trial and that the police were on the side of the suspect. This was manifested in the police tending to be in more constant communication with the suspect about how their case was progressing. It was also evident in the example of the complainant who recalled how police officers had tried to make her feel guilty about how bad the defendant must be feeling having been accused of rape; whilst their sympathies appeared to be with the ‘lad in the cells’ during her interview, they changed their attitude and even shared a joke with her when she finally withdrew her allegation – something that she felt was her only option. Experiences such as these provide less support to the argument that the poor treatment of complainants is due to evidential difficulties with rape cases that have nothing to do with discriminatory practices. They instead lend support to feminist claims that it is poor treatment and the lack of a criminal justice response to rape victims that serves to endorse and even legitimate the crime of rape (Mackinnon, 1989; Walby, 1990).

The present study, therefore, drew attention to two forms of ‘secondary victimisation’ that appear to impact on complainants at different stages of the system: adverse treatment during the initial stages where complainants often face disbelieving attitudes and insensitive treatment at the hands of police – termed ‘covert secondary victimisation’ in this thesis; and unpleasant treatment during the court process where she must endure intensive questioning and perhaps even cross-examination about her sexual history – termed ‘overt secondary victimisation’ in this thesis. ‘Secondary victimisation’ is seemingly compounded if a complainant is not perceived to be a ‘deserving victim’: an example of this was seen in the case of the complainant who recounted that, although she had been violently raped, the perpetrator had been her ex-boyfriend whom she had willingly let into her flat earlier in the evening – factors serving to diminish her credibility - resulting in her effectively being bullied by two male police officers into retracting her allegation.
Giving voice to the other side of the story, police respondents maintained that thorough questioning which might be perceived as ‘getting at’ the complainant was not meant to be upsetting but was a necessary part of the investigation. Several police respondents also suggested that, if a complainant was not perceived to be a convincing witness, they would have to warn her about the potential evidential difficulties with her case and the likelihood that she would have a difficult time in court. This echoes Stewart et al. (1996) who found that police officers felt compelled to warn a complainant that she did not have a “good case” if she demonstrated character flaws or had engaged in misconduct. Police officers in the present study also drew attention to the practical difficulties that they faced in finding doctors, particularly female doctors, to conduct medical examinations. In fact, the views of many of the police officers interviewed supported the argument that the poor treatment of complainants is down to evidential difficulties, weak cases and practical difficulties that have nothing to do with discriminatory practices or bias.

The difficulties for the police investigating rape allegations are evident. The present study also revealed something of a tension between the police being seen to care for a complainant’s welfare as well as conducting an effective investigation, suggesting that they might not be best placed to provide the support that a complainant needs during these early stages. However, complainant withdrawals accounted for the highest proportion of cases being lost in the present study. Therefore, it remains a fact that, even if the police do not mean to act insensitively and do not tell a complainant to withdraw her allegation in so many words, the combination of ‘secondary victimisation’ and ongoing judgements about whether she is in fact a ‘deserving victim’ might leave the complainant feeling that it is her only option. All of the complainants interviewed for the present study had withdrawn their allegations and each of them maintained that it had not been their choice to do so. In addition, three were quite clear that, if they were raped again, they would not report it to the police next time. In this sense, the present research adds greater support to the argument that the criminal justice system is failing rape victims.
9.3. A closer look at police decision-making

A strong message coming out of this thesis is that the principal purpose of those who investigate, prosecute, and even defend, rape allegations, is to construct a convincing narrative. In practical terms, this appeared to mean that the judgement process was not necessarily as straight-forward as, for example, evidence of injury or prompt reporting satisfying the criteria for an allegation to be classified as genuine and therefore a decision to proceed. In terms of the police decision-making process, officers were found to operate within a particular interpretative framework: in order to judge whether a rape was genuine, certain details about an allegation were often subject to a degree of 'contextual gloss' according to the story that they needed to tell in order to make the case 'fit' with their established 'real rape' archetype. The idea that the police construct a narrative during investigations has also been identified by Innes (2003), as something that assists with explaining and interpreting “actors, actions and their causes and effects” (p.167) to help unpack the complexities of an allegation and, essentially, to ‘get the job done’.

In order to demonstrate how the police go about constructing a narrative using information pertaining to a complainant in order to convey her as a deserving victim, this thesis included an exploration of Goffman’s analysis of process and meaning in mundane interaction (Goffman, 1959a) as well as an assessment of Innes’s adaptation of Hughes’s (1958) concept in assigning ‘moral’ careers to individuals involved in police investigations (Innes, 2003). Goffman’s and Innes’s concepts of ‘dramaturgical analysis’ can be usefully applied in this context to explore the way in which meaning is assigned to actors, their actions and the causes and consequences surrounding rape allegations. Goffman refers to the control and communication of this information through performance as ‘impression management’. In their seeking to construct a convincing witness, the police effectively interpret details about an allegation with reference to ‘social setting’ and ‘appearance and manner’ – those factors that contribute to the nature of a person’s ‘front’, according to Goffman. Police officers therefore arguably become most involved in determining the nature of the performance that is conveyed by a complainant to an audience. In this sense, police officers investigating rape allegations essentially become spin-doctors in terms of ‘impression management’. It is also useful here to consider Innes’s reference to ‘legal
identities’ whereby characters involved in police investigations are assigned roles, allied to which are ‘moral’ characteristics. This thesis lends support to Innes’s research in that the police in the present study were revealed to effectively ‘work up’ the moral roles of victims to provide moral clarity to their narrative if they wanted to convey the victim as ‘deserving’.

Goffman’s work on stigma is also of interest to this thesis given that stigma was revealed to be evident among certain types of complainants in the present study serving to push those people who deviate from the ‘ideal’ towards marginalised, less credible groups who encounter greater difficulty in being believed (Goffman, 1963). It appeared from the present study that complainants can experience stigma on two fronts: they might find themselves stigmatised by virtue of their belonging to a particular group – prostitutes, for example - or they might experience stigma on account of their apparent behaviour at the time of the alleged rape - if they were particularly drunk, for instance, or had willingly accepted a lift with a stranger. Goffman also refers to people who experience stigma as possessing ‘discredited’ or ‘discreditable’ identities while Innes refers to ‘moral tainting’ whereby victims who are tainted are not considered worthy. The importance of ‘impression management’ is particularly pertinent with those people who struggle to present an idealised image (Goffman, 1963).

Given that the complainants interviewed for the present study were only too aware of how certain details about them or their circumstances could discredit their allegations in the eyes of the police, it is not surprising that some will try to conceal these aspects. However, police respondents were quite clear that, if a complainant was found to have been keeping something from them, then this would only serve to diminish her credibility all the more. Indeed, a complainant who had apparently lied or been inconsistent in recounting what had happened to her would have negative implications for other evidence connected to her case and for her being perceived as a credible witness. This again concurs with Goffman’s claim that credibility is won by a person being consistent in communicating activities and traits (Goffman, 1959a). However, aside from actively trying to conceal something about herself, consistency is usually very difficult for a rape complainant to achieve. For instance, a complainant will usually have had to have recounted the alleged rape to several different people on
different occasions and in varying states of mind. Unsurprisingly, the confusion that she will feel in the aftermath of a rape may well cause her to forget vital details or seemingly change her story. Rape Trauma Syndrome has been acknowledged as an explanation for, on the one hand, why different complainants might display completely different responses in the aftermath of a rape, but also why the same complainant can also exhibit different behaviour at different times. In the words of one police officer in the present study, everyone has a different “shock clock” [Police Officer, Focus Group 3], indicating that achieving consistency in behaviour following a rape attack poses something of a challenge for rape complainants.

The police were found to effectively put an interpretative gloss on certain facts about a rape allegation in response to two compelling forces. To start with, there is a pressure on the police to ‘get results’: Skolnick (1966) talks of the pressure on police to “produce – to be effective rather than legal when the two norms are in conflict” (p.42). This thesis suggests that these two norms are in greater conflict in the case of rape offences than most other crimes given the evidential difficulties that allegations pose and that, therefore, the police might more readily seek to obtain a satisfactory conclusion at the expense of justice. A further related driving force was identified as the duty of the police to anticipate what will be perceived as a strong case by the CPS and a jury (Shapcott, 1988; Department for Women, 1996; Lees, 1997; Scutt, 1997), and the need to give thought to how convincingly a complainant would present in court.

Within this contextual framework, it also emerged that a high proportion of allegations tend to be classified on police records as being ‘false’. The reality of so many allegations actually being false has been challenged by previous research (Adler, 1987; Gilmore and Pittman, 1993; Gregory and Lees, 1999; Kelly, 2002), as it was in the present study. Instead, it is argued in this thesis that, whilst police officers are inclined to classify a rape allegation as ‘false’, they actually mean that it simply does not conform to their standards sufficiently to be classed as ‘genuine’. This view is defended by Torrey (1991) who also claims that allegations that are classified as false are usually ones in which, although a rape might have occurred, the police have determined too many barriers for it to be possible to obtain a conviction in court. None of the cases involving mentally impaired adults in the present study reached
court and many allegations involving prostitutes were also deemed unreliable, despite police officers often believing that a rape had occurred. This demonstrates quite clearly that what is at the centre of the debate is not actually whether an alleged incident satisfies stereotypical notions in order to be classed as ‘real rape’ or even whether the complainant is a ‘deserving victim’ in that she was genuinely attacked. Instead, what appears to be at the root of police decision-making, in anticipating the CPS and the courts and in ‘getting the job done’, is ultimately whether the complainant can be demonstrated to be a *convincing witness*. Given that a ‘deserving victim’ is not necessarily seen to exhibit the same characteristics as a convincing witness, this quite strongly suggests that ‘getting the job done’ does not necessarily mean ensuring that justice is done.

### 9.3.1 Constructing a narrative

Within the interpretative framework that the police were found to operate, it emerged from the present study that details about rape allegations were, essentially, differentially interpreted on two levels: first, information pertaining to an allegation was subject to contextual gloss depending on what *other* details about the case might need to be taken into account: in this way, a complainant who reported an incident immediately and who had sustained evidence of injuries to show for her attack – both factors that would add credibility to her allegation – might still not be judged as ‘deserving’ if the perpetrator was an ex-boyfriend of hers. Second, it appeared that a complainant was often judged differently according to the *stage* of the criminal justice system at which she was being assessed: prostitutes provide a good example here since these complainants were more often than not considered by the police to be genuine victims as they would be unlikely to make up spurious allegations and risk a loss of earnings – “I see them as business people” [*Police Officer, Focus Group 3*] were the words of one police officer. However, police officers and other practitioners were also only too aware of how poorly a prostitute witness would present in court to a jury with the result that this sort of complainant was ultimately not judged to be a convincing witness during the latter stages.

In effect, therefore, the police conduct two assessments of an alleged victim in establishing whether she is a convincing witness. Goffman’s analysis of social
interaction is useful in pursuing the notion that a woman who alleges rape is judged on the basis of two ‘performances’: on her performance as a victim whereby the police assemble details about the incident and the complainant at the time of the alleged rape; and on her performance as a complainant whereby judgement centres around how effectively she is likely to come across as a witness in court. Judgement about her performance as the former will determine how deserving she is as a rape victim - details concerning the ‘social setting’ and her ‘appearance and manner’ at the time that she was allegedly attacked will be important considerations in the decision-making process. Judgement about her ‘performance’ as the latter – as a complainant who has reported her allegation - becomes the responsibility of the police who must decide what impression they need to convey to make her a convincing witness. Here, her ‘appearance and manner’ as a complainant comes under scrutiny and how well she will perform in court is of paramount concern. Arguably, a complainant is judged more on her performance as a victim during the early stages of proceedings when police officers are tasked with assembling information about the alleged incident and more on her performance as a complainant later on in the process. However, in conducting their investigation, the police are also compelled to consider the woman’s performance as a complainant in that they are required to anticipate the later stages of the process and judge how credibly she will come across as a convincing witness.

Effectively, then, complainants were shown to embark on moral ‘careers’ to adopt Hughes’s conceptual terminology (1958), whereby an alleged victim was perceived differently according to three stages of the police investigation. During the early stages of the investigation, a rape complainant arguably complies with stage one of this classification, where she is perceived as a physical object – a body of evidence, in effect - before proceeding to stage two where she becomes an individual subject or a person in the eyes of the police – a point at which she might be judged in terms of her culpability for the attack and whether she can be deemed a ‘deserving victim’. Finally, and where judgement is usually most contentious, she reaches stage three of her ‘career’ in terms of perceptions about her credibility as a convincing witness, a career that essentially stays with her through court.
9.4 ‘Taking the stage’ – the presentation of the witness in court

Concepts utilised by both Goffman and Innes inspire a notion of drama: Innes infers that actors who are involved in police investigations are effectively assigned *roles* and Goffman debates the construction, control and communication of information through *performance*. The concept of ‘drama’ was taken a step further in the present study when a complainant was seen to take the stage in her most important performance of all – in court. An interesting concept that emerged from interviews with prosecutors and barristers was how often a court scenario was likened to a television show or being on stage. Several barristers who were interviewed did not feel that this was necessarily helpful and felt compelled to warn juries of the reality of the case before them whilst others saw the benefit of a complainant ‘playing to the audience’, the more dramatic the performance, the better. In the words of one barrister who saw himself in the role of a ‘production manager’, “[juries] haven’t the imagination, you’ve got to bring it alive for them.” [Barrister 2]

9.4.1 The complainant’s ‘performance’

This thesis has posed the concept that an alleged rape victim who takes the stage in a court setting is judged to a greater degree on her performance as a *complainant* than that as a *victim*. Examples from the research that support this argument include cases involving prostitutes or complainants with learning disabilities: police officers often believed that they were genuine *victims* given that prostitutes would be unlikely to waste their time and money making up spurious allegations and people with learning disabilities have been shown to have an enhanced vulnerability to being raped (Luckasson, 1992; Hayes, 1993). However, such complainants were judged quite firmly on what they represented as a *complainant* or as a witness in court – in other words that they would be regarded as ‘undeserving’, regardless of what might actually have happened to them.

Another example of the significance of an alleged victim’s performance as a complainant in court was raised by a judge who was interviewed for the present study: the case he referred to involved a complainant who had returned home with a group of men intending to have intercourse with one of them but then changing her mind and
agreeing to have intercourse with another. When the second man had later tried to have intercourse with her she had pushed him off and alleged rape. In this case, the woman's performance as a \textit{victim} had lacked credibility: a lack of physical evidence coupled with a great deal of ambiguity surrounding her claims weakened her allegation considerably. However, as a \textit{complainant} she had turned out to be an effective witness despite any possible moral interpretations that her behaviour might have attracted, and when the case went before a jury they found the defendant guilty. Indeed, judgement of an alleged victim's performance as a complainant is related to how well she conveys the role of a credible witness: the fact that the somewhat ambiguous case referred to here resulted in a conviction supports Larcombe's view that "the 'successful rape complainant' is not necessarily one with an unblemished sexual history. Rather she has a strong sense of herself [as a complainant]" (Larcombe, 2002:144).

An exception to the rule that an alleged victim is best assessed on her performance as a complainant in court came in the form of an historical rape, where a middle-aged complainant was not perceived to be a realistic depiction of the alleged 7-year-old victim. In this case, the focus of judgement had switched to the woman's character as a \textit{victim} when the jury were presented with a photograph of her as a young girl, this tactic proving to be more effective in this instance than a focus on her 'performance' as a complainant.

Judges and barristers in the present study confirmed that the nature of rape cases reaching court had changed over the last ten years or so, suggesting that this was because the filtering of cases by the police and the CPS was not as rigorous as it had been in the past. This is despite the present research also having revealed that the principle aim of the police in investigating rape allegations was to filter out any cases where they believed that a complainant would not present as a convincing witness. Barristers in the present study echo the views of those who were interviewed in Temkin's study who believed that 'weaker' cases were reaching court due to the CPS being too ready to prosecute in cases that were not always suitable (Temkin, 2000b). However, it is possible that the reason for a greater number of apparently 'weak' cases reaching court is that a greater number of allegations that do not fit the 'real rape' template form the bulk of reported allegations: under current law and to
practitioners working within the context of the court who only get to review these cases on paper, such cases might have a propensity to appear as ‘unsuitable’.

An examination of what factors barristers and judges perceived would affect the credibility of an allegation revealed evidence of injury, a complainant’s morality and her perceived relationship with the perpetrator to be the most important variables in the judgement process. In the case of allegations involving people who are known to one another, even if they have been acquainted for a very short time, where a lack of evidence makes it difficult to prove the argument of either party and the issue becomes a question of consent, a defence barrister will usually seek to undermine a complainant’s credibility. Some concern was expressed by barristers in interviews that the CPS attach low fees to rape cases which preclude senior barristers from taking them. Thus, inexperienced, junior barristers tend to end up prosecuting rape cases which is not ideal, a concern that has been articulated elsewhere (Temkin, 2000b).

None of the complainants who were interviewed in the present study had pursued their cases to court, but two had had prior experience of the court process concerning past allegations. One complainant reported how difficult it had been for her to give evidence in court and how insignificant she had been made to feel. Arising from some of the interviews with practitioners and from court observations, several options were identified that were meant to ease the trauma for a complainant giving evidence in court. These included screens to shield the defendant from view of the witness box as well as one-way glass to the public gallery so that no disturbances could be seen or heard from the courtroom. The use of video-link as a means of interviewing particularly vulnerable witnesses was also accepted by some as a good measure. However, several respondents did not feel that this was the best way of conveying a convincing witness to the jury, the use of a video-link being thought to compound the notion of a trial being seen as a television drama.

9.4.2 The jury

According to interviews with prosecutors and barristers in the present study, the prevalence of rape myths is particularly evident among jurors. Reflecting the complexities with rape trials, an issue arising from interviews with prosecutors was a
belief in the propensity of jurors to err on the side of the notion that the complainant is in the wrong: it was felt that, faced with an option of convicting a man for rape when the evidence was poor and the case before them did not resemble a ‘classic rape’ scenario, members of a jury would be highly likely to believe that a complainant was not telling the truth if this suggestion was made to them by the defence. Several CPS respondents also drew attention to stereotypical views about ‘real rape’ that they believed would be in the minds of jurors, one prosecutor stating that the “more natural, normal and understandable it is, the less likely a jury is to convict” [Crown Prosecutor, Focus Group 2]. Indeed, reflecting this mindset, a common view among barristers was that the prosecution would always prefer to see a jury made up of men as it was thought that women could be quite judgmental of their own sex and would be less likely to have sympathy with the complainant. A further interesting idea arising from discussions with two barristers was that any proof that a complainant had lied about some aspect of the allegation would count against her more than it would against a defendant if he could be shown to have lied, again revealing something of a double standard. For instance, it was felt that jurors would more readily interpret inconsistency in a defendant’s story as being down to the shame and embarrassment of having to appear in court charged with rape.

9.4.3 The use of sexual history evidence

In what was termed ‘overt secondary victimisation’ in the present study, stereotypical principles come to the fore as a complainant has to endure cross-examination from a defence barrister about aspects of her allegation that do not appear to fit, or be ‘in line’, with preconceived notions about genuine rape. By revealing negative details about a complainant’s character - details that are not readily apparent to a jury and that contradict stereotypical and socially sanctioned notions about appropriate female behaviour - a defence barrister can build a strong case to damage the reputation of a complainant as a ‘deserving victim’. This thesis lends support to Matoesian’s claim that defence cross-examination in rape trials inevitably “involves categorisation work specifically designed to create a disjuncture between the victim’s actions on the one hand, and the requirements of normative and socially structured incumbency in the category victim on the other” (Matoesian, 1993:30). Indeed, it is through this
disjuncture between a complainant’s behaviour and that attributed to the genuine victim that much ‘blame work’ is performed.

With respect to defending rape cases, barristers in the present study were divided on whether they thought that sexual history evidence would be relevant to a case, some seeing it as an important defence tool whilst others believed it to be irrelevant to the case at hand. Brown et al. (1993) concluded from their research that sexual history evidence is usually raised to “create a smokescreen of immorality” (p.26) which serves to veil the facts about a case that do not support the defence. In the present study, no defence barristers were seen to ask the judge for permission to cross examine a complainant about her sexual history in any of the cases that were observed at court. However, the notion of a ‘smokescreen’ seems pertinent to the whole process: police, prosecutors and barristers have been shown to raise certain factors about a rape allegation - or ‘work up’ moral roles that are attached to certain complainants, to use Innes’s conceptual term - whilst, in effect, creating a smokescreen to conceal other factors that do not fit with the narrative that they wish to convey. In this way, a prosecution barrister may seek to withhold certain information that counts against a complainant - what Goffman (1959a) terms a process of ‘mystification’ - whilst presenting only approved traits to an audience that legitimate the complainant’s role as a ‘deserving victim’. Pursuing the theme of ‘narrative construction’, it became evident that, in prosecuting or defending rape allegations at court, the principle aim of practitioners at the end of the day continues to be to construct the best argument – which, evidently, does not necessarily mean to get at the truth. A particular example to support this idea was seen in the case of one barrister who maintained that, were he acting for the prosecution, he would not consider the fact that a complainant was a prostitute as relevant to the case in question and he would advise the jury as much. However, were he acting for the defence, he said that he would not hesitate in raising something as potentially damaging as this as evidence against her.
9.5. In conclusion

More complainants are coming forward and reporting rape but the possibility of achieving a conviction is decreasing year on year. What this research has revealed is that definitions of genuine rape which are based on stereotypical notions form the foundations of attrition at all stages of the criminal justice process, serving only to deny, minimise or misrepresent the reality of this crime.

Given that cases coming before the police rarely encompass the ‘real rape’ or ‘deserving victim’ template, assessments during the investigation of rape allegations are essentially based on a hierarchy of credibility according to details about particular rape incidents and, more usually, information about the character of the complainants in the absence of physical evidence. In order to conduct an effective investigation under current law, police officers are compelled to construct a narrative to make the case ‘fit’ to ‘get the job done’. This quite clearly results in discrimination towards certain complainants whose ‘performances’ do not comply with expectations, discrimination that is based on sexist attitudes towards women rooted in a perception of whom a genuine victim is understood to be. To return to the research question, then, it certainly appears that the high rate of attrition in rape allegations is due to discriminatory practices and procedures at various stages of the criminal justice process based on stereotypical beliefs and interpretations of what genuine rape is.

In the present study, the greatest reason for attrition at the police stage of proceedings was complainant withdrawals – ‘voluntary attrition’ according to Steffensmeier (1988), an expression that suggests that the complainant has some choice. However, a lack of support and encouragement coupled with ‘covert’ and ‘overt’ ‘secondary victimisation’ often leaves the complainant with no choice but to withdraw her allegation.

Furthermore, law reform appears to have had little impact and feminist legal victories in this area are likely to be futile “until we can address the fundamental problem of phallocentrism which disqualifies women’s experience of sexual abuse” (Smart, 1989:49). Indeed, in this context, as the following quote from Helena Kennedy

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suggests, myths about rape are not only pervasive throughout our society but essentially underpin what is written in law as well:

“Myths are tent pegs which secure the status quo. In the law, mythology operates almost as powerfully as legal precedent in inhibiting change, and the law is full of mythology. Women are particularly at its mercy...mythology is a triumph of belief over morality, depending for its survival not on evidence, but on constant reiteration.”

[Kennedy, 1992:32]

In this way, myths can only serve to perpetuate rape given that, if the criminal justice system continues to fail to challenge these stereotypes so that just those cases fitting the genuine rape template result in a conviction, the whole process from investigation through to court will only serve to reinforce preconceived notions about what a genuine rape is.

It is within such a contextual framework that police officers, prosecutors, barristers and judges must operate to get the job done. It is also within this context that complainants must decide whether to report their allegations and, if they do, whether they choose to pursue their complaint through the process. This thesis could propose several changes to improve the way in which rape allegations are handled by the criminal justice system: an improvement in services for victims, for example, specialist rape units within the police or training for prosecutors and barristers in how to prosecute or defend rape cases. However, it is argued here that the issue goes much deeper than this and, in actuality, transformation requires a more fundamental redefinition of the notions of ‘real rape’ and ‘deserving victim’ in order that the investigative focus might change. Without this, as the present research has revealed, the processing of rape allegations will continue to rely on the construction of a winning narrative along with the existence of a convincing witness to ‘get the job done’, rather than a focus on the basic facts about the case or the worthiness of the complainant, to ensure that justice is done.
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## Appendix A: Attrition rate for female rape between 1995 and 2003/04

(includes attempted rape)

<table>
<thead>
<tr>
<th></th>
<th>Recorded by police as rape</th>
<th>Cleared up by police</th>
<th>Proceeded against at magistrates’ court</th>
<th>Committed for trial at Crown Court</th>
<th>Proceeded against at Crown Court</th>
<th>Total cautioned or found guilty of rape</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
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<td>3722</td>
<td>75</td>
<td>1324</td>
<td>27</td>
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<td>2001/02†</td>
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<td>100</td>
<td>3631</td>
<td>40</td>
<td>2461</td>
<td>27</td>
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<tr>
<td>2002/03‡</td>
<td>11436</td>
<td>100</td>
<td>4116</td>
<td>36</td>
<td>2769</td>
<td>24</td>
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<tr>
<td>2003/04‡</td>
<td>12354</td>
<td>100</td>
<td>3793</td>
<td>31</td>
<td>2612</td>
<td>21</td>
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</table>

Notes:
1. Recorded figures and clear-ups (first two columns) do not include no-crimes and are for financial years from 1998.
2. Figures in this table are taken from two sources – those in the first two columns are offence based whilst those in the remaining ones are offender based.
3. 1998 and 1999 figures indicate the first time the proportion of offenders tried at the Crown Court.
4. Recorded crime statistics are presented by financial year whilst court statistics are based on the calendar year. Thus, it should be noted that they are not directly comparable.
5. The National Crime Recording Standard was introduced in April 2002. The impact of this was to increase the number of offences recorded by the police and this means that figures for 2002/03 are not comparable with those for earlier years.
Appendix B: Multivariate analyses

Table B.1  Logistic regression analysis predicting no-crime decisions by the police.

<table>
<thead>
<tr>
<th>Variable</th>
<th>B</th>
<th>Standard Error</th>
<th>Wald Statistic</th>
<th>Signif</th>
<th>R</th>
<th>Exp (B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age of complainant (under 16)</td>
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<td></td>
<td>12.2242</td>
<td>.0067</td>
<td>.1064</td>
<td></td>
</tr>
<tr>
<td>16 - 25 years</td>
<td>.809</td>
<td>.2992</td>
<td>7.3077</td>
<td>.0069</td>
<td>.0982</td>
<td>2.2454</td>
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<tr>
<td>26 - 35 year</td>
<td>.981</td>
<td>.3309</td>
<td>8.8019</td>
<td>.0030</td>
<td>.1112</td>
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<tr>
<td>Over 35 years</td>
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<td>.3523</td>
<td>8.7841</td>
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<td>Use of violence</td>
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Notes:
1. N=483 (complainants and suspects). Data were missing in seven cases.
2. Other variables tested were relationship, marital status, place of contact, location of attack, threat of violence, injury and time of complaint.

Table D.2  Logistic regression analysis predicting no further action decisions by the police.

<table>
<thead>
<tr>
<th>Variable</th>
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<th>Signif</th>
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<td>Consensual contact</td>
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<td>.0001</td>
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</table>

Notes:
1. N=282 (complainants and suspects). Data were missing in 30 cases.
2. Other variables tested were relationship, marital status, place of contact, location of attack, threat of violence, injury and time of complaint.

Logistic regression identifies which factors are independently associated with a particular outcome variable when all other factors are held constant. However, it should be borne in mind that any significant statistical relationship between variables does not necessarily imply a causal relationship between the two. A range of
variables\textsuperscript{1} were tested to explore their association with police decisions to no-crime cases and to take no further action. Numbers were too small to produce significant associations at the CPS and court stages.

In order to predict no-criming and no further action being taken by the police, the most satisfactory model was constructed using the following variables: age of complainant and use of violence, as well as evidence of consensual contact in the case of NFA.

The estimated coefficients (B) produced by the model are shown in tables C1 and C2. Each coefficient represents a change in the ‘log odds’ of no-criming or no further action (i.e. a change in the likelihood of these disposals) associated with a one-unit increase in a predictor variable, while controlling for all other predictor variables. It can be seen that for all predictor variables an increase in value is associated with a greater likelihood in a case being no-crimed or NFA-ed.

Because the size of the predictor variables will affect the size coefficient estimate, to obtain a comparable indicator of the effect of the different predictor variables, it is necessary also to look at the Wald statistic and the R statistic. The latter can range in value from -1 to +1 (a positive value indicating that as the variable increases, so does the chances of a case being no-crimed or NFA-ed, while a negative value indicates the opposite), and is a measure of the relative (and partial) contribution of each variable to the model.

In the final models used, violence and age were found to predict no-criming decisions and violence, age and consensual contact were found to predict the police taking no further action.

\textsuperscript{1} The independent variables selected were age of complainant, relationship between complainant and suspect, degree of consensual contact, place of initial contact, location of offence, use of violence and extent of injury.
Appendix C1: Police focus groups - topic guide

Introduction to research.

• How often do you deal with rape cases

Reporting of rape.

• What is the procedure once a rape has been reported to the police?

• How/where is the medical examination carried out?
  - examination suite

• Who carries out the examination?

• Who is assigned to deal with the victim and how do they do this?
  - any special measures

• What happens next?
  - What is the victim told?
  - How and how frequently is the victim kept informed as to proceedings?

[When would you provide a victim with police protection?]

• What is taken into account when deciding how to proceed with rape cases?
  in terms of investigation
  in terms of decision to charge and prosecute

  What kind of evidence is considered important, what PI factors?
  what's the significance / whether significant?

• What are the guidelines for investigating a rape case (force guidelines / CPS)?
  - are the guidelines clear?

• To what extent do decisions made further along the process (ie.CPS, court) affect your decisions as to whether to charge a suspect, generally? (other than advice)
  - opinion of the CPS, perception that CPS will drop case unless good evidence

• What makes a case stronger (aggravating circumstances) or weaker?
  - problems with acquaintance/intimate rapes?

• Are there any difficulties associated with late reporting?
Dropping cases

- What is the procedure when you decide to drop a case?

- How do you officially categorise dropped cases?

- What do you understand to be meant by (a) NO-CRIMES and (b) NFA’s?

- In what circumstances would you no-crime a rape case?
- In what circumstances would you NFA a rape case?
  what is taken into account...when?

- Are there any difficulties in deciding what is a no-crime and what is an NFA?

- Do you ever / how often do you seek CPS advice about proceeding with rape cases?
- In what sorts of circumstances would this be?

- Have your no-crimeing procedures been affected by the Home Office guidelines regarding no-crimeing policy?
  - Home Office circular 69/1986
  - if yes, how?

Other issues

The number of alleged rapes recorded by the police has increased three-fold since 1985. However, the attrition rate has worsened considerably with the proportion of recorded rapes resulting in a conviction for rape lower in 1994, at nine per cent, than in any other year. 10 per cent in 1996.

- What do you see as the reasons behind (a) the high attrition and (b) low conviction rates for rape cases?
  higher reporting rate of acquaintance rapes?

- From a police perspective, what are the most common problems/principal issues perceived to be with rape cases?
  evidential

- To what extent are these problems unique to rape cases? (compared with other sexual offences, for example)

- Are there any other issues or problems you would like to mention?
Appendix C2: CPS focus groups - topic guide

Introduction

- Overview of research
- Introduce themselves/general overview of involvement - any who specialise in rape cases?
- What is taken into account when deciding how to proceed with rape cases in terms of decision to prosecute?
  - What kind of evidence is considered important, what PI factors?
- Is it ever not in the public interest to prosecute? If so, why?
- Are there any guidelines specific to rape/general which you go by?
  - Are the guidelines clear/useful?

  Code for Crown Prosecutors

- To what extent do decisions made further along the process (i.e. court) effect your decisions as to whether to prosecute?
- How much feedback do you get about the outcome of court cases? (re: acquittals)
- To what extent do you think this information this affects/informs your decisions?

Advice

- What proportion of cases that come to the CPS were originally advice cases?
- Why do the police seek advice from the CPS?
  - In what sort of circumstances would this be?
- To what extent do the police make recommendations as to the decision about a case?
  - [McConville and Sanders (1992) research: CPS rarely drop cases which are evidentially weak but when they do it is usually on the initiative of the police and/or after several court appearances]
- Do the police come to you for advice in too few cases/too many?
  - Is this more/less than has been the case in the past?
- Do you receive cases for prosecution that should have come to you for advice?
- Are there any special categories of case for which you might be more inclined to advise no further action?
Dropping cases

• At what stage would a case usually be discontinued?
• What is the procedure when you decide to discontinue a rape case?
  what is taken into account...when?

• In what circumstances would you discontinue a rape case?
• What makes a case stronger (aggravating circumstances) or weaker?
  problems with acquaintance/intimate rapes?

• What makes a good witness?
  - under what circumstances might you find a witness unreliable and therefore
  find grounds for discontinuance?
  mentally unstable, children, dubious morals

Research seems to be showing that cases lost through CPS discontinuance is not so
much of a problem when compared with cases dropping out at the police stage.
However, this is not reflected in public opinion.
• How do you react to criticism about the CPS discontinuing cases?

Other issues

• What do you see as the reasons behind the high drop out and low conviction rates for
rape cases?

• From the perspective of a prosecutor, what are the most common problems/principal
issues with rape cases?
• To what extent are these problems unique to rape cases? (compared with other sexual
  offences, for example)

• Are there any other issues or problems you would like to mention?
Appendix C3: Interview with judges - topic guide

Introduction.

How long have you been judging cases/rape cases?
(Some reference to what you have done already).

How are cases allocated to judges?

What's different with rape cases as opposed to other cases, including those for other sexual offences?

Evidence - [main issue we would be wanting to talk to judges about]

Issue of Consent:
Issue of consent - how is this defined?
does this issue constitute a problem? How?

Admission of evidence:
Under what circumstances would you admit
• sexual history evidence?
• similar fact evidence?

What are the rules regarding the admission of evidence?
(How do the rules differ for the victim and the suspect?)
Why is this / What is the rationale behind this?
Is the law clear in this area?

Problems with rape trials:
What would you say are the sorts of problems associated with evidence in rape trials?
Are these unique to rape cases? - how do they compare to other sexual offence trials/trials generally?

In court:

What sorts of cases fail at Crown Court?

What are the circumstances in which an acquittal might be ordered/directed?
What are the sorts of reasons for a directed acquittal?
[Under what circumstances might a sentence of rape be reduced to a lesser offence?]
What do you feel are the circumstances in which it is appropriate to admit sexual history evidence?
Are there any particular issues that juries tends to have trouble with?

How much do you see delays and changes in court dates for rape trials?
To what extent do you think this is a problem? Why?
The use of screens in court - at judge's discretion
What determines whether you would allow a screen to be used?

The cross-examination of victims - what would you not allow (in addition to sexual history/similar fact evidence)
•cross-examination of victim by her suspect?

**Direction to the jury:**

What is your final direction to the jury comprised of?

What is your view on corroboration ruling?
Under what circumstances would you give a corroboration ruling?
  How is this given?

**Convicting and Sentencing...**

Are the guidelines clear here?

Why do cases fail at court?
Why have cases that fail at court got that far? (Why have they not been subject to attrition?)

Do you think that there are factors of a rape allegation which contribute to its outcome?
What might these be?
  • victim injured
  • stranger rape
  • virgin victim
  • victim's previous sexual history

There has been some call recently for specialist judges for rape cases, as well as other specialist criminal justice personnel
What is your opinion on this?

There is a lot of controversy surrounding the issue of rape in that the conviction rate for rape cases is low whilst the reporting rate is high.
What, in your opinion, could be done to improve things?
Can you provide some information on what needs to be changed?
Appendix C4: Interview with complainants - topic guide

Introduction

About the research - low conviction rate / high attrition rate. Importance of victim withdrawals in contributing to attrition and the need to explore how rape cases are dealt with by police, courts, etc.

Reporting the attack

How easy did you find the decision to report the attack to the police? 
any misgivings about whether to report

How long after the rape did you report the incident?
How did you report the incident? 
police station, phone, etc

What were your expectations of the police in reporting it, at this stage? 
any worries about how you might be treated? attitude towards police knowledge of treatment of rape victims by the police - sources of knowledge

Procedure once you had reported the rape -

Who dealt with you (male/female officer)?
Did you feel that you were believed?

Interview ] who conducted / your feelings
Medical examination ]

How were you treated?
Did these give you any doubts as to whether to go through with it?

Did you receive any help from support services at this stage? 
were you advised by anyone as to help available?

Communication / liaison after leaving the police station

Were you kept informed about what was happening in the investigation? Was anything ever said to you about what next / next stages of process? - by whom? 
P CPS, being a witness in court, difficulties in providing evidence
Withdrawal of complaint

At what stage did you decide to withdraw the allegation?

Why did you decide to do this?

How did you go about withdrawing your allegation

How did the police react when you said that you wanted to withdraw?
   *did the police make this easy / difficult to do / any encouragement?*

Was it your own decision - any encouragement/discouragement (by friends, alleged attacker, police, etc.)
   *possible intimidation*

What were your feelings afterwards, having done this?

In conclusion

Did you receive any help from support services following your withdrawal?
   *were you advised by anyone as to help available?*

Did you find this help valuable?

What is your overall opinion as to how the criminal justice system treats rape victims?
   *what known/believed re: treatment of victims at court*

From your experience, do you think that rape victims are dealt with satisfactorily by the police and other services you have come into contact with?

What are the good and bad points?
   *police / St Mary's Centre / anyone else*

In your opinion, how could rape victims be dealt with better?
Appendix D. Vignettes

(No further action)

CASE ONE

complainant 1: 20 years old
single - mother of 2
no injury

offender 1: 22 years old

date of offence: 11/05/96
date of reporting: 11/05/96

relationship: casually acquainted - met on the evening of the rape at a night-club

complaint: The complainant went one evening with some friends to a night-club. A man approached her and one of her friends during the evening and they got talking. She then spent most of her time in the club with the man talking, dancing and kissing. At the end of the evening, the complainant said goodbye to her friends and accompanied the man to his car as he had offered to drive her home, whereupon the petting continued. The man then drove his car to a deserted area where the complainant was allegedly raped whilst she was kept prisoner for about 2 hours. When she was finally freed she called the Samaritans who in turn alerted the police for her.

disposal: NFA - insufficient evidence.
CASE TWO

complainant1: 43 years old
married
slight injury

offender1: 38 years old
offender2: 21 years old
offender3: 22 years old

date of offence: 17/08/96
date of reporting: 17/08/96

relationship: casually acquainted - met on the evening of the rape at a party

complaint: The complainant was at a night-club where she met a man and subsequently spent much of her time talking and dancing with him. She also admitted to having voluntarily kissed him and participating in sexual conduct whilst in the club. On his suggestion she was apparently happy to follow him outside to a car which they got both into. In the car were 2 other men whom the complainant did not know. She said that she started to feel uneasy as they drove off. They drove to a quiet area where each man allegedly raped the woman in turn and she was made to perform oral sex. Four hours later she was released and told her story to a bus driver who helped her contact the police. She was found to be very drunk at the time.

Witnesses said that everything seemed fine between the two in the club and a security camera video shows them hand in hand. Furthermore, there were some discrepancies in her story as she subsequently remembered additional information not originally divulged in the first interview. The ordeal apparently lasted 4 hours although her account did not entirely cover the time lapsed.

When being interviewed, the complainant remembered little about the other two men in the car. CPS advice was not to proceed, but the complainant took it upon herself to gather some more evidence. She found out more details about a second offender but the CPS maintained there was insufficient evidence to proceed.

disposal: NFA - on advice of CPS.
CASE THREE

complainant1: 32 years old
married
serious injury

offender1: unknown age

date of offence: January 1996
date of reporting: March 1996

relationship: husband and wife

complaint: The complainant had been subjected to a history of abuse from her husband including abuse towards their two children. The occasion in question involved a very violent attack upon the complainant one night. Both she and the offender had gone to bed when the offender started making sexual advances towards her. She was not in the mood and pushed him away, at which point he forced himself on her. Allegedly, the complainant was raped both vaginally and anally, the offender bit her nipple almost off, inserted objects up her anus, tried to strangle and pushed her into a mirror which broke and lacerated her body.

The complainant was seriously injured in the attack.

disposal: NFA - insufficient evidence and the complainant also decided to withdraw her allegation.
CASE ONE

complainant1: 37 years old
no injury

offender1: 40 years old

date of offence: 10/10/97
date of reporting: 13/10/97

relationship: acquaintances - both complainant and suspect were patients in a psychiatric hospital.

complaint: Both the complainant and the offender were resident in a psychiatric hospital. The first anyone knew about this incident was when the complainant, a female patient, called a member of staff and alleged that she had been raped by another patient in the hospital. She said that she had been going to the laundry room to do some washing when the male patient had offered to help carry some of the clothing. She accepted his offer and they went down to the laundry room together. Once inside, they were alone and he allegedly forced himself on her and raped her.

Staff said that, according to procedure in these cases, the police were called even though no one working there believed allegation to be true. It was said that this female patient had a very high sex drive and had made many advances to men in the past.

disposal: No Crime - it was believed that the complainant consented
CASE TWO

complainant1: 37 years old
   single
   slight injury

offender1: unknown age

date of offence: 20/08/96
date of reporting: 20/08/96

relationship: acquaintances - offender is a friend of complainant’s husband

complaint: The husband of the complainant was in prison at the time of the alleged attack. During his time in custody, his wife had started to have an affair with a friend of his, previously known to her. The friend came to live with her and they proceeded to have a relationship of a sexual nature. A short while before the complainant’s husband was due to be released, she made it clear to the offender that she wished their relationship to stop. However, she alleged that the offender was in her bedroom one evening refusing to leave, when he forced himself on her and raped her, including attempted anal intercourse. The alleged attack lasted two hours. A medical examination revealed no genital or anal injuries.

During the police interview the complainant was nervous but was also reported as being ‘giggly’ with no obvious feelings of anger towards her assailant.

disposal: *No Crime* - insufficient evidence
CASE THREE

complainant 1: 25 years old
slight injury

offender: 34 years old

date of offence: 11/04/96
date of reporting: 11/04/96

relationship: prostitute and client

complaint: The complainant was a prostitute. She met the offender in a public area where they talked and agreed to go somewhere for paid sex. She took the offender back to a hotel room, but once in the room he allegedly became very violent and she feared for her life. She wasn't able to leave as he blocked her escape and was very threatening and abusive towards her. She said that the offender proceeded to rape her and at one point he forced a bottle into her vagina. Eventually the offender left and the complainant contacted hotel staff.

During the alleged attack, the complainant said that the door got damaged. However, on investigation, no evidence was found of the damaged door or of the bottle used in the attack.

disposal: No Crime - allegation believed to be false/malicious
Appendix E: Letter to victims

Dear client,

Home Office research on rape cases

The Home Office Research and Statistics Directorate is currently carrying out research looking at the way in which rape cases are dealt with by the criminal justice system. The conviction rate for rape offences has dropped dramatically over the last decade to just 10 per cent in 1996. This is obviously a matter of considerable concern, and the key aim of the research will be to examine the reasons for this. It is hoped that the research will result in improvements in the way such cases are dealt with and lead to a higher level of convictions.

An essential part of the research is to interview rape victims to hear their side of the story. We know from existing research that the majority of rape cases reported to the police are dropped by them at an early stage. The most common reason for this is that victims often withdraw their allegations, but we have little information about why. This will be the main focus of the interviews we are proposing to carry out.

The Home Office is collaborating with the St Mary’s Centre in Manchester in setting up this stage of the research. The Centre obviously comes into contact with victims of rape on a daily basis and is therefore helping to select a sample of women who might be interviewed and is advising us on how best to go about this.

It is important to point out that we would not wish to pry into details of the assaults and any conversations would be entirely confidential. Interviews will be conducted as informally as possible. Counsellors will be available to sit in on the interviews if desired and of course a meeting can be stopped at any time that you wish. Interviews can be carried out wherever is most convenient for you. A room is available at the St Mary’s Centre, but interviewers would be most willing to go to your home or to some other location. Of course, any travelling expenses will be reimbursed.

I do hope that you will be prepared to help us with this important research by agreeing to be interviewed. Thank you for your time.

Yours faithfully,

Jessica Harris
RESEARCH OFFICER
Home Office Research and Statistics Directorate