

Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries

Country briefing: ENGLAND

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Introduction

Attrition - the process by which the majority of reported rape cases fail to reach trial - has become a critical research and policy issue. In virtually all countries where major studies have been published, substantial increases in reporting have not been matched by rises in prosecutions, resulting in a falling conviction rate. Whilst this pattern has been documented in two previous Daphne projects (Regan & Kelly, 2003), it was not universal across Europe. The central research question for the current study was to analyse the similarities and differences in attrition processes across 11 countries with varying judicial systems and socio-legal cultures; it is the first study to do this.

Methodology

The research design combined two strands: the first updated time series national level data on reporting, prosecution and conviction for 33 European countries for the years 2001-2007. The second had at its core a quantitative content analysis of 100 case files in Austria, Belgium, England & Wales, France, Germany, Greece, Hungary, Ireland, Portugal, Scotland and Sweden. This was supplemented by: interviews with key informants; mapping the legal process/procedure; and creating a timeline to document social and legal responses to sexual violence. Project Partners were responsible for the collection and collation of data from their respective countries.

The 100 cases were to be consecutively reported after 1 April 2004 and fitting the following inclusion criteria: cases recorded as rape; female and male *adult* victims (aged over 16/the age of consent); single perpetrator.

All data were collected using case file content analysis, and covered: socio-demographic information on the victim and the suspect; the offence and reporting proceedings; the investigation, prosecution processes and court outcomes; and attrition. The process of data collection revealed gaps, both in official record-keeping and in the variables and categories in the project database.

The English sample was gathered in a metropolitan area. Obtaining the 100 consecutive cases

was relatively straightforward, since access was granted to data gathered for a pre-existing research project conducted by the police force. This project had analysed cases reported from 1st April 2005, meaning the timeframe criteria for the study was extended for this sample. However, all cases were closed, and the data had been coded using similar categories to those for this study and entered on a compatible electronic database. Data on the first 100 cases matching the study criteria were made available to the research team. Additional data collection was needed to complete this study data requirements, requiring access to original police files. The CPS also provided additional data on case outcomes where this was not available in the police records.

The main limitation of this sample is that it is drawn from a slightly later timeframe to other countries. There were also several areas where the police data were inconsistent, particularly the relationship and employment status of victims and suspects and previous offending by suspects.

The data for all countries are presented in more detail in the final report - in English - which will be available at www.cwasu.org from 31 June 2009. Country specific briefing documents focus on attrition and emerging comparative findings.

Law and procedure

The definition of rape in statute is consent based, and is gender neutral with respect to victimisation, but gendered in relation to perpetration. The offence of rape requires penetration by a penis, but covers vaginal, anal and oral assaults. An additional offence - sexual assault by penetration - covers penetration by fingers and objects, and is gender neutral. Consent was defined in statute for the first time in the Sexual Offences Act 2003 as when a person 'agrees by choice, and has the freedom and capacity to make that choice' (§74). The law includes a non-exhaustive list of circumstances that negate consent, including: the use of violence or fear of violence; the victim being asleep, unconscious or having been administered a stupefying substance; and where disability prevents the victim from being able to communicate consent. Where the victim is under the age of 13, rape is a 'strict liability' offence, meaning that a consent defence is not permitted.

The minimum sentence for rape is five years where there are no aggravating factors, eight years with aggravating factors (or higher if victim is under 16 or under 13); the maximum sentence is life imprisonment. Marital rape was recognised as a criminal offence in 1991 and male rape in 1994.

Rape is usually reported directly to the police by the victim or a third party. A report can also be made via a Sexual Assault Referral Centre (SARC), where the victim can attend as a self-referral. These services, in existence since 1986 but introduced more widely across England & Wales since 2000¹, provide forensic examinations, medical assistance, immediate crisis support, advocacy and counselling (see Lovett et al, 2004). In areas where there is no SARC, forensic services may be undertaken by local doctors or private contractors, and the availability and quality of provision is more variable (Pillai & Paul, 2006).

¹ Before 2000 there were a small number of SARCs operating in the North of England, but during the 2000s SARCs were promoted by government and many new services were established in England and Wales. There are now 26 SARCs, although not all areas of the country are covered (Coy, Kelly & Foord, 2009).

Police are responsible for conducting the investigation, gathering evidence and interviewing the victim, suspect and other witnesses. There are 43 police force areas across England & Wales, each operating independently, although some standardised protocols and guidelines are set by an over-arching body - the Association of Chief Police Officers (ACPO). In many areas, specially trained police officers known as Sexual Offence Liaison Officers (SOLOs) or Sexual Offence Investigation Trained Officers (SOITs) are responsible for the parts of investigation involving sexual offence victims, and the option of a female officer is usually available. Detectives usually conduct the main investigation. In London, there are dedicated 'Sapphire'² teams who work specifically on sexual offences.

When the initial investigation is complete the case file is passed over to the Crown Prosecution Service (CPS), although there may be consultation on charging and case building before this point. Prosecutors decide whether to proceed using two tests: whether there is sufficient evidence to provide a realistic prospect of conviction at trial; and whether prosecution is in the public interest. Since 2004 prosecutors have been responsible for the charging of all suspects and are encouraged to be involved in the investigation from an early stage.

England & Wales has an adversarial legal system, and in criminal cases the onus is on the prosecution to prove the defendant's guilt beyond reasonable doubt. Rape is an offence against the Crown and a victim is chief witness to the prosecution rather than a party in their own right. Rape is tried in Crown Court, although preliminary hearings may take place in a Magistrate's Court. Cases are usually heard in open court by a judge and 12-person lay jury. It is the jury that decide whether the defendant is guilty or not, following the trial, although judges can, where they consider the evidence problematic, direct an acquittal: this is rare. Judges make the decision about sentencing. Victims can also claim compensation under separate procedures in the civil courts.

Under the Youth Justice and Criminal Evidence Act 1999 special measures for vulnerable victims, including those of sexual offences, were introduced. These include: use of screens in court to ensure the victim does not have to see the defendant; video recorded evidence-in-chief; the possibility of giving evidence in court via a live video link; the removal of wigs and gowns by the lawyers, judges and other officers of the court. The same Act also sought to tighten regulations on the use of sexual history evidence; evaluation research found success was limited (Kelly et al, 2006).

Attrition in reported rape cases

The attrition data are presented in two sections, the first outlining the national statistics and the second reporting detailed case tracking analysis of the 100 cases. All comparisons made are with the other countries participating in the study.

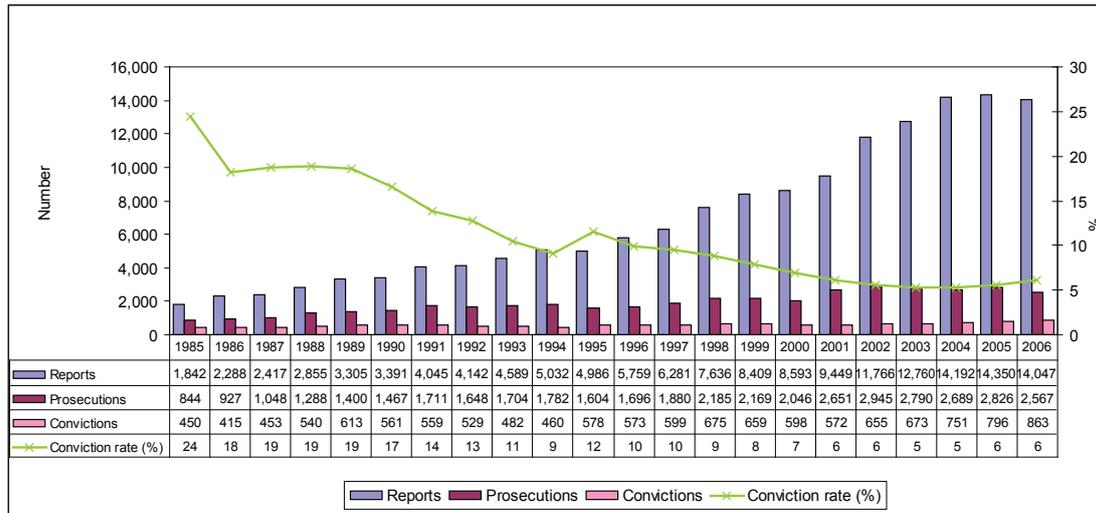
² 'Project Sapphire' is an initiative within the Metropolitan Police, who cover the Greater London area, established to improve police responses to rape in London.

National statistics

National level data for England & Wales represent, perhaps most clearly of all countries in this study, the classic attrition trend evident in many EU states: a virtually continuous year-on-year rise in reporting and only a nominal increase in prosecutions and convictions, with the effect of an ever-decreasing conviction rate (see Fig 1). Reported rapes have increased by 663% between 1985 and 2006 - from 1,842 to 14,047 - albeit the 2006 figures show a slight drop of 2% from those of the previous year. The growth in rape reports can be partly attributed to the widening of the legal definition, with both marital and male rapes being recognised in the early-mid 1990s. However, the most marked points of increase relate to earlier and later periods - the highest annual percentage increase in reporting can be observed between 2001 and 2002 (25%), several years after these reforms, while the next highest, 24%, preceded the reforms in 1985-1986.

In real number terms England & Wales have the highest volume of reports in Europe; Germany, Italy and France, all with larger national populations than England & Wales, have around half the number of reports per year. At the same time, however, this does not translate into the highest reporting rate (per 100,000 of the population): England & Wales at 26.14 is the fourth highest after Sweden, Iceland and Belgium (based on 2006 figures). The Swedish reporting rate is by far the highest at 46.5.

Figure 1: Reports, prosecutions and convictions for rape in England & Wales 1986-2006



Source: Kelly et al (2005) supplemented by latest figures supplied by RDS – Office for Criminal Justice Reform.

Notes: Cases include minors. Data are collated on the principal offence rule.

By contrast, prosecutions have increased far less from 844 in 1985 to 2,567 in 2006, equal to 204%, and the proportion of reported cases leading to prosecution has fallen progressively from a high of 46% to a low of 18% over the same period. Convictions have increased at an even slower rate of 92%, doubling from 450 in 1985 to 863 in 2006. The conviction rate reached an all-time low of 5% in 2003 and 2004, with a slight reversal to 6% in 2005-2006, and 6.5% in 2006-7. This is the second lowest conviction rate in Europe after Scotland.

Case tracking

Victim profile

- The majority (95%) of victims were female, with 5 male victims.
- The age range was 16-85, with an average age of 28. More than two thirds were aged either 16-20 (29%) or 21-30 (39%).
- Reflecting the ethnic profile of the city the sample was drawn from, victims were the most mixed of all countries in the study, with two thirds white (66%) and one third (33%) from black or other non-white backgrounds.
- Just over one third (36%) were single and almost two fifths (38%) were in a relationship (remaining data missing).
- Almost half were either employed (29%) or students (18%) and just over one fifth (22%) were unemployed (remaining data missing).
- One quarter (26%) of victims had a mental health issue - the highest rate of all countries in the study - 12% of which related to substance misuse, and 5% had a disability.
- Just under two fifths (39%) of victims had consumed alcohol around the time of the assault, and 15% had consumed drugs. While the level of alcohol is well within the range evident in other countries, the proportion of drugs is the highest of all those participating. This tended to involve Class A drugs, such as heroin and crack cocaine.
- Four cases occurred in the context of prostitution, and in all of these the victim either had a drugs problem or had consumed drugs around the time of the assault.

Suspect profile

- All suspects were male, as required by the legal definition of rape.
- Suspects were on average slightly older than victims.
- Suspects were also the most ethnically diverse of all countries in the study, albeit information was missing in 8 cases, with the minority (39%) white and more than half (54%) from black, mixed or other non-white backgrounds (remaining data missing).
- Far fewer suspects than victims were single (12%) and a similar proportion (30%) were in a relationship, but there was substantial missing data (57%).
- The same proportion of suspects were employed (29%), though fewer were students (7%) and far fewer were unemployed (16%), but information was missing in more than half of cases.
- 10% of suspects had a mental health problem, most commonly substance misuse issues, which was the highest rate of all countries in the study; the proportion with disabilities (2%) was comparable to suspects in other countries.
- A similar proportion of suspects (35%) to victims had consumed alcohol around the time of the assault and (16%) had consumed drugs. As with victims, the level of alcohol compares to that found in other countries in the study, while the level for drugs is higher.
- Just under one third of suspects had been previously accused of a criminal offence (9% sexual offences, 21% other offences), and one in ten had been previously convicted (2% for sexual offences, 9% other offences).

Offences and contexts

All cases in the England & Wales sample were recorded as rapes: five were re-classified later in the investigation - one as attempted rape, three as indecent assault and one as unlawful sexual intercourse. In addition, 16 were subsequently 'no crimed' - a police category covering false allegations and other instances where, in the opinion of police, no crime took place.

The majority of assaults (78%) occurred in a private space, such as the home of the perpetrator, victim or a friend, while 10% were in public spaces and 8% in semi-public spaces, such as residential homes and pubs/clubs. The most common individual assault locations were victims' homes (29%) and shared homes where the victim lived with a partner (18%). The majority of suspects (77%) were known to the victim, strangers and recent acquaintances comprised just less than one quarter (23%).

The victim sustained documented injuries in just over one third (35%) of cases, which was slightly above average compared to other countries in the study, and especially given the low proportion of victims overall who were forensically examined³. The proportion of those examined who had documented injuries was higher at 45% (n=21 of 47). A weapon was used in just two cases.

Attrition analysis

In the majority of cases the report was made either by the victim (83%) or a known other (7%), but in a relatively high proportion, compared to other countries in the study, a third party report was made by a professional (9%) - and in some of these cases this was a prison or probation officer.

In most cases (86%) the victim was interviewed by police (see Table 1), but this was the lowest rate of all countries participating in the study. In considerably fewer cases (61%) the victim made a formal statement, and a forensic examination was conducted in less than half (47%). In half of the cases where no examination was undertaken (n=27), it was clear that the window for forensic findings had passed, with reporting delayed by several days to several years. There were also cases where an examination was declined by the victim.

In almost all cases where a victim was interviewed, a suspect was subsequently identified (97%, n=83 of 86). A high proportion of suspects (63%) were arrested (equivalent to 76% of those identified), representing the highest rate of all countries in the study: 24% were held in custody at some point during the investigation - mid-range compared to other countries.

Of the 83 cases where a suspect was identified only 65 (78%), were interviewed and only 22 (27%) were charged - the second lowest rate in the study as a whole. In 29 of the cases where no charge was brought, the victim had withdrawn, retracted or declined to complete the initial processes needed to advance the investigation, and all but one of these involved suspects who were well known to the victim, including 19 current/ex-partners. In the remainder the issues at play were primarily evidential: insufficient evidence, concerns that the allegation was false or did not amount to a sexual offence and failure to locate the suspect.

³ The low level of forensic examinations is a surprising finding given the availability of SARCs in the area the data was drawn from.

Just over one fifth (21%) of cases were referred to court, with one discontinued before the full trial took place. Of the 20 cases that were tried, 7 (35%) were convicted and 13 (65%) acquitted - not only one of the lowest conviction rates in the study, but by far the highest acquittal rate.

Table 1: Case progress and attrition

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	86
	Suspect identified	83
	Suspect interviewed	65
Charge	Suspect charged	22
Court	Referred to court	21
	Discontinued	1
	Tried at court	20
	Acquittal	13
	Conviction*	7

*Includes guilty verdicts, guilty pleas and part convictions

Table 2 presents in more detail the points during the legal process at which cases were discontinued, who the primary decision-maker was (victim, police, prosecutor, judge or jury) and the main reason why. This analysis illustrates that attrition in this case tracking sample is spread across the course of the criminal justice process, with around one quarter of cases respectively lost during the early (26%), mid (24%) and late (28%) stages of the investigation, and a proportion (15%) of the final quarter withdrawn, discontinued or acquitted during the final court phases.

In the early and mid investigation, decisions to discontinue can be primarily attributed to either victims (38%) or police (11%). Of particular importance in this sample are the number of cases where victims declined to complete the initial processes necessary for progressing the investigation, withdrew or retracted their complaints (23% early investigation, 15% mid investigation). Three quarters (76%, n=29 of 38) of these cases involved suspects who were well known to the victim and half (50%, 19 of 38) involved current/ex-partners. Further details from the case records indicated that at least 16 of these cases involved ongoing or previous domestic violence. Police decisions at these early stages tended to focus on the genuineness of complaints, with two allegations designated false during the early investigation and a further five during the mid investigation.

Very few victim withdrawals (n=2) occurred in the latter stages of the investigation. Reflecting the nature of national procedures, most discontinuances (n=21 of 28) during this phase were attributable to prosecutors, with sufficiency of evidence a primary consideration. One further case was designated false. In a relatively small number of cases (n=5) police made the decision not to proceed due to a range of factors, including evidential issues, failure to identify/locate the suspect and concerns that the allegation did not amount to a sexual assault. There were two further discontinuances that occurred just prior to the case being heard at court - one a victim withdrawal, where the suspect was a current partner, and one a case where prosecutors decided there was insufficient evidence.

The proportion of cases in the English sample designated false allegations (8%) is relatively high compared to other countries in the study, although it is within the range of 1-9% found across all countries: 8% is also consistent with that found in previous research (Kelly et al, 2005).

Table 2: Detailed attrition point analysis

When case fell out	Whose decision	Why fell out	N / %
Early investigation	Victim	Declined to complete initial process	12
		Victim withdrawal of co-operation	10
		Retraction	1
	Police	False allegation	2
		Insufficient evidence	1
Early investigation total			26
Mid investigation	Victim	Victim withdrawal of co-operation	10
		Declined to complete initial process	5
	Police	False allegation	5
		Insufficient evidence	1
		No evidence of sexual assault	2
Prosecutor	Suspect deceased	1	
Mid investigation total			24
Late investigation	Victim	Victim withdrawal of co-operation	2
	Police	Insufficient evidence	2
		Suspect not identified	1
		Suspect not located	1
		No evidence of sexual assault	1
	Prosecutor	Insufficient evidence	12
		False allegation	1
		No evidence of sexual assault	1
	Other	4	
	Unknown	3	
Late investigation total			28
At court before case heard	Victim	Victim withdrawal of co-operation	1
At court before case heard total			1
Just before court	Prosecutor	Insufficient evidence	1
At court before case heard total			1
At court during/at conclusion of case	Judge	Legal technicality	1
		Unknown	3
	Jury	Unknown	9
At court during/at conclusion of case total			13
Convictions			7
TOTAL			100

This case tracking sample is unusual in the high proportion of cases acquitted at trial: almost two thirds (65%). As a consequence analysis comparing acquittals and convicted cases has been undertaken, with the caveat that the baseline N is small for both categories.

- All victims were female in acquitted cases.

- More victims were single among the acquitted (50%, n=5 of 10, where known) than convicted cases (20%, n=1 of 5, where known).
- In three acquittals victims had consumed drugs, whereas none had in convicted cases; alcohol consumption did not appear to influence acquittal in any direct way, although the only two cases in the trial sub-sample where the victim was reported to be severely affected by alcohol were acquitted.
- More suspects among the acquitted (54%, n=7 of 13) than convicted (14%, n=1 of 7) cases were UK nationals, although they were not all from the same ethnic backgrounds.
- Fewer suspects who were acquitted had been previously accused (38%, n=5 of 13) or convicted (23%, n=3 of 13) of a criminal offence than those who were convicted (71% and 43% respectively).
- Fewer suspects who were acquitted had consumed alcohol (54%, n=7 of 13) than those convicted (71%).
- Among those acquitted, 77% (n=10 of 13) were well known to the victim, while 23% (n=3 of 13) were recent acquaintances, whereas in the convicted sub-sample, more were strangers or recent acquaintances (43%).

Characteristics of convicted cases

In the English sample of 100 cases, seven resulted in a conviction for rape (one was a guilty plea). All but one, where sentencing details were unknown, received a custodial sentence of between 2.5⁴ and 8 years.

Although only a small number of cases were convicted, comparing this sub-group to the original 100 cases revealed the following factors that appeared to make conviction more likely.

- All victims were female.
- The average age of victims in convicted cases was slightly older: 33 compared with 28 years.
- A higher proportion of victims in convicted cases (n=4, 80%) were employed.
- Alcohol consumption was present in many of the convicted cases, by victim and/or offenders at a higher level than the whole sample, although none was reportedly severely affected by it; none had consumed drugs.
- In 4 out of 7 cases (57%) the victim had documented physical injuries - a higher proportion than in the English sample as a whole (35%).
- Six out of 7 (86%) convicted offenders were non-UK nationals.
- A lower proportion of convicted offenders were well known to the victim (57%, n=4 of 7) than in the case tracking sample as a whole (78%); a higher proportion (43%, n=3 of 7 compared with 23%) were strangers or recent acquaintances.
- Five out of 7 (71%) convicted offenders had been previously accused of a crime (3 of sexual offences), and 3 (43%) had been previously convicted (1 for sexual offences).

⁴ The sentence was lower than the minimum in sentencing guidelines, but was linked to a guilty plea.

In terms of investigative procedures:

- All victims in the convicted cases had undergone a forensic medical examination.
- All offenders had been arrested, and all but one held in custody.

Conclusions

The data from England was both similar and different to other countries in revealing ways, with implications for policy and practice which we summarise here.

From the national data

- Reporting has increased in numeric terms higher than any other country in the study, with a 663% increase between 1985-2006, and England and Wales have the fourth highest reporting rate per 100,000 in Europe.
- Prosecution and conviction rates have not kept pace with the changes in reporting, falling to an all time low of 5% in 2004.
- Despite a recent small increase England and Wales have the second lowest conviction rate in Europe, second only to Scotland.

From the case tracking data.

- Attrition is spread across the investigation and prosecution process.
- Whilst a relatively high proportion, compared to other countries, were designated false reports, this is still lower than the perceptions of many CJS personnel.
- There was a relatively high rate of reporting of rapes in relationships, especially in the context of domestic violence, but few victims in these cases felt able to continue to support the prosecution.
- The acquittal rate at court was the highest in the study, and the conviction rate one of the lowest.
- The majority of cases resulting in a conviction reflect stereotypes of rape and rapists.

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