



# Violence Against Women: Newsletter

Issue no. 3  
August 2010

## An introduction to the VAW newsletter

Welcome to our third Violence Against Women Newsletter. We hope it will help you practically in your work on VAW and keep you up to date with developments across government, HQ and CPS Areas and highlight new legislation, cases of note, policy and guidance.

We are developing the format of the newsletter so would welcome comments about usability. Please also continue to let us know what you would like to see in future editions, including good practice in your Area by contacting us at:

VAW.strategymanager@cps.gsi.gov.uk

Highlights from the August newsletter include:

- opening comments from our new **VAW Champion** Ian Rushton CCP for Lancashire;
- details on changes to the **performance management** of VAW prosecutions in 2010-11;
- advice for prosecutors on the nature of **stalking and harassment** from Laura Richards (available on page 6);

- updated legal guidance for prosecutors on the copying **indecent images of children** for the defence (please see page 14 for details);
- updated guidance for prosecutors on **communicating with victims**. To accompany the guidance a very useful list of Do's and Don'ts has been developed please follow the link for a copy: [http://infonet.cps.gov.uk/infonet/idcplq?IdcService=GET\\_FILE&dDocName=doc\\_033576&RevisionSelectionMethod=latest&allowInterrupt=1](http://infonet.cps.gov.uk/infonet/idcplq?IdcService=GET_FILE&dDocName=doc_033576&RevisionSelectionMethod=latest&allowInterrupt=1) See page 11 for full details

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## VAW update



### Welcome from our new VAW champion, Ian Rushton (CCP)

I am delighted to make a short contribution to this, the third Violence Against Women Newsletter. In our last Newsletter, published in May, we announced the retirement of Sarah Jane Gallagher - my predecessor as CCP VAW Champion. Sarah Jane worked tirelessly in promoting and developing VAW work and is a really tough act to follow. However, we did manage a brief hand over session, all of fifteen minutes, down a crackly mobile phone line!

Since picking up the reins from Sarah Jane, I have had the privilege of working closely with VAW team from the Equality and Diversity Unit in Headquarters. Their enthusiasm and expertise is quite admirable as is their total commitment to providing support and guidance for colleagues up and down the country, who, day to day, are dealing with VAW casework issues. As in previous editions of the Newsletter there is a wealth of valuable, practical information over the next few pages.

Can I take this opportunity, on behalf of the Service, to say a fond farewell to

Karen Morgan-Read who will be leaving CPS on secondment to the Foreign and Commonwealth Office. I had the pleasure of working with Karen in Cheshire several years ago when I was her CCP and I saw, first hand, her total dedication to domestic violence issues and to the SDVC initiative in particular. She quickly moved to the former Policy Directorate where her contribution to the VAW cause was displayed on a wider canvas! It is no exaggeration to say that over the last few years, Karen has directly and indirectly helped hundreds of distressed women and hugely enhanced the reputation of the Service.

The coalition government has recently re-energised the State's response to Violence against Women in all its forms. The Service needs to continue in all its efforts to play its full part in delivering justice for victims of these crimes. I regard it as a huge privilege to champion this cause for the Service and, in particular, to sponsor an effective flow of what Sarah Jane in a previous Newsletter, called the "vital, effective flow of information and ideas between those developing policy...and those prosecuting the cases themselves."

Finally, a brief reminder that the national VAW Seminar takes place on 14 October in HQ. I am acutely aware, in these financially challenging times, that releasing co-ordinators to attend this event is something of a tall order. However, we have thought long and hard about the content of the day and liaised extensively with Group Chairs as to the programme, which has a very practical emphasis, complimenting the

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delivery Core Quality Standards. We hope to see as many of our co-ordinators as possible at the event.

### **The coalition approach to ending Violence against Women**

The Home Secretary has said the coalition government aims to "end violence against women and girls."

In a speech to the Women's Aid National conference on 16 July Theresa May stated that:

'We need a new approach – not to start from scratch, but to build on the existing work. Not to disregard the work already done but to improve on it and to fix its problems...there is still important work to be done there in improving prosecution rates for domestic violence and for rape, improving rehabilitation for victims and in protection from repeat offenders.'

The coalition government has been clear that a cross government approach, with commitment from all departments, is the best way for tackling the issue. In light of this commitment the first cross government meeting with ministerial colleagues on VAWG was held on 21 July. The Attorney General attended on behalf of the CPS and gave an update on the work of the CPS VAW strategy and improvements in prosecutions across the VAW strands.

The inter-ministerial group will be advising on the best response to VAWG and will publish in the Spring.

The Home Secretary has also committed to delivering a full government response to Stern.

### **Recent questions to the Attorney General, Dominic Grieve QC and Solicitor General, Edward Garnier QC on VAW in the House of Commons**

Answers given by the new Attorney General and Solicitor General outlining their commitment to the VAW agenda at Parliamentary Questions on 27 July are detailed below.

When asked whether potential cuts in CPS funding would lead to a lesser focus on VAW issues he stated that:

'Although there will clearly be financial constraints on all Departments, let me reassure him that it is certainly my intention and that of the Director of Public Prosecutions to ensure that the CPS can maintain its record of momentum and good progress in this area.'

The AG went on later in the debate to confirm that:

'tackling domestic violence will remain a key priority'

Full text on the debate is available at: <http://www.theyworkforyou.com/debates/?id=2010-07-27a.856.0>

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### VAW performance management in 2010-11

In the last four years we have seen improvements in the handling of VAW crimes by the CPS resulting in a rise in conviction rates and improvements in the quality of prosecutions. Between 2006-07 and 2009-10 the number of VAW prosecutions has increased by 25% to 85,904 defendants. Successful prosecutions, from charge to conviction, have overall increased from 65% to 72% in the same period – a 7% increase in convictions compared with an overall 2.5% increase across all CPS cases. The continued monitoring of this data is crucial in ensuring that the CPS builds on this improvement in performance.

In 2010-11, VAW Area performance will no longer be measured against a target and the formal performance review process will take place at the Group, not Area level.

Although performance will no longer have targets, the VAW crime measures will continue as validation measures for these crimes alongside an assessment of 12 Core Quality Standards (outlined below).

#### Validation measures:

VAW Validation measures contain the key information required to monitor performance on VAW as part of the quarterly Group Performance Review (GPR) process. They focus on:

- unsuccessful prosecution rates (attrition) for domestic violence, rape and sexual offences; and

- rape caseload (volume) as a % of indictable only Crown Court caseload (new measure in 2010-11)

Groups will be assessed on performance against the national average and trend performance over time. This assessment will be provided quarterly from HQ, with only a few lines on the highest priority issue/s for groups to address – e.g. main focus on rape volume; or on DV victim issues.

This would include any key issues related:

- to charge to NFA ratio;
- cautions (simple, conditional),
- bindovers (DV only),
- flagging (rape only); and
- reasons for unsuccessful outcomes, broken down as victim issues, conviction after trials, jury acquittals (rape only) and discontinuances.

Data on each of the above will be available at group level from HQ.

As the overall data for validation measures is only prepared at Group level by HQ, VAW Coordinators and EDCEMs, together with business teams, will benefit from looking at their Area data locally to understand any local performance issues.

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### **Core Quality Standards:**

There are 12 Core Quality Standards.

Core Quality Standards Monitoring (CQSM) which came into operation on 1 July 2010.

The standards will be assessed against a national dip sample of cases. For VAW, approximately 10% of rape cases will be specifically flagged for assessment, across CPS nationally. Three flagged rape cases will be identified annually in each Unit (approximately 180 currently existing Units) – two identified by Unit heads and one from a Peer Reviewer. The sample will be selected randomly.

CQSM will provide data on the quality of charging decisions, disclosure, instructions to counsel, victim code compliance and DCV letters.

### **Rape Monitoring Group – development of new rape measures:**

The cross government Rape Monitoring Group (RMG) is reviewing national rape measures. A small working group has been set up to develop joint police/CPS measures that avoid conflicting targets and encourage effective multi-agency work by summer 2010. The group involves representatives from Police, CPS, Home Office, Ministry of Justice and Survivor's Trust. The aim is to rationalise any proposed measures with the current CPS rape measures. VAW coordinators and EDCEMs will be informed of any new proposals as soon as possible.

### **Support for Coordinators and EDCEMs:**

A short briefing has been prepared for EDCEMs and discussed at their meeting in July, to help in their understanding of VAW and hate crime performance. **The VAW seminar in October for VAW Coordinators** will hold a workshop to help in assessment and understanding of VAW performance.

For further details on the VAW seminar for VAW coordinators please contact [Antonia.theodorou@cps.gsi.gov.uk](mailto:Antonia.theodorou@cps.gsi.gov.uk)

### **VAW performance in Q1 2010-11**

Our updated data briefing on performance in VAW for Q1 is available at:

[http://infonet.cps.gov.uk/consump/idcplg?IdcService=GET\\_FILE&dDocName=doc\\_033910&RevisionSelectionMethod=latest&allowInterrupt=1](http://infonet.cps.gov.uk/consump/idcplg?IdcService=GET_FILE&dDocName=doc_033910&RevisionSelectionMethod=latest&allowInterrupt=1)

### **Enhanced Women's Service – Bail Accommodation Support Service**

An 'Enhanced Women's Service' is now available from 18 June 2010 until 31 March 2011 as part of the Bail Accommodation Support Service

This service will provide additional levels of support for female defendants with multiple or high levels of need that cannot be met through the normal BASS accommodation or support only service. It provides an opportunity to divert women away from custody and aims to increase the number of women being bailed and referred to BASS.

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Prosecutors are asked to consider this when dealing with bail issues.

For further information prosecutors should see paragraph 4.5 at: [http://psi.hmprisonservice.gov.uk/psi\\_2010\\_34\\_pi\\_09\\_2010\\_bass.doc](http://psi.hmprisonservice.gov.uk/psi_2010_34_pi_09_2010_bass.doc);

### Conditional Cautions with a Women Specific Condition

Legal Guidance has been developed to assist prosecutors when they are deciding if a conditional caution with a Women Specific Caution (WSC) is an appropriate disposal.

Conditional cautioning pilots for women offenders were established in Leeds, Bradford and Liverpool. In these areas, a Conditional Caution could be issued to women offenders requiring them to attend a full needs assessment at a Together Women Project Centre. The aim of the intervention was to address and reduce the offending behaviour and break the pattern of offending (in particular, of those who have been a victim domestic abuse). The pilots ran from 1 September 2008 until March 2009 and an evaluation report was produced at the end which has informed legal guidance to assist prosecutors when deciding if a conditional caution with a WSC is an appropriate disposal

The guidance includes:

- background information about development of these conditions;
- examples of where a conditional caution with a WSC could be

considered as a suitable rehabilitative disposal; and

- a booklet of Women's Community Projects which may support the imposition of a conditional caution with a WSC.

Further information about this type of disposal can be found at: [http://infonyet.cps.gov.uk/infonyet/infonyet\\_live/Gateway/xml\\_033471](http://infonyet.cps.gov.uk/infonyet/infonyet_live/Gateway/xml_033471)

## Domestic Violence

**Stalking and Harassment: 'offenders engaging in stalking behaviour can follow a path that ultimately can lead to homicide'**

Article by Laura Richards BSc, MSc, FRSA, Criminal Behavioural Psychologist, Specialist Adviser on Violence and Director of Protection Against Stalking and Karen Morgan-Read, CPS

The recent homicide of Chris Brown and attempted murder of Sam Stobbart in Northumbria by Raoul Moat unfortunately continues to remind us of the serious consequences that can result from cases involving stalking. Sadly, the findings from recent homicide reviews are all too familiar. Key areas highlighted are:

- the lack of understanding regarding stalking and harassment;

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- insufficient risk identification, assessment and management;
- poor communication; and
- insufficient information sharing.

The findings of those homicide reviews have informed this article and the S-DASH Risk Identification Checklist which is currently being rolled out across England and Wales as part of the wider Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH 2009) Risk Identification and Assessment Model implementation plan. The DASH (2009) is also used to make a Multi-agency Risk Assessment Conference Referral (MARAC) referral. You need to be aware of its existence and the risks when making decisions about stalking cases. Further information about DASH and S-DASH can be found at: [www.dashriskchecklist.co.uk](http://www.dashriskchecklist.co.uk)

[http://www.caada.org.uk/practitioner\\_resources/riskresources.htm](http://www.caada.org.uk/practitioner_resources/riskresources.htm)

CPS legal guidance on prosecuting cases of domestic violence can be found at [http://infonet.cps.gov.uk/infonet/idcplg?dcService=GET\\_FILE&dDocName=doc\\_026800&RevisionSelectionMethod=latest&allowInterrupt=1](http://infonet.cps.gov.uk/infonet/idcplg?dcService=GET_FILE&dDocName=doc_026800&RevisionSelectionMethod=latest&allowInterrupt=1)

### **Frequently Asked Questions re: Stalking and harassment:**

**What is stalking?** -There is no legal definition of stalking, however, it is generally accepted that it includes repeated attempts to impose unwanted communications and/or contacts on

another in a manner that could be expected to cause distress and/or fear in any reasonable person.

### **Types of stalking behaviour –**

Behaviours might seem completely normal – until repeated. They then take on a more sinister meaning. That is why the context and detail of the behaviour is crucial when understanding the risks posed to a victim. The behaviours include unwanted communication which can consist of: telephone calls; letters; Email; Fax; text messages on mobiles; graffiti; and messages on social networking sites.

In addition to unwanted communication the defendant may take part in a number of associated behaviours including: sending or leaving unsolicited materials/gifts; ordering or cancelling goods/services; making vexatious complaints (to legitimate bodies); cyberstalking; threats; property damage; and violence

There are two distinct sets of behaviour: about 50% of stalking cases involve repeated and frequent contacts (usually approaching or following) and lasting only a day or two (these then peter out of their own accord); or, more worryingly, those that continue beyond two weeks. These often extend to months or years and involve both unwanted communication and contact. They may involve threats and violence (Purcell, Pathe and Mullen, 20004).

According to the BCS (2006) up to one in five citizens will experience stalking in the UK and approximately 5 million people will experience stalking in one

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year. The majority of stalkers are known to their victims. They tend to be male and the victims female. However, akin to other forms of Violence Against Women stalkers come from all backgrounds and are not homogenous. Motivations will also vary.

Stalkers may not always have had a relationship with the victim, they may be acquaintances, colleagues as well as strangers. Those who target a complete stranger are rare and unusual, but it does happen.

#### **What do we know about risk?**

The risk of assault has been most extensively researched. The most dangerous and malignant type of stalkers are those who have had an intimate relationship with victims. It is crucial that you do not think it is any less serious if there has been no physical violence. Police and prosecutors need to make a clear and compelling case for a posed threat, even though the defendant may not have yet physically attacked the victim. In some active stalking cases, aggressive prosecution resulting in imprisonment may save a life when the offender follows a path to violence.

The S-DASH Risk Identification Checklist can be used in all stalking cases. If stalking is present, 11 further questions must be asked in relation to the stalking behaviour(s).

#### **High risk factors in Stalking and Harassment cases:**

##### **Is the victim very frightened?**

Research demonstrates that the victim

is frequently the best assessor of risk posed to them (Weissz, Tolman, and Saunders2000). Stalking often consists of behaviours that, when taken at face value, may appear to be quite ordinary (e.g. walking past the victim's house, asking the victim to go out on dates). With repetition, however, these behaviours can become menacing, and the victim can feel unsafe and threatened.

##### **Is there a previous domestic abuse and harassment history?**

(both the current victim and/or other victims) One of the best predictors of future behaviour is past behaviour. Research shows that many victims will suffer more than 100 incidents before reporting to the police (Sheridan, 2005).

##### **Does the defendant vandalise or destroy property?**

Various studies have identified that a sizeable proportion of stalkers (up to two thirds) will damage their victim's property (Blaauw et al., 2002). Property damage has been identified by researchers as preceding or co-occurring with physical attacks on the victim (Harmon et al., 1995, 1998).

##### **Does the defendant turn up unannounced more than three times per week?**

Stalking rarely takes place at a distance. Research tells us that nearly all stalking cases will ultimately involve face-to-face contact between victim and stalker (Mullen et al., 2000). The research informs us that those stalkers who visit the victim's home, workplace, or other places frequented by the victim more than three times in a

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week are those who are most likely to attack.

**Does the defendant follow the victim or loiter near the victim's home, workplace etc?** Most stalkers will be seen by their victims. The positive aspect of this is that evidence can be collected, particularly if the victim keeps a log of stalker sightings and behaviour.

**Has the defendant made threats of physical or sexual violence?** Stalkers frequently threaten their victims, either directly or indirectly. Examples of indirect threats include sending wreaths or violent images to the victim (often anonymously). Stalkers will often make specific written or verbal threats and research demonstrates that these should be taken particularly seriously. Threats have been found to be even stronger predictors in cases of very serious violence (James and Farnham, 2003).

**Has the defendant harassed any third party since the harassment began?** (e.g. friends, family, children, colleagues, partners or neighbours of the victim). On average, 21 people connected to the victim will be affected (Sheridan 2005). Therefore secondary victims will be identified.

**Has the defendant acted violently to anyone else during the stalking incident?** Secondary victims will be identified in a majority of stalking cases, and these can be a valuable source of evidential information.

**Has the defendant engaged other people to help him/her?** (wittingly or unwittingly). The ability of a stalker to pose as other persons and/or to draw information out of third parties should never be under-estimated. Many stalkers will devote hours each day to their stalking campaign, and are capable of stalking their victims for many years (Meloy, 1996).

**Is the defendant abusing/misusing drugs/alcohol?** Substance abuse by the stalker has been found to be associated with physical assault on the victim in a significant number of cases (Rosenfeld, 2004).

**Is there a history of previous violence in the past?** (This could be physical or psychological. Intelligence or reported) One of the best predictors of future behaviour is past behaviour. It may not always be physical violence but could include the psychological impact as well. It should be noted, however, that some of the most seriously violent stalkers identified in the past had no recorded criminal history (James and Farnham, 2003).

Other relevant information/additional observations made by professionals will cover a range of factors including, but not limited to: the level of fear in victim, victim's beliefs concerning stalker's motives, weapons owned by stalker, nature of unwanted 'gifts'/items left for victim, and whether victim has responded in any way to the stalker.

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### Use of Expert Witness

It is important that when prosecutors are dealing with complex and serious cases that the possibility of using an expert witness is considered. Assessment can be based upon expert testimony and other evidence which may convince the judge of dangerousness on a clear standard of proof. Calling an expert witness represents another way of trying to establish a posed risk. Those who specialise in analysing, profiling, researching or investigating violent behaviour can give their opinions based on their training and experience of prior cases.

### CPS Legal Guidance

The CPS is developing specific legal guidance to support prosecutors dealing with cases of Stalking and Harassment. This will be available on the Infonet late August 2010. We are also supporting leading charities such as: the Protection Against Stalking ; the Network for Surviving Stalking; and the Suzy Lamplugh Trust, who, with the support of the funding from the Home Office, have launched a national help line to assist victims who are experiencing this most frightening of crimes.

### Contact details The National Stalking Helpline: 0300 636 0300

[www.stalkinghelpline.org](http://www.stalkinghelpline.org) – Practical advice and information to anyone who is currently or previously been effected by harassment or stalking.

If you would like further information on the DASH, S-DASH or masterclass

training events in October and November go to [www.dashriskchecklist.co.uk](http://www.dashriskchecklist.co.uk) or contact [laura@laurarichards.co.uk](mailto:laura@laurarichards.co.uk)

## Forced Marriage and Honour Based Violence and FGM

### Forced Marriage and Honour Based Violence Specialist Prosecutors

A number of specialist HBV/FM prosecutors have now been trained. A list of specialists is available for CPS staff at:

[http://infonet.cps.gov.uk/consump/idcplg?IdcService=GET\\_FILE&dDocName=xls\\_033344&RevisionSelectionMethod=latest&allowInterrupt=1](http://infonet.cps.gov.uk/consump/idcplg?IdcService=GET_FILE&dDocName=xls_033344&RevisionSelectionMethod=latest&allowInterrupt=1)

### Forced marriage e-learning training

The FMU has designed an e-learning training package to support professionals, including education, social and health care professionals, police officers, housing officers, the voluntary sector and others dealing with forced marriage in the course of their work. The training will give professionals a basic understanding of the key issues surrounding forced marriage, how cases can present and how to respond appropriately. Case studies explore:

- issues surrounding forced marriage;

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- some of the ways in which Forced Marriages can impact a young person's life;
- the importance of inter-agency work; and
- specific cases studies for agencies including police, social care and housing.

This tool complements the multi-agency practice guidelines for professionals and should be read alongside the training.

To access training please visit the Moodle site: [www.fmelearning.co.uk](http://www.fmelearning.co.uk)

## Rape and Sexual Violence

### Direct Communication with Victims (DCV) Guidance in relation to Rape and Sexual Violence

Guidance for prosecutors on communicating with victims in relation to rape and other sexual offences has recently been updated on the CPS Infonet. Offence Definitions and Sample Letters in Part 2 of the DCV Legal Guidance now contain definitions of offences contained in the Sexual Offences Act 2003 and a new example of an appropriate letter for a victim in a rape case. The guidance can be accessed a:

[http://infonet.cps.gov.uk/infonet/Legal/legal\\_guidance/xml\\_003993](http://infonet.cps.gov.uk/infonet/Legal/legal_guidance/xml_003993)

The new sample letter is informed by suggestions and recommendations from several independent sources including *Rape: The Victim Experience Review* by Sara Payne MBE; the DCV Audit Follow-up Report by HM CPS Inspectorate (HMCPSI); and Baroness Stern's *Independent Review into how Rape Complaints are Handled by Public Authorities in England and Wales*. In addition the letter was the subject of consultation both inside CPS and with members of external specialist support services for victims.

One of the catalysts for the new letter was Sara Payne's finding that: '*victims were highly critical of the way in which decisions not to proceed with a case ...are communicated*'. She recommended: '*The CPS should improve the way in which they inform victims that their case will not proceed to trial*'. She also found that victims: '*wanted to be treated with dignity and respect*' and '*key to this was the issue of "real choice"*'. The letter offers a choice between a face to face meeting and a telephone conversation with the prosecutor who made the decision in their case. It also invites feedback on how victims feel they have been treated by CPS.

HMCPSI found examples of letters: '*where cases were dropped through no fault of the victim and the letter failed to acknowledge the disappointment they might feel*'. The audit identified as important that the letter: '*expresses an appropriate level of empathy with the victim*'. In addition: '*More could be done to include details of sources of support that might be available to the victim*'. Representatives of the voluntary sector, whom we consulted,

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pointed out the importance of detailing locally available support services and providing local, as opposed to national, telephone numbers. This will prevent the victim potentially having to make several calls in order to obtain the local details.

HMCPSP previously recommended the inclusion of a: *'clear telephone number and name in case the victim wished to contact CPS'*. It is crucial that any number provided to a victim will be answered. Connecting with the voicemail of someone who is rarely at their desk would be a cause of deep frustration for a caller.

Commenting on a specific rape case they had examined and the explanation for a decision not to proceed HMCPSP said it: *'contained too much detail, mentioning what other witnesses had said which contradicted the evidence of the victim and giving quotes from the defendant's interview, which the victim may have found upsetting'*. Writers should put themselves in the position of the victim receiving such a letter or imagine how it would feel if the recipient was a member of their own family. It is vital that we avoid any implication that the reason for not proceeding with a case is due to the victim's own fault.

Baroness Stern included a section in her review on *'Honouring the experience'*. She highlighted the importance, where cases cannot go to court, of informing victims: *'how useful the information they have given will be in assembling intelligence that can be used to protect others...acknowledging that complainants are concerned not just about themselves but also for the common good.'* The new sample letter

contains an appropriate form of words for conveying this message.

The update to the legal guidance also contains a very useful list of **Do's and Don'ts for those writing DCV letters** please follow the link below for a copy: [http://infonet.cps.gov.uk/infonet/idcplg?IdcService=GET\\_FILE&dDocName=doc\\_033576&RevisionSelectionMethod=latest&allowInterrupt=1](http://infonet.cps.gov.uk/infonet/idcplg?IdcService=GET_FILE&dDocName=doc_033576&RevisionSelectionMethod=latest&allowInterrupt=1)

The quality of DCV letters in rape cases will be monitored as part of the CQSM framework.

## Child Abuse

### Shaken baby syndrome

*Henderson, Oyediran, Butler [2010] EWCA Crim 1269, June 17 2010.*

The appellants, H, B and O, in joined cases, appealed their convictions for manslaughter, GBH and cruelty, and murder respectively. All three had been convicted in cases involving shaken baby syndrome. They sought to adduce fresh medical evidence. The CA dismissed the appeals of H and O, but allowed the appeal of B. Moses LJ gave the judgment of the court. If a conviction is to be based merely on the evidence of experts then that conviction can only be regarded as safe if the case proceeds on a logically justifiable basis. Justice in such cases depended on proper advanced preparation and control of the evidence from the outset at the stage of investigation and thereafter.

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The jury could only approach conflicting expert evidence if that evidence was marshalled and controlled before it was presented to the jury. The process of narrowing the real medical issues was vital as the judge should be in a position to identify whether the expert evidence from either side was admissible.

### Parallel care / criminal proceedings

The 2008 Practice Direction Guide to Case Management in Public Law Proceedings (commonly known as the Public Law Outline (PLO)) was revised with effect from 6 April 2010.

The 2010 update refers to parallel care and criminal proceedings and states that “... *linked directions hearings should where practicable take place as the case progresses. The timing of the proceedings in a linked care and criminal case should appear in the Timetable for the Child.*” (para 3.9)

The Timetable for the Child includes not only legal steps but also social, care, health and education steps. Due regard is required to be paid to the Timetable to ensure the court remains child-focussed throughout the progress of the proceedings and that any procedural steps proposed under the PLO are considered in the context of significant events in the child’s life.

The expectations under the PLO are that the proceedings should be finally determined within the timetable fixed by the court in accordance with the Timetable for the Child - the timescales in the PLO being adhered to and being taken as the maximum permissible time for the taking of the step referred to in

the Outline unless the Timetable for the Child demands otherwise.

Case Management Orders will include orders relating to the disclosure of documents into the proceedings held by third parties, including medical records, police records and Home Office information and the disclosure of documents and information relating to the proceedings to non-parties.

### Family Proceedings Rules

The Family Proceedings (Amendment) (No.2) Rules 2009 amended the Family Proceedings Rules 1991. Former Rule 10.20A was replaced by a new Part XI dealing with the communication of information relating to proceedings concerning children. See Rules 11.2 – 11.9 in particular.

The Family Proceedings Courts (Miscellaneous Amendments) Rules 2009 amend the Family Proceedings Courts (Children Act 1989) Rules 1991 by inserting a new Part IIC.

### Cases of note

*A Local Authority v S [2009] EWHC 2115 (Fam)* – key High Court judgment regarding the medical experts’ significant difference of opinion in a non-accidental head injury case (shaken baby syndrome).

*R v Levey (Stephen) [2006] EWCA Crim 1902* – the findings in care proceedings could not be a final determination of the criminal proceedings. The paramount consideration in the care proceedings

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was the welfare of the child and issues of prosecution or conviction could not be determined by that court. Where possible, linked criminal and care directions hearings should take place as the cases progressed.

Re W (Children) [2010] UKSC 12 – the presumption against a child giving evidence in family proceedings could not be reconciled with the approach of the European Court of Human Rights to strike a fair balance between competing rights. The effect of this judgment is that children may now be cross-examined in family proceedings on the contents of their ABE interviews.

Re H (Children) [2009] EWCA Civ 704 – appeal by the police against refusal to allow disclosure of information from care proceedings for further possible criminal investigation. Appeal allowed. Guidance given on the matters to be contained in the police application.

Re L (Care proceedings: risk assessment) [2010] 1 F.L.R. 790, C.A. (Civ. Div.) - there must be close liaison between courts having the conduct of care proceedings and parallel criminal proceedings. Where a judge in care proceedings decided at a fact-finding hearing that the perpetrator of serious injuries to a child was one of its parents, but that it was not possible to decide which, and where in parallel criminal proceedings the father was charged with offences including s.18 and s.20 assaults and the mother with offences including cruelty based on neglect, the proceedings would have revealed material not available in the care proceedings (the mother was unable to cross-examine the father in those proceedings) and the outcome of the

criminal proceedings was plainly relevant to the outcome of the care proceedings. The criminal proceedings should have been heard first.

Legal guidance is being updated.

## Indecent Images of Children

The CPS Legal Guidance was recently updated because of the case of Crown Prosecution Service v LR [2010] EWCA Crim 924.

In the case of CPS v LR the defendant faced a trial on an indictment that alleged he had made indecent photographs of a child contrary to section 1(1)(a) of the Protection of Children Act 1978. It was also alleged he had possession of such photographs contrary to section 160(1) of the Criminal Justice Act 1988. The defendant pleaded not guilty. Part of his case was that at least some of the images were of women over the age of 18, who therefore were not children protected by the legislation.

The CPS offered arrangements to enable the defendant and his legal advisers to examine the material which were deemed by the Judge as inadequate. The Judge ordered that the defence be given a copy of the images subject, to appropriate undertakings as to the safe custody and control of the images. The prosecution objected to the order and

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did not comply with it. The Judge found that the non compliance with the order was an abuse of process.

The CPS appealed against the ruling of the Crown Court Judge that the proceedings against the defendant should be stayed as an abuse of process. The appeal was dismissed as the Court of Appeal found no basis for concluding that the order was inappropriate, let alone unreasonable to such a degree that interference with would be justified.

The legal guidance has been updated to ensure that everyone is aware that if the defendant's solicitor or counsel or expert (for any reason) wishes to view the indecent photographs/pseudo-photographs or examine the defendant's hard drive, the prosecution should provide the defence with suitable access to the relevant material. Such access must enable the defendant to have private and confidential discussions with his legal advisers, unsupervised and unobserved by police officers or representatives of the CPS. Whenever possible, such access should take place either on police premises, or at the offices of either the defendant's solicitors or the offices of the defence or prosecution expert. The accused should, of course, only be permitted access whilst in the company of their legal representative.

It will not always be the case that the defence need full access to a forensic computer image. Likewise it may not always be appropriate for law enforcement agencies to deny access to a forensic computer image.

The guidance goes on set out the approach which should be followed when deciding whether or not to release such material:

- a) In cases involving a request for a technical examination of the evidence, a meeting should take place between defence and prosecution technical experts in order to agree what should be supplied. If it is necessary the defence technical witness may be given private (or controlled) facilities to examine the images at law enforcement premises at reasonable hours
- b) If the person in charge of the investigation considers it necessary, then the work may take place other than at police premises if the defence technical witness signs an appropriate undertaking.
- c) If the defence team cannot for good reason view the indecent images at a police station, for example in cases where the defendant is in custody, the prosecution should correspond with the defence in order to agree access to the indecent images by the defence team. Such access can be at an appropriate venue for example a court, the defence solicitor's office or counsel's chambers etc.
- d) In situations (a), (b) and (c) above, where no agreement is reached, the case should be referred to the court to hear

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argument and, if necessary, issue appropriate directions.

- e) If the court directs that copies of the indecent images should be supplied to the defence solicitor or counsel, prosecutors should ensure that the order contains a proviso that the material is to be released only upon the solicitor or counsel signing an undertaking as to the safe custody and control of the image etc

In the case of a technical witness, prosecutors should ensure that the order contains a proviso that the material is to be released only upon the technical witness signing an undertaking as to the safe custody and control of the image etc.

identify opportunities to replicate in London.

Revising the policing/prosecution strategy and policy on prostitution with the newly appointed ACPO lead on exploitation of prostitution – DCC Simon Byrne of Greater Manchester Police.

Responding to concerns raised by prosecutors and police relating to the practical administration of amended sec 1 of the Street Offences Act – loitering and soliciting for prostitution, particularly around the new persistent element; we are working with ACPO to resolve and consider revised guidance.

## Prostitution

The CPS is currently working on:

Preparation for the 2012 Games (prostitution and trafficking for sexual exploitation) which includes training and awareness raising (particularly of our domestic legislation);

Encouraging reporting of sexual and physical violence on sex workers, either formally or anonymously. Considering the good work of Armistead project in Liverpool to inform investigations and prosecutions for violence against sex workers. The prostitution policy lead will be visiting the project in August to

## Trafficking

On 29 July the CPS began a three month public consultation on its policy statement on the prosecution of human trafficking cases. It's purpose is to explain to those who help victims of trafficking what the law is, our role in dealing with trafficking cases and what measures can be employed by police, prosecutors and courts to help victims who decide to support criminal proceedings. We hope to get feedback not only on how useful and clear it is, but also on what further measures can be considered.

[www.cps.gov.uk/consultations/ht\\_index.html](http://www.cps.gov.uk/consultations/ht_index.html).

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Forced labour – new stand-alone offence came into force on 6 April to deal with those offences where exploitation can be proved but trafficking elements either not present or difficult to evidence. To drive up investigations and prosecutions, development of agreement with ACPO UKBA GLA and CPS which we hope to publish in October 2010.

Project Acumen report into trafficking for sexual exploitation to be published end of August 2010 to provide Ministers and law enforcement with an up to date and comprehensive estimate of the size of the problem of trafficking for sexual exploitation. The report will be of Ministerial interest and is likely to attract media coverage. It covers both England and Wales and publishes estimated figures for the number of people involved in prostitution that have been trafficked at a regional level. CPS contributing to response.

The provisions for trafficked victims which flow from the Council of Europe Convention on trafficking have now been in force for 12 months. A 12 month review of the effectiveness of the mechanisms to identify and refer victims to appropriate support services has recently been conducted. The outcomes will be considered together with a critical report from the Anti-trafficking third sector group to identify improvements to the processes.

## Feedback

Thank you for taking the time to read our newsletter. As always we are keen to invite your feedback on improving the next issue.

Please send you suggestions and comments to:  
[VAW.strategymanager@cps.gsi.gov.uk](mailto:VAW.strategymanager@cps.gsi.gov.uk)  
or telephone 020 3357 0553

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