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RESEARCH ARTICLE

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The attrition problem: The role of police officer's decision making in rape cases

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Abstract

Rape offences in England and Wales garner incredibly low levels of convictions. The policing stage of a complaint experiences high levels of case discontinuances. The aim of this research is to explore police officer's decision making in rape cases and how that shapes the attrition of cases. The method employed in this study is qualitative interviews, with retired or serving police officers, with the use of vignettes. This study found that police officers prioritise and continue with cases that they predict to be most likely to reach a conviction. Such predictions are guided by assessments over the strength of the evidence in cases, informed by a range of legal and extra-legal factors. An overarching prediction employed is how likely a jury would be to convict a case. However, the participants reported that they find it incredibly difficult to accurately predict jury verdicts, making such decisions premised on a flawed logic.

KEYWORDS
police decision making, rape, the attrition problem, violence against women

1 | INTRODUCTION

The criminal justice response to rape in England and Wales fails to deliver justice to victims. In so far as victims are exceptionally unlikely to see their case end with a successful conviction, a phenomenon referred to as the attrition problem (Hohl & Stanko, 2015). The police are known as the 'gatekeepers' to justice, for a complaint of rape to progress through the Criminal Justice System (CJS) the police must first record the offence and commence an

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investigation (Hohl & Stanko, 2015, p. 327). It is widely reported that the policing stage of rape cases suffer from the highest levels of attrition (Brown et al., 2007).

Over the past 20 years there have been numerous positive developments that aim to curb rape case attrition. There are now specially trained officers with expertise in investigating rape offences, in some police forces they also have specialist units that primarily work on rape cases. A recent study highlights the positive impact rape units can achieve, Rumney et al. (2019) carried out a case file analysis and conducted interviews with nine officers based in rape units from Avon and Somerset constabulary. The analysis found rape units incite a higher likelihood of prosecution, victim retention, and victim referrals to support services. Findings from the interviews demonstrate that the officers felt the right people with the necessary expertise were present in a specialist unit, specialist units were best placed to respond to complex rape cases, and team working was most effective. There has also been the creation of Sexual Assault Referral Centres to enable victims to give evidence in a more comfortable and supportive environment. Rape victims will now also have the offer of support from Independent Sexual Violence Advocate services (Home Office, 2017). Despite any positive changes the levels of convictions remain very low (Murphy et al., 2021).

A recent government review of the response to rape offences found several issues (George & Ferguson, 2021). Namely, rape investigations are taking longer, this could be due to an increase in digital and third-party evidence and an increase in pre charge disclosure requirements. Police investigators also reported an increase in cases lacking sufficient evidence and a decline in the quality of police case files. A lack of resources was found to create challenges around high workloads and staff turnover. Further, victim support services were found to lack the funding to sufficiently meet demand.

Much of the previous literature analysing the factors influencing rape case attrition has utilised a police case file review method to identify characteristics of cases that are more likely to end in a conviction (Brown et al., 2007). This method does not allow for an examination of why the officers working on cases made the decisions they did that impacted the progression of cases. Research that does focus on police officers' perceptions that can influence case progression is largely on the topic of rape myths (Sleath & Bull, 2017). Research measuring rape myth acceptance within samples of police officers generally utilises quantitative surveys (Murphy et al., 2013). Therefore, rich in-depth explanations around how such attitudes can impact on actions taken in cases is lesser understood. This study aims to address this gap in the literature by exploring qualitatively police officer's decision making in rape cases and how that influences case attrition in England and Wales.

This study argues that police officers primarily make decisions on rape cases based on predictions of how likely cases will be to reach a conviction, including how likely a jury will be to deliver a guilty verdict. Cases deemed to have a higher likelihood of conviction were less likely to be discontinued and more likely to be prioritised in terms of investigatory effort. However, this study found that police officers, by their own admission, find it incredibly difficult to accurately anticipate jury verdicts. Thus, this mode of decision making is premised upon a flawed logic.

This article reviews the literature explaining the patterns of rape case attrition before outlining the methodology utilised for this study. The article ends with an explanation and discussion of the findings of this study.

2 | THE ATTRITION PROBLEM

There are several points through the CJS where rape cases can be discontinued. Firstly, victims may not report the offence, or they may subsequently withdraw from the process. For cases that have been reported, the police can opt to take no further action. Some cases will garner a charge and may be referred to the CPS, in turn the CPS may opt to take no further action. The final point in the justice process where a case can suffer attrition is at trial when a jury return a verdict of not guilty (ONS, 2018).

The Crime Survey for England and Wales estimates that less than one in six female victims of rape or assault by penetration aged 16–59 reported the crime to the police (ONS, 2021). Nonetheless, according to police recorded crime data compiled by the Rape Monitoring Group, part of Her Majesty's Inspectorate of Constabulary and Fire &

Rescue Services (HMICFRS), the levels of reported rape offences have been increasing since 2012 (HMICFRS, 2019). The latest police recorded crime data shows the charge rate for rape remains low and has been decreasing, for the financial year 2017/2018 it was 3% (victims aged 16 and over; HMICFRS, 2019).

Numerous studies have utilised a police case file review method to track the trajectory of rape cases to understand the patterns of attrition. Kelly et al. (2005) analysed data collected from three Sexual Assault Referral Centres and the London Metropolitan Police and identified that 80% of the cases suffered attrition at the police stage of the system and only 8% resulted in a conviction. Feist et al. (2007) also generated similar results based on a sample of cases from eight police force areas with a 26% charge or caution rate and a conviction rate of 6%. A further study that also reviewed a sample of the London Metropolitan Police service cases found that 40% of the sample were discontinued by the police (Hohl & Stanko, 2015). A recent case file review of London Metropolitan Police cases found 21% of the sample were referred to prosecutors and the rate of victim withdrawal was 48% (Murphy et al., 2021).

2.1 | Factors influencing attrition

Numerous studies have identified characteristics in rape cases that predict a higher likelihood of attrition. Several factors have been commonly observed to impact on case outcomes. A key factor is when the perpetrator used violence during the offence and the victim sustained injuries, cases with such a characteristic are more likely to reach a trial (Murphy et al., 2021). Furthermore, the victim/perpetrator relationship is significant, cases where the victim and perpetrator had a pre-existing relationship are more likely to be discontinued than a stranger rape offence (Gregory & Lees, 1999). Moreover, when victims are intoxicated at the time of the offence the likelihood of attrition is increased (Schuller & Stewart, 2000).

Feist et al. (2007, p. 78) found five variables that predicted a case getting to court and gaining a conviction: 'that the assault was linked to sexual offence against a separate victim; the victim's medical history was obtained; the offender threatened the victim; forensic evidence was recovered; and where witnesses were present'. Similarly, Murphy et al. (2021) found that when there were inconsistencies in the victim's account, or when the victims and suspects testimonies were in contradiction, and the officers believe there to be a low chance of conviction cases were more likely to suffer attrition. On the other hand, when there were witnesses and forensic evidence this lessened the chances of attrition.

It has been theorised that a reason why rape cases rarely gain convictions is that they are inherently difficult to convict. In the sense that often there is no independent corroboration to suggest there was a lack of consent, rather cases involve the victim's and suspect's testimony portraying a different set of circumstances (Lea et al., 2003). This does not provide much evidence to give a jury confidence beyond reasonable doubt. Lea et al. (2003) found even when police officers wanted to progress rape cases, they could not do so due to the evidential requirements.

A further explanation posed to account for the high levels of case attrition is that the policies and procedures governing practice in the area are appropriate, rather the issue lies in the implementation of such policies (Stern, 2010). This issue has been termed the implementation gap.

2.2 | Police decision making in rape cases

An alternative explanation for the high levels of case attrition at the police stage is a culture of scepticism directed towards victims (Kelly et al., 2005). A culture of scepticism dictates that the police are excessively concerned that women may be making false allegations of rape. In turn they may be inclined to discontinue cases and make little attempt to investigate them. This is despite research demonstrating that the prevalence of false allegations is incredibly low (Kelly, 2010). Correspondingly, a victim being perceived to lack credibility is a common factor in the literature to explain cases being discontinued (Venema, 2016). Venema conducted qualitative interviews with 10 officers in the

USA. It was found that they make judgements around victim's credibility and the strength of the evidence in cases and subsequently view cases as lying on a continuum. Some cases they classify as legitimate, others false and some in between as ambiguous. They claim their initial judgements do not impact on their actions; however, it can influence how vigorously a case is pursued.

Linked to the idea of a culture of scepticism is the presence of rape myths and victim blaming attitudes influencing case progression. Research suggests there are many myths and stereotypes surrounding rape stemming from sexist attitudes, reflective of women's unequal position in society (Kelly, 1988). Rape myths can be defined as 'descriptive or prescriptive beliefs about rape … that serve to deny, downplay or justify sexual violence' (Bohner, 1998, p. 14). A common rape myth is referred to as the 'real rape' myth, this myth depicts a rape that is viewed as the archetypal example of a rape offence. A stranger rape, with the use of violence, in a public place, where the victim sustains injuries is one such example of a 'real rape' (Kelly, 1988). However, most rapes are committed by someone known to the victim and occur in a private place (Waterhouse et al., 2016). The factors that make a case less likely to suffer attrition outlined above (Section 2.1) depict elements that are in line with the 'real rape' stereotype. It is well documented individuals subscribe to rape myths and mock jury research suggests such attitudes may influence jury deliberations (Leverick, 2020). Research into rape myth acceptance in police samples concludes that overall levels are relatively low (Sleath & Bull, 2017). However, research has found that police officers attribute blame for rape offences according to victim's personal characteristics, with victims who were raped by their husband garnering more blame than those who were not (Areh et al., 2009). Similarly, stereotypes of rape victims have been found to influence police perceptions. Maddox et al. (2011) conducted qualitative interviews with police officers in the US. Three key themes were identified from the qualitative interviews regarding the way the police viewed victims. They saw a real victim as intelligent, well dressed, emotionally distressed, and vulnerable. Victims that appeared to be unemotional, angry, or overtly sexual were seen as having an ulterior motive and unreliable. Overall, the police officers appeared to care about the victims of rape, but still held stereotypical views in line with some rape myths. The notion of rape myths is not without critique, Reece (2013) asserts that rape myths are a mixture of fact and opinion that are interpreted in a negative way and subsequently labelled as myths. Reece goes on to argue there is a danger of creating 'myths about myths' (2013, p. 446). Nonetheless, this standpoint has been widely discredited (Conaghan & Russell, 2014).

LaFree (1981) posited that police officers operate in a legally rational way, that is pre-empting whether cases will be prosecuted and proceeding on that basis. Similarly, Kelly et al. (2005) concluded that police officers 'second guess' the likely outcomes of cases and make decisions accordingly. Correspondingly, Souilliere (2005) found that officers rely on legal and extra-legal factors when making decisions on rape cases. Legal factors are those sanctioned by the legal definition of an offence. Whereas extra-legal factors are legally irrelevant elements of a case that are not sanctioned by law or policy to have a role in the response to an offence (O'Neal, 2017). Alternatively, Brown et al. (2007, p. 369) reported that police decision making is based on 'both attitudinal prejudices and a rational legal logic with the latter dominating'. Recent research argues that there is now a move away from attitudinal prejudice guiding police practice in favour of evidential factors as the primary concern (Murphy et al., 2021). A legally rational style of decision making when starting with a likely jury decision and then working backwards through a CPS decision has been described as a downstream orientation and can result in applying a higher standard of proof than beyond reasonable doubt (Emerson & Paley, 1992). Campbell et al. (2015) linked this downstream focus to officer's assessments of victim's credibility. Campbell conducted qualitative interviews with 45 officers in Houston police, USA to assess how they weigh up a victim's credibility. The perceptions of victim's credibility have a 'downstream' focus in that they were based on assessments of prosecutor's opinions on credibility. In the absence of physical evidence credibility is pushed to the forefront of considerations. Influential factors guiding judgements of credibility were consistency of victim statements, the victim's criminal history, and victim intoxication.

This study aims to explore police officer's decision making in rape cases and how that shapes the progression of cases. The method utilised to explore this aim is documented next.

3 | METHODOLOGY

The method utilised in this study to explore the above aim was semi-structured qualitative interviews, with recently retired or serving police officers, with the use of vignettes. I carried out the interviews in a variety of locations, such as, the participants home, a police station, or a café. The data collection took place over the summer months of 2017. The findings presented here are taken from a larger project (Sinclair, 2020).[1]

3.1 | Participants

In total 29 interviews were conducted; all the participants were either serving officers or had recently retired[2] and had experience of working on rape cases. Access was gained to the participants using a poster distributed through various networks with further participants recruited using a snowball method. Eighteen of the participants were men and 11 were women, 18 were retired and 11 were serving police officers. Eight participants had retired within five years from the time of the interview, four had retired within six to 10 years, and five within 11 to 12 years. The mean age of the sample was 51 years old (range: 31–66). All the participants were White British. The participants held a variety of different ranks and positions (of which 19 were a Detective role), with an average length of service of 24 years (range: 7–32), in one of five different police forces (see Table 1 for a table displaying the full demographic details of the participants).

3.2 | Interviews

To explore how police officers make decisions in rape cases and what influences their decisions vignettes were used in the interviews. Three different vignettes depicting rape offences were presented to the participants in the form of small booklets. The booklets included photographs to illustrate the hypothetical scenes where the offence took place, a victim's perspective on the offence and the suspect's perspective on the offence.

The first vignette depicted an offence in line with the 'real rape' stereotype, here a young woman who was intoxicated was raped by an individual she had never met before in a public place. The second scenario included an acquaintance rape where the victim and suspect were students at university together and had been drinking with friends in the preceding hours. The third vignette depicted a date rape scenario with middle aged individuals who had been on a first date and the victim invited the suspect back for a coffee at the end of the date. The participant read each vignette and was asked a series of questions. The questions in the interviews were designed to elicit how the participants would handle each of the scenarios and why, if they were working on the case. The discussions covered what investigative steps would be taken, what evidence is likely to be collected, how strong is the evidence, and the likely journey the case would take through the CJS.

3.3 | Analysis

Qualitative thematic analysis was carried out on the interview data following Braun and Clarke's (2006) six stages. Firstly, I thoroughly familiarised myself with the data by reading the transcripts in depth. Secondly, I began to code the entire data set line by line using the software Nvivo 11. Next, I began to group together codes into larger themes. I also wrote a short analytic description for each theme; this included any links with concepts and theories in the academic literature. Following this, I moved on to refining the themes and checking that within each theme the coded data worked coherently together by reading all coded data extracts within each theme. The fifth stage involved analysing each theme and identifying the 'story' of each theme. I defined and refined my themes until I had a thematic

TABLE 1 Demographic details of the participants

Participant	Police rank	Retired or serving	Length of service	Age
Female officer 1	Detective constable	Retried 12 years ago	15 years	58
Female officer 2	Sergeant	Retired 2 years ago	21 years	45
Male officer 3	Police constable	Retired 4 years ago	30 years	53
Male officer 4	Detective superintendent	Retired 12 years ago	30 years	62
Female officer 5	Detective sergeant	Retired 12 years ago	30 years	61
Male officer 6	Detective inspector	Retired 11 years ago	30 years	66
Female officer 7	Sergeant	Retired 7 years ago	30 years	55
Male officer 8	Detective inspector	Retired 7 years ago	30 years	55
Female officer 9	Detective superintendent	Retired 11 years ago	30 years	59
Male officer 10	Police constable	Retired 2 years ago	30 years	51
Male officer 11	Sergeant	Retried 3 years ago	30 years	55
Male officer 12	Inspector	Serving	13 years	36
Male officer 13	Inspector	Serving	14 years	42
Male officer 14	Sergeant	Retired 8 months ago	30 years	58
Male officer 15	Detective sergeant	Serving	14 years	40
Male officer 16	Detective inspector	Retired 7 years ago	30 years	55
Female officer 17	Detective constable	Serving	7 years	31
Male officer 18	Detective sergeant (Deputy senior investigating officer in charge of rape unit)	Serving	15 years	34
Female officer 19	Detective constable	Retired 6 years ago	30 years	60
Male officer 20	Detective sergeant	Retired 10 years ago	24 years	61
Male officer 21	Detective chief inspector (Senior officer in charge of rape unit)	Retired 5 years ago	32 years	54
Male officer 22	Detective inspector and crime registrar	Retired 2 years ago	32 years	60
Female officer 23	Sergeant	Serving	14 years	38
Female officer 24	Police constable	Serving	28 years	47
Male officer 25	Detective constable	Retired 1 year ago	14 years	56
Male officer 26	Detective constable	Serving	20 years	45
Male officer 27	Detective sergeant	Serving	20 years	43
Female officer 28	Detective sergeant	Serving	23 years	46
Female officer 29	Detective inspector	Serving	20 years	43

map outlining each theme and codes that all my data fitted within (see Figure 1 for a thematic map that represents the themes discussed in this paper).

3.4 | Ensuring quality

Several steps were taken during the collection and analysis of the data to ensure that quality findings were produced. Guba (1981) proposes four criteria that qualitative research should strive to meet to ensure quality; they are, credibility, transferability, dependability, and confirmability. Shenton (2004) provides practical examples of how each of these criteria can be fulfiled. Several of Shenton's examples have been applied in this study and they will now be documented under each of Guba's criteria.

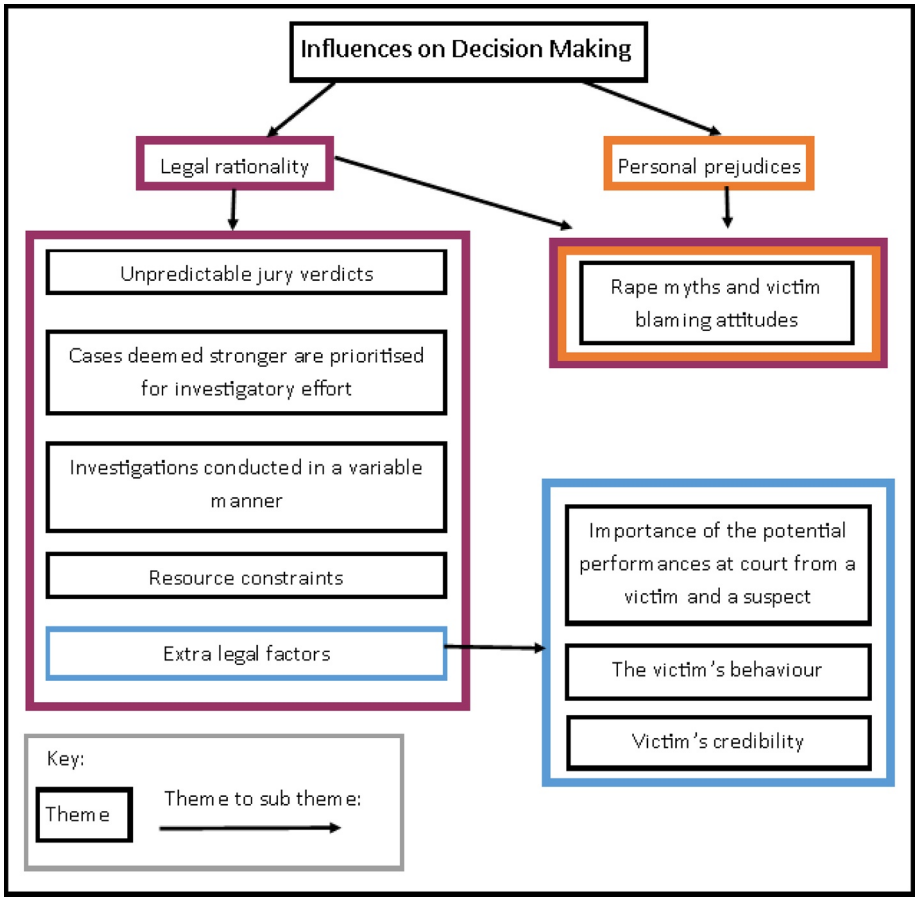

FIGURE 1 Thematic map

Credibility can be described as how far the findings in a study are an accurate reflection of the phenomena under scrutiny (Shenton, 2004). Credibility was achieved here in several ways, firstly, as numerous studies have relied upon the use of vignettes to explore police officers' decision making in rape cases, the methods used here are well established (Goodman-Delahunty & Graham, 2011). Additionally, site triangulation was employed as officers from five different police forces were sampled (Shenton, 2004). A further way credibility was enhanced, that is not one of Shenton's examples, was by utilising vignettes that presented life like scenarios allowing the interviews to be based in accounts of actual practice, rather than opinions in an abstract sense. This meant the data collected bridged the gap between perceptions officers have on cases and how that in turn can impact case outcomes. There is sufficient methodological detail provided here to satisfy the transferability and dependability criteria. Researchers can infer how far the findings can be transferred and applied to similar situations. Similarly, dependability involves future researchers being able to replicate the methods in the future (Shenton, 2004). Finally, confirmability has been realised as the study's shortcomings have been discussed and the potential effect they can have on the findings (see Section 5.1). The findings of the analysis are documented next.

4 | FINDINGS

The participants were asked a closed question around how likely they felt each vignette would be to end in a conviction and gave answers on a Likert scale. The stranger rape scenario (vignette one) was seen as the most likely to

result in a conviction with 79% giving a response of 'extremely', 'very likely' or 'likely'. The acquaintance rape involving student's scenario (vignette two) was viewed as the least likely to be convicted with 83% giving a response of 'totally unlikely' or 'not very likely'. 59% of participants felt the date rape scenario (vignette three) was 'extremely', 'very likely' or 'likely' to end in a conviction. The participants were then asked to discuss what actions they would take and why if they were an officer working on each of the cases depicted in the vignettes. What influenced and guided the participants proposed decision making will now be explored.

4.1 | Legal rationality

The notion of legal rationality was an overarching framework that guided the way all the participants made decisions on the rape scenarios presented to them (LaFree, 1981). This legally rational logic took the form of 'second guessing' (Kelly et al., 2005) the journey the cases would take through the CJS. Such predictions were informed by the participants weighing up the strength of the evidence in the vignettes and continuing with cases deemed to be evidentially stronger through the eyes of the CPS and a jury. The quote below from a detective inspector demonstrates this,

> If you put any element of doubt in the mind of a jury you don't get a conviction… You have to look at that when you're sending cases to CPS. You can't waste their time if you look at it and think 'that won't get to a trial'. I have struggled with some when I thought it passes the threshold test but I know the CPS will discontinue the case. Do you send it for the sake of it? You shouldn't really.
>
> (Female officer 29, serving detective inspector)

In the quote above the officer implies that even in cases where the evidence can be deemed as strong, cases can still be discontinued based on predictions of CPS decision making. This is an example of the downstream thinking resulting in a harsher standard than is legally necessary (Emerson & Paley, 1992).

4.1.1 | (Un)predictable jury verdicts

An element of the legally rational mode of decision making that the participants often utilised as a rationale for discontinuing cases is that a jury will be unwilling to convict the perpetrator, regardless of what the evidence suggests or whether they believe the perpetrator is guilty personally, as the quote below demonstrates,

> There are so many cases that don't end up going to court that are genuine jobs that we can't prove to the point where it's a good idea to take it to court… if you are 90% sure that there's no way a jury can convict.
>
> (Female officer 17, serving detective constable)

However, 20 of the participants asserted that they find jury decisions in rape cases incredibly difficult to accurately predict, despite this being a core basis of how they make decisions, as the comments below explain,

> I've had cases before that I think are cast iron and I've seen men walk out of court. I've seen the opposite once with the abduction, imprisonment, and rape, the main protagonists were convicted. The rapist got acquitted, I couldn't believe it, even on retrial.
>
> (Male officer 21, retired detective inspector)

> Juries are fickle people; they are very difficult to predict.
>
> (Male officer 22, retired detective inspector)

Thus, the legally rational predictions the officers employ are based on a deeply flawed and inconsistent logic. Officer's by their own admission appear to make such predictions on a stereotype of the lay publics' views, not an accurate prediction of the outcomes of cases as the quote below sums up,

> It's really tough, the bit that gets me is the lottery with the jury … We set a bar so high to get to court, victims are judged, and CPS will look at a video interview of a victim and think how she will look in court because they have to.
>
> (Female officer 29, serving detective inspector)

There is in fact research that casts doubt on the accuracy of predictions that agents in the CJS undertake, showing support for the finding here that police cannot accurately predict the outcomes of cases. Lea et al. (2016) reviewed rape cases that had been reported to a police force in the South of England over a 21-year period. A sample of non sex worker cases were compared with a sample of sex worker cases that had similar characteristics. Despite cases with sex workers being presumed (by police and CPS) to be hard to convict due to concerns over a lack of victim credibility, sex worker cases were surprisingly more likely to gain a conviction.

Conversely, there is research that suggests the predictions officers make on jury's verdicts in rape cases are largely a true assessment of the public's viewpoints. Leverick (2020) reviewed both qualitative and quantitative mock jury research studies that seek to assess how attitudes impact on jury verdicts. The review concluded that there is 'overwhelming' evidence that rape myths influence juror's deliberations and verdicts (p. 256). This indicates that the police and CPS and the judgements they make do have some accuracy.

4.1.2 | A variable service

The participants reported that cases deemed evidentially stronger and more 'convictable' would also have greater investigatory resources channelled into them. In the context of resource constraints within policing (George & Ferguson, 2021), the participants stated they cannot apply equal time and effort to every complaint, so they prioritise some cases over others. The quotes below display the prioritisation that occurs,

> It has been so under resourced… It gets to the stage where you think that one will go to the bottom of the pile as it's not going anywhere.
>
> (Male officer 27, serving detective sergeant)

> I say to my detectives, if you know it won't go anywhere let's look at, well, we could take whatever actions here to get evidence but even with all that it won't go anywhere. We make a decision to get a statement, do the minimum, put a rationale on that crime to file it.
>
> (Male officer 15, serving detective sergeant)

Thus, victims receive a service that is subject to variability based on predictions made about the trajectory of their case (that officers themselves have little confidence in due to the unpredictability of jury decisions), which is inherently unfair. It could be that for some cases if they had more effort applied, they would be less likely to suffer attrition. This act of prioritisation is evidence of an implementation gap as the policies guiding procedures are carried out in variable ways (Stern, 2010).

As well as the prioritisation of certain cases, 11 participants raised concerns over investigations conducted in a variable manner based other factors, including the quality of the initial attendance, availability of specially trained officers, and quality of supervision, as the quotes below captures,

> Getting the initial evidence can end up with anyone on it if there isn't a trained officer around…The officers do their best but they're not always trained. The investigation is good and the CPS too but the front end initial stuff and training is lacking at the moment.
>
> (Female officer 23, serving detective sergeant)

> We have the same procedure but the service will be different depending on who's on and resources, so it's variable.
>
> (Female officer 24, serving police constable)

Unless the correct procedures are followed to ensure the capture of any available evidence, and the confidence of the victim is gained at the beginning of an investigation, a case can be disadvantaged later on in the process. This could be because of less evidence being collected or giving an opportunity to the defence lawyer to discredit the investigation at trial.

4.1.3 | Extra legal factors

The participants consider a range of factors when judging which cases are more 'convictable' and will thus be prioritised and continued with. The key factors that influence such legally rational decisions made on the vignettes will now be discussed.

Factors around the victim

The perceived credibility of the victim was a prominent extra-legal factor that shaped the participants assessments of how strong they deemed the evidence in each vignette to be. Previous research asserts that the victim's account dictates the lines of enquiry in investigations and is something to be proved or disproved (Barrett & Hamilton-Giachritsis, 2013).

Any element that can make the victim's account appear unreliable greatly diminishes the strength of the case. The participants predicted how credible the victims in the scenarios would appear in front of a jury and how the CPS would perceive their credibility in relation to the victim in vignette two:

> It sounds really bad, but rape investigations are credibility based, they're half evidence half credibility. If she's got no reporting history or no false allegations or anything like that she's made an immediate report on this occasion there would be nothing stopping it. If she's made three reports in six months that have gone nowhere because of lies, then we wouldn't even get it to CPS.
>
> (Male officer 15, serving detective sergeant)

The findings from this research suggest several factors influence the assessments made on victim's credibility. The presence of multiple victims making a complaint against the same perpetrator was viewed to strengthen the allegations. Similarly, presenting a consistent account of the offence to the police strengthens the case as it minimises the chance that the defence can shed doubt on the victim's word (Campbell et al., 2015). Conversely, the participants felt that if there is any suggestion that the victim could be viewed as 'dishonest' this greatly reduced their credibility. When there was a time lapse from the offence to reporting to the police and the victim was intoxicated at the time of the offence, were also seen to weaken the credibility.

Age and character of the victim were also viewed by the participants as instrumental in assessing credibility, as the quote below displays,

> It's good from a victim point of view, she is of good character. Not that we discredit people on their background and history, but the defence will so we have to deal with that early on and make sure we can combat any issues the defence may raise… The fact that she's of good character and older in a situation that lots of people are in, a single mum, divorced, dating, it will be better for her.
>
> (Female officer 17, serving detective constable)

The quote refers to the scenario containing a middle-aged victim, this victim was viewed as more credible than the victim who was a young student. Dellinger Page (2010) also found police judgements over the characteristics of the victim affected how credible they were seen to be.

Rape cases involving sex workers as the victim were introduced, unprompted, by 10 of the participants. Those participants expressed concern that such cases epitomise the issue of victim's credibility being a factor leading to case attrition. Essentially, the participants felt that sex workers are perceived by society to lack credibility so automatically their cases are viewed as challenging to convict. The participants themselves did not agree with this stance, they did however feel bound to make decisions considering it, the quote below exemplifies this sentiment,

> I've never known a case where the victim's place in society makes any difference, except where the female is a prostitute and is raped. … Which is not fair as no one should be judged on what they do… I can hear the defence barrister saying my client is a respectable figure in the community.
>
> (Male officer 13, serving inspector)

However, research shows that jurors are in fact willing to convict in sex worker cases contrary to assumptions made (Lea et al., 2016), thus further lending support to the finding that officers cannot accurately predict jury decision making (Section 4.1.1).

The participants also made predictions as to how credible they believed the suspect would come across in court to a jury. In essence the victim's credibility was weighed up against the suspects, similar judgements around character, age and class were employed in the same way they are with victims. Even if a case has a strong evidential base, if the victim is deemed to perform poorly in a trial, or a suspect is deemed to perform particularly well at trial, the case can be perceived as weak by police officers. This is problematic as they cannot accurately know how someone will perform on the day of a trial:

> There's only two people in that room and it's who you believe completely. I say that to my victims, I have to be brutally honest with them … It sounds awful, but it's like a personality contest, it's who they like and who's most believable: it's sad but true.
>
> (Female officer 23, serving detective sergeant)

It would appear victim's credibility is rather fragile and can be easily diminished due to factors beyond the control of victims.

Factors around the victim's behaviour

The victim's behaviour in the time around the commission of the offence was a further area of consideration the participants drew from when deliberating over the vignettes. This area aided the participants in ascertaining whether they believe the victim consented to the act or not. With rape cases where the actions around the time of the offence can mimic common courtship behaviours, such as flirting or going on a date, it can be perceived as suggestive consent could have been given or the suspect was reasonable in believing consent was given, as in many similar circum-

stances consent would be given. Conversely, this is not the case with a stranger rape scenario, it does not leave open the possibility a victim would ordinarily consent in such circumstances and a suspect should not believe it so. The following comment was made in relation to vignette two,

> I mean, she's put herself at risk, she's put herself in danger. You know when he started to kiss her neck and stuff why didn't she just get out of the bed and tell him to stop… It's not a good one.
>
> (Male officer 4, retired detective chief inspector)

The vignette (two) involving students that had been drinking in the time surrounding the commission of the offence was viewed as the most likely scenario where the victim was consenting, or it was reasonable for the suspect to believe it to be so.

4.2 | Rape myths

Previous research highlights not only the influence of a legal logic but also the role that personal prejudices and views of officers can have on decision making (Kelly et al., 2005). Due to the challenges with readily observing the way officers make decisions (as it is a mental process) it can be hard to draw the line between legally rational considerations and where personal prejudices of the officers themselves are influencing actions taken on cases. The findings in this research suggest a mixture of both a legal logic and personal views shape how cases are handled with a legal logic as the overarching framework, in line with Brown et al. (2007). An area that demonstrates the influence of a legal rationality and individual prejudices overlapping is the influence of rape myths.

This study found evidence of the influence on decision making of several rape myths including: the 'real rape' myth, that only 'abnormal' men rape, victim-blaming sentiments, the myth that rape is a miscommunication, and rape is easy to allege and hard to disprove. The stranger rape vignette (one) was the most likely to be opted to be passed to the CPS and was predicted to be the most likely to be convicted at trial, this scenario is most aligned with the 'real rape' scenario. The analysis supports previous research claiming acquaintance rape victims are blamed more while acquaintance rape perpetrators are blamed less (Sleath & Bull, 2012).

Furthermore, nine participants displayed victim blaming sentiments, an example of this follows,

> We would like to be able to educate people and students in how to better look after themselves and how to better establish consent and give consent. But it's not a popular opinion to be saying to young people maybe don't have that eighth Jägerbomb, … you can't really voice because it's anti-feminist … We would like to be able to go out and say to blokes 'don't rape, it's bad' but you can never stop that, but by turning it round and saying 'look after yourself, have your wits about you', you're not really allowed to say that.
>
> (Female officer 17, serving detective constable)

The opinion above pushes the responsibility for preventing rape onto victims rather than men, despite the criminal behaviour belonging to them. The officer is also aware that it is not largely acceptable to voice such victim blaming views, yet they will hold onto them.

There were also 26 participants that critiqued the lay public's (potential jurors) reliance on rape myths. The participants did not often agree with the rape myths and begrudged the fact they had to take them into account when working on rape cases, as the following quote demonstrates,

> The jury are told they have to be sure. I think that depends on the make-up of the jury as daft as it sounds, some will think you've gone out dressed in a short dress and heels, you've got so pissed you don't know what you're doing. That's a myth and stereotype, there might be a few blokes thinking

> 'I've sailed a bit close to this somehow'. I think if they find them guilty they send them to prison for a number of years, unless it's so crystal clear I think it's easy for them to not be sure.
>
> (Male officer 26, serving detective constable)

Whether it is the officer's own victim blaming views or they are pre-empting the views of jurors the outcome for victims is the same.

5 | DISCUSSION

Overall police officers principally base their decision making and subsequent actions on predictions of jury decisions, an original finding of this research reveals that officers by their own admission find it incredibly difficult to accurately predict jury decision making. Essentially, cases could be discontinued in the early stages of the criminal justice process on the assumption they have a low chance of success at trial when in fact this may not be the case. In other words, victims could be missing out on justice unnecessarily.

This study identified numerous extra-legal factors that underpinned judgments over the likely trajectory of cases. It can be argued that elements of the adversarial justice system introduce extra-legal considerations into the police decision making process, making the separation between legal and extra-legal factors an artificial one. Temkin (2002) asserts that the evidential and public interest tests that prosecutors employ incite subjective considerations into the decision-making process. The police then pre-empt this stage of the CPS decision making, and in turn consider extra-legal factors. The findings in this study highlight how seemingly legal decisions were underpinned by extra-legal considerations. For example, extra-legal factors around how well a victim or suspect will perform in a trial stem from the legal consideration of how likely the case will be to succeed at trial. Brown et al. (2007) argues that criticism the police face in the academic literature may be too harsh as they primarily act according to the public's prejudices, due to the demands of an adversarial justice system, rather than being driven by their own.

The qualitative approach employed in this study allowed for connections to be established between legally rational predictions of case outcomes and the allocation of police resources and investigatory effort applied to cases. Commonly used methods in this area, such as, case file reviews or quantitative surveys do not identify multiple layers of influences on decision making. Furthermore, analysing officer's own views on the difficulties associated with securing rape prosecutions is a lesser explored area, the use of open-ended questions allowed for this to be explored and enabled inconsistencies in the decision-making process to be highlighted.

Several suggestions to improve investigative practice stem from the findings of this analysis. Namely, officers should not make decisions based on predictions of trial outcomes if this is not an accurate foundation to base such decisions upon, this may go some way to avoiding victims missing out on justice. Furthermore, action should be taken to reduce the influence of extra-legal factors when decisions on discontinuing cases and which cases will be prioritised for investigatory effort are made. A toolkit with common extra-legal factors and how to recognise and minimise their influence should be formulated to guide officers decision making on a day-to-day basis. A recent government review into the criminal justice response to rape has advocated for a shift in emphasis in police investigations to focus on suspects and their behaviour, rather than the victim and their credibility (George & Ferguson, 2021). This is a welcome shift as it has the potential to minimise the influence of extra-legal factors that shape case progression.

5.1 | Limitations

A potential drawback to the method employed here is the consideration of how far the approach presented by the participants is a true account of practice. This is further compounded by the possibility that the participants may have provided socially desirable answers, especially as the topic of rape offences is a politically charged and sensitive issue.

The data collected in this project documents a range of answers that could be considered as socially undesirable, such as opinions in line with rape myths and victim blaming sentiments. There were also high levels of agreement between the participants with the approach to the fictional cases they presented. Further, the participants also made critical points themselves about the response to rape offences.

A further limitation to the study is that using vignettes to elicit a view of practice does not capture the influence of some factors present in a work setting such as financial considerations, time demands, and the influence of colleague's opinions. Furthermore, a proportion of the participants were retired police officers, thus their perceptions may not accurately reflect current decision making in rape cases. Nonetheless, their contribution was beneficial as they had long careers to reflect on and discuss.

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CONFLICT OF INTEREST

No potential conflict of interest to report.

DATA AVAILABILITY STATEMENT

Research data are not shared due to ethical considerations.

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ENDNOTES

[1] This project received ethical approval from The University of Sheffield Ethics Review Committee (Application number: 006634).

[2] The participants that were retired had all retired after the Sexual Offences Act 2003 had been passed.

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