

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

Country briefing: Scotland

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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; creating a time line 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 1st 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 in official record-keeping.

As Scotland is a small country, with a total population of 5.1 million, the 100 cases were drawn from the nation as a whole. Initial access was through a senior police officer who contacted all eight Scottish police forces to secure their agreement to complete pro formas for cases which met the inclusion criteria. Agreement was also secured from a senior official in the Crown Office and Procurator Fiscal Service (COPFS) to compile the prosecution data on relevant cases. The researchers entered the case information on the project database. The first 100 sequential rape cases reported from 1st April 2004 were identified from a centralised database, and include cases from all eight police forces. This method resulted in 15 cases being included where the victims were minors at the time of the assault, but as these were historic allegations, all were adults (aged over 16) when they made the report. The inclusion of these cases means the Scottish sample is not directly comparable to those from other countries.

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

Law and procedure

Although part of the United Kingdom, Scotland has its own criminal justice system, with distinctive systems of prosecution, criminal procedure and sentencing. Scots criminal law is also different in many respects from the law of England and Wales, and has therefore been studied separately in this project.

Scotland is somewhat unusual in that, unlike many European countries, it does not have a criminal code. Criminal law is derived from several sources: common law (or case law) derived from legal precedent and judicial decisions on cases; the authority of legal tradition and thinking; and legislation. Most criminal offences, including rape, are common law offences. The definition of rape has evolved over time as a result of court decisions; the most recent (HMA v Watt, 2001) transformed a force-based definition to one based on consent, and rape in marriage has been a crime since 1989. Rape remains a gendered crime, restricted to male perpetration, female victimisation and vaginal penetration. This is one of the narrowest definitions in Europe, and a current review is consulting on reform proposals to extend it.

Scotland has an adversarial legal system in which the COPFS is responsible for investigating and prosecuting crime, and local Procurator Fiscals (PF) make initial decisions about prosecution. The police in Scotland investigate crime on behalf of the PF, and the two agencies work closely together.

Rape is reported to the police, who carry out an initial investigation and submit a report to the local PF. Variation across the eight police forces means some have dedicated units with specially trained staff and others do not. Guidance on the investigation of serious sexual crime, published in 2008 (ACPOS, 2008), states that the welfare and safety of the victim should take precedence over investigative issues. On the basis of the initial investigation report the PF decides whether to move to a formal prosecution process and/or investigate the case further. Decisions are based on an evidential and public interest test, and in Scotland the evidential test requires corroborative evidence: that is, there must be more than a single evidential source (COPFS, 2006). In the case of rape, this presents particular difficulties since there are rarely witnesses to the crime, and previous research has shown that cases resulting in conviction are

more likely to include medical and/or forensic than other types of evidence (COPFS, 2006).

In 2007 the first SARC opened in Glasgow, ensuring forensic examinations can be undertaken by a trained female doctor, and other forms of support made available for victims of sexual offences. However, this is only available in one region; in other areas forensic examinations tend to be conducted by doctors trained in forensic evidence, with limited access to experienced, female medical examiners.

A PF gathers and reviews evidence and then makes a report with recommendations to senior prosecutors (Crown Counsel), who make the final decisions about charging and prosecution. The crime is prosecuted by the Crown in the name of the Lord Advocate. Victims are chief witnesses for the prosecution and do not have the right to separate legal representation.

Rape cases are always prosecuted in the High Court presided over by a judge with a 15-person lay jury. Other serious sexual offences are prosecuted either in the High Court, or the Sheriff Court before a Sheriff and 15-person jury.

There are some forms of victim protection ('special measures') that can be applied for to assist victims of sexual violence to give their evidence. All cases are heard in a closed court, which may be augmented by; giving evidence by live television link; sitting behind a screen in the courtroom; and/or having a supporter present in court. Scotland has introduced 'rape shield legislation' to restrict the use of unnecessary and irrelevant questioning of a victim's sexual history and/or character in court, although research has found this legislation to be limited in its effectiveness (Burman *et al.*, 2007).

In addition to a finding of guilt, Scottish jurors have the possibility of finding a case 'not proven' as well as 'not guilty', both of which result in an acquittal with no possibility of retrial. The decision can be unanimous (all the jury members agree) or by majority (at least 8 of the jury agree). The High Court can sentence up to life imprisonment, whereas a Sheriff Court can sentence up to a maximum of five years, but may refer the case to the High Court if they think the sentence should be longer.

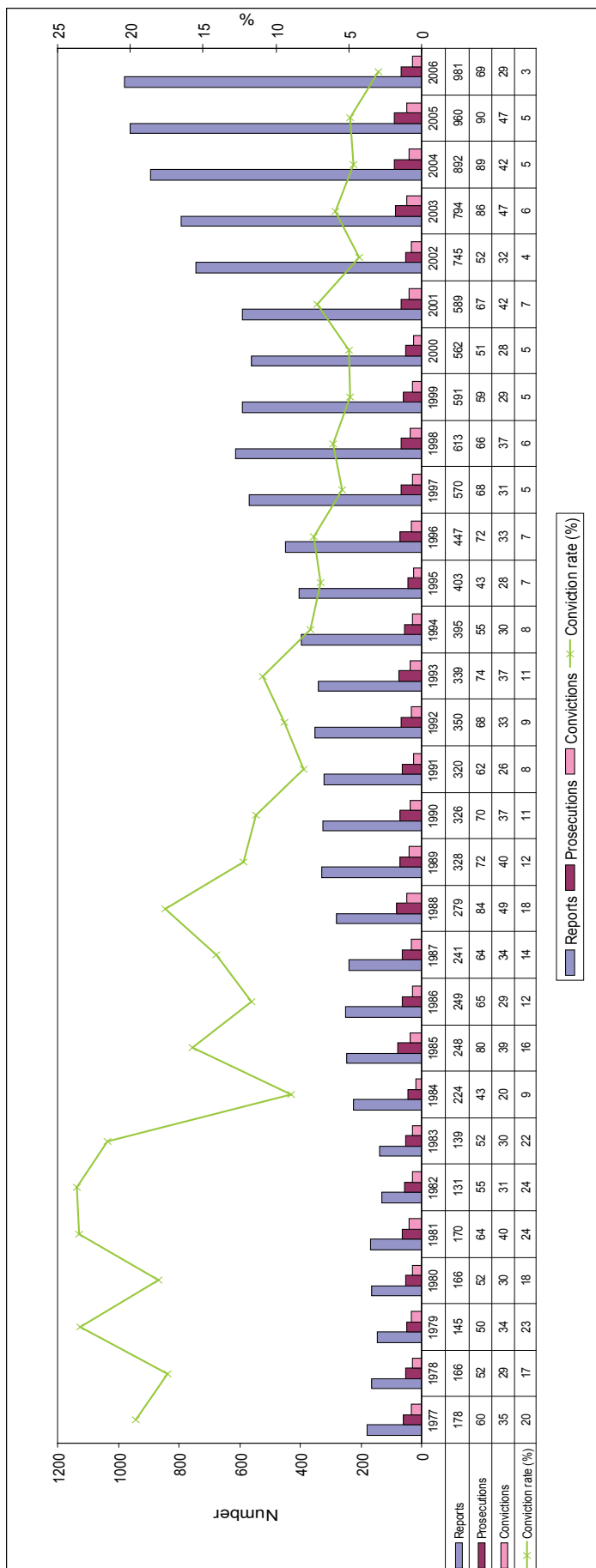
Attrition in reported rape cases

The attrition data for Scotland are presented in two sections, the first outlining the national statistics and the second reporting detailed analysis of the 100 cases. In the latter, all comparisons are with the other countries where original data were collected.

National statistics

The Scottish national statistics over the last three decades reveal attrition trends similar to those found in England & Wales and many northern European states - increased reporting, virtually static prosecutions and convictions and a sharply declining conviction rate. Rape reports in Scotland have grown fairly consistently year on year, with an increase of 451% between 1977 and 2006 (see Figure 1); a similar rate to England & Wales. This increase has been attributed to the widening of the legal definition of rape and the removal of the requirement to prove force, although the increase begins before these changes suggesting additional factors are in play (COPFS, 2006). The reporting rate per 100,000 of the population is the fourth highest in Europe, after Sweden, Iceland and England & Wales.

Figure 1: Reports, prosecutions and convictions for rape in Scotland 1977-2006



Source: Court Affairs, Prisons & Offenders Analytical Team, Scotland

Note: Analysis based on calendar year

In marked contrast, there has been virtually no change in the number of prosecutions or convictions. Between 1977 and 2006 the number of prosecutions grew by only 15% (an increase of just 9 cases from the original figure of 60), representing a fall in the proportion of reported cases prosecuted from 34% in 1977 to 7% in 2006. The highest number of prosecutions over the whole period was achieved in 2005, at 90.

Convictions have also remained almost static, with a comparison between 1977 and 2006 revealing a decrease of 17% from 35 to 29, although figures for 2003-5 were in excess of 40. This represents a maximum increase across the period of 34% - again, minimal compared to the increase in reporting. Around half of prosecuted cases are successful (42-61% between 2001 and 2006). However, like many other EU countries where reporting levels are high, the conviction rate as a proportion of reported cases in Scotland is low: in fact, it is currently the lowest in Europe at 3%.

Case tracking of the 100 cases

Victim profile

- Given the legal definition, all victims were female.
- More than half were aged 16-30 (53%), and just under one fifth were under 16 at the time of the assault.
- The Scottish sample was one of the least ethnically diverse, albeit that the population is fairly homogenous.
- Half (51%) were single, with 16% in relationships.
- Half were employed or students (50%), with 44% unemployed - the highest proportion of all countries in the study.
- 11% had a mental health problem and 6% had a disability, but information was not known in around half of cases.
- A fairly high proportion (44%) had consumed alcohol at the time of the assault and 6% had consumed drugs: just under half (45%) of those consuming either substance (n=47) were reported to be severely affected at the time.

Suspect profile

- Suspects were all male.
- They were, on average, somewhat older than victims.
- Ethnicity was similar to victims, and fewer were single, with over a quarter in relationships (26%), but this information was missing for more than a third (38%).
- More were employed than victims (37%), far fewer were students and a similar proportion (51%) were unemployed.
- Only one had a mental health issue and one had a disability (in more than half of cases data were missing).
- Slightly lower proportions (35%) had consumed alcohol and drugs (2%) at the time of the assault.
- 40% had been previously accused of a criminal offence (7% sexual and 33% other offences), and 29% had been previously convicted (6% for sexual and 23% for other offences).

Offences and contexts

- All cases were reported as rapes; six were re-classified later in the investigation - two as indecent assault, two as physical assaults and two as 'other' offence types.
- Almost two thirds (63%) occurred in a private space, such as the perpetrator's or victim's home, or in a shared home, one fifth (20%) in a public place and 7% in a semi-public place, such as a social gathering or pub/club.
- Two thirds of perpetrators (65%) were known to the victim in some way. Strangers and recent acquaintances (someone the victim had met within the previous 24 hours) comprised just over one fifth (22%), but the proportion of strangers (7%) was by far the lowest of all countries participating in the study.
- Just over one quarter (27%) of victims had documented physical injuries, and one case involved a weapon.

Attrition

Table 1 presents basic data on case progress and attrition. In the majority of cases the rape was reported by the victim (75%). All victims were interviewed by police but more than one fifth (22%) did not make a formal statement, and almost half (48%) did not have a forensic examination; the latter is in part accounted for by the proportion of historic allegations.

The majority of suspects were identified (88%) and interviewed by police (85%), just under two thirds (61%) were arrested, with 57% held in custody (most commonly by police). These are the highest arrest and custody rates of all countries in the study. Almost six in ten (59%) were charged - the second highest rate in the study.

Table 1: Case progress and attrition in the Scottish sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	100
	Suspect identified	88
	Suspect interviewed	85
Charge	Suspect charged	59
Court	Referred to court	28
	Discontinued	8
	Victim withdrawal	1
	Outcome unknown	1
	Tried at court	18
	Acquittal	2
	Conviction*	16*

*Includes guilty verdicts, guilty pleas and part convictions

Table 2 presents more detail on the points during the legal process at which attrition occurred, the primary decision-maker (victim, police, prosecutor, judge or jury) and the main reason why. This analysis shows that attrition in Scotland takes place over the course of the legal process as a whole. However, there was a high degree of missing data in relation to some variables compared to other countries.

Scotland has the lowest proportion of cases discontinued at the early (21%) and mid (9%) stages of the investigation of any country participating in the study. At the earliest point, this decision is most commonly made by victims withdrawing co-operation or declining to complete the initial processes (n=10). Three of these cases involved the victim's current partner. However, police and prosecutors also make early decisions not to proceed due to lack of evidence (n=7); three cases were designated false allegations at this point.

At the mid-point, prosecutors are responsible for the majority of decisions (n=6), with concerns about sufficiency of evidence and whether the allegation amounted to a sexual assault the main considerations; a fourth case was also designated a false allegation at this point.

The late investigation is the key stage of attrition in Scotland, with 29% of cases discontinued here, spread across prosecutors (n=12), police (n=9) and victims (n=4), where details were available. For the former, evidential concerns were paramount, including identification of the suspect and whether the alleged offence amounted to a sexual assault. There was a mid-range designation of false reports, at 4%, with the range in the study as a whole 1-9%.

There are more cases discontinued just before court in the Scottish sample (n=14) than in any other country in the study. Whilst in one there was a victim withdrawal, the majority were due to decisions by prosecutors regarding evidence, where details of the reason are known. In well over two thirds of cases (71%, n=10 of 14) discontinued at this point, the suspect was well known to the victim, including one current and four ex-partners; the remaining four were strangers (n=2) or recent acquaintances (n=2).

Only a small proportion of cases were discontinued at court - one just before the case was heard and two acquittals following the trial, one of which was directed by the judge. This is very low compared to most other countries.

The conviction rate of 16% in the Scottish sample is noticeably higher than that in the national level data (3% in 2006 and 5% in 2004-5), although as a proportion of cases referred to court (57%, n=16 of 28) it is within the national rate of successful prosecutions of recent years (see above). The reasons for this disparity are unclear, although the fact that six of the convicted cases involved victims who were minors at the time of the assault(s) may have increased the rate somewhat, since research indicates that child cases are more likely to result in conviction (Kelly et al., 2005).

Table 2: Detailed attrition point analysis in the Scottish sample			
When case fell out	Whose decision	Why fell out	N / %
Early investigation	Victim	Victim withdrawal of co-operation	9
		Declined to complete initial process	1
	Police	Insufficient evidence	2
		False allegation	1
		Unknown	1
	Prosecutor	Insufficient evidence	5
False allegation		2	
Early investigation total			21
Mid investigation	Victim	Victim withdrawal of co-operation	1
		Police	False allegation
	Prosecutor	No evidence of sexual assault	1
		Insufficient evidence	2
		Other	1
Unknown	3		
Mid investigation total			9
Late investigation	Victim	Victim withdrawal of co-operation	3
		Declined to complete initial process	1
	Police	Insufficient evidence	7
		No evidence of sexual assault	1
		Suspect not identified	1
	Prosecutor	Insufficient evidence	5
		Unknown	7
Unknown	Unknown	1	
Late investigation total			26
Just before court	Victim	Victim withdrawal of co-operation	1
		Prosecutor	Insufficient evidence
	Prosecutor	No evidence of sexual assault	1
		Other	1
Unknown	Unknown	6	
Just before court total			14
At court before case heard	Prosecutor	Insufficient evidence	1
At court before case heard total			1
At court during/at conclusion of case	Judge	Acquitted	1
	Jury	Acquitted	1
At court during/at conclusion of case total			2
Unknown			11
Convicted			16
TOTAL			100

Characteristics of convicted cases

In the Scottish sample 16 cases resulted in a guilty outcome at trial (n=10 convictions, n=4 guilty pleas and n=2 part convictions). The majority of sentences were custodial - ranging from one to eight years - one was given a nine-month Community Order and one three years' probation. In two cases sentencing details were unknown.

Additional analysis reveals factors which made conviction more likely.

- Almost all (88%, n=14 of 16) convicted offenders were known to the victim, with the most common relationships family members (n=8) and ex-partners (n=3). The majority of assaults (n=10) occurred in the victim or offender's home.
- A higher proportion of convicted offenders had been previously accused (50% v 40%) or convicted (75% v 29%) of criminal offences.
- In over half of cases (56%, n=9 of 16) victims were under the age of 20 at the time of the assault, and in over one third (38%, n=6) they were minors.
- More victims in the sub-sample of convicted cases had undergone a forensic examination (63% v 52%), and a higher proportion of convicted cases (38% v 27%) involved documented injuries.
- A lower proportion of victims in convicted cases (25% v 44%) had consumed alcohol, in part due to the number of cases involving minors in a familial context.

Conclusions

The data from Scotland were 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 rates are high, and have increased by 451% since 1977.
- Prosecution and conviction rates have not kept pace, and the conviction has fallen to the extent that it is now the lowest in Europe at 3%.

From the case tracking data

- Attrition takes place across the legal process, albeit that much more of the decision making takes place later and is made by PFs/COPFS.
- A relatively low proportion (4%) of cases are designated false reports.
- The conviction rate is mid-range for the study, but considerably higher than the national rate for Scotland.
- Whilst cases involving perpetrators who were family members had a reasonable chance of proceeding to trial, very few of those involving current/ex-partners did so.
- The majority of cases resulting in a conviction reflect stereotypes of rape and rapists.

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