

<b>Institution:</b> Anglia Ruskin University
<b>Unit of Assessment:</b> UoA21 Sociology
<b>Title of case study:</b> Enhancing criminal justice practice and processes in rape trials.
<b>Period when the underpinning research was undertaken:</b> 2014-2018
<b>Details of staff conducting the underpinning research from the submitting unit:</b>
<b>Name(s):</b>  Dr Olivia Smith <b>Role(s) (e.g. job title):</b>  Senior Lecturer in Criminology <b>Period(s) employed by submitting HEI:</b> 01/02/2014 - 31/08/2019
<b>Period when the claimed impact occurred:</b> 2015 – December 2020
<b>Is this case study continued from a case study submitted in 2014?</b> No
<b>1. Summary of the impact</b>  Research by Dr Smith into rape trials in England and Wales through court observation has informed criminal justice practice and enhanced justice through improved court practices during trial. This has benefitted criminal justice practitioners, policy makers, non-government organisations (NGOs) and campaign groups, and, indirectly, rape complainants.  Between 2015 and 2020, research led to: <ul style="list-style-type: none"> <li>• the instigation of a court observer panel in Northumbria and thence to the implementation of the first system of court inspection in England and Wales, and later in Northern Ireland</li> <li>• improved knowledge and practice of criminal justice practitioners, as a result of the observer panel instilling greater confidence in the criminal justice process</li> <li>• changes in the recommendations of the Northern Irish Gillen Review into rape trials</li> <li>• informing the Judicial Studies Board rape review methodology, and the provision of evidence underpinning NGO campaigns and media coverage of policy reform related to rape trials.</li> </ul>
<b>2. Underpinning research</b>  Developing policy and practice to ensure respectful and fair responses to rape complaints continues to be hampered by apparent contradictions: interviewed complainants assert that rape trials were a traumatic experience; legal professionals argue they are conducted to ensure all evidence is heard. To reconcile these two perspectives, Smith's studies comprise the first comprehensive observation of the full rape trial process in England and Wales since significant legislation was introduced in the Sexual Offences Act 2003. The court observation methodology developed by Smith allowed the study of proceedings in court to move beyond contrasting perspectives to closely examine the trial process.  Building on her ESRC-funded PhD project [1], Smith undertook detailed further analysis of court observation findings and rape trials policy following her appointment at Anglia Ruskin University which were published in outputs in 2017 and 2018 [2,3,4]. Output [2] examined the practical aspects of trials and found several causes of inefficiency and distress, such as delays, problems with evidence disclosure, and inadequate witness facilities. It argued that these practicalities are

often trivialised or ignored during trials but are central to justice as they represent access to meaningful participation. Output [3], in collaboration with T. Skinner (contributed 25% to output), showed that ‘rape myths’ remain prevalent at trial despite some challenges by prosecution barristers and judges. While policy debates had focused on the importance of training legal professionals about rape, the article demonstrated that problematic attitudes were not the main cause of rape myths being used in trial narratives. Instead, it suggested that rape myths were used because of the adversarial imperative to win and the rationalist legal tradition, which dismisses complainants’ evidence as irrational and untruthful. Alongside [2], this article demonstrated the value of court observation methodologies in creating different forms of data that would not be accessible using alternative methods such as interviews.

In 2018, Smith published a monograph, *Rape Trials in England and Wales: Observing Justice and Rethinking Rape Myths* [4], which examined the deep-rooted barriers to survivor justice during rape trials and introduced potential avenues for more effective reform. It developed previous outputs by demonstrating that controversial evidence about the complainant’s sexual history was being used routinely at trial, mostly to explain evidence introduced by the prosecution. The book also argued that most policy aimed at improving trial experiences is undermined by the influence of wider societal inequalities. For example, women complainants were dismissed as irrational and therefore untrustworthy in a variety of intersecting ways depending on their perceived social class, disability, and ethnicity. This has implications for current policy, which assumes that myths about rape can be tackled by adding judicial directions about common misunderstandings, while ignoring any potential myths about rape complainants themselves. Output [4] also situated Smith’s research in the light of #MeToo and high-profile trials such as that of footballer Ched Evans.

### 3. References to the research

[1]: Grants associated with the research. ESRC 1+3 PhD Grant. £57,026. Peer-reviewed. Undertaken at University of Bath.

[2]: Smith, O. (2017). The practicalities of English and Welsh rape trials: Observations and avenues for improvement. *Criminology & Criminal Justice*, 18 (3), 332-348. DOI: <https://doi.org/10.1177%2F1748895817702508> Peer-reviewed.

[3]: Smith, O. & Skinner, T. (2017). How rape myths are used and challenged at court. *Social & Legal Studies*, 26 (4), 441-466. DOI: <https://doi.org/10.1177%2F0964663916680130> . Peer-reviewed.

[4]: Smith, O. (2018). *Rape Trials in England and Wales: Observing Justice and Rethinking Rape Myths*. Basingstoke: Springer International. ISBN 978-3-319-75673-8. DOI: <https://doi.org/10.1007/978-3-319-75674-5>. In REF 2.

### 4. Details of the impact

This body of research has three main areas of cumulative impact:

#### Implementation of the first system of court inspection in England and Wales, and later Northern Ireland

After discussing Smith’s trial observations and the benefits of the court observer method, the then Police, Fire & Crime Commissioner for Northumbria (now Victims’ Commissioner for England and Wales) piloted a volunteer court observer panel (COP) between January 2015 and June 2016. The scheme “represented an innovative move to provide accountability in rape trials, as there is currently no independent inspectorate for the courts in England and Wales” [S1]. The panel observed 30 rape trials and in February 2017 its findings led to national policy debate in which Smith’s research was cited as initiating the scheme [S2].

In 2018, the court observer panel was also implemented in Northern Ireland, and Smith delivered a training package for Victim Support Northern Ireland to 11 (100%) of the court observer volunteers [S3] [S4]. 27 trials were observed by the panel between October 2018 and October 2019, the results of which revealed extensive problems with delays, technical difficulties, rape myths and sexual history evidence. The Final Report on the implementation of the panels acknowledged “Dr. Olivia Smith and Dame Vera Baird, whose original Seeing is Believing report was inspiration for us to launch a Northern Irish equivalent Court Observers Panel” [S4].

The Commissioner also expanded the court observer panel to Specialist Domestic Violence Courts in Northumbria. Between July and September 2017, volunteers observed 170 cases, the findings of which have informed Hansard debates about the Domestic Violence & Abuse Bill (House of Commons, 18 July 2018) [S5]. The Commissioner noted that, “without Dr Smith’s original research... these important changes would not have been possible” [S1].

#### Improved knowledge and practice of criminal justice practitioners

The Northumbria COP identified the importance of Independent Sexual Violence Advisors (ISVAs) in explaining court proceedings and supporting victims. Following discussions with the judiciary, prosecutors, and investigation teams, along with third sector support organisations, “it was agreed that the barrister when having the pre-case conversation with the victim would ask if there was an ISVA and if so would ask for her to accompany the victim at all material times in court” [S1]. The COP also provided evidence about the frequency of late prosecution applications to disclose the victim’s sexual history (s.41 applications) which cause significant delays. The North Eastern Crown Prosecution Service (CPS) subsequently agreed at every pre-trial preliminary hearing they would actively ask if there was to be a s.41 application to reduce the number of late s.41 applications and delays during trial [S1].

Between 2017 and 2020 Smith has delivered training to practitioners from third sector organisations, police, prosecutors, probation, housing and social work services, as well as presenting at the Annual Rape Crisis Conference (in 2017, 2018 and 2020) to approximately 400 ISVAs, on the use of evidence in investigations, prosecution of sexual violence and the Criminal Injuries Compensation Scheme. This has made ISVAs “more equipped to support and inform through the trial process, leading to increased survivor engagement with the Criminal Justice System”, according to the Chairwoman of Rape Crisis England & Wales [S6].

In Northern Ireland, the Gillen Review into rape trials highlighted the COP as key to sustainable change in future: “I applaud this development and look forward to its informed input into the criminal justice system. I consider that in the wake of our own local Court Observer project, informed consideration should be given to extending this project to embrace the notion of local panels comprised of local members of the community... I believe this could engender further confidence in the criminal justice process” [S7].

#### Provided an evidence-base for the Northern Irish Gillen Review into rape trials, the Judicial Studies Board rape review, non-government organisation (NGO) campaigns and media coverage of rape reform

Smith’s research is a significant evidence-base for national reviews into rape trials and for NGOs and women’s organisations campaigning for legal reform of rape trials focusing on the behaviour of the complainant, rather than the defendant.

The Gillen Review into the law and procedures in serious sexual offences ran from 2017 to 2019 and produced over 250 recommendations. The CEO of Victim Support Northern Ireland and a Gillen Review panel member said: “Smith’s research was a key resource ... and influenced the discussions in particular around the use of rape myths” [S3].

Smith is cited throughout Gillen’s final report as support for the recommendation to introduce legal representation for complainants, maintain the status quo on defendant anonymity, collect

better data on complainants from marginalised groups, and retain juries for rape cases. Engagement with Smith's work also led to a significant change in Gillen's report. The interim report stated that "public discussion and policy should only be based on research that [...] can arguably come only from systematic research with actual juries at court" (Gillen, 2018: 6.117). However, this recommendation was removed and cited Smith's consultation response as the reason for the change. Similarly, the interim Gillen report stated that there was no need to reform the use of sexual history evidence, but the final report - citing Smith's response - added a recommendation "that the Department of Justice should carry out an exercise to determine the extent of the admission of previous sexual experience in trials in Northern Ireland which, when taken alongside the reports from the current Court Observers Panel scrutiny, should provide a basis to consider if more serious legislative intervention is required" (s. 8.102) [S7].

In 2019, Smith's research informed the England and Wales Judicial Studies Board's rape review methodology [S8]. The Rape Review Lead for the Ministry of Justice stated that Smith's "insightful advice" about sample sizes, data collection, and literature reviews "enabled us to produce robust and detailed project plans, helping to steer the review and provide government leaders and third-party organisations with confidence that this review will really help tackle the fall in rape prosecutions" [S8].

Smith's research is also used by leading campaign groups. Since 2014 Rape Crisis have quoted Smith's findings in their consultation with policy makers, such as the National Council of Police Chiefs, Cross-Governmental rape review, and Home Office working groups for the Victims Code and Witness Strategy [S6]. Smith also informed an extensive cross-party campaign in 2018, signed by 9 organisations, 17 members of parliament and 6 Baronesses, to change the law on sexual history evidence during rape trials. The central evidence to this campaign was the *Seeing is Believing* Report which used court observations informed by Smith's initial research [S9]. The End Violence Against Women (EVAW) Coalition's Rape Justice Fail campaign was informed by Smith's observation research and the CEO commented: "We do not believe we would have the clearly refined messages we now have, which are critical to campaigning, without this [Smith's research]" [S10]. As a result of the EVAW Coalition campaign, there has been "a major Guardian newspaper campaign (featuring in the front page every day for a week in Sept/Oct 2018), reaching millions of readers on- and off-line ... and briefing more than a dozen MPs on the key problems in the justice system for rape complainants, specifically citing Olivia's research" [S10].

In 2019, Smith was cited in a BBC Radio 4 documentary, *Rape Trials: Is the Jury Out?* on policy reform in rape trials and also consulted on a BBC Radio 1 Newsbeat segment and a BBC 5live Investigates documentary. This media coverage has raised awareness of issues within rape trials highlighted by the research and policy reform in this area. Public statistics show that taken together BBC Radio 4, Radio 1 and 5live reached approximately 25,179,000 listeners in the July–September 2019 quarter when these programmes aired (RAJAR, 2020).

### 5. Sources to corroborate the impact

**S1: Police, Fire & Crime Commissioner for Northumbria 2012–2019**, confirms the role of Smith's research in initiating and underpinning the development of the Northumbria Court Observer Panel.

**S2: Northumbria Court Observer Panel Report, *Seeing is Believing***, thanks Smith for her role in initiating the scheme: Durham, Lawson, Lord & Baird. (2016). *Seeing is Believing: The Northumbria Court Observers Panel Report on 30 Trials 2015-2016*. Newcastle: Northumbria Police & Crime Commissioner. Available at: <http://www.northumbria-pcc.gov.uk/v2/wp-content/uploads/2014/08/Seeing-is-Believing.pdf>

**S3: CEO of Victim Support Northern Ireland**, confirms the influence of Dr Smith's research on the Northern Ireland Gillen Review and in the methodology, training, and development of the Northern Irish Court Observer Panel.

**S4: Victim Support Northern Ireland, Bearing Witness: Report of the Northern Ireland Court Observer Panel 2018 – 2019**, cites Smith for her role in inspiring the panel and for providing training to the court observer volunteers. Available at:

[https://www.victimsupportni.com/site/wp-content/uploads/2021/02/VSNI-Report\\_BearingWitness\\_Final.pdf](https://www.victimsupportni.com/site/wp-content/uploads/2021/02/VSNI-Report_BearingWitness_Final.pdf)

**S5: Hansard, House of Commons Debate**, volume 645, columns 136–137, 18 July 2018. Available at: <https://hansard.parliament.uk/Commons/2018-07-18/debates/FB94A1F2-10A5-4B4D-AC5A-6C9BECC3B611/DomesticAbuseVictimsAndFamilyCourts>

**S6: Chairwoman of Rape Crisis England & Wales**, confirms influence of Smith's trial research on Rape Crisis campaigns.

**S7: Gillen Review Final Report** cites Smith's research and consultation responses: Sir John Gillen. (2019). Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland. Belfast: Department of Justice for Northern Ireland. Available at:

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

**S8: Rape Review Lead for Ministry of Justice**, confirms the influence of Smith's research and expertise on methodology in changing the planned review methods.

**S9: Cross-Party Campaign to change the law on sexual history evidence**, Press Release cites Smith's article as justification for needing law reform.

**S10: CEO of End Violence Against Women Coalition**, confirms significance of Smith's court observation methodology and wider research on EVAW campaigns.