

Gaps and chasms: understanding.  
why so many rape cases never result  
in a conviction or justice for victims

Prof Liz Kelly

Roddick Chair on Violence Against Women

London Metropolitan University

# Overview



- ◆ Some context
- ◆ What justice means for rape victims
- ◆ What it means to tell/report
- ◆ European research on attrition
  - ◆ Iceland not one of the countries
- ◆ The importance of support services
- ◆ Ongoing challenges

# How we got to here



- ◆ 1970s – ‘speak outs’, helplines, self-help, rape crisis centres
- ◆ 1980s – Wave 1 of legal reforms, child sexual abuse, debates on the sex industry
- ◆ 1990s – ‘The decade of domestic violence’, human rights framing via UN, rape and conflict, trafficking
- ◆ 2000s – re-emergence of sexual violence in research and Wave 2 of law reform

# The meaning of sexual violation



*'In the act of rape the rapist seizes control of the victim's body, violating the victim's sense of autonomy. The sense of disempowerment is immense. Another person has taken charge of one's body, manipulating it like a puppet, reducing the victim to an object, a prop in that man's world'*

Jan Jordan (2008) *Serial Survivors: Women's Narratives of Surviving Rape* Sydney, Federation Press p.180

# Justice from the perspective of victims

- ◆ To be victimised is to control taken away: an assault on the body and the self
- ◆ Justice includes
  - ◆ Recognition of the violation of rights
  - ◆ Respectful treatment
  - ◆ Support at the point of need/disclosure
  - ◆ Having control restored
    - ◆ Information and options
  - ◆ Support – practical and emotional
  - ◆ Formal/legal justice

# What it means to speak/report



- ◆ Naming what happened a sexual assault
- ◆ To 'be' a victim = shame, stigma
- ◆ Awareness of potential for blame or disbelief

## RESULTS IN

- ◆ Most likely to tell a friend – gate openers or gate closers?
- ◆ More likely to report if fits 'real rape' stereotype (Ullman et al, 2008).
- ◆ Important for professionals to make sexual violence 'speakable' (Hooper & Warwick, 2006).
- ◆ Being believed and listened is the most valued response (Kingi & Jordan, 2009)

# The intent behind Legal reforms



- ◆ To increase reporting
- ◆ To enhance prospects for prosecution and conviction
  - ◆ Removal of the discriminatory elements of law, especially in terms of evidential requirements and the definition of rape
- ◆ Improve treatment of victims

# Rape in law

## ◆ Four main approaches

- ◆ Sex with force – many European countries
- ◆ Sex without consent - UK
- ◆ Levels of sexual assault - Canada
- ◆ Sex in coercive circumstances – UN tribunal on Rwanda, South Africa

“Expanded” force-based definitions increasingly common in Europe

To define through consent is recognition of the principle of sexual autonomy

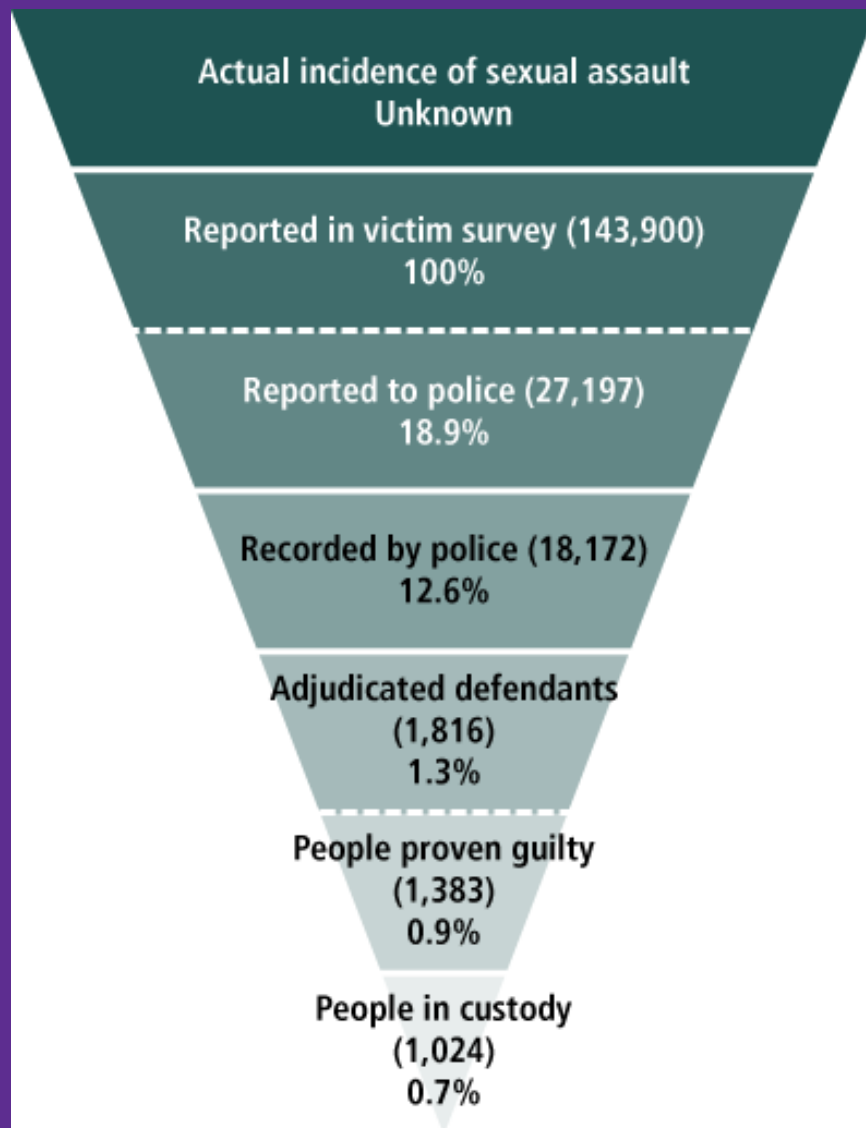


# Attrition and impunity

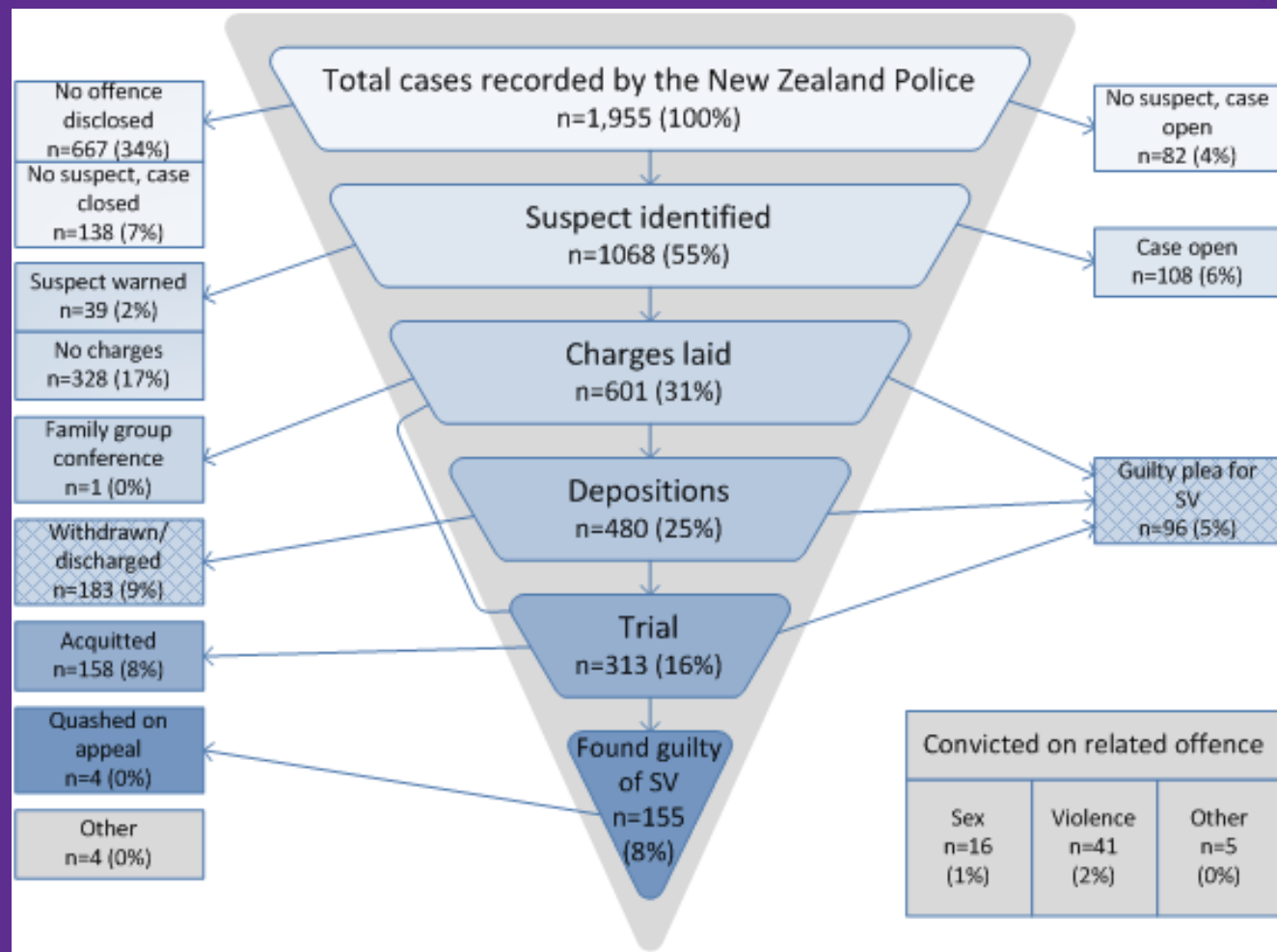


- ◆ The attrition rate is the proportion of reported cases that fail to result in prosecution and/or conviction
  - ◆ Some argue first stage is the decision not to report
- ◆ The attrition rate is calculated as a percentage
  - 100 reports
  - 10 prosecutions = 10% prosecution rate, 90% attrition rate
  - 1 conviction = 1% conviction rate, 99% attrition rate
- ◆ Reasons why cases fall out has layers and timings
  - ◆ Can involve actions of complainant and/or actions of police/prosecutors/courts
  - ◆ Key attrition point vary across legal systems

# An Attrition model: Australia



# Attrition model: New Zealand



# European attrition study



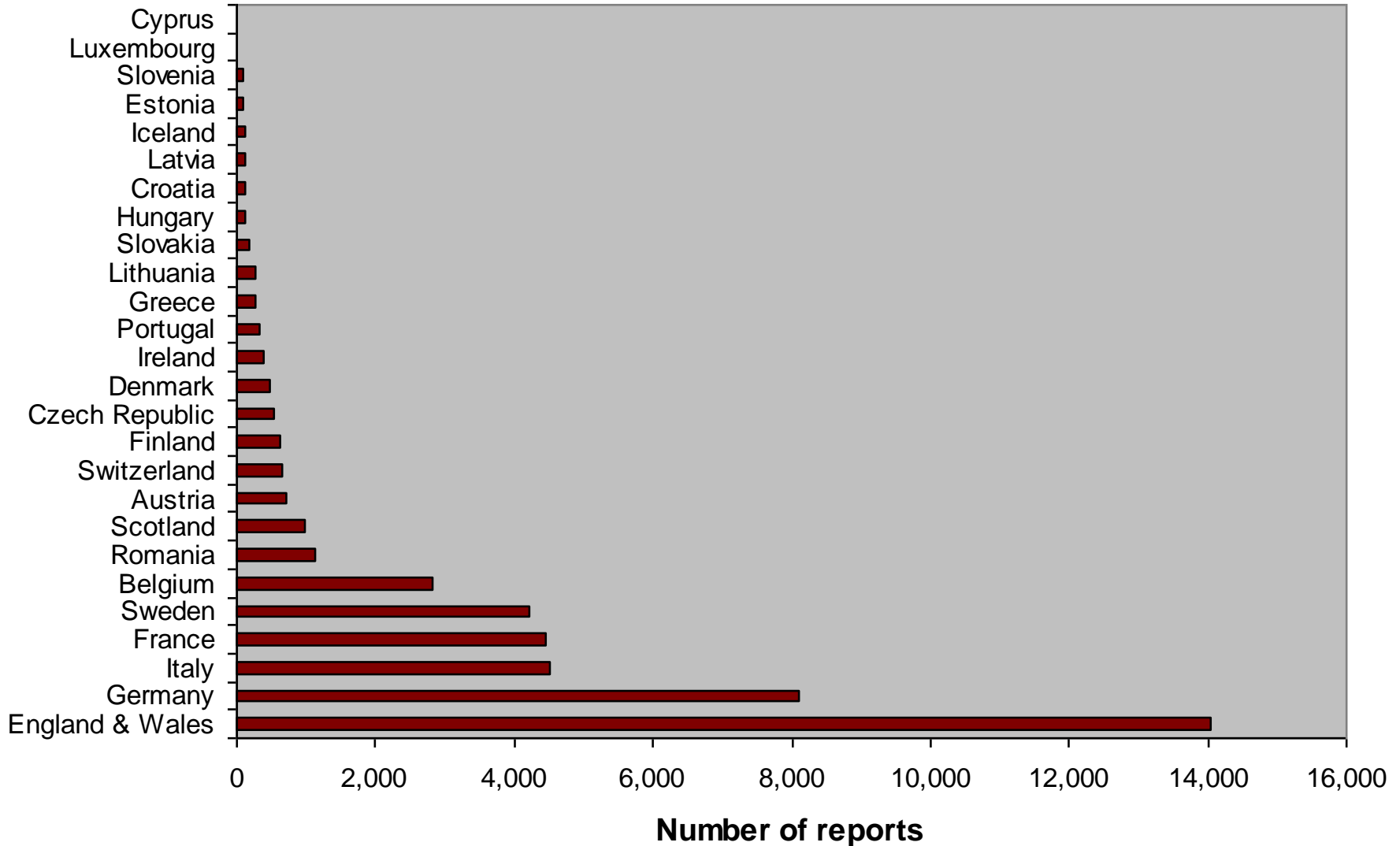
- ◆ Third in a series of studies under the Daphne programme – all available on [www.cwasu.org](http://www.cwasu.org)
- ◆ *Different Systems, Similar Outcomes* (Lovett and Kelly, 2009)
- ◆ Two strands of data collection
  - ◆ Updating national level data across Europe 2001/2-2006/7
    - ◆ Complete data sets from 17, countries
  - ◆ Original data collection tracking 100 consecutive cases in 11 countries - Austria, Belgium, England & Wales, France, Germany, Greece, Hungary, Ireland, Portugal, Scotland and Sweden

# Reporting Data 2006



- ◆ Plotted **number** of reports and **reporting rates**
- ◆ Number has implications for resources and specialisation
- ◆ **Reporting rates** tell us something about
  - ◆ Recording practices
  - ◆ Willingness to report
  - ◆ Unclear if they tell us anything about the extent of rape

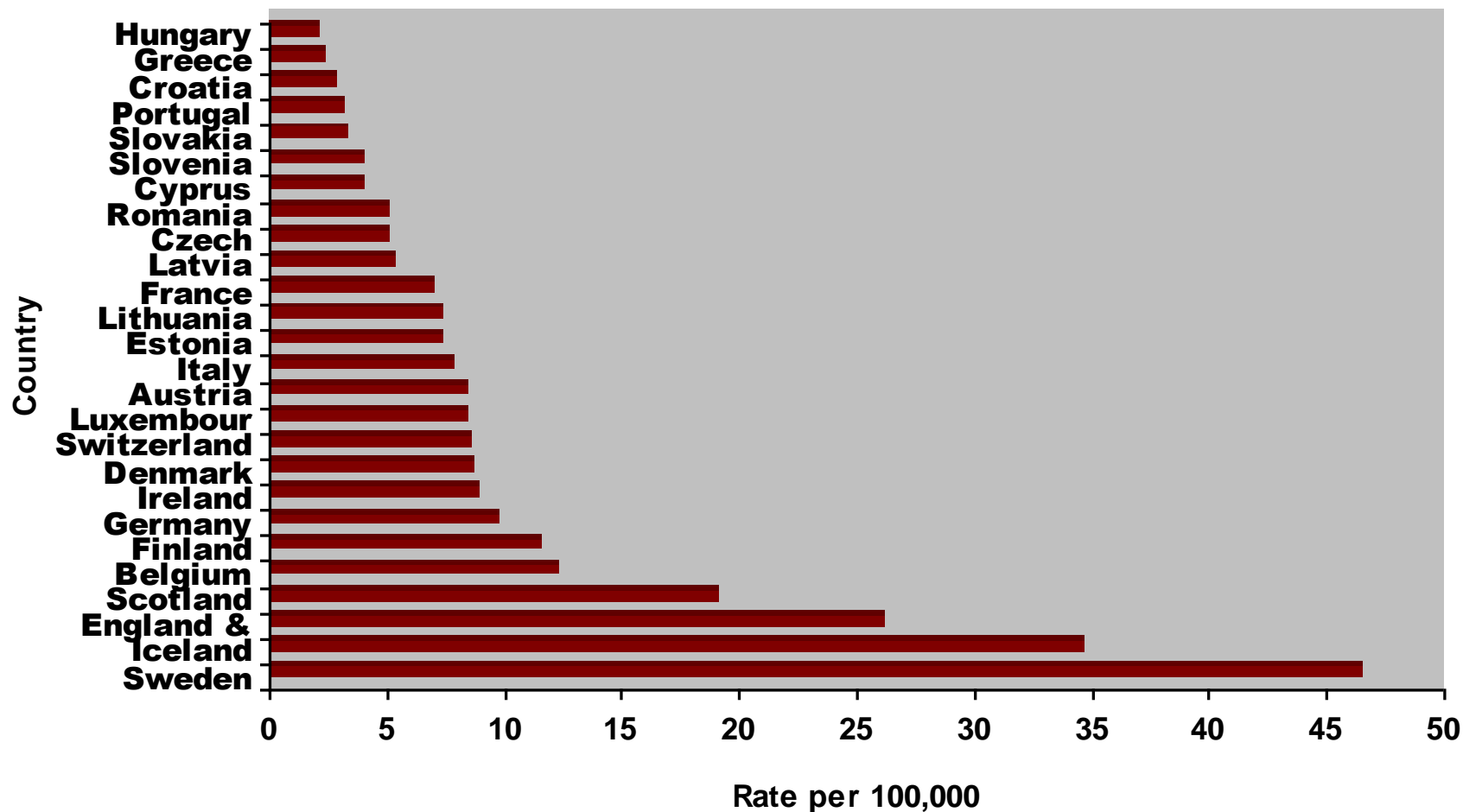
# Number of reported rapes 2006



# Reporting rates 2006



Figure 1: Europe - 2006 rape reporting rates



# Attrition across Europe

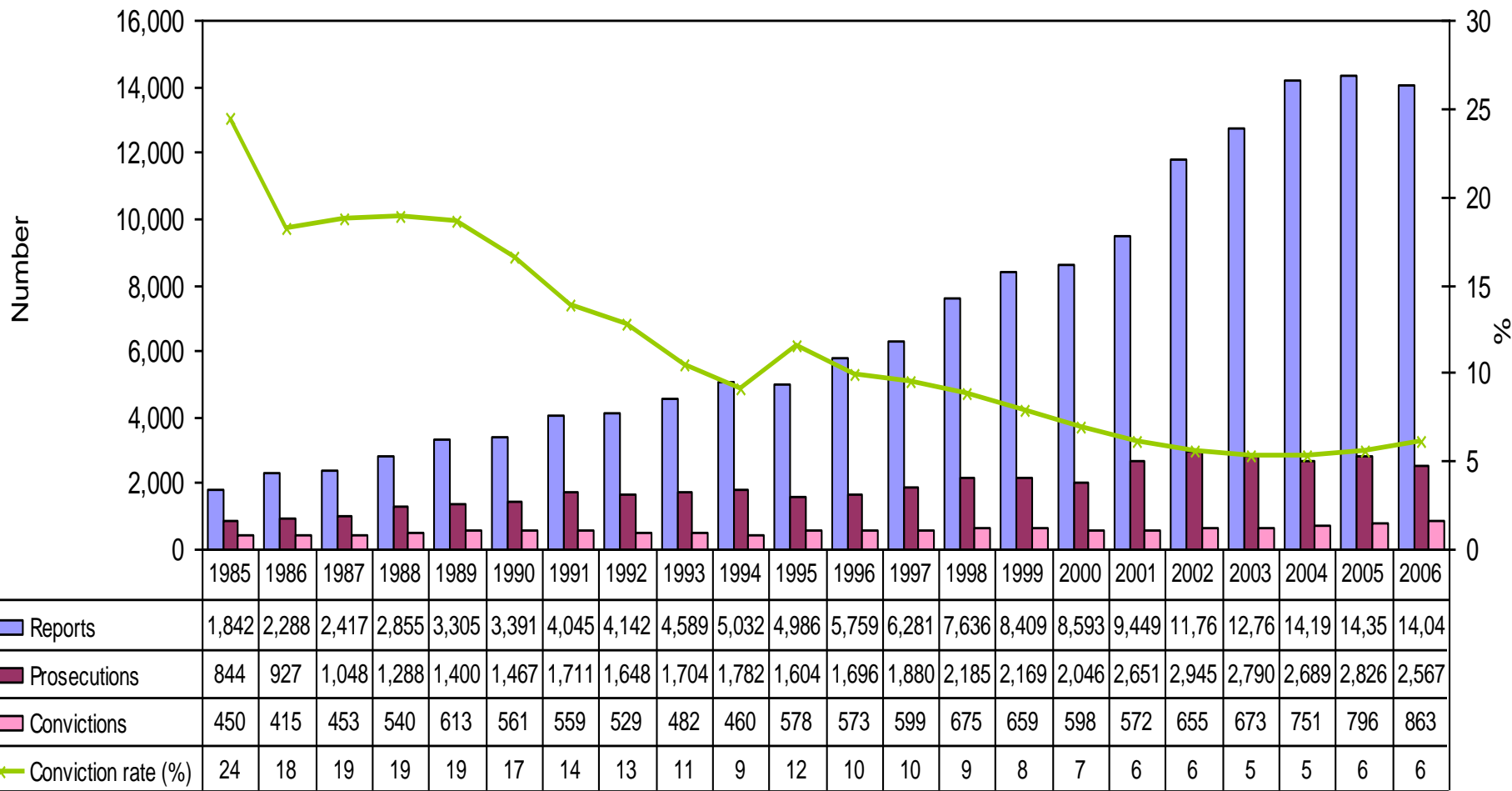


- ◆ Four patterns
  - ◆ Classic attrition – 16 countries
    - ◆ rising reporting, falling conviction rate
  - ◆ Expected pattern – 3 countries
    - ◆ increases in reporting and stable conviction rate
  - ◆ Reverse pattern – 3 countries
    - ◆ falling reporting and falling conviction rate
  - ◆ Anomalous – was 2 now only 1
    - ◆ higher convictions than prosecution/reports



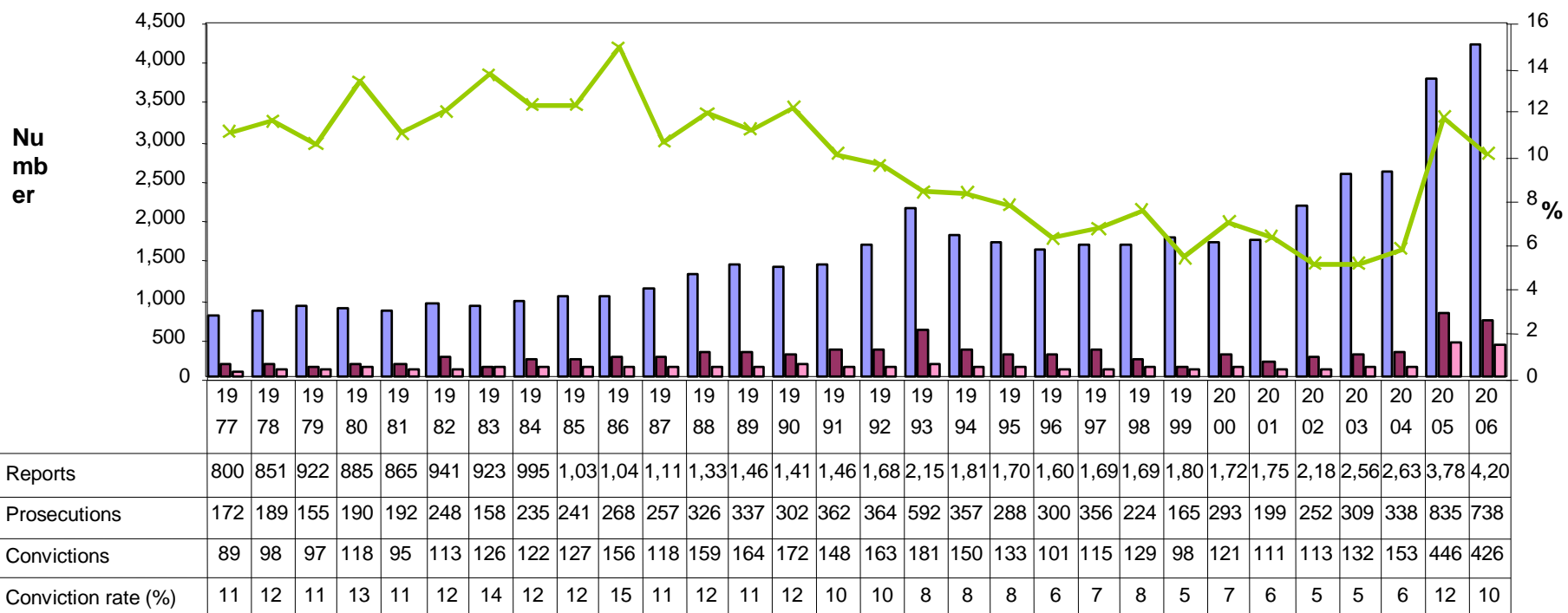


**Figure 3: Attrition in reported rape cases England and Wales 1985-2006**



■ Reports 
 ■ Prosecutions 
 ■ Convictions 
 —x— Conviction rate (%)

## Attrition in reported rape cases Sweden 1977-2007

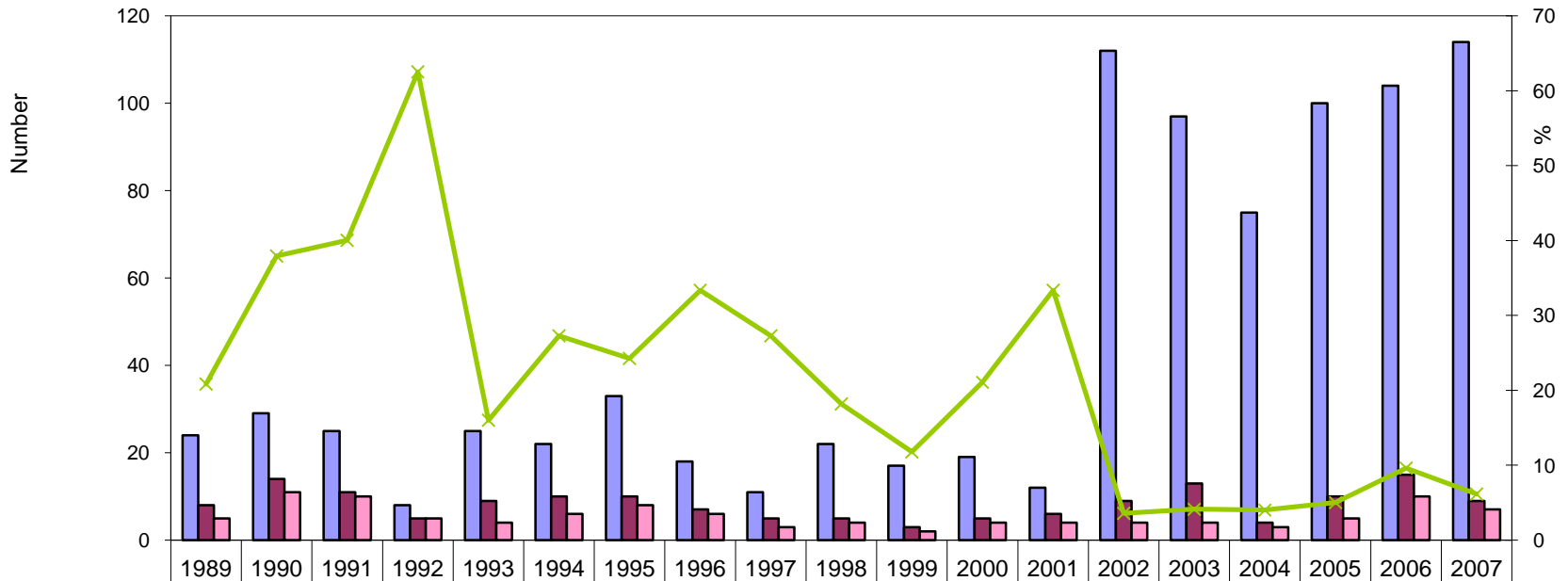


■ Reports   
 ■ Prosecutions   
 ■ Convictions   
 —x— Conviction rate (%)

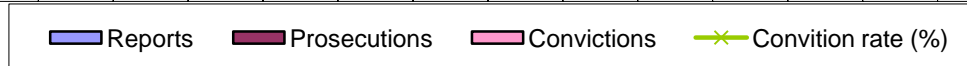
# The data from Iceland



## Iceland



Reports	24	29	25	8	25	22	33	18	11	22	17	19	12	112	97	75	100	104	114
Prosecutions	8	14	11	5	9	10	10	7	5	5	3	5	6	9	13	4	10	15	9
Convictions	5	11	10	5	4	6	8	6	3	4	2	4	4	4	4	3	5	10	7
Conviction rate (%)	21	38	40	63	16	27	24	33	27	18	12	21	33	4	4	4	5	10	6



# The original case file data



- ◆ 899 cases tracked, 9 countries
- ◆ Three sets of variables
  - ◆ Who are the decision makers?  
Victim/Police/Prosecutor/Court
  - ◆ Why did case fail to proceed?
  - ◆ When was the case discontinued?
    - ◆ Early/mid/later investigation
    - ◆ Before/during/at trial

# Key findings



- ◆ 15% of cases (n=134) resulted in a conviction
  - ◆ Conviction rates varied between 4% (Belgium) and 23% (Germany)
  - ◆ 20-68% were discontinued in the early investigation
  - ◆ Reasons for discontinuance
    - ◆ Insufficient evidence (30%)
    - ◆ Withdrawal of co-operation by victims (27%)
    - ◆ False allegations: 1-9%

# What made a conviction more likely?



- ◆ Comparison of conviction cases (n=128) with attrition cases (n=765)
- ◆ For suspects
  - ◆ Being a non-national
  - ◆ Being an identified stranger/recent acquaintance
  - ◆ Not being a current/ex partner
  - ◆ Having been previously accused/convicted
- ◆ For victims
  - ◆ Being female (1 of 32 male cases convicted)
  - ◆ Having a forensic examination and documented injuries
  - ◆ Not having a mental health problem

**Conviction cases were closer to the stereotype of rape and rapists than the whole sample**

# EXPLAINING ATTRITION: GAPS AND CHASMS

# 'Weak cases' or a question of perspective?



- ◆ CJS professionals argue that 'different' rapes being prosecuted from 1970s
- ◆ Their arguments include
  - ◆ That most reported rapes prior to 1980s involved strangers: **not the case in the 19<sup>th</sup> century**
  - ◆ Stranger rapes are violent, involve weapons, therefore strong evidentially: **rape by current/ex partners is among the most likely to cause visible injuries**
  - ◆ Rape by a known man is less damaging: **additional impacts due to betrayal of trust**
  - ◆ Problem is 'date rapes' where only evidence is one persons word against another: **very few (except in student samples) take place in context of a date, issue is targeting and how to adapt investigation and courtroom advocacy to known suspects**



# The reality of false complaints



- ◆ False allegations are complex
  - ◆ Third party reports
  - ◆ Distress and confusion
  - ◆ ‘Real’ false complaints are often vague lacking named individual
  - ◆ Range 1-9% across 11 European countries according to police and prosecution data
  - ◆ But other research shows CJS professionals think it much higher
  - ◆ Jan Jordon case file analysis in New Zealand, are adjudged false through judgements about victim credibility – 4 cases later re-opened

# Over-identification of false reports: Malcolm Rewa



- ◆ Tried in 1998 in New Zealand for assaults on 27 women over 15 years
- ◆ First report by young woman on edge of gang he leader of – she named him, but his alibi from a gang member was believed
- ◆ Subsequent attacks were all stranger rapes
- ◆ Only later were women who reported treated with respect and care
- ◆ Once he was charged ‘Rolls Royce treatment’ for victims
- ◆ Senior police officer – lesson = believe unless and until there is evidence to the contrary
  
- ◆ Jan Jordan, 2008, *Serial Survivors*
- ◆ Three similar cases in the UK in last three years

# International research suggests cultures of scepticism



- ◆ Police officers and prosecutors draw on stereotypes when deciding if a case (victim) is credible - reaching conclusions before a full investigation has taken place.
- ◆ Fearing disbelief and judgement, victims of rape may try to embellish their accounts, or conceal things, in order to make themselves appear more 'believable'
  - ◆ *[Thus] police scepticism promoted the narration of the very inaccuracies which, in turn, consolidated the police view that women fabricate complaints and make false allegations (Chambers and Millar, 1983, 86-7)*

# 'Real' rape

- ◆ *... the determining issue in the majority of rape cases is based on socially prevalent myths about sexual assault and stereotypes of female and male sexuality. These myths in effect classify some women as 'real' or 'deserving' rape victims and others as 'unrapeable'; some rapes as 'real' rapes and others as 'half won arguments' with no harm done. (Corbett and Larcombe, 1993, p133)*

# Credibility in court

- ◆ **Parraig and Renner, 1998** Study of 58 rape trials in US
- ◆ Extensive use of rape myths in content of questions asked of complainants
  - ◆ Lack of torn clothing; absence of injuries; demeanour post assault; prior knowledge of accused; lack of/insufficient resistance; sexual/medical history
- ◆ Victim-survivors have to enact non-consent convincingly in their evidence if the outcome is a guilty verdict
  - ◆ Polite but not compliant
  - ◆ Cooperative but not submissive
  - ◆ No exaggeration but talk straight
  - ◆ Answer promptly and precisely
  - ◆ Speak without shame

# Contradictions and paradoxes

- ◆ Have increased reporting and increasing convergence of reported rapes and the social science profile of rape
  - ◆ But low conviction rates
- ◆ To qualify as a 'real' and credible victim (Larcombe, 2002)
  - ◆ They should take appropriate precautions and act in predictable ways in the aftermath – if they do not fulfil these, professionals engage in 'blame work'
- ◆ Formal gender equality does not decrease rape in the short run – Nordic countries
- ◆ Rhetoric about 'seriousness' and trauma of rape
  - ◆ But limited priority in government policies
- ◆ Police responses rated more highly than in 1970s/80s, but many cases do not make it through this first stage of the process

# PROCEDURAL/PARALLEL JUSTICE: THE NECESSITY OF SUPPORT SERVICES

# What victim-survivors want and need

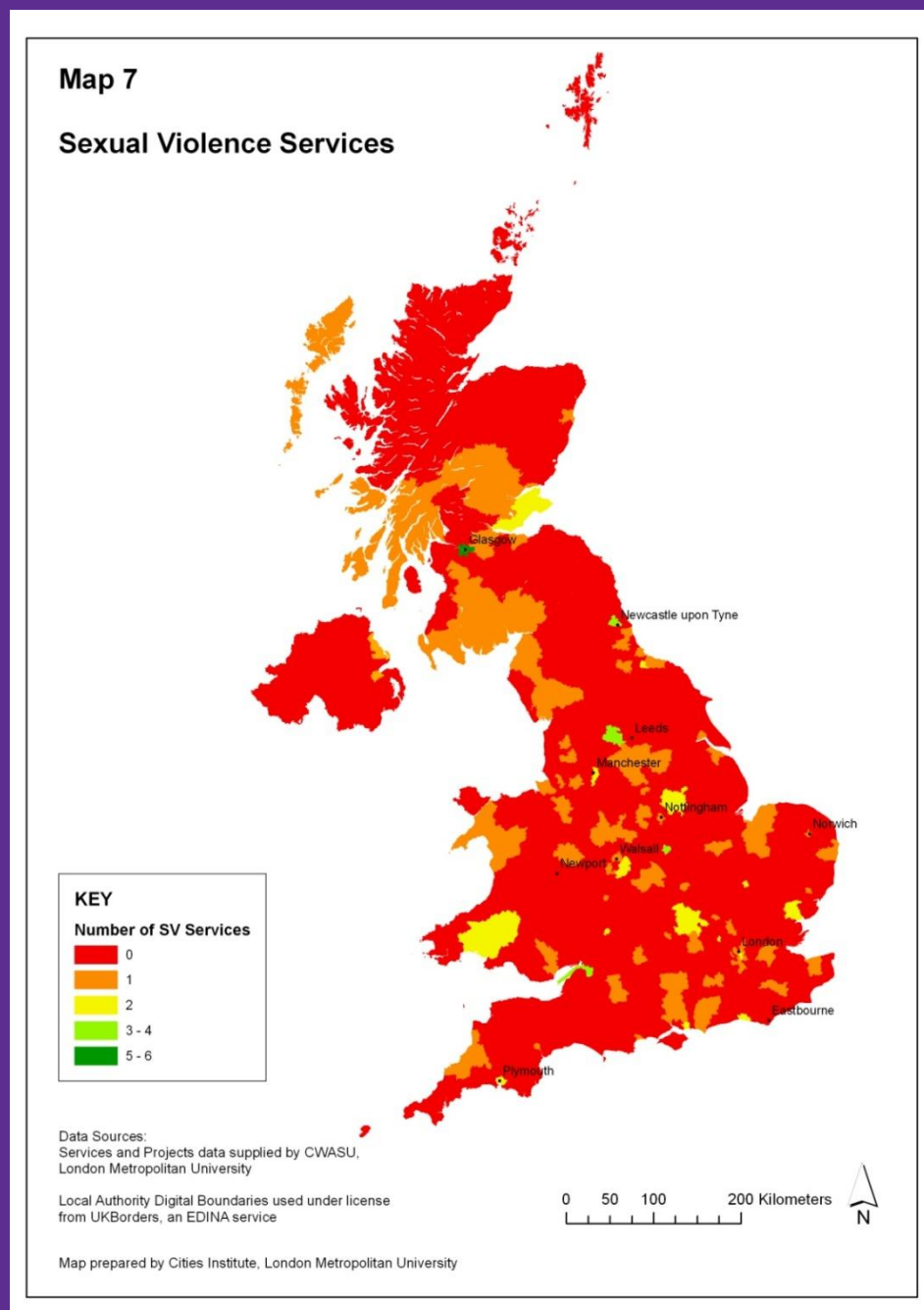


- ◆ Crisis and longer term support
- ◆ Safe space/context
  - ◆ Female forensic examiners/supporters
  - ◆ Culture of belief and respect
- ◆ Access when they need and want it
  - ◆ Availability – time and space
  - ◆ Responsiveness to need
  - ◆ Basket of resources
  - ◆ One stop person ('advocate')



# Sexual violence services in the UK

- In 2009 Only 1 in 4 local authorities have a sexual violence service
- No national sexual violence helpline
- Has been a growth in Sexual Assault Referral Centres through government policy and funding
- In last 12 months, first expansion in Rape Crisis Centres in England for more than a decade



# Rape Crisis Centres: 'The whole place self'



- ◆ Fiona Elvines MA dissertation,
- ◆ Standing alongside and working with
  - ◆ To rebuild a self fragmented by violence
  - ◆ Active participants in exploring what violence meant and means for their whole selves – they are not just a story of abuse, a collection of effects
- ◆ 'Relational self'
  - ◆ Rebuilding the self through connections with others
- ◆ Empowerment means extending women's space for action, including the power and possibility to speak out, be part of a collective movement against sexual violence and for women's equality

# Ongoing challenges and transformations



- ◆ Establish social norms of sexual autonomy
  - ◆ Sex as negotiated, and agreed to, not taken or acquiesced to
  - ◆ Consensuality – an enthusiastic ‘yes’
- ◆ Expand understandings of ‘real rape’, ‘real rapists’ and ‘real victims’
  - ◆ Rape as mundane, everyday in contexts of familiarity
  - ◆ Case building
    - ◆ ask critical questions about male behaviour
    - ◆ begin from 21<sup>st</sup> century notions of sex and gender
- ◆ Extend conceptions of justice
  - ◆ Victims as citizens and rights bearers
  - ◆ Right to quality support
  - ◆ Everyone a rape victim encounters can compound or mitigate the harm

# Getting it right and making a difference



- ◆ *And the respect I was shown! I didn't respect myself, you see, so for somebody to show you that much respect, and kindness, you start thinking, "I'm not a bad person, I'm not this dirty person, I thought I was, tainted, violated. They're treating me as normal. Something terrible has happened but they're treating me normally!" And you get a little bit – you feel confident, and more in control of things (50 year old woman attending a Sexual Assault referral Centre, court case acquittal).*