

Key facts about how the CPS prosecutes allegations of rape

Every allegation of rape that is referred to us by the police is dealt with in accordance with the [Code for Crown Prosecutors](#). This means we will only charge where there is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to pursue the case.

Rape is an extremely serious offence and when cases are referred to the CPS by the police they are carefully reviewed by experienced lawyers working in specialist Rape and Serious Sexual Offences (RASSO) units.

All RASSO prosecutors have completed a comprehensive rape training programme which includes training on consent, the traumatic impact of rape and the myths and stereotypes that surround these cases.

Charging and volume of rape cases

Justice for all is a cornerstone of our work. Casework decisions are taken fairly, impartially and with integrity, to ensure justice for victims, witnesses, defendants and the public.

The function of the CPS is not to presume guilt or decide a suspect is guilty, or automatically believe a complainant; it is to make fair, independent and objective assessments about the evidence. Suspects are innocent until proven guilty in a fair trial.

CPS prosecutors have a continuing duty to review cases that have been referred to us and charged. There are checks and balances throughout the process which are designed to identify and address issues before a trial, or stop a case when that's appropriate.

The CPS does not charge people with rape simply to increase prosecution numbers.

As with any other offence, a decision to charge a suspect is made in accordance with the Code for Crown Prosecutors. This means we will only charge where there is sufficient evidence to provide a realistic prospect of conviction and a prosecution is in the public interest.

Evidence shows that the prevalence of these crimes isn't decreasing; latest figures for the year ending September 2017, from the Office for National Statistics, reported an increase of 29% in police recorded rape crime (to 48,773 offences); following an increase of 15% in the year ending March 2017.

Of the 6,611 suspects referred to the CPS for rape in 2016–17, 55.5% were charged.

The CPS does not have a duty to prove guilt before a suspect is charged.

When the CPS authorises charges in a case it is because a prosecutor is satisfied that, having reviewed all of the available evidence in the case, there is a 'realistic prospect of conviction'. That

means that an objective, impartial and reasonable jury, magistrate or judge, acting in accordance with the law, is more likely than not to convict the defendant of the alleged charge. It is important to note that this is a different test from the one that the criminal courts must apply – which is to be sure that the defendant is ‘guilty beyond reasonable doubt’.

An acquittal does not mean that charges should not have been authorised by the CPS. It means that the jury, magistrate or judge could not be sure beyond reasonable doubt that the defendant was guilty.

Consent

A person consents to sexual activity only if they agree by choice, and they have the freedom and the capacity to make that choice.

The CPS has to prove the absence of consent in rape cases, and needs to consider if the complainant did not have the freedom and/or capacity to consent.

There is no requirement to prove an absence of consent for rape of a child under 13 or for child sexual offences involving children under 16; children under 18 having sexual relations with persons in a position of trust; or children under 18 involved in sexual activity with family members over 18.

Situations in which complainants may not have the **freedom** include:

- If rape occurs in a domestic abuse situation;
- Where the suspect was in a position of power where they could abuse their trust, e.g. teacher, employer, gang member, family member, religious leader;
- The complainant was dependant on the suspect, e.g. financially or for care;
- If the complainant was significantly younger than the suspect.

Situations in which complainants may not have the **capacity** include when they:

- Were heavily under the influence of drink or drugs;
- Suffer from a medical condition which limits their ability to consent or communicate consent;
- Have a mental health problem or learning disabilities;
- Were asleep or unconscious.

Further information on consent is available [here](#).

Prosecutors do not ignore what a suspect might have believed when applying the law on consent.

When applying the law on consent in rape cases, prosecutors are required to assess what the suspect believed when the alleged rape took place. The prosecution must prove that the suspect did not have a reasonable belief that the complainant was consenting. Whether the suspect’s belief was reasonable is determined in regard to all the circumstances, including any steps the suspect took to ascertain whether the complainant consented.

A suspect can be guilty of rape even if they believed the complainant consented.

The suspect's belief in the victim's consent must be 'reasonable'. All the circumstances of the case must be taken into consideration to assess the 'reasonableness', including any steps the suspect took to establish whether the complainant consented.

Consent, alcohol and drugs.

Being drunk or on drugs does not mean a person gives up their right to consent, that they are to blame for being attacked, or that they were 'fair game'.

People under the influence of drink or drugs may or may not be able to consent.

In 2007, the Court of Appeal [R v Bree [2007] EWCA Crim 804] determined that if a victim had temporarily lost their ability to consent, because of the effects of drink and/or drugs, then they were not consenting.

However, it is possible that a person may be heavily intoxicated, having voluntarily consumed a large quantity of alcohol and/or drugs, and still be capable of deciding to have sexual intercourse.

The specific facts of each case must be examined, including the defendant's state of mind, when deciding whether consent is deemed to have been given.

Silence does not amount to consent.

The Court of Appeal has repeatedly stated that there is no evidential obligation for a victim to have said or done anything in order for a guilty verdict to be returned. Judges provide [standard directions](#) to the effect that juries are to set aside any stereotypical assumptions about how victims and assailants act and react.

If a complainant says 'yes' once, that does not mean they consent to further sexual activity.

Consent can be withdrawn at any time and for any type of sexual activity. For example consent may be given for sexual intercourse but not for other types of sexual activity. The police need to check how the suspect knew or believed the complainant was consenting to sex; and continued to consent.

Rape can happen between spouses and partners.

The offence of rape was extended in 1992 so that a husband could be convicted of raping his wife [R v R [1992] 1 AC 599].

In 2016–17 the CPS prosecuted 959 cases of domestic abuse flagged rape cases, which represented 18% of all rape prosecutions. The CPS recognises the particular pressures faced by victims of domestic abuse and we are committed to providing as much support as possible to victims during their journey through the criminal justice process.

Disclosure

Dealing with disclosure is a fundamental part of the investigation and prosecution of all criminal cases, not only rape cases.

The disclosure process, which requires prosecutors to provide the defence with any material that is capable of undermining the case for the prosecution or assisting the case for the accused, is a crucial part of a fair criminal justice system.

In January 2018 the CPS and the police announced a [package of measures](#) to improve how the criminal justice system deals with disclosure.

Photographs and communication data is carefully analysed in the context of a rape allegation.

[In 90% of rape and sexual assault cases the complainant and suspect are acquainted](#) and as such there may be more communication between them, especially on social media, which is different to other types of cases.

Recovered photographs and messages may not reflect what was taking place between the parties at the time of the alleged rape. Prosecutors will carefully consider factors such as the timing and context within which images were taken, or messages sent, in order to assess relevance to the issues in the case.

It should be noted that [Section 41 YJCEA 1999](#) imposes significant restrictions on the admissibility of evidence relating to the previous sexual behaviour of a complainant in a sexual offences trial. This includes sexualised images or messages that may have been recovered during the course of the police investigation.

False allegations

If a case is not charged by the CPS or is stopped before a trial this does not mean the complainant made a false allegation.

A decision to stop a case on evidential grounds does not mean that an allegation is false. It means that the case does not meet the evidential test required to put an allegation before a jury under the Code for Crown Prosecutors.

Research has shown that false allegations of rape are rare. [A CPS report published in 2013](#) showed that over a 17 month period, there were 5,651 prosecutions for rape, and during the same period there were 35 prosecutions for making false allegations of rape.

The CPS prosecutes false allegations of rape when the evidential test is met.

False allegations of rape or sexual assault can have a very damaging impact on the person falsely accused. Such cases are dealt with robustly and those falsely accused should feel confident that the CPS will prosecute these cases wherever there is sufficient evidence and it is in the public interest to do so.

The Director's Legal Advisor advises on all charging decisions for perverting the course of justice offences where there has been an alleged false allegation of rape.

An acquittal does not automatically mean there was a false allegation.

When a jury returns a not guilty verdict it means that they were not satisfied 'beyond reasonable doubt' that the offence was committed.

Victims of rape

Victims react in many different ways to a sexual assault.

All RASSO prosecutors have received training on the traumatic impact of rape and the fictions and stereotypes that surround these cases. Judges provide [standard directions](#) to the effect that juries are directed to set aside any stereotypical assumptions about how victims and assailants act and react.

It may take time for a rape victim to come forward and report.

The trauma of rape can cause feelings of shame and guilt which might inhibit a victim from making a complaint. This fact was recognised by the Court of Appeal in R v D (JA) October 24 2008 where it was held that judges are entitled to direct juries that due to shame and shock, victims of rape might not complain for some time, and that a late complaint does not necessarily mean that it is a false complaint.

Judges provide [standard directions](#) to the effect that juries are to set aside any stereotypical assumptions about how victims and assailants act and react.

Volume of Violence against Women and Girls cases.

The volumes of Violence against Women and Girls (VAWG) cases reported to the police and brought forward for prosecution have increased significantly over the last decade. VAWG prosecutions now account for one in five of the overall CPS caseload. We always assess each case according to the Code for Crown Prosecutors.

In the year ending September 2017, the Office for National Statistics reported that there was an increase in the number of domestic abuse-related offences recorded by the police (up 20% to 535,359 from 447,950) and rape offences rose by 29% (to 48,773 offences) compared with the previous year.

The CPS treats female and male victims of sexual violence equally.

We are committed to securing justice for *all* victims. All our VAWG policies are applied fairly and equitably to all perpetrators and victims of crime – irrespective of their gender. In 2016–17 there were 4,657 female victims of rape, 754 male victims and the gender was not recorded for 1,790 victims. In recognition that male victims may not come forward to report rape and other VAWG crimes, CPS published a [public statement on support for male victims](#) in September 2017.

Further data and information can be found in the [CPS Annual Violence against Women and Girls report](#).

CPS Victim Data

Gender

- Data on the gender of rape victims was recorded for 7,201 individuals in 2016–17.
- Of all rape victims 4,657 were female, 754 were male and the gender was not recorded for 1,790 victims.

Age

- Of those rape victims whose age was recorded in 2016–17, the largest groupings of victims were aged 25–59 (45.9%) and 18–24 (24.7%).
- 52.3% of rape victims (3,022) were aged 24 and under, with 1,059 (18.3%) of victims being 14–17 years old, 435 (7.5%) aged 10–13 and 103 (1.8%) under 10.

Suspects of rape

90% of rape and sexual assault offences are committed by offenders who are known to the complainant. People are often attacked in settings where they feel safe such as the home or workplace.

In 2016–17 only 13% of all the rape trials that took place in England and Wales involved a defendant aged 18–24, where a victim was over 18 years old.

Most defendants in criminal cases are not provided with anonymity.

Defendants in criminal cases in England and Wales, in all but exceptional cases and cases involving people under 18, are named at point of charge. Changes in legal policy and legislation around anonymity for suspects accused of rape and other crimes are a matter for wider government, but it is our consistent experience that the publicity given to cases serves to encourage additional complainants and witnesses to come forward, giving the police access to valuable additional evidence and enabling the CPS to build a prosecution case.

CPS Defendant Data

Gender

Of the 5,190 defendants prosecuted for rape in 2016–17:

- 5,118 defendants were male (98.8%), 64 were female (1.2%). Gender was not recorded for eight defendants.

Ethnicity

- In 2016–17, 56.4% of defendants prosecuted for rape were categorised as White, of which 50.9% were identified as belonging to the White British category.

- 5.8% of defendants were identified as Asian and 9.7% were identified as Black – a rise of 0.4ppt.

Age

- Of those rape defendants where age was recorded in 2016–17, the majority of defendants were aged 25–59 (59.9%) and 18–24 (21.3%).
- 29.6% of defendants (1,526) were aged 24 and under, with 371 (7.2%) of defendants being 14–17 years old and 54 (1%) aged 10–13.

Legal landmarks

In the last few decades there has been significant changes in legislation, including:

- In 1992 rape in marriage became a crime;
- In 1999 Section 41 was introduced to restrict how and when a complainant's sexual history in cases of sexual offence can be used;
- In 2003 rape was extended to include oral rape; and the law also changed the way in which lack of consent may be proved;
- In 2017 victims were allowed to provide evidence in pre-recorded cross-examinations, to be played to the jury once the trial begins, rather than have to attend court in person.