

**CHARGING PERVERTING THE COURSE OF JUSTICE**  
**AND WASTING POLICE TIME**  
**IN CASES INVOLVING ALLEGEDLY FALSE**  
**RAPE AND DOMESTIC VIOLENCE ALLEGATIONS**

**Joint report to the Director of Public Prosecutions**

**by**

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## **FOREWORD**

### **Director of Public Prosecutions**

The Crown Prosecution Service has come a long way in dealing with cases involving violence against women and girls (VAWG). In the last year (2011-12) we have seen the conviction rate rise to 73%, delivering the lowest attrition rates ever recorded.

This report is the product of the first ever study, by the Crown Prosecution Service, of the number and nature of cases involving allegedly false allegations of rape or domestic violence, or both. This is in many ways a trailblazing report, the first time we have clear evidence about the prosecution of this important issue. The report outlines the key findings of that review and the steps that we plan to take in response.

In recent years both the police and prosecutors have put a great deal of effort into improving the way we investigate and prosecute sexual offences. The results of the changes and improvements which have been made are encouraging. Our committed and specialist staff have prioritised performance in these important and difficult cases. We have bolstered training, policies and guidance for rape and domestic violence specialists. Closer working with the police and specialist services has helped to address the types of ingrained practices which can ignore, or even add to, the victimisation of women and girls. We are not complacent, however, and in particular, events over the last 12 months show that there is still more that we must do to improve.

In recent years we have worked hard to dispel the damaging myths and stereotypes which are associated with these cases. One such misplaced belief is that false allegations of rape and domestic violence are rife. This report presents a more accurate picture.

At the outset it is important that we acknowledge the very damaging impact that a false allegation of rape or sexual assault – be it either malicious or misguided – can have on the person falsely accused. Reputations can be ruined and lives can be devastated as a result. Such cases will be dealt with robustly and those falsely accused should feel confident that the Crown Prosecution Service will prosecute these cases wherever there is sufficient evidence and it is in the public interest to do so.

However, these cases can be extremely complicated. In November 2010, the Court of Appeal considered an appeal against sentence in the case of Ms A, who ultimately pleaded guilty to perverting the course of justice on the basis that she had falsely retracted true allegations of rape she had made against her husband. This case underlined the need for police and prosecutors fully to investigate and carefully to consider the circumstances in which an allegedly false claim of rape, sexual assault, or domestic violence is made.

Following this case and in order further to support prosecutors in their decision-making, I published new legal guidance on perverting the course of justice in July 2011<sup>1</sup>. For a period of 17 months, I also required CPS areas to refer all cases involving an allegedly false allegation of rape, domestic violence, or both, to me personally to consider.

This report outlines the key findings from the review of those cases and the steps that we plan to take. Importantly, what it shows is that charges brought for perverting the course of justice or wasting police time for an allegedly false allegation of rape or domestic violence need to be considered in the context of the total number of prosecutions brought for those offences. In the period of the review, there were 5,651 prosecutions for rape and 111,891 for domestic violence<sup>2</sup>. During the same period there were 35 prosecutions for making

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<sup>1</sup> [Guidance Perverting the Course of Justice - Charging in cases involving rape and/or domestic violence allegations](#)

<sup>2</sup> Note - false allegation data is related to 'victims' alleging rape or domestic violence where a charge of PCJ or WPT has been made; whereas rape and domestic violence prosecution data is related to 'defendants' prosecuted for these offences. CPS rape and domestic violence victim data does not allow for direct comparison; however equivalence in volume can be indicated

false allegations of rape, 6 for making false allegation of domestic violence and 3 for making false allegations of both rape and domestic violence.

Furthermore, the report shows that a significant number of these cases involved young, often vulnerable people. About half of the cases involved people aged 21 years old and under, and some involved people with mental health difficulties. In some cases, the person alleged to have made the false report had undoubtedly been the victim of some kind of offence, even if not the one which he or she had reported.

This review has highlighted the complex nature of these cases. Prosecutors need to look critically at the behaviour and credibility of all those involved, not just the person making the complaint.

In addition, the events of the last year have demonstrated that there is an urgent need for an informed national debate about the proper approach to the investigation and prosecution of sexual offences. That debate needs to extend well beyond the CPS and the police.

I know that this report will help us to ensure that we are able to make consistent and sound decisions in cases involving allegedly false allegations. I hope, too, that it will help to inform the wider debate. I look forward to working with colleagues and stakeholders on these important issues.

## INTRODUCTION

1. In January 2011, the Director of Public Prosecutions<sup>3</sup> decided to require all CPS Areas to refer to him any case in which a person who was said to have made a false complaint of rape and/or domestic violence was being considered for prosecution. He wished personally to oversee all charging decisions<sup>4</sup> in these cases, because of the particular difficulties and sensitivities which can arise.
  
2. This report analyses the 159 charging decisions<sup>5</sup> made over a seventeen month period between January 2011 and May 2012. Of these:
  - (a) 121 involved an allegedly false allegation of rape<sup>6</sup>,

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<sup>3</sup> 'DPP'

<sup>4</sup> In this context, 'charging decision' refers to the decision as to whether to prosecute for an offence, to offer an out of court disposal, or to take no further action

<sup>5</sup> The expression 'decision' correlates with the number of suspects, not the number of cases, because in a small number of cases there was more than one suspect, in relation to each of whom an individual decision had to be made

<sup>6</sup> In this report, 'rape' is used to include those who complained of other sexual assaults. The breakdown is as follows: 105 suspects alleged rape; ten alleged rape and sexual assault and six alleged other sexual offences.

- (b) 27 involved allegedly false allegations of domestic violence, that is to say, assaults of a non-sexual nature between adults who are or have been intimate partners or family members<sup>7</sup>, and
  - (c) 11 involved both rape and domestic violence.
- 3. In this report the expression ‘suspect’ is used to describe the person who has allegedly made the false complaint and is being considered for prosecution.
- 4. Whilst it is not an exact science, it may be instructive to compare the figures for those prosecuted for making a false allegation with the number of prosecutions for rape, sexual assaults and domestic violence which took place during the same period<sup>8</sup>:
  - (i) there were 5,651 prosecutions for rape, and 35 prosecutions<sup>9</sup> for making false allegations of rape.
  - (ii) there were 111,891 prosecutions for domestic violence, and 6<sup>10</sup> for making false allegations of domestic violence.

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<sup>7</sup> The Government definition of domestic violence from March 2013 states that it is: *Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological; physical; sexual; financial and emotional.* The full definition is available on the Home Office website.

<sup>8</sup> In England and Wales

<sup>9</sup> There is a possibility that a small number of these original allegations were made before January 2011

<sup>10</sup> See footnote 7

- (iii) there were a further 3 people charged with making false allegations of both rape and domestic violence.
- 5. It will be seen that there were a large number of prosecutions for rape and domestic violence but that only a very small number of individuals were prosecuted for having made a false complaint.

## **BACKGROUND**

- 6. In November 2010, the Court of Appeal dealt with the case of *R v A*<sup>11</sup>. The facts were as follows:
  - i. Ms A had reported to the police that she had been raped on three occasions by her husband, against a background of other domestic violence. As a result of her complaint, he was arrested and charged.
  - ii. Some weeks later, Mrs A told the police that she no longer wished her husband to be prosecuted and that, whilst what she had said was true, they were now reconciled and she wanted to retract her allegations. Following careful consideration, the CPS Area decided that the prosecution should continue, because cases involving serious offences such as rape are not merely a private matter between the parties.

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<sup>11</sup> [2010] EWCA Crim 2913

- iii. Upon being told that the case would continue, Mrs A said that she had lied in her statements and that her husband had never raped or otherwise assaulted her. This meant that there was no longer any evidence against him and therefore the case was stopped. The decision was made to charge Ms A herself with perverting the course of justice on the basis that she had made false allegations against her husband, who had as a result spent some time in custody awaiting trial.
  - iv. However, after she was charged, Ms A then said that in fact the original allegations had been true. As a result she was further charged (in the alternative) with perverting the course of justice, on the basis that she had falsely withdrawn a true allegation. This situation is known as a “double retraction”.
  - v. Ms A pleaded guilty, but on the basis that her original allegations of rape were true and she had lied when she said that they were not. She was sentenced by the Crown Court to eight months’ imprisonment, which was reduced by the Court of Appeal to a community order.
7. This case caused the CPS to consider whether the decision to prosecute Ms A had been in the public interest, because prosecuting her for falsely retracting her allegations involved of necessity accepting that she had in fact been a victim of rape.



8. As part of a package of measures intended to increase public confidence in the way that the CPS handles rape allegations, the DPP announced he would introduce legal guidance on how to deal with cases involving allegedly false rape and domestic violence allegations and that he would require CPS Areas to refer all such cases to him for approval. In February 2011, he launched a public consultation process which included a roundtable discussion with interested parties and stakeholder groups in order to get expert views as to the factors that prosecutors should consider when dealing with these difficult and sensitive cases.
  
9. Final guidance, informed by the roundtable and consultation responses, was published in July 2011 ([link](#)). It seeks to strike a balance between ensuring that genuine victims who retract truthful allegations (often as a result of pressure or violence) are not prosecuted, whilst recognising the need to protect the innocent from false allegations of rape or domestic violence. It recognises that not only is it inherently unfair and undesirable that genuine victims should be at risk of prosecution, but that that it might have the effect of deterring other victims from coming forward. However, it also reminds prosecutors that perverting the course of justice is always a serious offence; it is important to prosecute those who make false allegations of serious crime and to deter others who might be minded to do so.

## ANALYSIS OF DECISIONS REFERRED TO THE DPP FOR APPROVAL

### Overview

10. Between January 2011 and May 2012, the police referred 159 suspects to the CPS for charging decisions to be made.

#### *Allegedly false rape allegations*

11. There were 121 suspects whose cases involved allegedly false rape complaints. Of these, 35 were prosecuted: 25 for perverting the course of justice and ten for wasting police time.

#### *Allegedly false domestic violence allegations*

12. There were 27 allegedly false allegations of domestic violence. Of these, six were prosecuted: five for perverting the course of justice and one for wasting police time.
13. There were in addition eleven decisions involving allegedly false allegations of both rape and domestic violence, of which three suspects were prosecuted for perverting the course of justice.

**Table 1: Breakdown of all decisions made**

<b>Decision</b>	<b>Rape</b>	<b>Domestic violence</b>	<b>Rape and domestic violence</b>
<b>Total suspects referred for charge</b>	121	27	11
Charge PCJ	25	5	3
Charge WPT	10	1	0
No further action	75	21	8
Out of court disposal	11	0	0

### **The Suspect**

14. Of the 159 suspects, the vast majority (92%<sup>12</sup>), were female. Only thirteen of those suspected of making false allegations were men (eight involving rape and five involving domestic violence).
  
15. Nearly half of the suspects were aged 21 or under<sup>13</sup>, of whom eleven were aged under sixteen. The majority of young suspects had made an allegation of rape rather than one of domestic violence.

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<sup>12</sup> 146 suspects

<sup>13</sup> 72 suspects (45%)

**Table 2: Suspect data: Age related to allegation**

Age of suspect (total number)	Allegation			
	Rape (% <sup>14</sup> )	domestic violence (% <sup>15</sup> )	Both (% <sup>16</sup> )	Total (%)
Under 16	10 (8%)	0 (0%)	1 (9%)	11 (7%)
16 - 17	16 (13%)	2 (7%)	0 (0%)	18 (11%)
18-21	36 (30%)	5 (19%)	2 (18%)	43 (27%)
Total (% of cases)	62 (51%)	7 (26%)	3 (27%)	72 (45%)

Those against whom allegedly false allegations had been made<sup>17</sup>

16. 98% of those who had been accused of rape or domestic violence were men, and the majority were over 21<sup>18</sup>.

<sup>14</sup> % of all suspects involved in a rape allegation

<sup>15</sup> % of all suspects involved in a DV allegation

<sup>16</sup> % of all suspects involved in both a DV and rape allegation

<sup>17</sup> The expression 'complainant' is confusing, and 'victim' is inappropriate in this context

<sup>18</sup> Data relating to age was only available in 71 of the decisions; therefore, it cannot be relied on statistically for the purposes of this report. The sex of twelve of those accused was not recorded. Of the remaining 144 people who had been accused, and where this data was available, 98% or 141 were male and 2% or three were female.

## Relationship between the suspects and those they had accused

17. 84%<sup>19</sup> of suspects had identified a person as being their alleged attacker. The majority<sup>20</sup> of these cases involved allegations of rape.
18. A relationship of some kind between the suspect and the person he or she had accused was recorded in 106 of the decisions. For 54%<sup>21</sup> of the suspects that relationship was or had been an intimate one.

**Table 3: Type of relationship**

Type of relationship	Rape (% <sup>22</sup> )	Domestic violence (% <sup>23</sup> )	Both (% <sup>24</sup> )	Total (% <sup>25</sup> )
<b>Intimate</b>	25 (37%)	21 (78%)	11 (100%)	57 (54%)
<b>Family</b>	11 (16%)	5 (18%)	0 (0%)	16 (15%)
<b>Acquaintance</b>	32 (47%)	1 (4%)	0 (0%)	33 (31%)
<b>Total</b>	<b>68</b>	<b>27</b>	<b>11</b>	<b>106</b>

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<sup>19</sup> 134 suspects

<sup>20</sup> 96 or 72%

<sup>21</sup> 57 suspects

<sup>22</sup> % of 68 suspects involved in rape allegations where a relationship was recorded

<sup>23</sup> % of 27 suspects involved in DV allegations where a relationship was recorded

<sup>24</sup> % of 11 suspects involved in a DV and rape allegation where a relationship was recorded

<sup>25</sup> % of 106 cases where the relationship was recorded

## Common themes

***(This section should be read in conjunction with the Lessons Learned section which follows)***

### ***Third party reporting***

19. In 38%<sup>26</sup> of all decisions, the initial complaint of rape or domestic violence had been made by someone other than the suspect:
- 92%<sup>27</sup> of these related to rape
  - 6%<sup>28</sup> related to domestic violence and
  - 2%<sup>29</sup> related to both domestic violence and rape.
20. More than half<sup>30</sup> of the suspects who were under 18 had not contacted the police themselves, the initial report having been made by someone else. All but one of these decisions involved an allegation of rape.
- 21 It was a feature of these cases that the suspect later reported that the whole thing had spiralled out of control and he or she had felt unable to stop the investigation.

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<sup>26</sup> 61 suspects

<sup>27</sup> 56 suspects

<sup>28</sup> 4 suspects

<sup>29</sup> 1 suspect

<sup>30</sup> 55% or 16 out of 29 suspects

## CASE STUDY 1

The suspect was a girl of 14 who had been in a relationship with a young man aged 17. Her father became aware of the relationship and made it clear that, given the age difference, he did not want it to continue. However, the girl continued with the relationship without her father's knowledge and had sex with her boyfriend. When her father found out and confronted her she said that she had not wanted to have sex. Her father contacted the police and the girl gave an account to officers in which she said that she was not a willing participant in the sexual activity that had taken place.

The young man was arrested and admitted to having sex with the girl but said that it had been consensual (he was subsequently prosecuted for penetrative sexual activity with a child). As police investigated the offence they discovered evidence which cast doubt on the girl's allegation that she had been raped, including conversations and text messages with friends which undermined her account. She was arrested and interviewed and admitted that she had consented to sex. She said that she made the allegation to her father because she did not want him to think badly of her and once it was reported to the police she felt under pressure to continue with it.

The case passed the evidential stage of the full Code test however a prosecution was not required in the public

interest. Whilst the young man involved had been arrested and interviewed in relation to the rape allegation he had in fact committed an offence by having sex with the suspect when she was 14. Had this been reported to the police, it is likely that he would have been arrested and interviewed. The rape allegation did not appear to have been motivated by malice and it was clear that the suspect had not fully understood the seriousness of making a false allegation. There was evidence that the young man had had sexual relationships with other underage girls and he had plainly exploited the suspect's affection for him knowing that she was too young to consent. In addition the suspect had significant personal mitigation, had expressed remorse and appeared to present a low risk of reoffending.

## CASE STUDY 2

The suspect was a man aged 20 who was having a relationship with a woman. He told his mother he had been raped by a man. His mother called the police to report the offence and the suspect then repeated the allegation, adding more detail. The other man was arrested; in interview he accepted having sex with the suspect but said that it was consensual. As the investigation progressed the police uncovered evidence that caused them to doubt the truth of the allegation and the suspect was arrested.



When interviewed by the police he admitted that he had been struggling to come to terms with his sexuality. He had on two occasions had sex with a man; it was after the second occasion that he had told his mother he had been raped, because he had felt guilt, shame and depression about his sexuality.

The case passed the full Code test and the suspect was charged with perverting the course of justice.

### ***Mental health***

22. 18%<sup>31</sup> of suspects had a mental health problem that had been identified by a medical assessor. Of these, all but one had made an allegedly false rape allegation (three had alleged both rape and domestic violence and one domestic violence alone).

### **CASE STUDY 3**

The suspect was in her forties and at the relevant time, she was having a relationship with a man, X. The suspect had told her adult son that another man (Y) had raped her. A third person contacted the police, who attended and found the suspect drunk and with cuts to her arms. The suspect

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<sup>31</sup> 29 suspects

alleged that Y and others had been at her house, drinking alcohol and he had taken her upstairs and raped her; she said that her partner X (a man with a history of domestic violence) already knew about the rape: she had told him because he had *“popped his head round the door and seen her in bed with Y”*.

Y was arrested and interviewed under caution. He said that he had had consensual sex with the suspect.

After further investigation, the suspect was arrested for perverting the course of justice. She had a number of “informal” conversations with the police in which she said she had not been raped and had made a false allegation because she felt guilty for having consensual sex with Y. She was then interviewed (without a solicitor present) and accepted and repeated her earlier admissions.

However, further enquiry revealed that the suspect had a significant learning disability (she was in the lowest 1% of the population), was unlikely to have the mental capacity to understand the consequences of making a false statement and would have “just have gone along with whatever happened”. An educational psychologist who assessed her remarked that it would be wrong to assume that she had “common sense” knowledge.

The only evidence that she had not been raped came from

her admissions. There were significant concerns as to the admissibility of those admissions. Even were they admissible, there was an issue as to whether the prosecution would be able to prove that she had in fact intended to pervert the course of justice.

Those points, whether taken alone or together, meant that there was insufficient evidence to provide a realistic prospect of conviction

### ***Alcohol and drugs***

23. Alcohol and drugs were a feature in 33% of the decisions, in the sense that 53 suspects had taken drugs or drunk alcohol or both, either at the time the incident had allegedly taken place, or at the time the report was made. It is important that it is not perceived or suggested that the consumption of alcohol or drugs provides any excuse for making a false complaint, nor that it indicates either way that a complaint may be more likely to be false or true. However prosecutors are reminded that in some cases excessive consumption of alcohol may be an indication of vulnerability particularly in circumstances where the suspect is very young.

**Table 4: Suspect - alcohol and drugs**

	<b>Rape</b>	<b>Domestic violence</b>	<b>both</b>
<b>Alcohol (43)</b>	37	5	1
<b>Drugs (7)</b>	7	0	0
<b>Alcohol and drugs (3)</b>	3	0	0
<b>Total (53)</b>	47	5	1

24. A number of suspects for whom alcohol and drugs were a feature also had mental health issues. Again this may be an indicator of vulnerability.

***Previous convictions***

25. 28%<sup>32</sup> of suspects had previous convictions some of which related to false allegations:

- Two had convictions for perverting the course of justice arising from false rape allegations
- One had a conviction for perverting the course of justice arising from a false domestic violence allegation

Previous convictions may be relevant as bad character but the guidance reminds prosecutors of the need to ensure that

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<sup>32</sup> 44 suspects

there is sufficient evidence of the falsity of the incident under consideration.

### ***Evidential issues***

26. It can be a significant challenge for the police and prosecution to obtain evidence that the original rape or domestic violence allegation was, in fact, false, given that the prosecution has to prove this to the criminal standard.
  
27. In cases where it was possible to prove this, the prosecution relied on:
  - evidence from other witnesses,
  - CCTV footage,
  - proof that injuries were in fact self-inflicted,
  - telephone evidence (including in one case apparently threatening texts which the suspect could be shown to have sent to herself),
  - proof that the suspect had manufactured evidence.
  
28. There were some unexpected features. In more than one case, the person who had been accused of rape was able to produce mobile phone footage which clearly demonstrated that the sex had been consensual.

#### CASE STUDY 4

The suspect alleged that she had met a man in a night club and then got into a car with him and two others. During the car journey she said that the car had stopped, one of the passengers had got out and then pinned her down and raped her. CCTV footage from outside the nightclub supported the suspect's account to the extent that it demonstrated that whilst with one man she had met two others, they all then got into a car and the car drove off.

The police were able to trace the three men shown in the CCTV. They were arrested and interviewed. All three said that the suspect had met one of them in a nightclub and she had asked for a lift home. As they drove she would not give them meaningful directions and they became annoyed with her. They stopped the car and told her to get out; she refused because she said she was "in the middle of nowhere". Eventually one of the men physically removed her from the car.

One of the men filmed what happened on his mobile telephone, because he had an instinct that a false allegation might be made against them. The footage showed the suspect being lifted from the car and the car driving off. On the footage the men can be heard asking her, and the suspect is heard accepting, that the men had not done anything to her.

The woman later admitted to the police that the rape allegation was false and she had made it because she was angry at being left by the side of the road. The case passed both stages of the full Code test, the woman pleaded guilty and was given a suspended prison sentence.

29. However, in some cases the mobile phone footage had the effect of protecting the suspect, in that it showed that she had not “consented” in the way alleged.

#### CASE STUDY 5

The suspect was 18, she had met a man whilst on a night out and returned with him to a hostel where he was staying. She had sex with the man in a dormitory room in which four of his friends were staying. Whilst in the room two other men had sex with her and some of what took place was filmed using mobile telephones. After leaving the hostel in the early hours of the morning the suspect was approached by a police officer who saw that she was in shock, upset and heavily intoxicated. She told the officer that she had consented to having sex with the first man but not the other two and that she had been filmed. She gave a brief account to the police that night, however a few days later she refused to pursue any complaint. The men were arrested that night for rape. They told the police that they believed she had

been consenting and said that what happened had been recorded.

Footage was recovered from the mobile telephones of two of the men. The footage provided a mixed and incomplete picture of the sexual activity that had taken place. Whilst it appeared that the suspect may have been consenting, she could not clearly be seen because the view of her was largely obscured by the men around her. What could be heard from the footage was that the men were exerting pressure on her to perform sex acts and that, aware of how intoxicated she was, they had deliberately sought to humiliate and degrade her. She was in a vulnerable position lying in a confined space on a bottom bunk in the corner of a room with which she was unfamiliar.

It was concluded that there was insufficient evidence to prosecute the suspect. One of the main reasons was that the footage showed only those parts of the incident that the men had chosen to record and a court was likely to have some doubts over whether the suspect had consented to everything that had happened in the room.

30. It became apparent that many of the conventional assumptions made in other cases needed closer examination. For example, there is a presumption that people do not admit things contrary to their own interests. However, this is often shown not to be true in domestic



violence cases, where victims may be put under pressure to admit to having made a false allegation.

### CASE STUDY 6

The suspect was 32 years old. She was addicted to alcohol and had a number of mental health issues. She contacted the police and alleged that she had been raped by her ex-partner. She was plainly drunk during the telephone call to the police. Her former partner was arrested.

Over the course of the next few hours the suspect repeatedly changed her stance, first refusing to make a statement and then agreeing, then giving a perfunctory account but refusing to be medically examined

Her ex-partner was interviewed under caution: he accepted seeing her that evening, but denied that they had sex.

The suspect made a series of telephone calls to the police later that same day, the content of which was increasingly bizarre. In one she said that she wanted to be arrested for lying and that she didn't want her ex-partner to be in custody because he didn't do it. In a later telephone call she said that she wanted to be arrested, that she was not being believed about being raped and that she wanted to be arrested for wasting police time. She then telephoned the police and said that she had, in fact, been raped.

She was arrested and interviewed under caution. She said that

the allegation had been false and that in fact she had had consensual sex with her ex-partner (he of course had denied that they had had sex at all).

The suspect was known to have made allegations of rape in the past, but these could not be proved to have been false. There were serious doubts about the “confession” she had made, during which she had variously repeated and retracted the initial account. At one stage, she told the police that she had been threatened and that it was for that reason that she was withdrawing her allegation.

The view was taken that a jury would not be able to be sure that she had not been raped; it was not possible to exclude that at the time she was interviewed she may have felt under threat.

There was therefore insufficient evidence to provide a realistic prospect of conviction.

31. Some of the cases involving younger suspects showed a clear failure to think about (or even awareness of) the seriousness of making an allegation of rape. For example, one case involved the suspect accusing someone randomly selected from Facebook which appeared to have been done without any thought as to the consequences. Some suspects admitted lying to provoke a reaction or divert attention from their own behaviour from their parents, partners, or friends.

## **KEY LESSONS LEARNED**

### ***Proving the falsity of the original complaint***

32. It is axiomatic that, in dealing with these cases, the prosecution must be able to prove to the criminal standard that the initial complaint was in fact false.
33. In some cases, there was clear evidence which demonstrated that the initial allegation was false, for example, CCTV or employment records which provided an alibi for the person accused. However, in other cases, there was evidence which would tend to suggest that the initial allegation of rape or domestic violence might in fact have been true.
34. There was some evidence of investigators (and to a lesser extent) prosecutors reaching the conclusion that if no prosecution could take place for rape or domestic violence then this demonstrated that the allegation was false. But this is to confuse where the burden and standard of proof lies.

#### **CASE STUDY 7**

The suspect initially said that she had been sexually assaulted and violently attacked by her husband, and that he threatened to kill her. She said that as he sexually assaulted her, he tried to force her to kiss him and that in an effort to resist

she bit his tongue. She had some injuries, including scratches to her neck. Her husband, who was outside shouting when the police arrived, had an injury to his tongue and accepted when he was interviewed that he had picked up a knife during the incident (albeit that he said that he had done so in self defence).

The suspect later told the police that she had fabricated the allegation of sexual assault.

There was however, evidence about the circumstances of their relationship which suggested that the suspect had been placed under pressure to withdraw the allegation. It was concluded that the prosecution was unable to prove to the criminal standard that the allegation was false, indeed, taking into account evidence such as the injury to the husband's tongue, it appeared more likely that it was true. There was therefore insufficient evidence to provide a realistic prospect of conviction for perverting the course of justice.

***The need for care when relying on admissions made by the suspect in interview***

35. In the ordinary course of things it is generally safe to assume that a person will only make admissions if those admissions are true: that is because a person is more likely to be truthful about matters that are contrary to their interests than matters which are in their favour.

36. Cases arising from an initial allegation of rape or domestic violence may, however, give rise to different issues. As set out above, in the case of A, Ms A was initially prosecuted on the basis that she had made a false allegation of rape against her husband after she told the police that she had lied. In fact, she was later to say that she had made that “admission” because they were by then reconciled and she wanted to halt the prosecution which had been brought against her husband. As the Lord Chief Justice noted in the appeal against sentence:

*“Experience shows that the withdrawal of a truthful complaint of crime committed in a domestic environment usually stems from pressures, sometimes direct, sometimes indirect, sometimes immensely subtle, which are consequent on the nature of the individual relationship and the characters of the people who are involved in it.”*

37. It follows that prosecutors must make sure that they carefully examine any admission and the terms of it, bearing in mind that there may be understandable reasons why a person has retracted what is in fact a true allegation of rape or domestic violence.

38. In addition, an evidential difficulty may arise where there is no evidence of the falsity of the initial complaint other than an admission in interview. Prosecutors may be faced with two conflicting accounts with no way of proving which version is true. As the legal guidance notes:

*“Prosecutors should avoid charging two alternative counts of perverting the course of justice in a case. It is not proper for the prosecution to charge two mutually inconsistent counts and then invite the jury to choose which one it prefers”.*

39. There is therefore a need to consider whether other evidence exists which tends to support one version of events over the other. There may, for example, be independent evidence which establishes the falsity of the complaint or factors in the case which mean that it can properly be concluded that the initial account is false. Prosecutors should, however, take care to ensure that they do not use “rape myths” or stereotypes to prove the falsity of a complaint or to influence their approach to the case. Where necessary, prosecutors should challenge investigators if such assumptions have been incorporated into reports. It is, for example, well known that many rape cases will result in no visible physical injuries to the victim. The lack of injuries should not, therefore, be taken into account as a factor which tends to support the falsity of the allegation unless there is a clear evidential basis such as the suspect saying that s/he was repeatedly punched and kicked.

#### *Fabrication of evidence*

40. In nine of the decisions there was evidence which demonstrated that the suspect had clearly fabricated evidence. Plainly this would be capable of supporting the proposition that the suspect had made a false allegation of

rape or domestic violence. However, on closer analysis it became clear that in some cases there was at least a possibility that the suspect may have been trying to bolster a true allegation out of fear that s/he wouldn't be believed.

### ***The need for care in examining the terms of the complaint***

41. This point in the main related to allegedly false allegations of rape. There were cases in which careful scrutiny revealed that the suspect had not in fact made a clear allegation at all (and this was particularly true when the suspect was either young, or where someone else had initially reported it on his or her behalf). For example, in one case, when making the allegation, the suspect had repeatedly stated that she "*felt*" that she had been "*taken advantage of*" and that she could not remember precisely what had happened to her because she had been drinking alcohol. On close examination it could be seen that she had not explicitly alleged rape and what she was saying may have accurately reflected her state of mind; therefore there was nothing to show that what she was saying was untrue.
  
42. In another case, it was plain that the suspect did not understand the legal definition of consent. Thus although she said in answer to a question put to her that she did not "*consent*" to sexual intercourse, it became clear that she did not understand what the word meant.

43. There were also cases in which the complaint made to the police was on the basis that the complainant thought that s/he “might” have been raped, but could not recall because s/he had drunk alcohol or taken drugs. This underlines the need for the police to ensure that when the suspect uses terms such as rape or consent that it is clear what is actually being alleged.

***Previous convictions / previous reports of rape***

44. There has been a great deal of work undertaken in relation to challenging the myths and stereotypes about what constitutes rape, as to who can be a victim and how victims behave. An example of a myth is that a person is unlikely to have been the victim of a sexual offence on more than one occasion. In fact, research indicates that a person may be targeted precisely because s/he is vulnerable, and as a result there is every possibility that s/he may have been a victim of rape or other violence on more than one occasion.
45. In some of the cases referred to the DPP, investigators and prosecutors sought to rely on a previous complaint of rape or domestic violence which had not resulted in a prosecution as evidence that the allegation under consideration was false. There was a lack of appreciation that the earlier allegation had no probative value unless it could be shown not merely that there had been no prosecution but that it was also provably false.



46. In addition, if the victim had made a number of other complaints in the past there was evidence that this became a self-fulfilling prophecy: each time she complained, investigators or prosecutors would see that this was perhaps the third or fourth time she had reported that she had been raped and would regard that as evidence of unreliability, thereby ensuring that the present allegation would not be prosecuted either.

### ***Intention***

47. The legal guidance makes it plain that as a matter of law, intention is not the same as motive; however, the motive of the suspect is likely to be of importance if the public interest stage is reached.
48. To prove an allegation of perverting the course of justice, the prosecution must prove either an intent to pervert the course of justice or an intent to do something which, if achieved, would pervert the course of justice. Where the prosecution case is that a false allegation has been made, all that is required is that the person making the false allegation intended that it should be taken seriously by the police. It is not necessary to prove that she/he intended that anyone should actually be arrested. Similarly, to prove an offence of wasting police time in this context, the prosecution are required to establish that the suspect knowingly made a false complaint to the police.

49. Some of the cases, particularly those involving young suspects, raised issues about whether the suspect had the requisite intention. This often arose in cases where the young person had initially told a parent or guardian that they had been raped and it was then the parent or guardian who reported it to the police. Such cases require careful analysis.

***Young suspects who are themselves victims of sexual assault***

50. In more than one case, a young person (below the age of consent) reported that she<sup>33</sup> had been raped, the man she had accused denied raping her and claimed that she had consented to having sex. In some of these cases it became clear that the rape allegation was false, but the girl had been having consensual sex with the older man. However, he claimed that he believed that she was 16 or over and the prosecution could not prove to the criminal standard that that belief was unreasonable. In these cases the prosecutor needs to take great care before criminalising the young woman concerned; in some cases a prosecution was needed but it had also to be remembered that by definition such girls are themselves victims of an offence.

**CASE STUDY 8**

The suspect was fifteen; social services had been involved in her upbringing because there were concerns that she may

<sup>33</sup> In all cases in this category the suspect was female and the person she accused male

have been exploited by older men. She was in a relationship with a man, X, aged 18.

X's parents had contacted the police to report concerns about his violent temper and the suspect herself had also reported domestic violence incidents to the police. During the three weeks before she reported the rape allegation, the suspect contacted the police on a number of occasions. On one occasion, she dialled the police but hung up before the call was answered. The police called her back: she was tearful and said that she found out that X was being unfaithful. She was given advice about future behaviour. She contacted the police about a week later and said that she had been assaulted by X over a period of a fortnight and he had intimidated her into changing her account in the past. Bruising to her legs was seen and photographed by officers. Five days before the suspect made the rape allegation, X contacted the police and said that she had hijacked his MSN account and was sending messages. He also said that she was repeatedly trying to contact him – they had separated and she was not taking the split well.

The initial report the suspect made was one of assault, not rape. She said that X had wrapped a belt around her neck, causing bruising. Obvious bruising was seen by police officers. As is standard practice, the police completed a domestic violence questionnaire, whilst doing so they asked the suspect “[Does X] *do or say things of a sexual nature that makes you feel bad or that physically hurt you or someone*

*else*". She told the police officer that on a number of occasions, he had continued to have sex with her after she told him to stop because it was painful. The officer told her that this was rape, and noted "[her] *face dropped as if she hadn't realised this was the case*".

The suspect then gave a video interview in which she talked about being assaulted with the belt and said that X had continued to have sex with her against her will on up to ten occasions.

X was arrested and interviewed. He accepted that he had caused bruising with a belt, but said that this was at the suspect's request during consensual sex. The police spoke with a number of the suspect's friends, who indicated that she had said that she liked "rough sex" and being strangled during sex. The police gained access to her Facebook site, which contained the following entries on the day on which the assault with the belt was said to have taken place "*I think tonight was one of the best times of my life*" then later "*lol, I like belts*". Further, it was suggested that she had made the report to the police after a disagreement with X.

The suspect was arrested and interviewed. She denied that she had willingly tried sex with belts and said that she did not write the Facebook entries. She then denied telling the police that X had forced her to have sex and said that he did not rape her at any point. In relation to the matters previously reported as rapes, she said that although she had

initially refused his advances, she had eventually succumbed and agreed to have sex with him. Thus she appeared to admit to having made false allegations.

It was notable that the suspect did not suggest that the incident with the belt occurred during sex, and the accounts of the other witnesses and the Facebook entries cast doubt on what she said, particularly her suggestion that her Facebook account was altered. It was more likely that the injuries were caused during sex and that the suspect had purported to give consent to this.

However, she was only 15. Although the law states that adults can consent to common assault level injuries which are sustained as part of sado-masochistic activity, the suspect was not an adult. As such, even on X's account, he may have committed an offence of assault as well as offences under the *Sexual Offences Act 2003*, given the suspect's age. Therefore in law the suspect had been assaulted (even if not in the way she initially alleged). It was therefore concluded that there was insufficient evidence to provide a realistic prospect of conviction on the basis that she had made a false allegation of assault.

In relation to the rape allegations, the suspect had given different accounts. When she was interviewed under caution, she told the officers that X had told her what to say. It was noted that she had previously reported to the police that after she had reported incidents of domestic violence he

had told her to alter her accounts, and at the time that she was interviewed, the couple had reconciled. In addition his parents had also reported that he had been violent.

The conclusion was that it was not possible to prove to the criminal standard that she had not been raped. Therefore there was no realistic prospect of conviction. It was suggested, however, that social services might wish to consider their involvement with the suspect, given the facts of this matter.

### ***Level of charge***

51. Making an untrue report that a crime has taken place will usually amount to both the offences of wasting police time and perverting the course of justice. The latter is considerably more serious than the former<sup>34</sup>.
  
52. In considering the level of charge, regard must be had to the *Code for Crown Prosecutors*, which provides:  
*6.1 Prosecutors should select charges which:*
  - a) *reflect the seriousness and extent of the offending supported by the evidence;*
  - b) *give the court adequate powers to sentence and impose appropriate post-conviction orders; and*

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<sup>34</sup> wasting police time is triable only in the Magistrates' Court, with a maximum sentence of six months' imprisonment, whereas perverting the course of justice can be tried only in the Crown Court and carries a maximum sentence of life imprisonment

*c) enable the case to be presented in a clear and simple way.*

*6.2 This means that prosecutors may not always choose or continue with the most serious charge where there is a choice.*

53. The legal guidance on dealing with cases involving allegedly false complaints of rape and domestic violence provides some assistance. It states that perverting the course of justice may be the more appropriate charge where the allegation was prolonged for a period of time, where the person against whom the allegation was made was arrested, charged or even prosecuted, where other evidence had been fabricated or created to support the false allegation and / or where the complaint was malicious. A charge of wasting police time might be more appropriate where there was an admission that the complaint was false after a short period of time, where the alleged perpetrator was not named or identified, and where the complaint was not malicious.
54. The offence of wasting police time is a summary only offence: therefore proceedings can only be brought against a suspect within the six month summary time limit. The relevant date is the date on which the complaint was made, not the date on which the falsity of the complaint was suspected or detected. After the expiry of the statutory time limit, a suspect cannot be charged with or cautioned for an offence of wasting police time. A question may therefore arise as to what to do where it is clear that the case ought

properly to be charged as wasting police time but the statutory time limit has now expired, leaving a choice of charging the more serious offence or taking no further action. An analogous situation can arise in relation to assaults: the legal guidance on offences against the person provides:

*From time to time, there may be exceptional circumstances where a case would ordinarily be considered more suitable for being charged as Common Assault under this Charging Standard, but more than six months has passed since the incident complained of. In such circumstances it may be appropriate (where the injuries were more than 'transient and trifling') to charge an offence of ABH, but great care must be taken in making such a decision.*

*Such a course of action may be argued as being an abuse of process, and it is therefore necessary to clearly establish the reason for not bringing summary proceedings within six months (or laying a protective information within that time). Issues around the nature and complexity of the investigation will be relevant, as will be the stage at which the case was referred by the police. In determining whether the preferring of a charge of ABH in these circumstances is manifestly an abuse of process, or whether in fact it would be regarded as an affront to justice for proceedings not to be brought, reference should be had to the Legal Guidance chapter on Abuse of Process.*

55. When considering a case which could be charged as either offence and the six month statutory time limit has expired, prosecutors should consider using a similar approach in order to determine whether a case that might ordinarily have been dealt with as wasting police time ought instead to be dealt with as perverting the course of justice if the alternative



is that otherwise the offender would escape prosecution entirely.

### ***Public interest factors***

56. The *Code for Crown Prosecutors* sets out a number of public interest factors which should be considered by a prosecutor deciding whether, in a particular case, the public interest tends in favour of or against a prosecution. The legal guidance on dealing with these cases provides additional public interest factors which may be relevant.
57. The relevance of a “double retraction” at the evidential stage has been set out above. If there is sufficient evidence, then the background and context are likely still to be highly relevant at the public interest stage. The guidance specifically highlights the need for care in cases involving “double retractions”. It provides:

*“If all the circumstances lead the prosecutor to believe that it was the original retraction rather than the allegation of rape and/or domestic violence which was false, then she/he will need to give very careful consideration to whether a prosecution for the retraction of the original allegation is likely to be in the public interest. Any decision to prosecute in such circumstances is likely to be highly exceptional. This is because as a matter of logic, if the original allegation was or may have been true, then it follows that the suspect may have been a victim of rape or domestic violence”*

58. There were some cases where the allegation itself was demonstrably false but it was clear that the suspect had been the victim of rape or domestic violence on other occasions. In such cases the public interest ought carefully to be considered: if the suspect has been the victim of a serious crime, to prosecute him or her for a single instance of making a false allegation risks further victimising him or her.
59. In one case, the initial allegation was of a serious assault but it was provable that the injury had been self-inflicted. The suspect did, however, have other serious injuries which, it was accepted were caused by the person against whom the initial allegation was made (albeit that he said that these were caused accidentally). There was also some evidence to suggest that sexual offences may have been committed by him against the suspect. Therefore, although there was sufficient evidence to provide a realistic prospect of conviction in relation to the incident under consideration the well-founded concern that the suspect was a victim of domestic violence and / or sexual offences meant that a prosecution was not required in the public interest.
60. In all cases, prosecutors should make sure that the police have conducted comprehensive enquiries into the background both of the suspect and the person against whom the allegation was made. This may necessitate contacting organisations which have offered support to the suspect and person against whom the initial allegation was made, such as IDVAs. If the suspect is a youth, contact

should also be made with Social Services and the Youth Offending Service.

61. A number of cases involved suspects with mental health issues and / or those who were otherwise vulnerable. In one case a suspect who had mental health issues made a telephone call to the police and alleged that she had been raped by an unnamed individual. Soon after the police arrived, she admitted that the allegation was false and that she had made a false report because she wanted food and shelter.
62. Whilst motive is not to be equated with intent, it may be considered at the public interest stage as a relevant factor tending either in favour of or against prosecution. In three cases, the suspects lied to try to hide their sexual activity (two from partners and one from a parent). One made the allegation in revenge for the collapse of a relationship and one suspect was trying to hide his sexuality. Two suspects admitted lying in order to provoke a reaction (one from her ex-partner and one from a friend) and a young person said she was afraid of comments from class mates if she admitted that she had had sex.

## **CONCLUSION**

63. The review has allowed us to examine the suggestion that false allegations of rape and / or domestic violence are rife. It is plain that there were a large number of prosecutions for

rape and domestic violence but that only a very small number of individuals were prosecuted for having made a false complaint. It also emphasises the complex issues that can arise in these serious cases. Each case must carefully be examined on its own merits to assess exactly what has been alleged and the background that led to the making of the complaint. Where both stages of the full *Code* test are met these cases will be dealt with robustly.

**March 2013**