



**Consultation on CPS Interim Guidance on
Perverting the Course of Justice - Charging in
cases involving rape and/or domestic violence
allegations**

February 2011

Response Form

To understand what may happen to your personal details and the responses you give, please read the "confidentiality of responses" information which can be accessed via the consultation home page at:
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If you are a member of the public or from an organisation (including a statutory body) please fill in the following details:

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1. Is the description of perverting the course of justice clear?

The description is clear so far as it goes. However, care should be taken in associating these two offences too closely. While, in the case of rape, over 90% of victims are female, domestic violence is much more two dimensional, with over one third of victims male. The situation in respect of allegations of domestic violence can be therefore less clear-cut, although the consequences of false allegations can still be devastating to the accused.

There is also a difference in frequency of offence. In the case of rape, it is usually a single event, whilst with domestic violence it may be part of a chronic pattern, sometimes with both parties culpable to some extent.

International research [a list of published studies and annotated bibliographies is given by Fiebert on <http://www.csulb.edu/~mfiebert/assault.htm>] shows consistently that, by their own admission, women can be as physically aggressive as men in partner relationships and can initiate the aggression as often. In other words, 'mutual combat' is probably the norm in the majority of violent households.

False allegations of domestic violence can also be made, of course, during family law proceedings.

See also background information given in Section 5.

2. Do the observations on the evidential stage of the Full Code Test clearly set out the issues we should address when deciding whether there is sufficient evidence to justify a prosecution? If not, please suggest how this could be achieved.

The Test is again mainly aimed at false allegations of rape or sexual offences. Those made of domestic violence can be less clear-cut, since both parties may be jointly culpable. The situation with many incidents of domestic violence can also be basically different from that of rape, in that usually both parties are interviewed by the police at the same time when the police attend an incident, and joint allegations often made. In the 'heat of the moment', there is also temptation to make false allegations to secure advantage, particularly when there is little obvious immediate evidence of physical injury, etc to challenge an allegation or to

disprove it.

Studies of male victims, eg. the ManKind Initiative analysis of their helpline calls during 2009, suggest that false allegations of domestic violence by the woman perpetrator is a 'common' practice. See also background information given in Section 5.

False allegations of domestic violence made in the context of family court proceedings are, of course, normally subject to civil law, but do present a serious problem, since they are generally not made 'on oath' and court determination is based on probability rather than on evidence. If legal sanctions are available to deter such allegations, the impression is that they are rarely used by the courts.

3. Does the section on the public interest stage of the Full Code Test clearly set out factors which we should consider when deciding whether it is in the public interest to prosecute? If not, please suggest how this could be achieved.

As stated in para 10 of the Consultation document, many cases of rape or domestic violence will consist of one person's word against another's. Each of these types of offences has its own particular difficulties in determining culpability if false allegations are made. In some ways, false allegations of domestic violence present more difficulty, since they relate to generally a less serious interpersonal offence (or repeated offence), can be made more casually, carry less (if any) legal retribution if disproved, and are often aimed deliberately at securing a family advantage, eg. the ousting of the other person or parent when children are involved.

See also background information given in Section 5.

4. Have we provided sufficient explanation of what we mean by "double retraction" and are the factors to be considered in such cases clearly set out? If not, please suggest how this could be achieved?

The comments by the Lord Chief Justice referred to in para 22 of the Consultation document relate to the withdrawal of 'truthful' complaints in offences committed in a 'domestic environment', presumably including domestic violence cases. Such retraction, if the original complaint was indeed truthful, could, of course, be due to the subtle pressures by others that he hints at. Against this, however, there could be a genuine unwillingness by some victims to testify against an intimate or other family member, for arguably good reasons, such as subsequent reconciliation or reluctance to aggravate a family dysfunction. The courts and prosecutors should be wary of blaming others in this way without clear evidence.

Home Office Study 196 of 1999 reporting on a detailed study of 483 rape cases in the 1990s, found that allegations were withdrawn in about 16% of cases, another 11.5% were regarded as false or malicious, and a further 2% of complainants were unwilling to testify or co-operate after their initial allegation.

Few cases specifically of domestic violence reach the higher courts, and then usually because of particular difficulties they present. Even fewer involve a male victim. Such cases should not be viewed, therefore, as representing the majority of domestic violence cases which never reach such judicial heights (usually because of the legal cost). In general terms, it is likely that those most reluctant to pursue complaints or legal actions in domestic violence cases are father victims. Many believe that if they do, because of the entrenched bias against male victims still prevalent in society [not helped by the current focus on violence against women and girls], they risk being removed themselves from the home, rather than the abusive mother, leaving their children with the mother without their protection. Moreover, in such event, they also risk subsequently losing meaningful contact with their children.

See background information given in Section 5.

5. Any other comments about the document?

Background information

(1) Prevalence of rape and domestic violence

Rape

The British Crime Survey (BCS) for England and Wales for year 2009/10⁽¹⁾ estimated (Table 3.01) that about 0.3% of women between the ages of 16 and 59 had been victims of rape (excluding attempts) in the last year, equivalent to a total of about 48,000 women (based on Table 3.03 estimates).

In year 2008/09, 13,104⁽²⁾ offences of rape were recorded by the police in England and Wales [12,140 female and 964 male victims]. In all, in that year, there were 3,495 prosecutions and 2,018⁽³⁾ convictions for rape.

Domestic Violence

The same BCS for 2009/10 also estimated (Table 3.03) that 931 thousand women and 510 thousand men had been victims of partner abuse (including sexual) in the last year, a proportion of male victims of 35.5% of the total. The survey also estimated (Table 3.01) that 1.5% of women and 0.8% of men had been victims of 'severe assault' by a partner in the last year, a proportion of male victims of 34.8% of the total. Such proportions of male victims are slightly lower than in previous years but of the same order. In other words, about one third of victims of partner violence are male.

Despite this substantial level of male victimisation in partner relationships, in year 2009/10 in England and Wales, only 6.9% of those prosecuted for domestic violence offences, and just 6.5% of those convicted⁽⁴⁾, were women.

(2) Prevalence of false allegations

Rape

Of the 13,104 offences of rape recorded by the police in 2008/09, a total of 2,288⁽⁵⁾ of these were subsequently 'no-crimed' for various reasons, including the perception that an allegation was false, equivalent to a proportion of 17.5% of the total.

In addition to the offences 'no-crimed' by the police and Crown Prosecution Service, are those cases when the accuser subsequently admitted, or it was shown, that her [his] allegation was false. The Ministry of Justice (and, we understand, the CPS) at present keep no separate statistics for prosecutions of these. However, convictions for such actions are regularly reported in the media and suggest a significant number of cases occur each year.

Estimates of the prevalence of false allegations of rape range from about 8% upwards. The Stern Review⁽⁶⁾ published in 2010 suggested about one in ten. Some years previously, Home Office Research Study 196⁽⁷⁾ published in 1999 examined 483 incidents initially recorded as rape by the police in England and Wales in 1996. The study found (Table 3.1 and Fig 3.1) that a substantial proportion (25%) of rape allegations by women were in fact 'no-crimed' by the police, with just under half of these (46%) being regarded as false or malicious (ie. about 11.5% of the total). The study also found that 'no further action' was taken by the police in 31% of allegations, with 52% of these being due to the complaint being withdrawn (ie. about 16% of allegations were retracted).

The Stern Review also recommended (page 119) that the Ministry of Justice should commission and publish an independent research report to study the frequency of false allegations of rape compared with other offences and the nature of such allegations. This report is expected to be available this summer.

Domestic Violence

There is strong anecdotal evidence to suggest that the prevalence of false allegations of domestic violence, particularly between partners, is much higher than that in the case of rape.

The few detailed studies undertaken of male victims [eg. *Dispatches* (1998)⁽⁸⁾, *Dewar Research* (2001)⁽⁹⁾] have reported that in about half of incidents, it was the female assailant who called the police and, when they arrived, insisted that she was the victim, a claim the police tended to believe unless the man had obvious injuries. These studies also found that over 20% of the male victims reported that they had themselves been arrested rather than the female assailant.

A 2010 study by the charity ManKind Initiative⁽¹⁰⁾ reporting on the detailed experiences of 69 of the 600 male victims who had phoned the ManKind domestic violence helpline in 2009, concluded that the prevalence of making false allegations against male partners by women assailants, was a common practice. 56% of the male victims said that they had been threatened by the female assailant that she would make a false allegation to the police if his plight was ever revealed. In those cases (72%) where the police had been involved, 67% of the male victims reported that their female partner had made false allegations to the police, ie. in about half of all cases.

Such findings, albeit largely anecdotal, suggest that genuine male victims of domestic violence are particularly vulnerable to false allegations being made by an abusive female partner. The making, or threat of making, false allegations to the police or other authorities is thus a powerful weapon available particularly to women, since generally they tend to be believed unless it is clear-cut that it is the man who is the primary victim.

The introduction of so-called 'go' orders in domestic violence incidents this year in some police force areas, whereby one party can be ousted from their home and children for 48 hours, without legal representation or financial redress, based on the decision of a senior police officer, is likely to aggravate the situation for genuine male victims, who are already often disbelieved or even ignored by the police.

Despite the significant extent of false allegations of domestic violence suggested by studies of male victims, it is not clear that there is in place any routine or determined prosecution procedure to deter or deal with them. Allegations have to be proved to be false, of course, before prosecution can proceed. However, in the absence of any history of reports of such prosecutions in the past, it is unclear what importance the CPS attaches to this, particularly if the majority of culprits appear to be women.

(3) Effects of false allegations

Rape

As recognised in para 23 of the Consultation document, a false allegation of rape, particularly, can have a devastating effect upon the person who has been wrongly accused, and their family. Whilst the complainant is granted total anonymity on first reporting a rape, which remains for life unless the allegation is subsequently proved to be false, the person accused, even if innocent, is publicly defamed for life, since anonymity is not extended to defendants, except presumably in cases of marital rape. Not only that, but an unfounded charge remains permanently on the accused's Criminal Record Bureau (CRB) file, blighting his future life and job prospects. This is grossly unequal, unfair, and disproportionate.

Domestic Violence

False allegations of domestic violence can also have a comparable devastating effect if a parent is removed from their home and children as a result. Many fathers so treated subsequently lose meaningful, or any, contact with their children.

False allegations may arise in both domestic settings and in family court proceedings. The criminal law largely applies to the former (except in respect of the 'go' orders newly introduced where it is in effect 'by-passed' in the first instance), and civil law in family court proceedings. In criminal law, outcomes are, or should be, based on evidence or sound proof, even when applied ex-parte. In civil law, including the family court proceedings, they are based on a 'balance of probabilities' and not necessarily on reasonable proof.

Based on evidence given to the Special Joint Committee of the Canadian Parliament Inquiry on 'Child Custody and Access' in 1998⁽¹⁾, Canadian experience then was that 'perjury is rife' in the family courts (woman family court judge) and that allegations of domestic violence and child abuse 'peak at times of custody and access court proceedings' (child protection agencies). Since the Canadian family courts are more open to public exposure than our own, it would not be surprising to find no less an unsatisfactory situation a decade later in the UK courts.

False allegations of domestic violence or child abuse made deliberately in family court proceedings to influence court decisions on residence and contact, are difficult to defend, not routinely made 'on oath', and are generally insufficiently investigated by court welfare officers or the court. If legal sanctions are available to family courts to deter unscrupulous parents making such allegations in child proceedings, they appear to be rarely used.

References

- (1) Home Office Statistical Bulletin 01/11, Homicides, Firearm Offences and Intimate Violence 2009/10, 20 January 2011, Tables 3.01 and 3.03
- (2) Crime in England and Wales 2009/10. HOSB 12/10, July 2010, Table 2.04
- (3) Violence against Women crime report 2008-2009. Rape crime: Key findings, Table 2 - Completed prosecutions by outcome
- (4) Parliamentary Written Answer, Crispin Blunt MP, 8 December 2010
- (5) FOI Request 15786 - Home Office response 9 September 2010, Table 1
- (6) Stern Review into how rape complaints are handled by public authorities in England and Wales, Equalities Office, 2010
- (7) Home Office Research Study 196. A question of evidence? Investigating and prosecuting rape in the 1990s, 1999.
- (8) *Dispatches* (1998). 'Battered Men' Survey: Detailed Survey results. [A Summary of the results of this survey by the *Dispatches* programme highlighting the experiences of 100 male victims of domestic violence in the UK

- was broadcast on Channel 4 on the 7 January 1999].
- (9) George, Malcolm J. and Yarwood, David J. (2004). Male Domestic Violence Victims Survey 2001 - Main Findings. Dewar Research, October 2004
 - (10) Report of false allegations to the ManKind Initiative helpline, ManKind Initiative, Taunton, 12 September 2010
 - (11) Joint Committee of the Senate and Parliament. 'For the sake of the children'. Report of the Special Joint Committee Inquiry on 'Child Custody and Access', December 1998. SJCA (36-1). Government of Canada Publications, Ottawa.

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Where to send your completed form

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**All replies must be received by
6 May 2011**