



## **Eaves Response**

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

**February 2011**

<b>If you are a member of the public or from an organisation (including a statutory body) please fill in the following details:</b>	
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#### **About Eaves**

Eaves is a London-based charity established in 1977, that provides high quality housing and support to vulnerable women. We also carry out research, advocacy and campaigning to prevent all forms of violence against women.

At Eaves, we put the needs of women first. We are determined to give a voice to the most excluded women in society and provide direct, innovative services to support and empower women to help themselves. There are different projects run by Eaves.

## **The Lilith Project**

Lilith Research & Development have a wide remit ranging from research into various aspects of violence against women, to training and education for the women's sector, to lobbying for legislative change and to working directly with women who have experienced sexual violence.

Sexual Violence Action and Awareness Network (SVAAN) – Under the Lilith Project we co-ordinate the SVAAN Network – a network of 68 organisations working with women and girls who have experienced sexual violence. The network began in 2003 as a support network for the voluntary sector.

## **The Scarlet Centre**

The Scarlet Centre is an Eaves service providing advice and drop-in support to women who are affected by violence – including homelessness, rape or sexual abuse, prostitution or domestic violence – and the consequences of violence – including mental health and/or substance misuse problems.

## **The Poppy Project**

The Poppy Project provides support, accommodation and advocacy for women trafficked into domestic slavery and sexual exploitation in the UK. We have 54 bed spaces throughout England and Wales. We also run an outreach service which works with women who cannot be housed in Poppy accommodation, either because there is no room for her or she does not meet the criteria for support set by Poppy's funder, the Office for Criminal Justice Reform (reporting to the Ministry of Justice)

## **The Serafina Project**

Formerly Eaves Women's Aid, The Serafina Project provides support and accommodation for women (and their children) fleeing domestic violence. We provide bed spaces in Westminster in comfortable and safe environments where a full range of support provided, including help accessing benefits and legal advice.

## **The Sojourner Project**

The Sojourner Project is a pilot scheme run by Eaves and funded by the Home Office. It is for women with no recourse to public funds, who entered the UK on a spousal or partner visa and are eligible to apply for Indefinite Leave to Remain (ILR) under the Domestic Violence Rule.

**To find out more about our work please visit our website on [www.eaves4women.co.uk](http://www.eaves4women.co.uk)**

## **Introduction**

Eaves welcomes the decision by the CPS to produce 'perverting the course of justice' in cases involving rape and/or domestic violence allegations. We are also pleased that the interim draft is open for consultation to call for views from organisations and individuals working in the area.

This document is particularly timely due to the recent increase in the number of prosecutions for 'perverting the course of justice' in relation to women withdrawing or retracting complaints of domestic violence or rape.

Providing services to women who are victims of different forms of violence including domestic and sexual violence, we have first hand information that women withdraw or retract allegations or refuse to cooperate with the prosecution not in an attempt to pervert the course of justice but due to fear of violence, intimidation, pressure, fear of not being believed, a sense of shame or stigma, fear of the criminal justice system, etc.

We hope that once the final guidance is published these reasons would be clear to prosecutors and those in the criminal justice system and they will focus on prosecuting perpetrators of rape and domestic violence rather than those who are the victims.

### ***Is the description of perverting the course of justice clear?***

Since this section is describing '*perverting the course of justice*' it should start with the paragraphs actually defining what constitutes the offence, which is **paragraph 4 - 7**. **Paragraph 3** should be at the end of the section.

The guidance lacks clear description of and demarcation between what '**false allegations**', '**retraction of allegations**' and '**withdrawal of retractions**' are.

**False allegation** – the guidance should clearly describe the lack of robust research and consistent definition of what constitutes a false allegation and the variations in recording practices by police and others in the Criminal Justice System which could lead to an inaccurate estimate on the nature, reasons and prevalence of false allegations. Recent research by the Ministry of Justice highlights the problem and stresses that not all so-called false allegations are made **maliciously**.<sup>1</sup>

**Retraction of allegations** – Before discussing retraction, background information that only few incidents of rape and domestic violence are reported to the police could help prosecutors to put things into perspective. Studies estimate

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<sup>1</sup> Providing anonymity to those accused of rape: An assessment of evidence, Ministry of Justice, 2010  
[www.justice.gov.uk/publications/research.htm](http://www.justice.gov.uk/publications/research.htm)

that between 75% and 95% of rape crimes are never reported to the police.<sup>2</sup> The reasons for not reporting could be fear of being disbelieved; or being judged; distrust of the CJS; fear of family and friends knowing or of public disclosure; fear of further attack or intimidation; or language, communication or cultural issues.<sup>3</sup> These fears and doubts that a victim may have about reporting also extend to become reasons for retraction or withdrawal of allegations.

**Withdrawal of earlier retraction** - This is a case of '**double retraction**' where an original **retraction of allegation** is withdrawn. '**Double retraction**' is only defined under **paragraph 11**, the evidential stage, and we believe it's important that it's explained from the outset.

**Paragraph 5** - It's useful that the guidance cites case law to explain cases when prosecutors could go ahead with prosecuting suspects in false allegation cases even if there was no arrest or conviction of the original suspect (the person suspected of rape or domestic violence).

Likewise it's important for the guidance to include case law or examples of cases where an **allegation was retracted**, where an **original retraction was withdrawn (double retraction)** and where a **genuine false allegation was made**.

**Paragraph 6** states that **intention** is not the same as **motive**. However, the difference is not explained. It would be useful to have a description of both intention and motive in relation to perverting the course of justice and possibly also include an example which highlights the difference.

***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.***

**Paragraph 10** states, '*Many rape or domestic violence cases will consist of one person's word against another's.*' Though the literal description of this phrase is not a problem, in practice the wordings have been used repeatedly to reinforce one of the myths of rape, women make up false rape allegations or they 'cry rape'. Baroness Stern, in her review into handling of rape cases by public authorities in England and Wales, stated that, "Rape is more controversial than

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<sup>2</sup> Without Consent - A report on the joint review of the investigation and prosecution of rape offences, HMCPSI 2007, Page 8.

<sup>3</sup> Ibid

most other crimes. Strong opinions are held and often voiced ... women are seen as liars and are known to 'cry rape'."<sup>4</sup>

Therefore it is important to describe it as; that the crime might happen in private settings and sometimes it could be challenging to provide additional evidence other than the alleged victim's testimony.

**Paragraph 10** also states, *when the complainant **no longer wishes to support the prosecution but maintains that the allegation is in fact true**, this is **unlikely to be sufficient** in itself to found a case for perverting the course of justice. The prosecution will need additional evidence which is capable of establishing that the original allegation was false.*

To harmonize this paragraph with the purpose of the guidance the wording should clearly show that ***if a complainant no longer wishes to support the prosecution but maintains that the allegation is in fact true, there should not be a case for perverting the course of justice unless the prosecution have enough evidence to establish that the original allegation was false.***

**Paragraph 11** only states domestic violence as a situation to consider when dealing with "double retraction". It's important to **include sexual violence** in this case.

**Paragraph 13** also points out that *victims of domestic violence may sometimes retract a true allegation: for example as a result of pressure, fear of violence, or intimidation, or because of other factors such as a desire to give the relationship another chance.*

Since the guidance is aimed at cases of **rape and/or domestic violence** allegations, **the document should include both cases consistently throughout the document whenever appropriate.**

**Family and friends of victims** - The list has to also include other important reasons for retracting allegations. For instance, the pressure and intimidation could be directed at a **family member of the victim or someone close to her** and not directly at her. This had been acknowledged by the Stern Review which states that once rape has been reported the suspect or some of his associates may threaten the victim **or family members of the victim to pressurise them [victims] to withdraw the case.**<sup>5</sup>

**BAMER women** - Another important point to add would be cultural and religious barriers which are distinctly faced by Black, Asian, Minority Ethnic and Refugee (BAMER) women. For instance a study on the experience of BAMER women and

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<sup>4</sup> The Stern Review - A Report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales, 2010, Page 33.

<sup>5</sup> Ibid, Page 70

children facing violence and abuse showed that BAMER women are **more prone to ongoing violence after they leave an abusive situation.**<sup>6</sup>

The study also points out the source of the violence that places victims under pressure to retract their allegations. It states that post separation harassment and violence is **most common from extended family members (56%) followed by the wider community (41%).**<sup>7</sup> Prosecutors should be enabled to have a comprehensive understanding of how BAMER women could experience violence and pressure in different ways and from different groups.

**Young people** - Another group who have to be particularly mentioned and discussed would be young women/people. Although the nature of the violence and the reasons for withdrawal might be similar to what adult women face, there are some characteristics that might be peculiar or common to young women.

It should be noted that young people experiencing sexual and domestic violence could be unable to detach themselves from the situation and unable to cooperate with the prosecution because of their age, disempowerment, their fear and dependence on their exploiter/s, or because of the difficulty of understanding their situation.<sup>8</sup> Besides, there is a clear gap of service for young women and this lack of support mechanism could be one of the reasons why they might not want to cooperate with prosecution.

**Definition** - This could also be the right section to give a brief description and/or definition of domestic violence and sexual violence. Even though the guidance at the start states that the document should be read with CPS guidance on domestic violence and sexual violence, it might be worth including a brief paragraph highlighting the psychological, physical, financial nature of sexual and domestic violence.

**Paragraph 15** lists places where the CPS could access information to gather *evidence which tends to suggest that the original allegation was or may have been true.* It would be useful to make the list as broad and wide-ranging as possible if not exhaustive. Most importantly, the list should include different voluntary organisations specializing in violence against women and girls in addition to statutory agencies.

An exploratory study of seven intimate partner homicides in Englethire stated that much more attention needs to be given to communities; neighbours, friends, family and colleagues of victims and perpetrators as invaluable source of

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<sup>6</sup> Vital Statistics – The Experience of Black, Asian, Minority Ethnic and Refugee Women and Children Facing Violence and Abuse, Imkaan 2010, Page 4

<sup>7</sup> Ibid

<sup>8</sup> Meeting the needs of sexually exploited young people in London, Zoe Harper and Sara Scott, Page 41.

informal information.<sup>9</sup> The guidance should draw attention to this source whilst highlighting issues of safety and confidentiality.

***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.***

**Paragraph 22** states, *‘Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.’*

We find it very difficult to think of cases where prosecution should be considered even though it’s against public interest, however if there is such a case, it would be helpful to mention an example, preferably case law.

**Paragraph 24** brings back the issue of definition mentioned at the start of this document. The paragraph lists conditions when it’s in the public interest to prosecute a person who has made false allegations. As mentioned earlier, we think it would be useful to define what a false allegation is.

The paragraph also states that when applying the public interest factors prosecutors should bear in mind that a prosecution for perverting the course of justice is more likely to be required where the suspect has previous convictions or out-of-court disposals relevant to this offence, or **a history of making demonstrably false complaints.**

At this stage it is important to point out the practice of recording incidents by the police as **‘crimes’ or ‘no crimes’**. Evidence has suggested that cases exist where the police have failed to adhere to Home Office guidance and wrongly classified alleged rapes as ‘no crimes’. A joint HMCPsi/HMIC investigation examined 752 rape reports made in 2005 and found that of the 179 reports that had been ‘no crimed’ 32% (n=57) were incorrectly ‘no crimed’ and in 18 of the 57 incorrectly ‘no crimed’ cases, the allegation was incorrectly treated as false.<sup>10</sup>

Without recognizing this problem it would be worrying if prosecutors would rely exclusively on the recording of the police to conclude that the alleged victim has a history of making false complaints, while in fact the person was a victim of such crime. This problem of practice by the police has to be included in the guidance

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<sup>9</sup> ‘If only we’d known’: An exploratory study of seven intimate partner homicides in Englethire - Final Report to the Englethire - Domestic Violence Homicide Review Group, Linda Regan, Liz Kelly, Anne Morris & Rebecca Dibb, 2007

<sup>10</sup> Providing anonymity, Page 13.

to provide prosecutors with a clear picture while deciding whether or not to pursue a prosecution is in the public interest.

Another point made in this paragraph is that it's in the public interest to prosecute if *the suspect in the original allegation has **sustained significant damage to his or her reputation***. Significant damage to a person's reputation has to be defined and explained here. It should be clear if prosecution is in the public interest it is in a scenario where there has been a **false statement** that was **publicised or seen by someone** which resulted in the **individual's reputation being significantly damaged**. It would also be helpful to have examples or case law included here.

**Paragraph 25** lists cases when a public interest argument for prosecution is less likely to be made out. One of such cases is when *the suspect appears not fully to have understood the seriousness of making a false allegation (bearing in mind his or her age and maturity)*. The list in this case should try and include as many situations as possible where a person making the allegation does not fully understand its seriousness. These could be situations of mental health problems, learning disabilities, false memories, etc.

Research by the MPS in 2007 found **complainants proven to have made false allegations of rape were more likely to present with at least one vulnerability (e.g. mental health issues) than those who made genuine accusations**.<sup>11</sup> This should be clearly stated in the guidance.

Another point to be included is that allegations could be made due to **mistaken identity**. A recent study by the Ministry of Justice shows the difficulty of using the term 'false allegation' without making distinction between complainants who willfully misreport rape and **those who have been raped but who mistakenly identify an innocent individual as the perpetrator**.<sup>12</sup>

*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?*

**Paragraph 26** states that, *if all the circumstances lead the prosecutor to believe that it was the original retraction which was false, then she/he will need to give very careful consideration to whether a prosecution for the "retraction of the retraction" is likely to be in the public interest*.

It would be difficult to foresee any situation where it would be in the public interest to prosecute a victim of domestic violence or rape for retracting an

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<sup>11</sup> Ibid, Page 15

<sup>12</sup> Ibid

allegation which is true. We think the wording on the paragraph should strongly establish this point.

***Any other comment about the document?***

Below are brief cases of women who use our services; explaining why many women withdraw or retract allegations of domestic and sexual violence.

**Case one**

A woman, with mental health problems, reported verbal, financial and physical abuse to the police. However she immediately faced lots of pressure from both her and her partner's family to retract her statement. She was accused of being a spoilt woman and not a good Muslim. She gave up to the pressure and retracted her statement. However when the abuse did not stop she went back to the police with the same allegations. This time the police didn't believe her; she was called a liar and they refused to take up a new statement. She was then supported by one of our case workers who had helped her to build a case and help her to gather evidence to support the reasons for her retraction. She finally got an indefinite leave to remain after it was proved that her allegations of domestic violence were actually true.

**Case Two**

Neighbours called police as they witness physical abuse from the bathroom window. The woman, who is Egyptian and who does not speak English retracted her allegation after 2 days as she was on her own in a foreign country; with no means to support herself. Besides, she knew she was not going to be accepted back at her family home since she was a victim of rape by the abusive partner and has brought 'shame' to the family and herself. She felt nobody will want her and she believed her partner, who is an educated man, a Journalist, would change. However, he carried on abusing her physical and sexually for another year until one day he nearly killed her and the neighbours called the police who referred her to Sojourner project. She finally got her ILR under the DV rule and a criminal case against her partner is pending.

**Case Three**

A terrified woman went into a police station to report abuse from her husband while he was abroad. She started accessing support from a refuge and while the case was under investigation she contacted the police to retract her statement and said she has lied. By this time the husband was back from abroad and she was under immense pressure from him as well as the extended family and community. Both the police and the refuge withdrew their support saying she has lied. A week later she came to the Sojourner project where she was supported and finally it was proved that the original allegation of domestic violence was true.