

Consultati
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**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:
www.cps.gov.uk/consultations/pcj_index.html

If you are a member of the public or from an organisation (including a statutory body) please fill in the following details:

Your name	
Any organisation you represent	Justice for Women
Postal address	55 Rathcoole Gardens, London, N8 9NE
Contact telephone number	
E-mail address	

If you are a member of CPS staff please fill in the following details:

Your name	
Your Area, Group, HQ Division, or Directorate	
Contact telephone number	

Justice for Women contributes to the global effort to eradicate male violence against women, which includes sexual and domestic violence. Our focus is on the criminal justice system of England and Wales. Justice for Women works to identify and change those areas of law, policy and practice relating to male violence against women, where women are discriminated against on the basis of their gender.

Justice for Women was established in 1990 as a feminist campaigning organisation that supports and advocates on behalf of women who have fought back against or killed violent male partners. Over the past twenty years, Justice for Women has developed considerable legal expertise in this area, and has been involved in a number of significant cases at the Court of Appeal that have resulted in women's original murder convictions being overturned, including Kiranjit Ahluwalia, Emma Humphreys, Sara Thornton and Diana Butler. Most recently, in July 2010 we supported Kirsty Scamp to successfully appeal her murder conviction.

In addition to our renowned work around men, women and the homicide laws, we have supported female victims of male violence who have been wrongly charged with offences such as perverting the course of justice, wasting police time and who have been sued by perpetrators of sexual violence for alleged libel.

We very much welcome the Crown Prosecution Service's *Pervverting the Course of Justice - Charging in cases involving rape and/or domestic violence allegations* as an important step towards addressing what has long been a gross injustice in our legal system.

However, Justice for Women is concerned that the Interim Guidance, whilst clearly needed in relation to the issue of retraction and double retraction, misses the opportunity to address a wider problem. It for instance focuses heavily on domestic violence, without adequately addressing sexual violence that happens outside the context of domestic violence. Our response to the consultation questions below highlights the need for amendments to ensure that women who are victimised by sexual violence are fully protected from prosecution for perverting the course of justice. Further, we believe it is imperative that the overwhelming public interest in improving the UK's

appallingly low conviction rate for rape offences is considered by all prosecutors when deciding whether to charge women for perverting the course of justice. We also consider, there is an opportunity to provide guidance on the related question of when it is appropriate to charge victims of violence with the offence of wasting police time.

5. Any other comments about the document?

Justice for Women believes that the Interim Guidance must be framed within the persistent social and political context of women's inequality and oppression. Violence against women and girls is one way in which men exercise and demonstrate power over women, and our society's routine disbelief of women who report male violence is not only a symptom of women's inequality, but also perpetuates the problem. Fundamental social and cultural bias against women means that police, prosecutors, jurors and the judiciary tend to disbelieve women who report domestic and sexual violence, resulting in a situation where it is easier to obtain a conviction for perverting the course of justice than it is to obtain a conviction for rape. The criminal justice system must do everything within its power to help create new social and cultural norms, where women who report male violence can trust that they will be believed.

We outline below two case studies of women we have worked with which illustrate why the guidance should be aimed wider than simply cases involving retraction and double retraction:

1. SB was an 18 year old Asian woman who went out for a drink with an acquaintance. Later in the evening on the way back home he invited her to climb over a fence in a local park. In the mean time he texted two friends and invited them to join him. The three men then gang raped SB and made video recordings of part of their activity on their mobile phones as "trophy". SB was abandoned in the park half naked. She managed to call the police and reported the crime. She provided an ABE interview and the police were able to locate and arrest two of the young men she had accused. They provided accounts denying the allegations and produced the mobile phone video evidence (two short clips lasting less than 20 seconds) to support their account that SB was a willing participant. The police then arrested SB and held her in custody for several hours before charging

her with perverting the course of justice. The duty solicitor allowed her to accept a caution in circumstances where her “admission” was ambivalent. Subsequently a Justice for Women solicitor succeeded in getting the admission quashed, but not before SB (who was a victim of childhood sex abuse) made a serious attempt on her life. The men she accused remain free.

2. JM was a 35 year old black woman who was a victim of domestic violence related stalking. She telephoned a confidential telephone advice line and gave them a false name. She described an incident which had not in fact occurred but was based on previous similar threatening incidents from her stalker. She did this because she wanted to get an idea of what sort of support might be available if she was again threatened by this man. The telephone advice line feared this woman might be at risk and therefore provided her details to the police. The police tracked down JM and when it became apparent that she had invented the name and the account of the incident, they arrested and charged her with wasting police time. It was only after several months of intense worry, as the CPS indicated that they would proceed, that her solicitor obtained a psychiatric report and made detailed representations to the CPS, that the prosecution was not in the public interest that the charges were dropped.

Justice for Women believes that prosecutors must explicitly recognise the institutional and cultural sexism within which investigating police officers operate. Although we acknowledge that there are examples of good intention and practice in the police, such as Sapphire and Sexual Offences Investigation Trained (SOIT) officers in the Metropolitan Police, this is not uniform across all police forces in the UK and unfortunately not always as effective in practice as in policy.

Social beliefs and preconceptions about survivors of domestic and sexual violence too often result in investigating officers failing to properly conduct investigations into complaints of male violence. This is particularly true when women fail to present as a paradigm ‘victim’, such as when they have used drugs or alcohol, when they have previously consented to sexual activity with their attacker, when they have used force to resist attack, or conversely, if

they haven't used force to resist the attack. The IPCC complaint investigations into cases arising from the police investigations into the notorious serial rapists John Worboys and Kirk Ried demonstrate some of the ways in which investigating police officers' prejudices can inhibit women's access to justice. In the John Worboys case for instance, at least two complainants found that their allegations were doubted by police officers because "a black taxi driver would not risk his licence". Prejudicial treatment results in investigations failing to be carried through, women not receiving proper support or access to justice, serial rapists getting away with it and having the confidence to rape again and in some cases, victims being wrongly prosecuted – and convicted – for perverting the course of justice.

Every time a woman is prosecuted for perverting the course of justice, rape myths about women falsely accusing 'innocent' men are bolstered and women survivors of domestic and sexual violence are yet again discouraged from reporting the crimes committed against them.

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

The Interim Guidance provides a clear description of the law relating to perverting the course of justice.

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.

Justice for Women believes that the observations on the Full Code Test focus too heavily on domestic violence, and do not fully address issues relating to sexual violence. This is problematic, since women are more often prosecuted for perverting the course of justice in relation to complaints of rape and sexual assault.

Paragraph 10: We suggest that in the third sentence, "this is unlikely to be sufficient" is replaced with "this is not sufficient." Using the word 'unlikely' here leaves open the possibility that a woman could be prosecuted solely on the basis of her retraction. The Guidance must maintain consistency throughout, by recognising that women often retract allegations of sexual or domestic violence, most often under coercion from the perpetrator, and that the retraction must never be used as the sole evidence in perverting the course of justice prosecutions.

Paragraphs 11-13: Justice for Women welcomes the guidance on double retraction, and agrees with the text of these paragraphs. However, we feel that specifically mentioning domestic violence may preclude prosecutors' consideration of other situations where sexual violence and violence in close relationships occurs. For example, double retraction may also happen in cases of rape and sexual assault where the victim and defendant know each other, within young people's intimate relationships (which are currently not recognised as domestic violence), and in situations of gang-related sexual violence. Furthermore, women may 'double-retract' even when they are not pressured by the perpetrator, for example as a result of violence-related trauma and/or because of fear of the criminal justice process. The Guidance should include additional information for prosecutors to ensure that they understand the range of reasons that women may retract a true complaint, outside the context of domestic violence.

Paragraphs 14-15: Justice for Women is concerned that the Full Code Test places emphasis on prosecutors determining whether the original allegation is true, rather than seeking to determine whether there is any evidence that the allegation is false. We believe that this significant difference can have an important impact for women, and therefore advocate a two stage test for prosecutors:

1. Establish whether there is evidence to support the allegation (as outlined in the Interim Guidance);
2. Establish whether there is admissible evidence that would suggest the allegation is false.

As mentioned above, Justice for Women has supported women being prosecuted for perverting the course of justice, and in our experience, the prejudices of investigating police officers have resulted in inappropriate evidence being used. For example, in one case 20 second mobile phone videos were used as evidence that a woman had consented to sex, whilst in another, a man was allowed to appeal his rape conviction on the grounds that the complainant had made previous allegations of rape and sexual assault that had not resulted in convictions. The use of such 'evidence' demonstrates a fundamental misunderstanding of the context in which violence against women and girls is perpetrated.

It is imperative that the Guidance includes information for prosecutors about the relevance of particular types of evidence. Mobile phone videos are likely to be used increasingly as evidence, yet short clips are incapable of providing evidence for consent to sexual activity over a period of time. When evidence such as this is admitted, it perpetuates cultural myths about consent and disrupts the fundamental human right of women to withdraw consent to sexual activity at any time. Furthermore, it is known that some women are repeatedly victimised over their lifetime, and that less than 6% of women in the UK who report a rape will secure a conviction against their perpetrator. Accordingly, the fact that previous allegations of rape or sexual assault have not resulted in conviction should never be used as evidence that a woman has made a false allegation in the case under consideration by the prosecutor. We would go so far as to suggest that the evidential restrictions in rape cases should apply equally to prosecutions for perverting the course of justice where rape or domestic violence is in issue.

Whilst the observations on the evidential stage focus heavily on double retractions, it must also be recognised that women may make false allegations under duress of circumstances. Women who are being abused may be pressured by the perpetrator to make certain allegations against someone else, or indeed to make an allegation against their perpetrator of an offence which did not in fact take place on that occasion but was based on previous offences. If they later retract these, the CPS must recognise that a prosecution for perverting the course of justice would not be in the public interest.

Paragraph 16: Justice for Women agrees with the possible sources of evidence outlined here, but we note that these services are not available in every area. Cuts to local authority budgets, and consequently local authority domestic violence coordinators and frontline domestic and sexual violence services in both the voluntary and statutory sectors, mean that many women will simply not have access to any of these services. Furthermore, most of the sources of evidence listed are support services available exclusively to victims identified to be at high risk of imminent physical injury. If the woman making the complaint hasn't been assessed as high risk by support services, evidence is unlikely to be available. The Guidance should note that if a woman hasn't accessed support services and therefore these types of evidence are unavailable, the prosecutor must not interpret this lack of

evidence that the allegation was true as proof that it is false.

- 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.

Justice for Women believes that the section on the public interest stage of the Full Code Test does not clearly set out the factors which should be considered by prosecutors. Specifically, this section fails to set out the appallingly low conviction rates for crimes of rape, sexual assault and domestic violence. We believe that the overriding public interest factor to be considered is the need to encourage women to report domestic and sexual violence, and to ensure that women feel they are going to be properly treated by the criminal justice system. The Interim Guidance in no way acknowledges the negative effect that every case of perverting the course of justice against a survivor of domestic or sexual violence has on discouraging women from coming forward. Improving the conviction rate for domestic and sexual violence offences should be the primary public interest factor.

Paragraph 24, bullet point 5: as discussed above, Justice for Women has supported a woman whose previous failures to obtain a conviction against perpetrators of sexual violence were used as evidence that she had a history of making false complaints. The word ‘demonstrably’ in this sentence should be clarified, to ensure that the failures of the criminal justice system are not used against women.

Paragraph 24, bullet point 7: Justice for Women is concerned that in practice, this factor will mean that where the alleged perpetrator of domestic or sexual violence has a public profile, then the woman who has made the complaint against them will be more liable to prosecution. This should not be a relevant consideration, as it is likely to result in women who are abused by high profile men being reluctant to report it. The effect of this could be that high profile men have greater immunity from prosecution for violence against women and girls and that women abused by high profile men have less access to justice than other women. Indeed it could be said that partly as a consequence of the tabloid press, high profile men already have a degree of immunity from prosecution since every time the press get hold of an allegation made against a famous footballer, for example, insinuations are made that the victims are just making it up for the money. Justice for Women are unaware

of any well known footballer who has actually been prosecuted for rape. Furthermore, the recent practice of courts granting super-injunctions to men who are victims of such allegations means that victims are further denied the more limited redress of exposing the alleged wrong doing to the world.

Paragraph 25, bullet point 3: A history of abuse or domestic violence should not be considered simply as mitigating factors, but as reasons not to prosecute. Indeed Justice for Women are disappointed that the Court of Appeal only reduced the sentence of the woman whose case has led to this consultation exercise, rather than quashing her conviction altogether. It is wrong that she has a criminal conviction whilst the man she originally accused remains free from prosecution.. We believe that the emphasis in this sentence should not be on the nominal penalty likely to be received, but on the effect of the accused having suffered the violence .

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?

Justice for Women agree that the explanation of "double retraction" is sufficient, but that it should not be considered *in vacuo*. The Guidance should also direct prosecutors that where a double retraction identifies that the original suspect may have committed a crime, then the prosecutor should be under a duty to re-refer the case to police for investigation.

Secondly, police should then review the circumstances under which the woman retracted her allegation, and if it is established that anyone applied pressure to her (whether the perpetrator, family members or associates) then whoever so applied such pressure to her should be investigated for and potentially charged with perverting the course of justice or other related offences.

Finally, the prosecution should consider whether to review the original investigation into the defendant who was accused to consider whether there is other evidence to suggest that the victim's original allegations may have in fact been true.

Where to send your completed form

Email them to	<u>consultations@cps.gsi.gov.uk</u>
Post them to	Perverting the Course of Justice Consultation Strategy and Policy Directorate Crown Prosecution Service Rose Court 2 Southwark Bridge London, SE1 9HS
<p style="text-align: center;">All replies must be received by 6 May 2011</p>	