

Guidance for Charging Perverting the Course of Justice
and Wasting Police Time in Cases involving Allegedly
False Allegations of Rape and / or Domestic Abuse

by

The Crown Prosecution Service



Introduction

1. This guidance applies to cases when a charging decision is being made on a person who has made an allegation of rape or domestic abuse and one of the following situations apply:
 - It is suggested that their allegation is false;
 - They have retracted their allegation; or
 - They have withdrawn a retraction ["double retraction"].

For the purposes of this guidance any reference to rape should be read to include other sexual offences. The person who made the original complaint about whom the charging decision is being made is referred to as "the suspect".

2. In these three situations the following two offences should be considered:
 - Perverting the Course of Justice [see [paragraphs 28 to 31](#)], and
 - Wasting Police Time contrary to section 5(2) of the Criminal Law Act 1967 [see [paragraphs 32 and 33](#)].

The guidance below deals with issues common to both offences. References to "relevant offences" should be read as meaning these offences.

3. Prosecutions for these offences in the situations above will be extremely rare and by their very nature they will be complex and require sensitive handling. On the one hand, victims of rape and / or domestic abuse making truthful allegations require the support of the criminal justice system. They should not be deterred from reporting their allegations. Nor should they be criminalised for merely retracting an allegation because true allegations can be retracted for a broad range of reasons. Very often such allegations are made by a person who is vulnerable or in the context of a relationship, often with a protracted and complicated history, all of which is bound to have a bearing on the issues in the case. On the other hand, false allegations of rape and / or domestic abuse can have serious adverse impact on the person accused. This is why these cases must be examined thoroughly by suitably experienced prosecutors who should strike the right balance between ensuring genuine victims are believed and not criminalised whilst recognising the need to protect the innocent from false allegations.
4. The following handling arrangements apply:
 - It is mandatory that all cases falling within this guidance are handled by lawyers in the Rape and Serious Sexual Offences (RASSO) Units.

- CPSD must not deal with these cases and should advise the police to refer them to RASSO Units, under local charging arrangements.
- Trial advocacy must be undertaken by a Rape Specialist Advocate.
- If the suspect is under 18 then the prosecutor must be both a rape and a youth specialist and any advocate must have experience of dealing with cases involving youths.
- Any decision, whether to charge or not, must be ratified in writing by the nominated Deputy Chief Crown Prosecutor [DCCP] and, where they are not available, by the Chief Crown Prosecutor for the Area.
- All cases in which there is a decision to charge an offence of perverting the course of justice must be referred to the Director's Legal Advisor for approval.

This will ensure consistency of approach. Prosecutors reviewing these cases must have read the Principal Legal Advisor's Report "[Under the Spotlight](#)" and be familiar with all relevant policies and legal guidance. These are listed at the end of this guidance. Further information about handling arrangements is set out in paragraph 42 and about the DCCP ratification process at paragraphs 43 to 45.

Core Considerations

5. In reaching decisions in these cases the following core considerations should be taken into account at all stages of the decision making process when relevant to do so.
6. Prosecutors must not resort to using myths and stereotypes once associated with victims of rape and / or domestic abuse. These include:
 - Victims always physically resist and fight off their attacker;
 - Victims always receive injuries;
 - Victims provoke / invite offences because of the way they act and dress or because they have consumed alcohol or drug
 - Victims report the crime as soon as possible;
 - Victims always recall events consistently; and
 - Victims always get away from their attacker as soon as possible.

This is not an exhaustive list. Prosecutors should be familiar with the section on [societal myths in the legal guidance on Rape and Sexual Offences \[chapter 21\]](#). These should play no part in the decision making process. Nor should prosecutors make unjustified conclusions based on the presence or absence of injury without a sound medical basis.

7. The vulnerabilities of the suspect under consideration must be properly assessed and taken into account. Mental health issues, learning difficulties, age, maturity and substance misuse issues may have an impact at both stages of the Full Code test. Such vulnerabilities may, for example, have a bearing on the suspect's ability to form the necessary intention or understanding of the consequences of their actions. They will certainly have an effect on public interest considerations. Such issues, especially mental health issues, may be the reason why a false complaint is made in the first place or why a complaint is retracted and these matters must be taken into account. Prosecutors must ensure they have sufficient information about the suspect's vulnerabilities so that decisions under the [Code for Crown Prosecutors](#) are properly informed. This may involve taking proactive steps to obtain medical or other evidence on the issue. In this regard prosecutors should be familiar with the legal guidance on [Mentally Disordered Offenders under Diversion and Public Interest Considerations](#).
8. The context in which the original complaint was made must be considered. A history of previous domestic or sexual abuse may have a bearing on decisions made by the suspect to make the allegation in the first place or to retract it or to withdraw the retraction. Any context of intimidation, fear of coercion must be taken into account.
9. Prosecutors should ensure that they have all the information they need about the background of the suspect and the person against whom the allegation was originally made. They should ensure that the police have conducted appropriate enquiries to obtain this information. This may involve contacting and obtaining material from third party agencies in accordance with third party protocols, support organisations such as Independent Domestic Violence Advisors (IDVAs) or Independent Sexual Violence Advisors (ISVAs). If the suspect is a youth then contact should also be made with Children's Services and Youth Offending Services. In domestic abuse situations this may include Multi-Agency Risk Assessment Conference (MARAC) notes or Domestic Abuse, Stalking and Harassment and Honour-Based and Forced Marriage (DASH) risk assessments.

The Decision Making Process

10. As with all offences, prosecutors must apply the Full Code Test as set out in the [Code for Crown Prosecutors](#). The Full Code Test has two stages: (1) the evidential stage; and (2) the public interest stage. The evidential stage must be considered before the public interest stage. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. Where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

Observations on the Evidential Stage

Cases Where it is Suggested the Complaint is False

11. A person who deliberately makes a false allegation of a crime in the knowledge that there is a risk that the police will conduct an investigation would have committed one of the relevant offences and is liable to be prosecuted subject to public interest considerations.

12. The first question will be whether the suspect has in fact made a clear and unambiguous complaint of a crime against an identifiable individual in the first place. This may not be the case in the following situations:
 - Where he / she merely expressed a concern or feeling that they might have been the victim of a crime which was then perhaps treated as a complaint by others. This may be the case where the suspect cannot remember all the details, perhaps as a result of taking alcohol or drugs. In such a case this would merely be a truthful reflection of the suspect's state of mind rather than a positive complaint of a crime.
 - Where he / she did not truly understand the nature of the allegation which was reported. This may be the case, for example, where the suspect said that they had not consented but did not actually understand what the word "consent" meant. There should be particular focus on this issue where the suspect is young or has mental health or learning issues.
 - Where a third party made the allegation and the suspect was not completely supportive of it perhaps because they were coerced into supporting it.
13. The second question will be whether there is sufficient evidence to prove that allegation was in fact false. If the evidence is such that the original allegation might reasonably be true then there is not a realistic prospect of conviction and no charge should be brought. The mere fact that the original allegation did not meet the evidential stage of the full Code test does not mean that the prosecution can prove that it was false. That involves an entirely different question. Likewise, where a complainant withdraws their support for a prosecution but nevertheless maintains their allegation is true, this is unlikely in itself to be sufficient to found a case for one of the relevant offences.
14. Most cases of rape and / or domestic abuse will involve one person's word against another. Prosecutors should work proactively with the police to make sure any other evidence which may be relevant to the issue has been obtained. Such evidence will include CCTV footage, telephone traffic, text message or other electronic message exchange, cell site evidence, evidence from other witnesses, medical and scientific evidence, 999 calls, employment records and available risk assessments.
15. It is important that such evidence is scrutinised with care to see whether it really does support the falsity of the allegation made and, if so, to what extent or whether it tends to support its truth. When applying such scrutiny the quality and true value of the evidence must be assessed in the light of what sought to be proved by it. The evidence may, for example, more readily and clearly prove falsity where it is incontrovertible evidence [such as clear CCTV footage] which shows that the parties were not even together at the time the allegation is said to have occurred. It may less readily and clearly do so, for example, in situations where it is necessary to show the suspect consented to a sexual act in order to prove falsity. Care must be taken to apply the appropriate weight to such evidence.
16. Inconsistencies in the various accounts provided by the suspect whether given in statements / ABE interviews or informally [i.e. during risk assessments or medical examinations] can

be considered. It is important, however, to bear in mind that it is common for true victims of sexual and domestic abuse to give inconsistent accounts due to the trauma of the attack or for other reasons. The extent and circumstances of any inconsistencies must be carefully scrutinised. Positive contradiction of the suspect's allegation is of much more value than inconsistencies.

17. It will also be necessary to take into account any reaction of the suspect when contradictory evidence is put to them in interview. However, an admission may not necessarily be sufficient to prove falsity. There may be many understandable reasons why a true victim may distance themselves from an allegation they once made [see [section on retractions](#) below].
18. Where the suspect has made previous apparently false allegations then prosecutors should ensure all relevant information is obtained about them. The circumstances of each must be scrutinised to ascertain if it really was false. Alternative scenarios should be actively considered. For example, it may be a case where the suspect merely withdrew his / her support for an otherwise true allegation. It may be that the suspect was coerced into withdrawing from the prosecution process. It may be that the allegation of rape / domestic abuse was not acted upon because of unfounded assumptions by others about its reliability. If it was positively retracted then the circumstances of such retraction must be considered in accordance with the guidance below. If the earlier allegation may have been true then it should be ignored. Only if it is demonstrably false can it be taken into account and then, as with any other evidence of the suspect's bad character, consideration must be given to whether it would in fact be admitted under section 101 of the Criminal Justice Act 2003. Rarely if ever should such evidence be used to justify a prosecution in the absence of any other cogent evidence of falsity.

Cases Involving a Retraction or Double Retraction

19. In this guidance reference to a "retraction" means a situation in which the suspect has withdrawn their original allegation stating it was untrue. Sometimes the retraction itself is then withdrawn and the suspect reverts to maintaining the truth of the original complaint - a "double retraction".
20. When statements of retraction are being considered in whatever context it is essential to consider and understand the reasons for the retraction. Police and prosecutors should work closely to examine the circumstances of the suspect, any relationship with the person about whom they originally complained and any other factors which put the retraction in context so as to better understand the reason for it. Prosecutors should bear in mind the comments of the Lord Chief Justice in *A (R v A)* [2010] EWCA Crim 2913 that "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."

21. True allegations are sometimes retracted for a whole range of reasons which include:

- a complainant may be subjected to pressure, fear of violence, or intimidation (which may itself constitute a criminal offence). This may be from the accused, his / her family, friends or the community;
- a desire to give an existing relationship another chance;
- the complainant's fear that they will not be believed as a result of how they reacted / behaved after the incident;
- the fact that the incident will be the complainant's word against the word of the accused as there is no other evidence (for example, non-consensual intercourse will not always leave visible signs on the body or genitals);
- a delay in reporting the incident to the police;
- the impact upon children and / or finances (such as on benefits or tax allowances);
- as a result of an agreement by the person originally accused to halt proceedings in the family courts;
- embarrassment;
- a fear of going to court, and / or having to relive the experience through the giving of evidence;
- family / community pressure which may stem from the immediate and extended family, the wider community and from cultural traditions;
- the complainant is involved in prostitution;
- insecure immigration status;
- the complainant has a history of or a current problem with substance misuse;
- mental health issues / learning disabilities; or
- to bring a prosecution to an end because a complainant believes or has been told that merely withdrawing their support would not necessarily do so.

Use of Retraction to Support Falsity of Original Complaint

22. If the guidance above has been taken into account then a retraction claiming that the original allegation was not true may be used as part of the evidence to demonstrate the falsity of the original allegation. However, it would never be sufficient if it was the only evidence of falsity and a prosecution should never be based solely on evidence of a retraction. In such a case it would only take the suspect to withdraw the retraction and revert to the truth of the original allegation for the prosecution to be left in situation where it would be impossible to say which version of events is true. Therefore, there would always have to be some other evidence to prove falsity for there to be sufficient evidence for a prosecution.

Use of Retractions as Basis of Prosecution

23. In law a false retraction of a true complaint could form the basis of a prosecution for a relevant offence. However, prosecutions on this basis are exceptionally rare indeed. The evidence would need special scrutiny. Even if a prosecutor believes that there is sufficient evidence to prove that it was the retraction rather than the original allegation which was false, then very careful consideration would have to be given about whether a prosecution would be in the public interest. Any decision to prosecute in such circumstances would be highly exceptional indeed. 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 abuse who should not be criminalised.

Double Retraction

24. Cases involving a double retraction are even more difficult. These sometimes (although it is stressed, not exclusively) arise in situations where there is a background of sexual or domestic abuse. In such situations there may be little by way of evidence to indicate which version of events is true, the original allegation or the retraction. As such, prosecutions for double retractions should be rare. Prosecutors should not charge two alternative counts, one representing each of the two scenarios, for it is improper to charge two mutually inconsistent counts and then invite the jury to choose which one it prefers (*Tsang Ping-Nam v R* (1982) 74 Cr. App. R. 139).

Observations on the Public Interest Stage

25. It has never been the rule that a prosecution will automatically follow where the evidential stage of the Full Code Test is satisfied. This was recognised by the House of Lords in *Purdy (R (on the application of Purdy) v Director of Public Prosecutions* [2009] UKHL 45) where Lord Hope stated that: "It has long been recognised that a prosecution does not follow automatically whenever an offence is believed to have been committed." A prosecution will usually take place, however, unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour.
26. The public interest factors set out in the [Code for Crown Prosecutors](#) must be applied. More offence [specific public interest factors are set out at paragraphs 35 to 38](#). Any other relevant guidance must also be taken into account, for example, relating to youths or mentally disordered offenders.
27. Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. 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.

The Offences

Perverting the Course of Justice

28. Perverting the course of justice is a serious offence. It can only be tried on indictment and carries a maximum sentence of life imprisonment. The offence is committed where a person:
 - does an act (a positive act or series of acts is required; mere inaction is insufficient);
 - which has a tendency to pervert; and
 - which is intended to pervert the course of public justice.
29. The course of justice includes the police investigation of a possible crime (it is not necessary for legal proceedings to have begun). A false allegation which risks the arrest or wrongful conviction of an innocent person is enough. The word pervert can mean "alter" but the behaviour does not have to go that far - any act that interferes with an investigation or causes it to head in the wrong direction may tend to pervert the course of justice. All the prosecution needs to prove is that there is a possibility that what the complainant has done "without more" might lead to a wrongful consequence, such as the arrest of an innocent person (*Murray* (1982) 75 Cr. App. R. 58).
30. Intention is not the same as motive. However, the motive of the complainant is likely to be important if the public interest stage is reached. The prosecution must prove an intention either to pervert the course of justice or to do something which, if achieved, would pervert the course of justice. All that is necessary is proof of knowledge of all the circumstances, and the intentional doing of an act which has a tendency, when objectively viewed, to pervert the course of justice.
31. 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 (*Cotter* [2002] 2 Cr. App. R. 762).

Wasting Police Time

32. The offence of wasting police time (section 5(2) of the Criminal Law Act 1967) is committed when a person causes wasteful employment of the police by knowingly making to any person, a false report orally or in writing tending to:
 - show that an offence has been committed;

- give rise to apprehension for the safety of any persons or property; or
 - show that he has information material to any police inquiry.
33. Wasting police time is a summary only offence and proceedings may only be instituted by or with the consent of the Director of Public Prosecutions (DPP) as set out in section 5(3) of the Criminal Law Act 1967. Proceedings must be started within the six month summary time limit, from the date on which the complaint was made, not from when the falsity of the allegation was suspected or detected. It is important when considering charges of wasting police time in such cases, that prosecutors pay due attention to the date of the commission of the offence, and whether other options such as an out of court disposal are appropriate after taking the full facts into consideration.

Which Offence?

34. The appropriate offence will be determined by an assessment of the seriousness of the conduct of the suspect. A charge of wasting police time may be more appropriate where:
- there was an admission that the complaint was false after a short period of time;
 - the complaint resulted in no arrest, or if so, that the accused was not charged, detained or convicted and has not suffered damage to his or her reputation as a result of the original allegation;
 - where the alleged perpetrator was not named or identified; or
 - where the complaint was not made maliciously.

Specific Public Interest Factors

35. A prosecution for perverting the course of justice is more likely to be required where:
- a false complaint was motivated by malice;
 - a false complaint was sustained over a period of time (particularly where there were opportunities to retract);
 - the person originally accused was charged and remanded in custody;
 - the person originally accused was tried, convicted and / or sentenced;
 - the suspect has previous convictions or out-of-court disposals relevant to this offence, or a history of making demonstrably false complaints. This needs to be carefully assessed - a history of withdrawing support for allegations will not necessarily amount to a propensity to make false allegations for the reasons set out in [paragraph 18](#). This will only be a relevant factor if there is clear evidence of such a history;
 - the person originally accused was in a vulnerable position or had been taken advantage of; and / or

- the person originally accused has sustained significant damage to his or her reputation.
36. A prosecution for perverting the course of justice is less likely to be required where:
- the original allegation appears not to have been motivated by malice;
 - the suspect retracting the allegation has been threatened or pressurised into doing so by the person against whom the original allegation was made, or by his or her family, friends or other persons;
 - there is a history of abuse or domestic abuse or intimidation which might offer mitigation such as to make it likely that a nominal penalty will be imposed;
 - the person against whom the original allegation was made, was not charged, detained or convicted and has not suffered damage to his or her reputation as a result of the original allegation;
 - 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 suspect has failed to understand the gravity of the offence alleged to have taken place, particularly in cases of alleged rape; and / or
 - the suspect appears not fully to have understood the seriousness of making a false allegation bearing in mind any learning disability or mental health issues.
37. When wasting police time is being considered as the appropriate charge, a prosecution is more likely to be required where:
- public / police resources being diverted for the purposes of investigation for a sufficient period;
 - where a substantial cost is incurred - for example, where expensive scientific examination has to be undertaken;
 - considerable distress is caused to the accused by the reporting;
 - where the false report alleges that a particularly grave offence has been committed;
 - there is significant premeditation in the making of the report; or
 - the complainant persists with the allegation, even when challenged.
38. It follows that, in order to make such an assessment, it will be important that prosecutors are presented with all background evidence available about the suspect, such as any mental health issues or learning difficulties, their age and intellectual maturity, their mental capacity in understanding the nature of the allegation made and whether they have any other vulnerabilities, such as being a victim of sexual or domestic abuse, or if they misuse any substances. The vulnerability of the complainant needs to be properly understood and taken into consideration. Prosecutors should ask whether there any indication that further support / intervention is required over and above a criminal justice outcome?

Youths

39. Very great care is required in cases involving a person under the age of 18 who makes a false allegation or makes a retraction. Prosecutors must consider the interests of the youth when deciding whether it is in the public interest to prosecute, along with the principal aim of the youth justice system which is to prevent offending by children and young people. This is particularly so where an alternative to prosecution might be an appropriate way of dealing with the case.
40. Prosecutors will note that where a false allegation of domestic abuse and / or rape has been made by a youth and there is sufficient evidence to justify instituting proceedings, the public interest must always be carefully considered before any prosecution is commenced. Although a reprimand or final warning may provide an acceptable alternative in some cases, in reaching any decision, the police and prosecutor will have to take into account fully the view of other agencies that may be involved, in particular Children's Services or Social Services.
41. Prosecutors should take care not to criminalise young complainants, particularly where the gravity of the situation has not been properly understood or where the reporting of the allegation was beyond the complainant's control. An example could be when parents report the case, with coercion of the suspect.

Handling Arrangements

42. The following handling arrangements apply:
 1. Decisions falling within this guidance must be made by a prosecutor within the Area RASSO Unit in light of the complex and sensitive issues that are likely to fall to be considered. CPSD should not deal with these cases but should advise the police to refer them to the RASSO Unit.
 2. Cases involving youths should be passed to youth specialists who are also fully trained on rape issues within the Area RASSO Units and be prosecuted in court by advocates with experience of cases involving youths.
 3. Where cases are prosecuted by in-house advocates, it is essential that they have the relevant skills, awareness and training to ensure these complex cases are dealt with effectively. Similarly, agents and Counsel instructed should be selected from the CPS Rape and Child Sexual Abuse List to ensure the same high level of attention is given to these cases.
 4. To ensure consistency of approach, the charging decision in all cases must be approved by the nominated Area DCCP or, where they are not available, the CCP.

5. In line with the [Casework Quality Standards](#), prosecutors should record and explain as fully as possible the evidential considerations and public interest factors they have taken into account when making their decisions. All decisions, at every stage of the decision-making, must reference this guidance document, and be recorded on the CPS Case Management System (CMS) to ensure that a full audit trail of the handling of the case is recorded. This includes the ratification that the DCCP will make.
6. All cases in which the prosecutor has decided that an offence of perverting the course of justice should be charged should be referred to the Director's Legal Advisor for approval.

DCCP Ratification

43. In ratifying the charging decision made by the reviewing lawyer, it is important that the DCCP should record all reasons, used as the basis of ratification, on CMS to provide a clear audit trail. The DCCP's ratification note should include the following information:
 - confirmation that the reviewing lawyer has considered and applied this legal guidance and related policies highlighted within;
 - approval of the reviewing lawyer's reasons for the choice of the specific offence considered, or challenge where necessary.
44. Additionally, the DCCP must ensure that the reviewing lawyer's decision-making includes, upon ratification, where appropriate:
 - whether, applying the evidential stage test in the Code, there is sufficient evidence to establish that the original allegation was false;
 - whether, if relying on admissions made by the suspect that the admissions are credible and reliable [e.g. might the suspect have retracted a true allegation because of pressure, intimidation or a desire to reconcile a relationship with the accused; were the admissions made in a PACE compliant setting with the complainant treated as a suspect];
 - where there has been a retraction, details of the evidence to indicate that the allegation was proved "false" rather than just withdrawn;
 - confirmation that none of the rape myths and stereotypes (prosecutors should refer to the [Rape and Sexual Offences](#) legal guidance for further information) are being relied upon as evidence to prove the falsity of the allegation, or to influence the approach to the case;

- confirmation as to which public interest factors matters are relevant and have been considered, and how any conclusions were reached with respect to the public interest stage of the Full Code Test;
 - whether in cases of "double retractions" and / or youths, there has been a specific consideration of the specific section of the guidance dealing with the public interest considerations in those cases; and,
 - confirmation that details / records required from all relevant support agencies regarding the respective backgrounds of the complainant and the suspect have been requested, as appropriate, and considered.
45. DCCPs may also find that in setting out the factors for and against the original allegation, this may assist them with their final decision.

List of Other Relevant Guidelines

46. These Guidelines should be read with the following:
- CPS [Policy on Prosecuting cases of Rape](#)
 - CPS legal guidance [Rape and Sexual Offences](#)
 - CPS [Policy on Prosecuting cases of Domestic Violence](#)
 - CPS legal guidance [Domestic Abuse Guidelines for Prosecutors](#)
 - CPS legal guidance [Violence against Women and Girls Guidance](#)
 - CPS legal guidance [Public Justice Offences incorporating the Charging Standard](#)
 - CPS legal guidance [Youth Offenders](#)
 - CPS legal guidance [Mentally Disordered Offenders](#)
 - CPS legal guidance [Referral of Cases](#)
 - Principal Legal Advisor's Report - [Under the Spotlight: perverting the course of justice and wasting police time in cases involving allegedly false rape and domestic violence allegations](#)