

Disclosure deals 'are scaring off rape victims'

<https://www.thetimes.co.uk/article/disclosure-deals-are-scaring-off-rape-victims-3933b5k0p>

David Brown

February 26 2018, 12:01am, The Times



The police commissioners' association says people will fear personal records being passed to defendants

ALAMY

Alleged rape victims are forcing detectives to drop investigations because they fear confidential personal records will be given to the accused, police chiefs have warned MPs.

The collapse of prosecutions, highlighted by the case of the London student Liam Allan, because police failed to disclose evidence that cleared defendants, has led to prosecutors ordering a review of all sex offences cases.

The Association of Police and Crime Commissioners has warned that the drive to improve disclosure could lead to alleged victims withdrawing their complaints to avoid personal information being revealed.

Dame Vera Baird, QC, the association's lead on sexual offences, has written to the Commons' justice committee, which is investigating failures over disclosure. The former solicitor-general said police in sex offences investigations were being told by prosecutors to obtain health, psychiatric, social service and education records of alleged victims before they consider charges.

Dame Vera wrote: "We need to ensure that complainants are not discouraged from coming forward to report sexual offences by inappropriate 'fishing' into personal records, access to which is demanded in no other kind of case. This remains a very sensitive area of criminal justice with low conviction rates. The need for disclosure to the defence of appropriate relevant material must not mean, for instance, that all personal mobile phone data, which may concern information about other

relationships, is disclosed wholesale with the potential for more rape myths and stereotypes to play a role.”

The association said that the police were urging complainants in sexual offences cases to sign an agreement for disclosure of any material necessary for a fair trial.

Dame Vera told the committee: “Many complainants are not prepared to have their personal records accessed and will withdraw their complaint.” She feared many would be put off as a result.

The justice committee said last week that it would investigate whether disclosure procedures were fit for purpose and if the proposed improvements were sufficient to resolve the problems.

It comes after *The Times* revealed that [a series of rape and sexual assault trials had collapsed](#) after crucial evidence was disclosed at the last minute. Several defendants spent months on remand before the evidence emerged.

Earlier this month a rape case against Christopher Penniall was dropped after it emerged that police had failed to investigate messages which showed that the encounter was a consensual one-night stand.

Mr Penniall, 43, had spent 16 months on bail before fresh evidence led prosecutors to conclude that there was no realistic prospect of conviction. The decision was taken on the first day of his planned trial.

Mr Allan, 22, a criminology student, spent two years on bail and three days in the dock on 12 charges of sexual violence before it emerged that police had withheld texts from a woman that proved his innocence.

Steven Littlewood, the head of the FDA public services union, has claimed that failures to disclose evidence are linked to staff cuts in the prosecution service. In a letter to the attorney-general, Mr Littlewood said that the Crown Prosecution Service was under a “huge strain” as the number of lawyers has fallen by 30 per cent since 2010.

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MJJ Feb 26, 2018

If there is zero likelihood of a conviction, then any sane woman would spare herself the humiliation of tilting at windmills. Police and CPS have been pressuring unsuspecting women to pursue cases which have become more and more hopeless, just to satisfy Her Ghastliness, and I suspect the present difficulty of hiding or withholding exculpatory evidence means even the most cynical police officer is embarrassed to proceed with terminally dodgy cases. Now they need to recognise false statements or evidence

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Bishop Jonathan Blake Feb 26, 2018

So comes the backlash when the police want the freedom to set up the accused but deprive them of access to evidence that could prove their innocence. All this, in the name of protecting the accuser....but what about protecting the accused, who is innocent until 'proven' guilty?

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MJJ Feb 26, 2018

I suspect even the abhorrent Alison will now be unable to close the floodgates and the general outrage which police and CPS misconduct/incompetence have generated

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PB Joyce Feb 26, 2018

I see that this possibility may deter some genuine rape victims, and that can be tragic. However, innocent people are rotting in jail right now because of disclosure failures and other oversights caused by political pressure to get sexual convictions up. It's easy for the justice system to support the presumption of innocence in a nominal way, but it must have policies which make this a reality. Full disclosure is one of those policies.

Too much can be made of the suffering of sexual accusers during the investigation and especially in the courtroom. We are told that they are, in effect, forced to endure a second rape. No one considers the trauma of the defendant, who after all must be assumed at the outset to be innocent.

I was lucky, because the police finally abandoned the case after a woman I'd never met accused me of historical paedophile rape. If it had come to court, I would have been furious if the judge and lawyers had treated her so delicately that the truth didn't emerge.

I should add that I live in New Zealand, but I am familiar with what happens in the UK, and nothing is substantially different.

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9RecommendReply

Graeme Harrison Feb 26, 2018

"Alleged rape victims are forcing detectives to drop investigations because they fear confidential personal records will be given to the accused, police chiefs have warned MPs."

Here's hoping that the plods have investigated the truth of that allegation more thoroughly than they appear to have investigated many complaints of rape.

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3RecommendReply

Matt Greene Feb 26, 2018

My father-in-law, the most honest man under the sun, has been accused of rape by an old family acquaintance. She was a woman officially diagnosed with personality disorders as well as a heavy hand for drinking and telling fibs. He was imprisoned immediately a day after the alleged incident, was forbidden from his right to a phone call and it took 3 months and a very expensive lawyer for him to be released and for the case to be dropped due to the complete lack of any evidence. In the meantime the word spread around town, he lost his long-time job and is now a shadow of a man he was before the case. His accuser got away with no punishment or repercussions. The prosecutor was also a woman and took the accuser's word as gospel.

It appears that the presumption of innocence in those cases no longer exists. If a man is being accused of a sexual assault he is immediately treated as guilty as soon as he steps over the court's threshold, with no way of clearing his name because of course 'they all say they're innocent'.

It's situations like these that caused the major review in the first place. If it weren't for false accusations, there would be no ground for it. Yes, the rights of victims should be protected, but so are the rights of the accused, in the same capacity. You have nothing to fear if you have nothing to hide - and if you falsely accuse an innocent man (or a woman for that matter) of a crime that will undoubtedly ruin their life, their reputation and their future prospects - you should be trialed for perjury and your name should be made public.

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MJJ Feb 26, 2018

I'm afraid that I am rather uncomfortable with any woman being able to accuse any man of rape, and his life immediately being shattered. And I am a woman.

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brian wright Feb 26, 2018

If complainants object to their personal records being disclosed because they don't want their business to be known, well, that's not a good enough reason, I'm afraid.

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MJJ Feb 26, 2018

Surely there has to be a balance? Does having once had, say, an STI, mean that a woman has a choice between dropping the case or providing someone who may have attacked her, and consequently absolutely everybody, with personal medical details? Would you be willing for someone to have access to every detail of your life?

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RecommendReply

Ross Feb 26, 2018

Before asking complainants to reveal personal information, why don't the police try properly investigating all the information they already have?

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5RecommendReply

Mr Peter Cuthbertson Feb 26, 2018

One cannot hunt with the hounds and run with the hare. If they are "rape victims" they must accept the need for full and proper disclosure. Recent events demonstrate only too well that the police cannot be relied upon to disclose relevant information. The defence has every right to seek mobile phone data even if it contains evidence about other relationships. These may form an application to a judge to cross examine about previous relationships or may not. The point is a person innocent

until proved guilty means just that. It is not the alleged victim who is on trial however much some groups want to persuade us that it is.

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8RecommendReply

Katetomato Feb 26, 2018

@Mr Peter Cuthbertson and whilst these recent events were taking place, tens of thousands of women (and men) were being raped. with a current situation where, even if reported, then less than 6% get a conviction - so basically highly unlikely there will be any consequences for actual rapists, or any justice for victims. would you want to be humiliated in court, for whatever reason, by someone twisting your life? No - this is obvious because you defend those falsely accused from being put through it. Victims also lose their jobs, families relationships, sanity. This move will just make sure that no victims will want to go through two awful ordeal, and basically rape becomes something which is never prosecuted. the whole system needs a better overhaul

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3RecommendReply

Mr Peter Cuthbertson Feb 26, 2018

Katetomato

I am sorry your response is negative in nature and somewhat hyperbolic as this diminishes the strength of your argument. For instance, I very much doubt whether, "...tens of thousands" of women and men were being raped while, "... these events were taking place". The only event described was disclosure. I know of no statistical evidence to support your statement. I suspect it is an exaggeration borne of your apparent frustration. Let's look at facts and law. A victim cannot be questioned about her or his sexual history without permission of the trial judge. That is not likely to be forthcoming without persuasive evidence in support. If such permissions is given why is cross examination "...twisting [her] life"? Nor can it be "... humiliating" when its purpose is to question the truth of the victim and thereby the guilt or innocence of the accused. Of course, I understand it is difficult to give evidence in any trial and more so where one's personal life is being picked over but such cross examination is appropriate where a person's freedom (for many years) and character are at stake. Our laws provide the safeguard I have referred to and also provide anonymity to the victim whatever the outcome unlike the accused so if as you say victims lose their jobs, family and sanity I fail to see how this can be laid at the feet of a defendant who is ultimately acquitted. Our courts and our police do understand the victim's predicament and do everything they can to ease the burden but always remember it is the accused who is on trial not the victim. This must be the thread running through our jurisprudence on the issue of disclosure in rape trials.

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Caspertg1 Feb 26, 2018

What absolute nonsense statistics. You have no basis for this and you know it. Meanwhile the real story is that the "believe the victim" approach is perverting justice with daily examples of men being prosecuted on no evidence other than accusation and indeed many cases where pathetic police investigations have ignored evidence that exonerates the accused. The truth is that if you wish to accuse someone of a serious crime then there needs to be due process, there needs to be presumption of innocence and an accuser needs to be challenged. And false accusers of which there are now many need to be prosecuted and punished.

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1RecommendReply

BigJim Feb 26, 2018

For a false accuser, the disclosure rules, if correctly followed by police and CPS (they haven't been followed it seems for years) would pose a major hurdle, perhaps dissuading them from making a false allegation in the first place.

It isn't so clear why the disclosure rules would dissuade a genuine victim of rape from reporting the offense. For instance Vera Baird's contention;

The need for disclosure to the defence of appropriate relevant material must not mean, for instance, that all personal mobile phone data, which may concern information about other relationships, is disclosed wholesale...

isn't relevant if the material in the 'personal mobile phone data' includes a message to a friend saying (as an extreme example) *'had great sex last night, but will take up your suggestion to false-allege and get some dosh for holiday'*

And indeed many of the recent scandals concerning rape allegations and disclosure have included a facet whereby the 'victim' has disclosed that no rape took place, to a friend or colleague.

Any effort to interfere with such a disclosure should surely be seen as a means to see the continuation of wrongful arrests and convictions.

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22RecommendReply

Katetomato Feb 26, 2018

@BigJim the point is that no one would want their world pulled apart to be twisted and used to humiliate them, particularly not someone who is vulnerable from an awful offence. So you are basically meaning that no one who is actually raped will ever prosecute. This isn't talking about the points above where someone discloses they have lied (which would surely have to be disclosed) - but giving a free for all to look into every element of their life. Surely that would feel very violating indeed?

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1RecommendReply

BigJim Feb 26, 2018

@Katetomato @BigJim

I'm not entirely sure what you mean by *'So you are basically meaning that no one who is actually raped will ever prosecute'* as I've not written anything to suggest that.

What I have tried to emphasise though is that Dame Vera Baird's assertions means that if adopted, necessary disclosure would be once again skipped, as it is being done now. It will be for the Court to determine relevance.

Any other fudge is going to result in the opposite effect; if juries hear of even a hint that full disclosure hasn't been performed, then the chance of a conviction diminishes.

The DPP Alison Saunders has overseen a state where juries will be hugely sceptical listening to evidence of alleged rape/sexual assault offenses, simply because of the manner in which disclosure is (not) being performed at present. Anything that improves upon the current blunders will surely see better quality prosecutions, rather than the current strategy of going to Crown Court with obviously already-innocent defendants.

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PB Joyce Feb 26, 2018

@Katetomato @BigJim Katetomato, you seem to reject the principle of Blackstone's formulation, which states that it is better that ten guilty people go free than that a single innocent person is

convicted. Or perhaps you accept the idea put about by feminist groups and the CPS itself that false sexual allegations are rare, based on the number of convictions for false allegations.

The problem is that, just as with rape itself, wrongful accusations are more than convictions suggest. Look at the criteria the CPS uses for prosecuting false accusers (<https://www.cps.gov.uk/legal-guidance/false-allegations-rape-and-or-domestic-abuse-see-guidance-charging-perverting-course>), and you will see the many hurdles to prosecution. The CPS even says that such prosecutions will be "rare". Isn't its claim to know this enough proof that it has an agenda?

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Saint John Feb 26, 2018

dame Vera is wrong . The defence should have all the information the prosecution has . Same Vera seeks to imbalance the scales of justice in favour of conviction .

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16RecommendReply

Anthony Tamburro Feb 26, 2018

You would therefore support the proposition that all the information about the defendant should be made known to the prosecution, and would be made available in the trial.

Might cause some difficulty with the basic principles of English law, but I am sure you can resolve this conundrum.

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Saint John Feb 26, 2018

You prefer innocent men to

Go to jail for a rape they didn't commit. Clearly .

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8RecommendReply

Lucy's dad Feb 26, 2018

@Anthony Tamburro

And, if you are ever accused of an offence, would you not want your defence the right to the same data as the prosecution.

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Martin R Feb 26, 2018

@Anthony Tamburro I think if all information is given to the defence this is very different to then handing over to the defendant.

Only the information that is relevant to the case should then be used in the court.

As a note though. It seems from this article that some alleged victims are more worried about confidential information be shared (which may also counter their claim) than a person being jailed for rape. Seriously ?!?!?

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Tom Mead Feb 26, 2018

Alison Saunders should be sacked because she has been perverting the course of justice in sexual assault cases since she took up her post but the real problem is with the law.

First, in rape cases the presumption of innocence has been all but abandoned in a significant proportion of cases - most importantly where the complainant knows the accused and where drink is involved. Verdicts are inevitably harder to predict and more open to challenge.

Second. The refusal by activists and legislators to distinguish between different levels of severity in the assault makes convictions both harder to achieve and, if secured, less reliable. The reason for this is wholly ideological and is obstructing justice for genuine offenders and for victims alike.

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28RecommendReply

Graeme Harrison Feb 26, 2018

The presumption of innocence has not been abandoned in any case in relation to any offence. It remains a central plank of the criminal justice system and any tribunal that behaved otherwise would find its decisions successfully appealed in less time than it took you to post your ill-informed, untrue comment.

Flag

3RecommendReply

Matt Feb 26, 2018

@Graeme Harrison

If you believe that, can you explain to me how it is possible for one person to accuse another of rape in privacy if the other argues it was consensual?

There surely can be no evidence either way - just that the act took place which in itself is not evidence of a crime.

This was the "type" of rape which was alleged in all of the reported cases where the police didn't disclose evidence to prove innocence. However if these women hadn't incriminated themselves (either by threatening to make up a rape story, or telling a friend it was consensual), the men would be wrongly imprisoned.

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13RecommendReply

Ross Feb 26, 2018

@Matt @Graeme Harrison

There surely can be no evidence either way

There could well be evidence that 20 other women had previously complained of the exact same coercive behaviour (and been dismissed in the same way).

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Matt Feb 26, 2018

@Ross @Matt @Graeme Harrison

So lock all up all accused without evidence just in case?

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Tom Mead Feb 26, 2018

All you've done is state the official position. Like a lawyer. In practice, the police, the CPS and court practice give far more weight to the uncorroborated assertions of a complainant than for any other offence.

To take the celebrated conviction and false imprisonment of Ched Evans as an example: a woman was incited by police to accuse a man of rape on the grounds that she was too drunk to consent. Her proof of this was that she was so drunk that could not remember the incident. The judge instructed the jury to accept this ludicrously circular argument. The rules of evidence for rape cases meant that in this case it took the defence five years to win the right to challenge the witness's credibility. I've been lucky. I was able to demolish yours in five minutes..

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11RecommendReply

C J Delmege Feb 26, 2018

@Graeme Harrison Be accused of rape and you are immediately arrested before any further investigation . I don't call that presumption of innocence.

See Matt Green above for an informed comment.

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3RecommendReply

Caspertg1 Feb 26, 2018

@Graeme Harrison

"Believe the victim" has resulted in the complete erosion of the presumption of innocence because they can't both be right.

I wonder how these guys feel about the presumption of innocence: Liam Allen 2yrs on bail and kicked out of uni; Banker Paul Faulkner lost his job whilst waiting 70 weeks to be cleared; Policeman Paul Morgan who was suspended, nearly lost his job and felt suicidal. To name but three. One other thing in common was that there was absolutely no corroborating evidence. Projections were based on accusation alone.

<https://www.thetimes.co.uk/edition/news/met-and-cps-apologise-to-liam-allan-over-collapsed-rape-trial-5l2fsnr8q>

<https://www.thesun.co.uk/news/5528008/100k-a-year-bank-workers-life-left-in-ruins-after-70-weeks-on-bail-wrongly-accused-of-rape-by-bitter-blackmailing-match-com-girlfriend-who-texted-him-youll-never-work-again/>

<https://www.thesun.co.uk/news/4692649/woman-falsely-accused-policeman-rape-dating-site-jailed/>

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RecommendReply

PB Joyce Feb 26, 2018

@Tom Mead Exactly. It is now considered anathema to suggest there are degrees of what is called rape. Not hearing your wife half-heartedly decline your offer of intimacy is supposedly on a par with raping a seven-year-old at knife-point. New names for different degrees of sexual crimes are called for. Even feminist matriarch Germaine Greer has suggested this. The word "rape" preserves its terrifying connotation, but its meaning has broadened so much that it is no longer tenable to claim rape is a crime that necessarily destroys a victim's quality of life. With definitions, you can't have your cake and eat it too. Is rape rare and always terrifying, or is it common and often harmless?

*Ref. : Disclosure deals 'are scaring off rape victims'.docx
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