Law Commission
Reforming the law

Evidence in sexual offences prosecutions

Summary of the final report

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Evidence in sexual offences prosecutions project

Who are we?	The Law Commission of England and Wales is an independent body established by statute to make recommendations to Government to reform the law in England and Wales.
What is this report about?	In 2021 the Government asked the Law Commission to review the law, practice, guidance, and procedure in sexual offences cases and to make recommendations for reform to improve the understanding of consent and sexual harm, improve treatment of complainants, and ensure that defendants receive a fair trial.
What are we doing?	We commenced work on the project on 17 December 2021 and published a background paper in February 2022. We conducted research and met with a range of stakeholders to develop our provisional proposals for reform. We published a consultation paper with 119 consultation questions, and a summary consultation paper with 31 summary consultation questions in May 2023. We held a four-month public consultation ending in September 2023. We received a total of 133 consultation responses, and conducted around 60 consultation events and meetings. After analysing consultation responses and feedback we received at consultation events and meetings, we published a final report with recommendations to the Government for reform on 22 July 2025.
Where is the full report?	The full report, along with other documents, can be found at https://lawcom.gov.uk/project/evidence-in-sexual-offence-prosecutions/.
What happens next?	Government will consider our recommendations and decide whether to change the law.

This summary

This summary explains what the project is about and highlights our key recommendations for law reform. It does not summarise all of our recommended reforms to the law.

Further information about each topic and the recommendations can be found in the final report.

Introduction

Why is reform needed?

Rape and serious sexual offences are amongst the most significant criminal offences and are mostly committed by men.[1] Each year, around "128,000 adults – over 90% of them women" are estimated to have experienced rape (including attempts) according to the Crime Survey for England and Wales ("CSEW"), and over the last decade, the number of such reports has increased.[2]

A large number of sexual offences are either not reported to the police or once reported, do not proceed.[3] Even when reported, some complainants choose not to support investigations, often due to mental health impacts, lack of support, intrusive requests to access private information, and/or fear of the defendant.

While the Government's End-to-End Rape Review considered the decline in conviction rates since 2016, that is not our focus. We make recommendations for reform that best meet the aims of our project which are (as described above) to improve the understanding of consent and sexual harm, improve treatment of complainants, and ensure that defendants receive a fair trial.

We conclude that while progress has been made, evidence shows that the criminal justice process for rape and serious sexual offences is still flawed and more can be done to ensure that sexual offences are tried justly, without traumatising complainants.

One issue particularly harmful to the fair and effective trial of sexual offences is the risk that rape myths will permeate the criminal process, influencing jurors' deliberations.

What are rape myths?

Rape myths are genuine and sincere beliefs about sexual violence that are factually incorrect and derived from stereotypes. For example, there is a myth that rape will always be reported promptly – the reality is that most rapes are never reported, and delay is common.

There is a lack of consensus regarding the frequency and impact of myths on sexual offences cases and jurors' deliberations. A post-trial attitudes survey conducted with real jurors in England and Wales found no support for the claim that "juror bias" is "widespread" in sexual offences trials.[4] However, in New Zealand, a recent study supports the view that some degree of illegitimate reasoning does occur in real jurors' decision making.[5] Additionally, research with mock jurors in England and Wales indicates that myths do impact jurors' deliberations.[6]

[1] Office for National Statistics ("ONS"), *Nature of sexual assault by rape or penetration, England and Wales* (18 March 2021) Tables 3 and 4.
[22] HM Government, *The end to end rape review report on findings and actions* (June 2021) ("End-to-End Rape Review") p 3; R George and S Ferguson, *Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales; and Research Report* (HM Government, June 2021) ("End-to-End Rape Review Research Report") p 29.
[3] HM Government, *Criminal justice system delivery data dashboard* (May 2025).
[4] C Thomas, "The 21st century jury: contempt, bias and the impact of jury service" [2020] *Criminal Law Review* 987; C Thomas, "A response to 'The Jury is Still Out'" [2021] *Criminal Law Review* 772.
[5] Y Tinsley, C Baylis and W Young, "'I think she's learnt her lesson': Juror use of cultural misconceptions in sexual violence trials" (2021) 52 *Victoria University of Wellington Law Review* 464, 470.
[6] L Ellison and V Munro, "Reacting to rape: Exploring mock jurors' assessments of complainant credibility" (2009) 49 *British Journal of Criminology* 202 and S Dinos, N Burrowes, K Hammond and C Cunliffe, "A systematic review of juries'

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Taking all of this into account, in our review we proceed on the basis that there is a risk that jurors may be influenced by myths and misconceptions and reforms should try to minimise such risks.

Terminology and approach

To reflect the legal process, including the presumption that anyone charged with an offence is innocent until proven guilty, we use the terms "defendant" and "complainant" when we consider the trial process.

When someone is charged with an offence it means they have been formally accused by the police of committing a crime.

In this project, we examine rape and serious sexual offences. This means that unless specified, we do not consider or make recommendations regarding non-sexual offences or less serious sexual offences.

The defendant's right to a fair trial

Defendants in England and Wales have a right to a fair trial. This is an absolute right protected by the European Convention on Human Rights ("ECHR") and recognised throughout the criminal justice process.

The defendant's right to a fair trial is "a fundamental constitutional right recognised by the common law and guaranteed by the [ECHR] and other international human rights instruments" (*R v DPP (Ex parte Kebilene and others)* [2000] 2 AC 326).

It is protected by the Human Rights Act 1998, which incorporates article 6 of the ECHR into domestic law.

The complainant's right to respect for their private life

Complainants' have a right to a private life under article 8 of the ECHR.

The prosecution of sexual offences also engages the complainant's right to respect for their private life, for example, when using their private information as evidence or when they are questioned by the defence barrister during the trial (known as "cross-examination").The European Court of Human Rights has decided that "measures may be taken for the purpose of protecting the [complainant], provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence".[7] In this report, we look at how the rules of evidence and court procedures can be improved to better support complainants, help juries focus on the facts without being influenced by myths about sexual violence, and still protect the defendant's right to a fair trial.

assessment of rape victims: Do rape myths impact on juror decision making?" (2015) 43 *International Journal of Law, Crime and Justice* 36, 44 and 47.

[7] *SN v Sweden* App No 34209/96 at [47]; *Aigner v Austria* App No 28328/03 at [37]

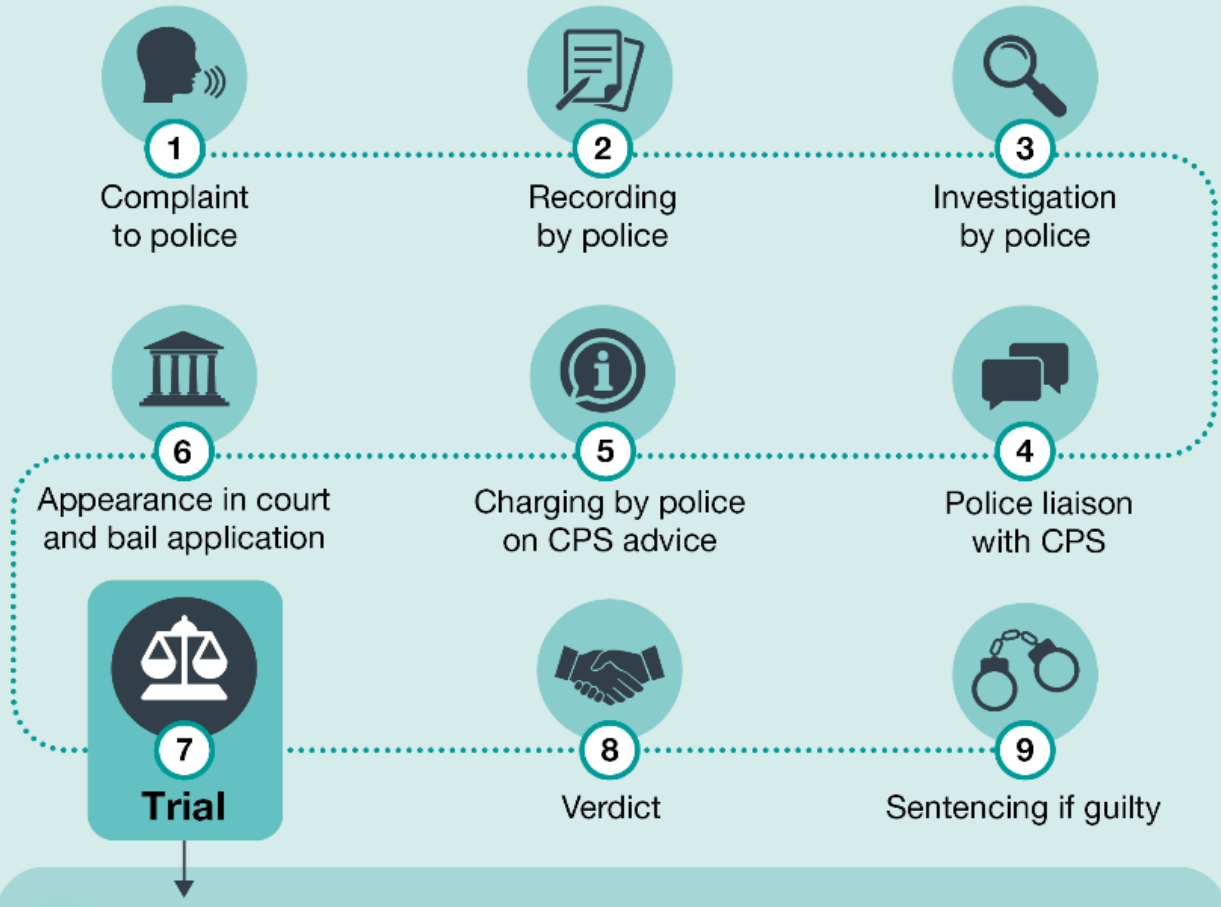
Resourcing and delay

We heard repeatedly about the strained resourcing of the criminal justice system and the impact of this upon sexual offences cases. We received comments about the lack of practitioners willing to undertake such cases. We were told of the effect of this on the listing of cases and court backlogs, and consequent lack of practitioners with specialist knowledge who might also become judges, or who might be engaged to provide independent legal advice and representation for complainants. We also heard about the very real impact of delays on both complainants and defendants, whose lives are put on hold for long periods of time waiting for the final outcome.

Finally, we received comments about inadequate facilities within the court estate and technological challenges which currently affect participants' experiences and the effectiveness of measures to assist with giving evidence. We have considered this issue carefully throughout our project and make recommendations where we believe they are justified and proportionate.

We have prioritised recommendations that we think will have the most benefit, and where we think there is more proportionate use of resources elsewhere, we have reflected that in our conclusions. We also recognise that resilience in the system is currently low and that our recommendations need to be appropriately funded to ensure they have the intended beneficial impact.

The journey through the criminal justice system



Our review includes:

- personal records held by third parties (including counselling records);
- sexual behaviour evidence;
- evidence that the complainant has made a prior allegation of sexual assault;
- evidence that the complainant has made a claim for criminal injuries compensation;
- character evidence;
- independent legal advice and representation for complainants;
- rights of appeal;
- measures to assist with giving evidence;
- judicial directions, juror education and the admissibility of expert evidence to counter rape myths;
- the way trials are conducted by judges and lawyers;
- specialist courts and more radical reform;
- pre-trial hearings; and
- holistic reform

Personal Records

Personal records include medical, counselling, education and social services records. They contain highly personal information engaging the privacy rights of the person who is the subject of the record. Such records are usually held by third parties and, when used in the context of a trial, are sometimes referred to as third-party material ("TPM").

Medical or counselling records are just one species of personal records that may be held by a third party. A third party is a person, organisation, or government department other than the investigator and prosecutor. Personal records held by third parties may also include records held by, for example, schools, immigration authorities, child and family services, and employers.

Terminology

"Access": records are provided to police and prosecution with the consent of complainant and record-holder ("access by consent"), or police and prosecution seek a court order to obtain the records so they can consider whether the records contain relevant information ("access by compelled production").

"Disclosure": where the records contain material the prosecution will rely on, or material that might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the defendant, then the records must be provided to the defence.

"Admissibility": the determination by the court that records may be used as evidence in the trial. Different types of evidence may be subject to different tests, or thresholds, to enable the court to make its determination.

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The problem

Problems can occur in sexual offences cases regarding access, disclosure and admissibility of complainants' personal records. The defence can legitimately seek them and rely on them at trial because they may be relevant and necessary to advance their case. However, some people are concerned that personal records are disproportionately requested. Such requests can be a route for introducing myths and can be traumatic for complainants infringing their right to private life because of the revelation of personal information to others (and in particular, to the defendant), or the potential use of it at trial. This may deter complainants from reporting or from continuing to support an investigation or prosecution.

There are also concerns that such requests may lead to complainants' therapy being compromised or delayed. This is because the complainant and/or their therapist may feel as though they cannot speak freely about the allegation, or they may decide to postpone therapy until the conclusion of the criminal proceedings in case the notes taken during therapy are requested.

The case for reform

Currently, access, disclosure and admissibility of personal records held by third parties are governed by a combination of laws and guidance that set low thresholds and are not specific to sexual offences. Changing the approach could improve complainants' experiences and their ability to engage with therapy and the criminal process. It could also create greater consistency in the way a complainant's personal records are dealt with in sexual offences cases. These potential benefits outweigh the concern that a framework limited only to the personal records of complainants in sexual offences is not necessary or justified; and the concern a bespoke regime may impact fair trial rights.

We conclude that a new regime should only apply at the stage of access/production of the personal records. There is evidence that inappropriate determinations regarding complainants' personal records primarily arise at the point of access, rather than at the point of disclosure to the defence, or decision making about admissibility. Therefore, we focus our recommended framework at this stage to ensure it is most proportionate and effective.

Recommendation

We recommend that for access by and compelled production to the police or prosecution, personal records held by third parties

1) must be likely to be relevant to an issue at trial or to the competence of a witness to testify; and

2) such access and production must be necessary in the interests of justice.

When deciding what is necessary in the interests of justice, the following factors should be considered:

1) the extent to which the record may be necessary to ensure a fair trial;

2) the likely probative value of the record to an issue at trial;

3) the nature and extent of the reasonable expectation of privacy with respect to the record;

4) whether the request for access to or production of the record is based on a discriminatory belief or bias or may invoke or rely on myths and misconceptions;

5) the potential prejudice to the personal dignity and right to privacy of any person to whom the record relates; and

6) the effect of the determination on the integrity of the trial process.

This threshold responds to the need to prevent unnecessary access to personal records and addresses the dissatisfaction with the current threshold as being too open to interpretation and permissive. The threshold is clearer than current provisions and ensures the relevant range of interests will be considered when determining if a record should be accessed, in particular the extent to which the record may be necessary to ensure a fair trial. Chapter 2 of the final report contains further detail on how the threshold may be applied in practice.

Judicial oversight

There is currently no judicial oversight of requests for third party material if the complainant consents for it to be provided to the police or prosecution. Consent from the complainant may be influenced by trauma or fear that the case will not proceed if access is refused. Record holders must navigate complex legal and practical issues. Accordingly, we consider whether there should be judicial scrutiny for access to records, even where the complainant has provided consent.

Judicial oversight of requests for access to which the complainant has consented would require judicial time and could cause delay. We do not think the benefits of such judicial oversight outweigh those concerns. We therefore conclude that there should not be judicial scrutiny for access to records where the complainant consents (either pre- or post-charge). However, where consent to access is refused, we recommend that the police, prosecution (pre- or post-charge) and defence (post-charge only) should apply to the court for an order for those records to be produced.

Independent legal advice and representation ("ILA" and "ILR") relating to requests for personal records is an effective and less resource-intensive alternative to requiring judicial oversight for access by consent. The legal representative will be able to advise the complainant on their options, liaise with the third-party record holder, and engage with the police/prosecution to obtain information and make representations regarding the scope and validity of their request. Moreover, with a clear (pre- and post-charge) statutory framework and guidance, the complainant and their legal representative, and the third-party record holder should feel more confident in raising objections about requests.

Overview of our compelled production recommendation

1) The police, prosecution or defence apply to the court for production of materials held by a third party.

2) The court hears arguments from the prosecution, defence, the complainant/their legal representative, and the third party, if it wishes to be heard. If persuaded that the threshold is met, the court orders the third party to provide the records to the police/prosecution and the complainant/their legal representative.

3) The third party provides materials to the police/prosecution and the complainant/their legal adviser or representative.

4) The police/prosecution review the materials, disclosing to the defence information which meets the threshold for disclosure. The threshold requires material to be disclosed if it is to be relied on to prove the case, as well as where it might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the defendant (see the Criminal Procedure and Investigations Act 1996, ss 3(1), 7A(2) and 7A(5)). This is required as long as the materials are not sensitive and should be withheld on the basis of public interest immunity.

5) Personal records may be introduced at trial by the prosecution or the defence as evidence and/or in lines of questioning, subject to the personal records being relevant, and any exclusionary rule or higher admissibility threshold.

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Scope of the regime

Complainants' privacy interests are engaged regardless of where or by whom the private information is recorded. Information might be found in a variety of forms of TPM and a broad definition is helpful to avoid gaps that could enable some records to be accessed inappropriately.

While we acknowledge that therapy records have a distinct form and function, this does not justify narrowing our approach to therapy records only. Empirical evidence suggests requests are made for a range of TPM, not just therapy records, and based on other jurisdictions, a narrow definition would be open to expansive interpretation, arguably making the law less comprehensible. In addition, a narrow focus on where information is recorded overlooks the fact that the same information might be recorded across a range of records, and this could lead to inconsistent decisions.

Recommendation

We recommend that the regime regulating access to, and compelled production of, personal records should apply to records held by a professional third party, in which the complainant has a reasonable expectation of privacy.

No complete ban on therapy records

Having decided that the regime should have a broad scope, we nonetheless consider whether the use of therapy records should be prohibited. The relationship between a therapist and their patient is confidential and is based on trust. This relationship may be impacted by the risk of counselling records being accessed, disclosed or admitted in sexual offences prosecutions.

However, there is also a risk that a complete prohibition may impact the fair trial rights of the defendant. For example, access to therapy records could be justified where the complainant retracted their allegation during discussions with their therapist.

We therefore conclude that there should not be a complete prohibition on access, disclosure or admissibility of pre-trial therapy records.

Sexual behaviour evidence

Evidence of the complainant's sexual behaviour (sexual behaviour evidence or "SBE") may be relevant evidence in a sexual offences trial. It can be necessary for a defendant to properly advance their case or challenge the prosecution evidence. However, in a trial where the jury must decide whether a particular instance of sexual behaviour occurred as alleged, detail of unconnected sexual behaviour is often irrelevant.

When admitted, SBE risks introducing myths and misconceptions about the complainant's credibility, consent and moral worthiness because of their sexual behaviour. SBE can therefore distort the fact-finding process and improperly influence jurors' decision making in trials. Further, being cross-examined about SBE can be very distressing, humiliating, and in some cases traumatising. SBE is inherently personal and its use in the trial process engages the complainant's qualified right to respect for their private life under article 8 of the ECHR.

For these reasons, in England and Wales, like many jurisdictions, the use of SBE is restricted in sexual offences trials. Laws that restrict its use are often called "rape shield legislation". Here we explain our recommendations for a new approach to the admissibility of SBE that better protects the interests of justice and the rights of the individuals.

Rape shield legislation: law that restricts the use of evidence of a complainant's sexual behaviour because of the risk it will introduce myths and misconceptions which influence decision making, and expose the complainant to disproportionately intrusive questioning

The current law

The current rape shield legislation for England and Wales is found in section 41 of the Youth Justice and Criminal Evidence Act ("YJCEA") 1999 ("section 41"). Described as a "gateway approach", section 41 restricts all SBE sought to be introduced or asked about on behalf of the defence, unless it meets the criteria for one of four gateways. In addition, the evidence must relate to a specific instance or instances of sexual behaviour and the court must be satisfied that not to admit the evidence might make the jury reach an "unsafe" conclusion on any relevant issue in the case.

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The four gateways are:

1) Not an issue of consent: SBE can be admitted as evidence of something other than the complainant's consent to the sexual activity with the defendant.

2) Similarity: SBE can be admitted as evidence that the complainant consented, if the SBE is "so similar" to the behaviour in the alleged offence, or to behaviour said to have taken place at or about the same time, that the "similarity cannot reasonably be explained as coincidence". Under this gateway, SBE may also be admitted if it is so relevant to the issue of consent that to exclude it would endanger the fairness of the trial.[8]

3) Contemporaneity: SBE can be admitted as evidence that the complainant consented if it relates to sexual behaviour that occurred "at or about the same time" as the alleged offence.

4) Rebuttal: SBE can be admitted if it is used only to rebut evidence presented by the prosecution.

To be admissible under gateways (1) to (3), the use of the SBE must not have the purpose, or main purpose, of impugning the complainant's credibility.

Having analysed its application, criticisms, and challenges in practice, we conclude that the current rape shield legislation is both too broad and too restrictive. It is also too complex, leading to inconsistency in application, and lack of transparency in decision making. It does not focus on the risks of admitting such evidence, or whether its admission is necessary for a fair trial. We think this is problematic.

A new framework

For any framework restricting SBE to be effective and fair it should:

1) facilitate a proper interrogation of relevance;

2) have a threshold for admissibility that is higher than just relevance;

3) not amount to a complete ban of all SBE; and

4) allow evidence to be admitted if it is necessary for a fair trial.

With these considerations in mind, we have developed a new structured discretion model to limit the use of SBE in trials, with an enhanced relevance threshold.

Structured discretion model: a framework that restricts the use of evidence by establishing a threshold for admission, with a set of factors that must be considered when deciding if that threshold is met in each case.

[8] *R v A (No 2)* [2001] UKHL 25 [46].

We consider this model to be a more logical and flexible framework, with a suitably high threshold. It will help ensure greater consistency and appropriate scrutiny of SBE considering all of its risks, and a clearer route for admission when it is necessary for a fair trial. We have refined the features of this model following consultation to ensure decision making is appropriately structured and to create a process that supports consistent, fair application. We think that this model will be most effective if it operates alongside the other recommendations in this report designed to minimise the risk of myths and misconceptions inappropriately influencing the trial, and ensure humane treatment of the complainant. This includes giving the complainant a right to be heard with ILA and ILR on applications regarding their SBE (see below for more detail).

Two-stage admissibility test

Recommendation

We recommend that SBE should only be admissible if:

1) the evidence has substantial probative value in relation to a matter in issue in the proceedings that is of substantial importance in the context of the case as a whole ("stage 1"); and

2) its admission would not significantly prejudice the proper administration of justice ("stage 2").

To be admissible, first, the evidence must have substantial probative value. This is an assessment of the probative value of the evidence itself. If it does not meet this threshold, it cannot be admitted.

Second, if the evidence does have substantial probative value, the court must then also be satisfied that its admission would not significantly prejudice the proper administration of justice. This is an assessment of the evidence in the wider context of a fair and just trial. If its admission would significantly prejudice the proper administration of justice, it will not be admissible. This means that SBE that has substantial probative value can still be inadmissible if it does not meet the second stage. The two-stage test will operate to ensure that whenever SBE is necessary for a fair trial, it will be admissible.

Stage 1: Does the evidence have substantial probative value in relation to an important matter in issue?

The risks that SBE will introduce myths into the trial process, inappropriately influence jury decision making, and cause disproportionate distress and humiliation for complainants justify a higher threshold for admissibility than the standard relevance threshold.

Under our model, to be admissible SBE must have substantial probative value in relation to a matter in issue in the proceedings that is of substantial importance in the context of the case as a whole. SBE with just "some" probative value, as required under the simple relevance test, will not be admissible. This stage of the test is similar to the existing threshold for admitting bad character evidence.[9]

To improve scrutiny, we recommend a list of factors for consideration when assessing the probative value of SBE. They will not all be applicable in every SBE application and therefore are not mandatory considerations.

[9] See further discussion of the "substantive probative value" threshold at Evidence in sexual offences prosecutions: a final report (2025) Law Com No 420, paras 3.52-3.59.

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Recommendation

To guide assessment of probative value, under stage 1 the judge may wish to consider:

1) the nature and number of the events, or other things, to which the evidence relates;
2) when those events or things are alleged to have happened or existed;
3) where it is suggested that the SBE has probative value by reason of similarity between it and the sexual behaviour alleged to have occurred, the nature and extent of the similarities and the dissimilarities between the SBE and the sexual behaviour alleged to have occurred;
4) the extent to which the evidence is necessary to rebut or explain evidence introduced by another party;
5) the extent to which the evidence may distract the factfinder from the main issues in the case; and
6) the risk that the probative value of the evidence relies on myths or misconceptions.

Stage 2: Would using the evidence significantly prejudice the proper administration of justice?

Stage 2 requires consideration of the evidence in the wider context of a trial that is fair and just. Justice is only properly administered if the defendant receives a fair trial.

The proper administration of justice also requires that:

1) necessary evidence is before the jury;
2) the jury are not unduly prejudiced by evidence introduced at trial;
3) the jury do not engage in impermissible reasoning; and
4) the rights and welfare of complainants are respected.

The requirement that the admission of SBE must "not significantly prejudice the proper administration of justice" is part of the landmark House of Lords case on SBE, *R v A (No 2)*[10] and features in the Canadian and Scottish structured discretion models.

Recommendation

When assessing whether stage 2 is met, we recommend the judge must consider each of the following factors:

1) the impact on the complainant's legal rights, including respect for the complainant's dignity and privacy);
1) the impact on the interests of justice, including the right to a fair trial; and
2) the risk of myths or misconceptions being introduced to the trial.

The relevance of the factors will vary depending on the specific details of the SBE and the facts of the case. These factors are not exhaustive, and no single factor is determinative; rather, the judge must assess them collectively to determine whether admitting the evidence would prejudice the administration of justice, and if so, to what extent.

[10] [2001] UKHL 25.

Credibility restrictions

The current law prevents the use of SBE for the purpose (or main purpose) of challenging the complainant's credibility. Challenging the complainant's credibility includes questioning whether they are truthful, reliable, or consistent.

We see value in restricting the use of SBE to suggest that the complainant lacks credibility. However, we have restructured this restriction to better target problematic use of SBE in this way. We think there should be a prohibition on SBE sought to be admitted as evidence that the complainant is "unchaste" and therefore should not be believed. This protects against the use of myths about complainants, ensuring necessary evidence relating to credibility can still be used in court. This restriction ensures that SBE that relies on the sexual nature of the behaviour to question the complainant's credibility is not admissible in court and enables SBE that relates to a credibility issue in the case to be admissible if it meets the threshold.

Definition of sexual behaviour

The term "sexual behaviour" in section 41 has been interpreted broadly. A wide and flexible definition ensures that evidence relating to sexual behaviour is brought within the scope of the regime and is subject to judicial scrutiny. We conclude that the current definition of "sexual behaviour" should be retained.

We are also satisfied that the current definition of sexual behaviour covers more modern forms of sexual behaviour such as online sexual messaging and conduct in virtual reality settings. We do not recommend including a reference to online communications in the definition so that the definition is flexible as technology changes.

Relationship evidence

With a significant number of sexual offences happening between people who know each other, the fact of a relationship of any kind between the complainant and defendant can help the jury understand the context of the case and interpret the evidence. Evidence that the complainant and defendant are in a relationship ("relationship evidence") therefore is important to explain this context. There is a risk that relationship evidence can encourage myths, particularly about consent in the context of relationships. However, we think that the likelihood the jury will draw improper assumptions as a result of relationship evidence which is purely explanatory is much lower than with other types of SBE. Given its explanatory value, restricting the admission of relationship evidence on the basis of the risk of myths is not proportionate. We recommend that relationship evidence that is relevant as explanatory or background evidence only should not be within the scope of any framework that restricts the use of SBE.

Procedure

We consider the procedure for parties when making applications to introduce SBE and for judges when delivering their decision in response to an application.

We were told that the current procedure for SBE applications works well; this includes the requirement that the application be made in writing and include particulars of the evidence or questions.[11]

Currently judges are not required to provide written reasons in relation to SBE applications. Written reasons would promote transparency and consistency and enhance scrutiny of these challenging decisions.

[11] Criminal Procedure Rules ("CrimPR"), r 22.

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We also recommend that the SBE framework should apply to both the defence and prosecution seeking to introduce SBE. While it may be appropriate for the prosecution to introduce SBE in some circumstances, the nature of the evidence means there is still a risk that it will be humiliating and intrusive for the complainant, that it may infringe on their privacy and introduce myths in the decision making process. Our recommended framework is designed to scrutinise SBE in order to minimise these risks, which arise regardless of the party seeking to introduce the evidence.

We acknowledge the resource implications of these additional requirements but ultimately conclude they are justified by the benefits.

Recommendation

We recommend the current procedure for making SBE applications should be maintained.

We recommend that the judge should be required to give written reasons for their decision on an application to introduce SBE, addressing the two-stage test, including the mandatory factors under stage 2.

Previous allegations of sexual offending

Here we consider evidence that the complainant has made an allegation of sexual offending that is not the subject matter of the trial. Most often this type of evidence is understood as "false allegation evidence" ("FAE") as it is usually used to suggest the complainant lied about the previous allegation, in support of the defence case that the complainant is also lying about the allegation on trial, or generally to impugn the complainant's credibility. However, not all previous allegations sought to be introduced in a trial are false, therefore it is necessary to consider how the law should address the full range of evidence of previous allegations of sexual offending.

The problem

Previous allegations by the complainant that they have been the victim of sexual offending may be relevant in a sexual offences trial. Evidence that a complainant has previously made a very similar allegation that was proven to be false can be important evidence for the jury to consider. Evidence that the complainant made a previous allegation that is not false may also be relevant to a fact in issue.

Whether said to be false or not, evidence of a previous allegation of a sexual offence also carries the same risks as SBE given its sexual nature: the risk of distracting the jury from the issues in the case; of causing unjustified distress to the complainant; and of introducing myths and misconceptions about sexual conduct and sexual violence (including the pervasive myth that allegations of sexual offending are commonly false).

In addition, there are concerns that the "falsity" of previous allegations is not robustly scrutinised in this context. These concerns relate to arguments, usually by the defence, that a previous allegation was false when there is insufficient evidence that the allegation was in fact false.

The current law

Where it is evidence of "reprehensible behaviour", FAE is a form of bad character evidence ("BCE"). The use of BCE relating to the complainant (or any witness) is restricted under the Criminal Justice Act 2003 because of its inherent risk of prejudicing the jury. The statutory framework imposes a higher threshold for admissibility than relevance, unless all parties agree to its admission (we discuss BCE in more detail below).

As FAE will likely involve content of a sexual nature, it can also fall within the definition of sexual behaviour and therefore be subject to SBE restrictions (currently under section 41 YJCEA 1999 described above).

Where the evidence is about the lies told by the complainant, rather than the sexual behaviour itself, it should be considered under the BCE framework instead of the SBE framework.[12] In practice it is not always clear which threshold applies. The two frameworks are different, and it is not straightforward to apply both in one application. Further the credibility restriction in section 41 can prevent FAE being admitted if it is applied. If a party seeks to admit FAE only through the BCE provisions (instead of the SBE provisions) there should be a "proper evidential basis" for asserting that the allegation is false.

[12] See *R v V* [2006] EWCA Crim 1901 at [21].

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The admissibility of evidence of previous allegations of sexual offending not said to be false would currently be considered either under the general relevance threshold, or under section 41 of the 1999 Act if the evidence falls within the definition of "sexual behaviour".

In addition to the confusing distinction between FAE and SBE, we are concerned that the application of the bad character framework alone for FAE is unsatisfactory. This is because the BCE threshold is easier to meet than the SBE framework, and is not designed to address the same risks. We provisionally proposed that FAE should be governed by the same framework as SBE, which would better address the similar risks that arise.

We recognise that SBE is not always the appropriate categorisation for FAE. Making a false allegation can be reprehensible conduct and some argue it should most appropriately be dealt with as BCE. However, a high threshold and robust scrutiny of this type of evidence is important where there is a risk of prejudice to the jury.

Our recommendations

In our view, there is a useful distinction between the SBE and BCE frameworks that should be retained. As described above, the definition of sexual behaviour is broad. It includes where no physical sexual activity took place, online sexual communication, and non-consensual sexual activity. If the evidence of an allegation does fall within the definition of "sexual behaviour", the SBE framework should apply. If not, then either:

1) the bad character framework will apply where the evidence of an allegation is said to be false, amounting to reprehensible conduct; or

2) the relevance threshold will apply if the evidence of an allegation is not said to be false, or is not being used as evidence of the complainant's misconduct.

Recommendation

We recommend that the use of evidence of a previous allegation (false or not) should be regulated by the SBE framework where the evidence sought to be introduced, or questions sought to be asked, fall within the definition of "sexual behaviour".

Increasing scrutiny of FAE

We remain concerned that within the BCE framework there is currently no express provision for consideration of the particular risks associated with the sexual nature of previous allegations.

We also heard concerns from some consultees that courts do not always properly scrutinise whether a prior allegation was false. To better interrogate falsity, we recommend that certain facts should not be treated as sufficient evidence of falsity on their own.

Recommendation

We recommend that when evidence of a previous allegation is being considered under the bad character framework that judges should be required to consider the risk of introducing or perpetuating myths and misconceptions, similar to the requirement to consider the risk of introducing or perpetuating myths and misconceptions in our SBE framework.

We recommend that on their own, the following should not constitute a "proper evidential basis" that a previous allegation of sexual offending is false:

1) raising and not pursuing a complaint;

2) a decision to take no further action, not to charge or not to prosecute; and

3) an acquittal.

Criminal Injuries Compensation evidence

Victims of violent crimes are entitled to apply for compensation under the Government funded Criminal Injuries Compensation ("CIC") scheme. Criminal Injuries Compensation evidence ("CICE") refers to evidence that a complainant has applied for, or received, compensation under the CIC scheme after reporting a crime.

The problem

Evidence demonstrates that CICE is used in sexual offence cases more often than other types of cases.[13] This evidence can be used in sexual offences cases to reinforce harmful myths, by suggesting that the complainant is motivated to lie about a sexual offence allegation for financial gain. In addition to potentially influencing jury decision making, this can deter complainants from applying for compensation out of fear it will be used against them in court.

Currently, the admissibility of CICE and cross-examination regarding CIC claims are governed by the usual test of relevance. Without a higher threshold to restrict the introduction of CICE, there is a risk that this prejudicial evidence will be deployed in sexual offences trials to influence the jury on the basis of myths and misconceptions.

A new framework

In our view the most suitable response to the risks posed by CICE is to introduce a higher threshold for allowing this evidence to be introduced and to require greater consideration of the relevant interests at stake.

While some of the risks associated with CICE could be managed by judges during proceedings, we do not consider these measures to be sufficient to adequately address the risk of prejudice presented by this type of evidence.

We also recognise the need to allow some CICE to be admissible as it may be needed to ensure the defendant receives a fair trial. This could be, for example, where there is an inconsistency in what the complainant has said about making a compensation claim, or where there is other evidence which supports an argument that the complainant has lied for financial gain.

In line with our approach to SBE, we conclude for any framework restricting CICE to be effective and fair it should:

1) facilitate a proper interrogation of relevance;

2) have a threshold for admissibility that is higher than just relevance;

3) not amount to a complete ban of all CICE; and

4) allow evidence to be admitted if it is necessary for a fair trial.

Two-stage admissibility test

Our recommended test for admitting CICE follows a two-stage structure similar to the SBE model.

[13] We were told by the Criminal Injuries Compensation Authority that for the period 1 April 2022 to 15 May 2023, it received 392 requests for personal data from the police in England, Wales and Scotland. It was able to identify a relevant application for 243 of those requests and of those, 191 related to claims made for sexual assault.

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Recommendation

We recommend that evidence of a CIC claim should only be admissible if:

(1) the evidence has substantial probative value in relation to a matter in issue in the proceedings that is of substantial importance in the context of the case as a whole ("stage 1"); and

(2) its admission would not significantly prejudice the proper administration of justice ("stage 2").

Recommendation

We recommend that when assessing whether stage 2 is met the judge must consider each of the following factors:

1) the impact on the complainant's legal rights, including respect for the complainant's dignity and privacy;

2) the impact on the interests of justice, including the right to a fair trial; and

3) the risk of myths or misconceptions being introduced to the trial.

Stage 1: Does the evidence have substantial probative value in relation to an important matter in issue?

Under our model, the court must first determine whether the evidence has substantial probative value. This is a high threshold that ensures only evidence with substantial probative value to a key issue in the case is admitted. This threshold helps exclude prejudicial or speculative claims, such as general assumptions that complainants regularly lie about sexual offence allegations and they do so for financial gain.

Stage 2: Would using the evidence significantly prejudice the proper administration of justice?

Stage 2 focuses on whether admitting CICE would significantly prejudice the proper administration of justice.

As with stage 2 of the SBE test, these factors are not exhaustive, and their relevance will vary depending on the individual case. Importantly, no single factor automatically determines admissibility; instead, judges must consider them together.

Procedure

The current process for making applications to introduce SBE includes written applications and judicial scrutiny, regardless of the party introducing the evidence.[14] We recommend the process for making an application to introduce CICE should be the same as the process used for parties seeking to introduce SBE.

We also recommend that judges be required to explain their decisions in writing, addressing the test and the factors under stage 2. We consider that providing written reasons explaining decisions on CICE applications would promote transparency and consistency.

[14] Youth Justice and Criminal Evidence Act 1999, s 43; CrimPR, r 22.2-r 22.4

Character evidence

Evidence of a person's good or bad character may be admissible in a criminal trial. It might be used to suggest a person should (or should not) be believed (referred to as credibility). It might also be used to suggest a person has (or does not have) a tendency to conduct themselves in a particular way (referred to as propensity).

Bad character evidence

What is bad character evidence?

Evidence of bad character will be either "evidence of… misconduct" or "evidence of … a disposition towards misconduct". "Misconduct" is defined as "the commission of an offence or other reprehensible behaviour" (Criminal Justice Act 2003, ss 98 and 112).

First, we consider the position where there is evidence that the defendant has engaged in previous misconduct such as coercive or controlling behaviour, other forms of domestic abuse, violence or sexual misconduct, but this misconduct has not resulted in a conviction. Stakeholders told us that the prosecution do not often seek to introduce this type of non-conviction evidence, and this evidence is not often admitted even when they seek to do so.

Evidence that a defendant has engaged in but has not been convicted of an offence will be evidence of "reprehensible conduct" that constitutes bad character. Evidence of bad character must fall within one of the seven gateways in section 101 of the Criminal Justice Act 2003 to be admissible. Further, it must not have such an adverse effect on the fairness of proceedings as to be excluded from the trial under either section 101(3) of the Criminal Justice Act 2003 or section 78 of the Police and Criminal Evidence Act 1984.

The current legal framework allows for non-conviction bad character evidence to be admitted where appropriate, subject to judicial scrutiny and safeguards to prevent unfairness to the defendant and we therefore do not recommend reform. Underuse of this evidence is due to issues in the investigation and case building, which are already being addressed via updated guidance..

Good character evidence

Secondly, we consider the admissibility of good character evidence for both defendants and complainants because of a perceived "imbalance" in the admissibility of this evidence for defendants compared to complainants.

What is defendant good character evidence?

Evidence of the defendant's good character will be evidence that they have no prior convictions or cautions, and no other reprehensible conduct has been alleged, admitted or proven. A defendant who has old, minor or irrelevant convictions and/or cautions might also be seen as having good character (*R v Hunter* [2015] EWCA Crim 631).

Evidence of the defendant's good character may be relevant to the trial and preventing the defence from introducing this evidence could infringe the defendant's right to a fair trial. Accordingly, we recommend that there should be no reform of the admissibility of defendant good character evidence. While we recognise there is a risk that this evidence could be misused to support rape myths, this risk should be mitigated by other safeguards, such as judicial directions.

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We acknowledge there are concerns that complainant good character evidence could distract the jury from the central issues in the case, result in intrusive questioning of complainants, disadvantage vulnerable and minoritised complainants, and undermine the defendant's right to a fair trial. We conclude that there should be no expansion of complainant good character evidence beyond its current limited admissibility.

What is complainant good character evidence?

Evidence of the complainant's good character is not usually admissible to show they are generally a truthful person who should be believed. It may be admitted if it is relevant to an issue at trial such as whether the complainant consented. Case law also indicates that complainant good character evidence includes evidence that the complainant has no previous convictions (*R v Mader* [2018] EWCA Crim 2454). It could also include evidence that, for example, the complainant "gets on well with her brothers and sisters, did well at school, is very polite and quiet [and] respects people" (*R v Tobin* [2003] EWCA Crim 190).

While we accept that complainant good character evidence may be relevant in some sexual offences cases, we do not think that it should be admissible more widely than it is at present. Greater use of this evidence could risk unfairness to the defendant, intrude into the privacy of complainants and disadvantage those who are not of good character, and perpetuate myths about credibility and consent.

Character directions

Instead of expanding the admissibility of complainant good character evidence, a better approach is to introduce an example judicial direction that would explain to the jury why they have not heard evidence of the complainant's character when they have heard evidence of the defendant's character. In our view, a direction would best address the impact of the imbalance between the admissibility of good character evidence for defendants compared to complainants.

As a purely explanatory direction, it would not risk unfairness to the defendant by operating as a "shadow" good character direction.

Recommendation

We recommend that the Judicial College should consider whether there should be an example direction in the Crown Court Compendium to be given where the jury has heard any evidence of the defendant's character, good or bad, but has heard no evidence of the complainant's character. This direction should explain the legal rules that mean they have heard no evidence of the complainant's character and instruct the jury not to speculate.

Independent legal advice and representation

The criminal justice system in England and Wales is adversarial, meaning there are only two parties to proceedings: the prosecutor and the defendant. The prosecution represents the interests of the state and general public and presents their case against the defendant to be tested by the defence, and decided upon by the jury. Complainants are not parties in the criminal process; typically, their formal role is confined to being a prosecution witness.

The problem

As we have explained, complainants in sexual offences cases often face the prospect of having highly sensitive personal information used to discredit them, including through the use of personal records or details of their sexual behaviour. They are also more likely to be subjected to broad requests for access to their records when compared with witnesses of other offences. These matters engage their right to privacy under article 8 of the ECHR. At present, complainants have limited ability to influence how such information is accessed or used during proceedings. While the prosecution can raise arguments on behalf of the complainant, they are not obliged to do so, and their position may be at odds with that of the complainant.

In order to respond to these concerns, we examine whether complainants should be allowed to make arguments and express their views about certain matters which are most likely to impact their privacy, and whether they should have legal advice, assistance and representation ("ILA" and "ILR") to assist them.

Right for the complainant to be heard

Although the complainant is typically a witness for the prosecution, there is a risk that prosecutors may not always fully protect complainants' privacy due to their duty to the public. Giving complainants a voice and legal support helps ensure their rights are properly represented. It can also improve their trust in the justice system by making them feel more involved and respected.

Accordingly, we conclude that complainants should have the right to be heard by the court when their private information may be introduced in the trial. This right would not mean that a complainant is a party to the proceedings, like the prosecution and defence, but would allow them to make arguments and express their views about matters that directly affect their privacy.

Recommendation

We recommend that complainants should be granted a limited right to be heard in court proceedings where decisions are made about the compelled production of their personal records and the admissibility of evidence relating to their sexual behaviour.

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Independent legal advice and representation

Legal advice is advice provided by an independent, qualified legal professional to an individual about a particular issue, question or case based on their instructions. In some cases, the advice may include "assistance" which involves engaging with material, other parties or organisations on behalf of the individual where it is permitted.

Legal representation involves a legally qualified person acting on behalf of an individual either in anticipation of, or during, court proceedings by taking instructions, giving advice, and making representations to other parties or the court on their behalf.

The recommended right for the complainant to be heard can be accompanied by ILA and ILR to help facilitate the complainant's participation and help protect the complainant's privacy rights.

The role of the complainant's legal representative at trial

We heard concerns that a right for the complainant to be heard and to have legal representation would interfere with the binary adversarial trial model, and that the defendant would effectively be forced to face two prosecutors rather than one.

However, in our view, the scope of the right to be heard and legal representation that we recommend would have a limited impact on the binary nature of the trial. ILR for complainants in sexual offences cases should be limited to representation at court when applications for the admission of their SBE and compelled production of their personal records are determined, whether that is pre-trial or during the trial in the absence of the jury. This is justified, as these decisions directly engage the complainant's right to privacy. Under our model, legal representatives would have no role at trial in the presence of the jury, as this would risk undermining the binary adversarial model.

Costs and efficiencies

Cost and delay may arise because of this right for the complainant to be heard. For example, if an application for SBE was made after the trial had started, this may require the trial to be postponed until a representative for the complainant has been engaged and had the opportunity to make representations. There is also an existing shortage of legal professionals undertaking sexual offences cases, which could be worsened if more solicitors and barristers were needed for complainants.

However, we consider the potential costs to be justified and may be offset by the efficiencies created. As demonstrated by an ILA pilot scheme in Northumbria, ILA could create efficiencies during the investigation process, such as the reduction of overly broad and speculative requests for complainant's personal records.[15] The reduction in traumatisation by the criminal justice process would also lessen the costs created by complainants accessing counselling or other therapeutic healthcare post-trial, and the costs associated with taking time off work due to mental ill-health.

[15] O Smith, and E Daly, Final Report: Evaluation of the Sexual Violence Complainants' Advocate Scheme, (December 2020).

Conclusion

We think ILA and ILR from early stages of proceedings could help to empower and inform complainants, aiding early identification and resolution of issues relating to access to their personal records and admissibility of evidence of their sexual behaviour. Having access to ILA and ILR could also improve complainants' confidence in the criminal justice process, reducing the number of cases where complainants withdraw their complaint.

Who should provide the ILA and ILR?

Recommendation

We recommend that the right to be heard for the complainant should be paired with access to ILA and ILR.

ILA and ILR should only be provided by qualified legal professionals. To enable them to provide effective advice and representation, legal advisers and representatives should be permitted to access necessary documents and to communicate directly with the police, prosecution, and defence where appropriate.

The legal adviser or representative would have to adhere to the rules against witness coaching, and to exercise professional judgement when discussing the case with the complainant. The legal adviser or representative could also obtain consent from the complainant to refrain from sharing certain materials with them where the risk of contaminating the complainant's evidence would be too high.

Models of legal advice and information

ILA could include a mixture of online or telephone advice, and in-person advice and assistance where necessary and appropriate. Complainants should be able to choose which means of information, advice, or assistance they wish to access, taking into account their own accessibility requirements and other needs.

Online or telephone advice may be necessary for urgent enquiries that can be dealt with remotely. In-person advice and assistance may be necessary when engagement with the police or access to physical documents would be necessary. We also recommend that complainants should be provided with legal information leaflets, so that they can access generalised information about their rights and the legal process. Adequate public funding for these legal services is required to ensure that the benefits can be available to all complainants, and that the benefits of introducing ILA and ILR can be achieved.

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Appeals

Current law

Currently, the law affords only limited rights of appeal in criminal proceedings. The prosecution and defence can appeal certain rulings made during a preparatory hearing, if they are given permission by the court. Preparatory hearings are a type of pre-trial hearing. Unlike other pre-trial hearings, preparatory hearings for case management can only be ordered by a judge in either serious fraud cases or where the case is complex, lengthy or serious.[16]

The prosecution can also appeal a ruling made at any point pre-trial, and after the trial has begun, as long as it is before the judge begins to explain the law and summarise the evidence for the jury (known as the summing up).[17] However, they must agree to acquit the defendant if leave to appeal is not obtained or the appeal is abandoned. After a verdict, if the defendant was found guilty, they can appeal on the ground that their conviction is unsafe if the court grants leave to appeal (which is permission from the court to appeal).

Rights of appeal for third parties (which are parties other than the defendant and prosecution) are very limited. Complainants currently have no right to challenge rulings that may interfere with their right to privacy, such as those involving SBE. A right of appeal would provide further oversight of judicial rulings because if leave to appeal were granted then the ruling would be reviewed by the Court of Appeal. This would encourage better-reasoned decisions by trial judges.

A new right to appeal for complainants

A limited right of appeal for complainants, particularly in relation to decisions made at preparatory hearings concerning the admissibility of SBE would provide complainants with a way to challenge decisions that may significantly impact their rights.

While there is a risk that a right of appeal for complainants would lead to delay and costs, including implications for judicial resources, we are of the view that a limited right of appeal, restricted to certain rulings made at preparatory hearings, is an appropriate and proportionate approach.

There are arguments against limiting a complainant right of appeal to decisions taken at preparatory hearings because:

1) it could undermine the overall value of the right of appeal, since rulings on the admissibility of SBE are rarely made at preparatory hearings; and

2) it may be perceived as an arbitrary limitation, since applications to admit SBE can be made at various other points throughout the trial.

However, we do not recommend extending the right of appeal beyond preparatory hearings, given the risk of significant delays and the potential impact on the broader criminal justice system. Our ongoing work on criminal appeals will further examine third party rights of appeal.

[16] Criminal Procedure and Investigations Act 1996, s 29.

[17] Criminal Justice Act 2003, s 58.

Legal representation for the complainant is essential to ensure that their participation in the process is both informed and effective. The presence of legal representation would also contribute to the quality and consistency of judicial decision making and the development of coherent case law in this area.

Recommendation

We recommend that complainants should have a right of appeal against a ruling made at a preparatory hearing on the admissibility of a complainant's SBE. We further recommend that complainants be granted access to independent legal advice and representation in connection with any such right of appeal.

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Measures to assist with giving evidence

In sexual offences cases, the complainant will often give evidence at trial as the prosecution's main witness. When they do, the complainant is currently eligible to apply to use measures to assist with giving evidence as an "intimidated" witness under the YJCEA 1999. This can include giving evidence in court behind a screen, or over a video live link. These measures aim to improve the quality of the witness' evidence and protect against inhumane treatment by ensuring they are not subject to disproportionate distress or traumatisation.

These measures are currently known as "special measures". However, this term may have negative associations for some people and may discourage witnesses from applying for them. We therefore recommend that the term "special measures" should be replaced with the term "measures to assist with giving evidence". This more neutral term avoids the negative associations of the current terminology, while being clearer about the purpose and use of these measures.

Current law

Currently, complainants in sexual offences prosecutions are categorised as "intimidated" witnesses who are in fear or distress about testifying. The prosecution must apply for them to be allowed to use measures and must demonstrate to the judge that the requested measure would improve the quality of the complainant's evidence.

We consider whether to change the current system so that complainants in sexual offence cases would automatically be entitled to certain measures to help them give evidence (like using a screen, live link, or pre-recorded evidence) without needing to explain why they need them. We call this an entitlement model.

Standard measures for giving evidence

The current system often requires complainants to explain why they need support, which can be intrusive and stressful. Since most applications for measures are granted anyway, this requirement is unnecessary. The entitlement model better reflects the reasons these measures exist: to help complainants give their best evidence and to treat them with dignity. It also recognises that complainants are often vulnerable simply because of the nature of the offence, not because of personal characteristics.

Recommendation

We recommend a new entitlement model for complainants in sexual offence cases, where they can use standard measures to help them give evidence, without needing to prove that this will improve the quality of their evidence.

However, there are two important limits: each relevant measure must be available in the court, and the measures selected must not stop the defence from being able to effectively test the evidence.

Our recommended model is supported by other key recommendations, including giving complainants access to independent legal advice and training for judges and lawyers about these measures. These changes will help complainants make informed choices, improve consistency across cases, and give them more control over how they participate in the trial. Meanwhile, the limitations we suggest in relation to the entitlement are essential to protect the defendant's right to a fair trial and to ensure that the new approach is practicable.

The measures we recommend should be included within the entitlement model are:

Screens	The complainant gives evidence from behind a screen so they are shielded from seeing the defendant.
Live link	The complainant gives evidence live from outside the courtroom via a video link, either from another room within the court building or another suitable location.
Pre-recorded evidence	The complainant gives their evidence before the trial, which is recorded and then played to the jury during the trial. This would not be dependent on whether there is an admissible video-recorded Achieving Best Evidence ("ABE") interview for evidence in chief. Where there is no admissible ABE interview, evidence in chief should be able to be pre-recorded at a separate hearing conducted by the prosecution.
Attendance of a supporter	A complainant is accompanied by a supporter (such as an Independent Sexual Violence Adviser) while they give their evidence.
Excluding the public	The public is excluded from the court during the complainant's evidence. The judge has discretion over who is excluded, but the following people may be allowed to remain: those directly involved in the case (like the defendant and legal representatives); all bona fide members of the press; academic researchers with ethical approval from a university research ethics committee; a supporter for the complainant (if requested); and anyone else the judge allows in the interests of justice.
Removal of wigs and gowns	Judges and barristers in the court remove traditional court dress while the complainant gives evidence.
Separate and accessible entrances and waiting rooms	The complainant can use an accessible entrance and waiting room that is separate from members of the public and the defendant.

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Independent legal advice

We recommend that complainants should be able to receive ILA about the special measures available to them. This would ensure complainants receive clear, tailored guidance from someone who is not part of the police or prosecution about the available measures. This could include information about the complainant's rights, the practical effects of each measure, and how to make informed decisions about giving evidence. It would also enhance early arrangement of measures, reduce the risk of complainant distress or disengagement, and help ensure that the complainant's needs and preferences are properly considered and respected throughout the process.

Measures for defendants who give evidence

We also consider whether there should be specific or different provisions for measures to assist defendants in sexual offences prosecutions to give evidence, beyond those currently available for all vulnerable defendants.

We heard that there may be a need for better provision of measures for all defendants, particularly those who are vulnerable. However, we did not receive evidence that defendants in sexual offences cases specifically have distinct needs that justify a separate regime. Creating offence-specific measures for defendants could lead to an unjustified hierarchy of support and would not reflect the broader principles of fairness and equality before the law.

We recognise that the current framework for supporting defendants, especially vulnerable ones, is fragmented and underdeveloped. Measures are not consistently available or clearly set out in statute. Therefore, we recommend that the Government undertake a broader review of the measures available to all defendants, to ensure that they can give their best evidence and participate effectively in the trial. This review should consider formalising and expanding the support available, while taking into account the distinct role and rights of the defendant in the criminal justice process.

Juries

In sexual offences trials, juries are tasked with determining whether the defendant is guilty. The influence of myths and misconceptions on juror deliberations is contested, however the evidence base as a whole suggests that myths and misconceptions do have some effect on juror reasoning.[18] We therefore consider how information should be conveyed to jurors during sexual offences trials to ensure they fairly evaluate the evidence before them without the influence of myths and misconceptions. We consider two main methods of juror education: judicial directions on myths and misconceptions, and expert evidence of general behavioural responses to sexual offending.

We also evaluate whether there should be a statutory exception for researchers and juror participants in such research from the existing offence which prohibits disclosing information about juror deliberations in order to allow for the content of real jurors' deliberations to be researched.[19]

Giving directions to the jury

Judicial directions are the main method by which jurors are informed about rape myths and misconceptions. These directions are discretionary, meaning judges can choose whether to give them, and judges are encouraged to tailor them to the facts of each case. However, stakeholders raised concerns about inconsistency in both the content and the frequency with which such directions are given.

To address this inconsistency, we consulted on whether more could be done to ensure that directions are given when they would be beneficial. Considering the available evidence, we take the view that directions could be given more consistently than they are presently and the Judicial College[20] should consider providing guidance on when to give directions relating to myths and misconceptions.

Recommendation

We recommend that the Judicial College should consider developing guidance for judges about giving directions on myths and misconceptions, including that directions should be given when:

1. evidence is or will be led relating to the myth or misconception;
2. questions are or will be asked relating to the myth or misconception;
3. a statement is made that relates to a myth or misconception;
4. an application is made for a direction by the parties; or
5. the judge considers that a direction may be needed,

unless, in the circumstances of the case, no reasonable jury would consider the evidence, question, or statement to be material.

Example directions

The Crown Court Compendium contains various example directions that are designed to address myths and misconceptions about sexual offending.[21] Judges often use these example directions as a template and will tailor the direction that they give to the jury to the facts of the case.

[18] See discussion in Ch 1 {para 1.5}.
[19] Juries Act 1974, s 20D.
[20] The Lord or Lady Chief Justice is responsible for arrangements for training the courts' judiciary in England and Wales under the Constitutional Reform Act 2005. The Judicial College operationalises this responsibility, including the development of the Crown Court Compendium. See Courts and Tribunals, Judicial College.
[21] Judicial College, *The Crown Court Compendium – Part 1: Jury and Trial Management and Summing Up* (April 2025 Update).

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Below are our recommendations to the Judicial College to consider amending some of the existing example directions so that they accurately reflect the available empirical evidence. We also recommend the Judicial College consider new directions relating to myths or misconceptions as they are not currently covered in the Crown Court Compendium.

Amendments to existing example directions
The example direction on "avoiding assumptions about rape and other sexual offences" should be amended to explain to the jury that they must avoid assumptions about there being a "typical rapist or typical person that is raped" (this should reflect the direction that was approved in *Andreous* [2014] EWCA Crim 2886, [2014] 11 WLUK 279 at [23]).
The example direction on "fear, although no use or threat of force, physical struggle and/or injury" should be amended to refer to the range of common responses to sexual offending, including freeze, befriend, flight, fight, and flop.
The example direction on "background of domestic abuse" should be amended to refer to the common response of a victim of domestic abuse taking steps to placate and/or appease an abuser.
The existing example directions about giving evidence using special measures should be amended to explain that the jury should draw no inference from a complainant's decision to watch the rest of the trial when they have used special measures to give evidence.
New example directions
An example direction should be introduced to respond to the myth that a male complainant will make false allegations about sexual offending due to shame or fear of reprisal in connection with consensual homosexual sexual activity
An example direction should be introduced on misconceptions about complainants and defendants who have a mental health condition, have a learning disability, or are neurodiverse
An example direction should be introduced that provides clarification about CICE and the CIC scheme
An example direction should be introduced about FAE to respond to misconceptions about the prevalence of false allegations.
An example direction should be introduced about SBE
An example direction should be introduced responding to the misconception that certain groups of people are more sexually promiscuous and therefore less worthy of belief and/or more likely to have consented.
An example direction should be introduced about the misconception that a victim of sexual offending would not continue to be in contact with the person who raped them.

Expert evidence

Expert evidence may be admitted to assist the judge and jury in understanding a variety of different subjects. The courts have decided that expert evidence is only admissible if it is necessary to provide helpful information which is likely beyond the judge or jury's knowledge and experience.

Under the current legal framework, expert opinion is admissible where it is relevant, necessary, reliable, and provided by a suitably qualified individual. However, the courts have historically adopted a restrictive approach to the admissibility of generalised behavioural evidence, favouring judicial directions as the primary means of guiding juries.

We consider this approach to be unduly narrow. Jurors may hold misconceptions regarding how complainants are expected to behave during or after sexual violence has occurred, which can distort their evaluation of evidence. General expert evidence has the potential to dispel such myths by providing jurors with a more detailed understanding of the diverse and sometimes counterintuitive responses to trauma, including delayed reporting, disassociation, or continued contact with the perpetrator. In complex cases, such as those involving prolonged intra-familial abuse, cultural considerations, or human trafficking, judicial directions alone may be insufficient to convey the necessary information.

The evidence in question would be general in nature and would not address the credibility of any individual complainant. This is important to reduce concerns that such evidence may improperly bolster the credibility of complainants or to encroach upon the jury's evaluative role.

The purpose of this expert evidence would be to provide jurors with a broader evidentiary framework within which to assess the facts of the case. Judicial oversight would ensure that the evidence remains within appropriate bounds, and the defence would retain the right to challenge its admissibility, cross-examine the expert, or call rebuttal evidence where appropriate.

We do not think there is an unacceptable risk that this type of expert evidence will inevitably lead to a "battle of the experts" or the inadvertent creation of a new normative framework for victim behaviour. There is a broad consensus among experts regarding the variability of victim responses, and in practice, such evidence could often be presented through agreed facts or joint reports. The objective is not to prescribe how victims ought to behave, but rather to challenge the assumption that there is a typical or expected response to sexual violence.

Finally, expert evidence may have resource implications and lead to delays. However, this could be addressed by the use of agreed expert evidence, which will reduce the potential for delay as time would not be required to cross-examine two competing experts. Further, our recommendation for expert evidence limits the admissibility of expert evidence to complex cases, meaning that expert evidence would not be used in all (or indeed, most) sexual offences cases.

Recommendation

We recommend that expert evidence of general behavioural responses to sexual violence should be admissible to address myths and misconceptions in particularly complex sexual offences trials where it is necessary because:

1) the evidence is directed to something that is outside the knowledge and experience of the jury; and

2) other forms of juror education, including by means of judicial directions, would not provide sufficient help to the jury.

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Jury research

At present, section 20D of the Juries Act 1974 prohibits the disclosure or solicitation of information about jury deliberations. While this provision serves to protect the confidentiality of jury deliberations, it also significantly limits the scope of empirical research into how juries reach their decisions. Most existing research in this area is conducted using mock juries, which, while valuable, cannot fully replicate the dynamics of real jury deliberations.

Research involving real jurors could fill critical gaps in the evidence base about how myths and misconceptions may influence juror reasoning. Where real juror research is conducted, it is important to allow access to a broad and diverse range of researchers, including those from socio-legal, psychological, and criminological disciplines.

In our view, further research with real jurors would enhance our understanding of jury behaviour and improve the support provided to juries. However, we also acknowledge the methodological and ethical challenges involved. For example, we heard such research could undermine public confidence in the jury system. We take the view that greater transparency and evidence-based reform would, in fact, strengthen confidence in the administration of justice.

We recognise concerns about the potential impact of research on the fairness of trials, and the associated risk of increased appeals. However, we believe that these risks can be mitigated through an approval process that considers the nature and intrusiveness of the proposed research. Conditions should be imposed on a case-by-case basis by the body responsible for granting research approval.

Recommendation

We recommend that further research involving real jurors should be conducted. We recommend that a statutory exception to section 20D of the Juries Act 1974 be created to allow for such research.

Conduct of sexual offences cases

An advocate is a person who is professionally qualified to advise and represent another person in court. An advocate's role in a criminal trial involves presenting their case to the jury. This includes adducing evidence, questioning witnesses and giving opening and closing speeches. In sexual offences trials, the way an advocate performs this role can have a significant impact on the complainant's experience and the risk that myths or misconceptions will be introduced to the jury.

Reliance on myths and misconceptions

Advocates may inadvertently or deliberately introduce myths and misconceptions about sexual offences during trials, particularly through questioning and speeches. This occurs despite existing professional obligations and rules of evidence, such as the requirement that evidence must be relevant. While many advocates demonstrate sensitivity and fairness in sexual offences cases, evidence suggests that myths are still being introduced in sexual offences proceedings and may consequently influence jurors.[22]

In our view, the focus of reforms to address this issue should be on ensuring that only relevant evidence is introduced to sexual offences trials. Below we explain how improvements can be made through training for legal practitioners, judicial guidance and case management tools to better distinguish between acceptable and unacceptable lines of questioning, and address reliance on myths or misconceptions.

Role of the parties

In sexual offences cases, both the prosecution and defence have critical roles in ensuring fair trials while preventing the introduction of myths and misconceptions. All barristers must ensure they adhere to professional obligations under the Bar Standards Board ("BSB") Code of Conduct.

Prosecutors must carefully identify and respond to myths and misconceptions, both within their own arguments, and when they are introduced by defence advocates. The role of the prosecution is reinforced by established guidance for prosecutors.[23]

Defence advocates test the prosecution's case and make arguments on behalf of the defendant. This includes conducting cross-examination of prosecution witnesses and making closing speeches. In conducting their case defence barristers must not mislead the court or insult, humiliate or annoy a witness or any other person.[24] These obligations should be well-known and carefully adhered to by all barristers. This is important in all trials, including sexual offences prosecutions in which a barrister's approach to cross-examination or presenting their case may risk introducing myths and misconceptions to the jury.

[22] See Evidence in sexual offences prosecutions: a final report (2025) Law Com No 420, paras 11.8-11.14.
[23] See CPS, *Legal Guidance, Rape and Sexual Offences, Chapter 4, Tackling Rape Myths and Stereotypes, Annex A* (21 May 2021); CPS, *Victims and Witnesses: CPS Public Policy Statement on the Delivery of Services to Victims - The Prosecutors' Pledge*, (23 January 2018).
[24] Bar Standards Board, *BSB Handbook*, (December 2020), Part 2, Code of Conduct, C1, RC3, RC6.

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Role of the judge

The court's primary responsibility in sexual offences prosecutions is to ensure that cases are dealt with justly.[25] Judges are expected to use their case management powers proactively to maintain fairness, prevent the introduction of irrelevant or prejudicial material, and respond appropriately when myths or misconceptions arise. This includes early identification of contentious issues, guiding the relevance of proposed lines of questioning, and intervening when necessary. The judiciary has made significant progress in improving its handling of these cases, including requiring specialist training for judges who preside over serious sexual offences trials. The Crown Court Compendium also provides guidance and example directions to help judges address myths and misconceptions effectively.

While we do not recommend mandatory prior approval of all lines of questioning, judges are encouraged to use pre-trial mechanisms and interventions, where necessary, to ensure that only relevant evidence and questions are introduced during sexual offences trials.

Our recommendations

Our recommendations are targeted at addressing the risk that myths and misconceptions will be introduced through lines of questioning and speeches in sexual offences trials.

Mandatory training on myths and misconceptions

Mandatory training for legal practitioners who work in sexual offences cases could improve knowledge, challenge pre-existing assumptions, and promote consistency across the profession.

This training would equip professionals who work for both prosecution and defence with the knowledge and skills to identify and avoid reliance on harmful stereotypes that can influence juries and undermine the fairness of trials. While some practitioners, including those who act for the prosecution, already receive such training, there is currently no formal training requirement for defence solicitors or many barristers who only act for the defence.

Recommendation

We recommend that all legal practitioners involved in sexual offences cases be required to undertake training on myths and misconceptions.

Our recommendation is intended to ensure that all legal professionals working on sexual offences cases are adequately prepared, without placing undue administrative or financial burdens on practitioners.

Professional misconduct consequences

A barrister's decision to disregard a clear direction from a judge could constitute a breach of their duties under the BSB Code of Conduct.[26] Amendments to the code could assist to clarify that barristers who deliberately use rape myths or inappropriate generalisations during sexual offence trials are at risk of professional misconduct consequences. This reform would make it clear that such reliance is not compatible with a barrister's duty to act with honesty, integrity, and in the interests of justice.[27]

[25] CrimPR, r 1.1 and 1.3.
[26] This could involve breaches of the following duties: Core Duty 1 – You must observe your duty to the court in the administration of justice; Core Duty 3 – You must act with honesty, and with integrity (integrity only); and/or Core Duty 5 – You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession. Bar Standards Board, *BSB Handbook*, (December 2020), Part 2, Code of Conduct.
[27] Bar Standards Board, *BSB Handbook*, (December 2020), Part 2, Code of Conduct, CD1, CD3 and rC6.

We conclude that it would be valuable to strengthen the regulatory framework to deter conduct that risks misleading the court and prejudicing the fairness of trials. We believe amendments to the Code of Conduct would enhance transparency, accountability, and public confidence in the legal system. They would also support the BSB in enforcing professional standards more effectively. Importantly, the changes would not be intended to penalise inadvertent reliance on myths or misconceptions, which should instead be addressed through judicial case management tools such as directions or other interventions.

The amendments to the Code should not deter barristers from pursuing legitimate lines of argument due to fear of disciplinary action. This is because the amendments we recommend are aimed at addressing deliberate conduct and should be accompanied by clear guidance to help barristers distinguish between permissible advocacy and prohibited generalisations.

Recommendation

We recommend that the BSB consider amending its Code of Conduct to clarify that barristers who deliberately rely on myths and misconceptions in sexual offences prosecutions may be in breach of their professional obligations.

We also recommend that the BSB explicitly prohibit the use of generalisations that perpetuate these myths in barristers' speeches. This is because generalisations can influence juror reasoning and reinforce harmful stereotypes, and their deliberate use should be treated as a breach of the duty not to mislead the court.

Guidance for judges

Guidance about myths and misconceptions could assist judges to identify myths and misconceptions, and how to respond when barristers use generalisations that rely on myths and misconceptions in their opening or closing speeches.

While there is already some existing judicial training and resources for judges, like the Crown Court Compendium, we conclude that it would be valuable to provide further guidance specifically in relation to:

1) identifying when lines of questioning may be irrelevant because they rely on myths or misconceptions; and

2) responding to generalisations based on myths or misconceptions in advocates' speeches.

Such guidance would help ensure fairer and more consistent decision making. It would give judges practical tools to assess whether questions or speeches rely on harmful stereotypes, support confident and appropriate interventions, and discourage advocates from using such generalisations. This guidance would complement existing resources like the Crown Court Compendium and promote transparency, efficiency, and public trust in how these sensitive cases are handled.

Recommendation

We recommend the Judicial College develop new guidance to assist judges in identifying and responding to myths and misconceptions in sexual offences prosecutions.

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Specialist courts and more radical reform

Much effort has gone into trying to improve sexual offences trials over many decades. However, we are aware of concerns that not enough progress has been made, and that the problems in this area are too significant to be dealt with by small adjustments to the trial process. We therefore consider some changes to the trial process for sexual offences that might be seen as more radical.

Other options for reform

- creating specialist sexual offences courts ("SSOCs");
- removing juries in sexual offences cases;
- using specialist examiners to question complainants;
- screening jurors based on rape myth acceptance and / or training jurors about rape myths; and
- requiring reasoned verdicts in jury trials.

Specialist sexual offences courts

We heard concerns about inconsistency and uncertainty in the trial process for sexual offences, and the impact that this has on complainants. These concerns include inconsistent availability of measures to assist with giving evidence, varying use of judicial directions, courtrooms that are unsuited to the particular requirements of sexual offences cases, and unpredictable application of evidential principles. We also considered evidence about the need for wider cultural change in the investigation and prosecution of sexual offences.

Existing examples of specialist courts

Specialised courts already exist in England and Wales. Examples include the youth court, specialist domestic violence courts ("SDVCs"), and court centres with particular areas of expertise.

In Scotland, the creation of a national Sexual Offences Court is currently being considered as part of the Victims, Witnesses, and Justice Reform (Scotland) Bill.

We also consider examples of SSOCs from New Zealand and South Africa.

Benefits of SSOCs

SSOCS have potential benefits for all areas of the trial process, including improving participants' experiences, greater training and specialisation in trauma-informed practice, and effective listing and resolution of cases leading to reduced delays. SSOCs would also help to implement the other reforms that we recommend in a comprehensive and consistent way.

Some of the particular features of SSOCs that would achieve this include trauma-informed training of all personnel, including court staff and security guards; provision of infrastructure such as separate entrances and waiting areas and suitable courtroom layouts; and appropriate technology to accommodate measures to assist with giving evidence

Features of a specialist court

We consulted on several possible models of specialisation: entirely separate court centres, designated courtrooms within existing court real estate, and specialist listing.

Recommendation

We recommend a model of specialist courts in which serious sexual offences cases would be heard in designated court rooms within existing courthouses.

The court would be technologically equipped for sexual offences cases, including with equipment to ensure that measures to assist with giving evidence will be effective.

Everyone working in the court would have training about sexual offences and trauma.

With a specialist court, sexual offences could be prioritised in listing, to try to reduce delays.

A specialist court should feature regular rotation of judges and court staff to avoid putting expertise in silos and prevent case-hardening.

This option will mean that specialist courts are accessible across England and Wales. This is a pragmatic approach which will help to develop better facilities and procedures to address the particular challenges faced in sexual offences prosecutions. It will allow judges and court staff to rotate between specialist and generalist courts, which will help to prevent burn-out or traumatisation, and encourage sharing of knowledge and expertise. Finally, it will reduce the risk that jurors may become biased against a defendant if they learn that they are in a specialist sexual offences court.

Specialist courts would need to be properly resourced to avoid making delays worse, or taking resources away from other cases within the criminal justice system. If all sexual offences have to go through a small number of courts or courtrooms, this could increase delays rather than decreasing them.

We suggest it would also be beneficial for SSOCs to include:

1) support systems to manage the risk of vicarious trauma for court staff and judges, such as debriefs, counselling support, and limiting length of exposure to sensitive cases; and
2) specialist listing protocols, including a requirement that trials are given a fixed hearing date, and a protocol allowing trials to be heard in non-SSOCS where no SSOC is available within a reasonable time frame

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Juryless trials in sexual offences cases

In England and Wales, juries are used in serious criminal cases. The jury gives the verdict and decides the facts, while the judge determines any legal issues and will sentence the defendant if they are convicted. There are already contexts where defendants do not face juries in England and Wales. These include less serious offences tried in the magistrates' court, offences tried in the youth court, and cases where there is a danger of jury tampering. Jury trials can contribute to defendants having a fair trial under article 6 of the ECHR, but they are not required.

We consider whether removing juries from sexual offences trials would help to prevent rape myths from influencing trials, better protect complainants' privacy and ensure that complainants are treated humanely. We did not look at the jury system more widely.

The purpose of this project is to address the issues we have identified in sexual offences prosecutions, including the risk of myths and misconceptions about sexual violence influencing the trial. There is not enough evidence to suggest that removing juries will address these problems.

Polls indicate strong public support for the use of juries to try serious offences. Consultees told us about the benefits of juries, including democratic participation in the criminal justice system, bringing a range of life experience to the deliberations, and the importance of discussion in reaching a fair and unbiased verdict. We also heard concerns that the removal of juries in sexual offences cases would risk of a loss of public confidence in the criminal justice system. We conclude that there are other ways to address the problems we have identified which should be explored before moving forward with such a radical reform.

Recommendation

We recommend that juries are retained in sexual offences trials.

The use of specialist examiners to take evidence from complainants

When complainants give evidence in court, they are usually asked questions by the advocates for the prosecution and the defence. We consider whether those questions should be asked by a specialist examiner instead. The main options that we considered were the use of an independent lawyer or a specialist communications expert.

We do not recommend the use of specialist examiners to take evidence from complainants. There is not enough evidence to suggest that specialist examiners would definitely benefit complainants, or reduce reliance on myths and misconceptions about sexual violence. Specialist examiners might also interfere unfairly with the defence's ability to ask the complainant questions about their case, and could risk jeopardising a fair trial if the examiner did not properly explore the complainant's account. It also might confuse the jury, or create a negative perception of the defendant or their lawyer. There are other protections, such as measures to assist with giving evidence and training for lawyers, which can be used and improved instead.

Screening jurors based on rape myth acceptance and / or training jurors about rape myths

In the consultation paper, we asked about screening jurors for rape myth acceptance. This means asking jurors questions to identify and exclude those with a high level of false beliefs or misconceptions about sexual violence.

We do not recommend screening jurors in this way. The evidence that this will be effective is limited, particularly because these misconceptions are often subtle and subconscious. It may add complexity, delay and expense, and could limit the pool of available jurors. Screening jurors may also be seen as influencing the composition of the jury or biasing the jury against the defendant.

A requirement for reasoned verdicts in jury trials

In England and Wales, judges give reasons for their decisions. Juries do not give reasons for their verdicts; in fact, what happens in the jury deliberation room is confidential. We considered whether juries should be required to give further information about the reasons underlying their verdicts.

It is not clear whether this would be effective in identifying and addressing bias amongst jurors. Because bias is often subconscious, it might not be apparent from the reasons. Arguably giving detailed reasons could be complicated for juries and would cause delay and confusion. However, if the reasons were less detailed, such as a tick box form, this would be unlikely to provide any meaningful information about whether the jury were biased.

Although having to give reasons might help jurors to structure their discussions and consider their verdict, there are other ways to achieve this which are already in use. One example is the use of written routes to verdict, which are written documents given to juries setting out the questions they need to answer when deciding their verdict. For these reasons, we do not think that reasoned jury verdicts are necessary or would be effective. Accordingly, we do not recommend that juries be required to give reasons.

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Pre-trial hearings

Throughout the issues we consider in this project, hearings that take place prior to the trial ("pre-trial hearings") have been flagged as a potential source of delay and increased use of resource, as well as an opportunity to streamline the trial process resulting in efficiencies overall.

We make recommendations for restricting the introduction of certain types of evidence in sexual offences trials: the applications to introduce such evidence should be considered at a hearing before the trial as this helps reduce potential delay to the trial itself. We also recommend reform of the framework for measures to assist the complainant to give evidence. Early identification of the need for measures, and early notification to the court, will help to ensure that the framework operates well. Pre-trial hearings can be used to support such early identification. We have identified several benefits of greater use of a particular type of pre-trial hearing for this purpose: a Ground Rules Hearing ("GRH").[28]

What is a GRH?

GRHs are held after the first hearing in the Crown Court in any trial (the Plea and Trial Preparation Hearing) and are usually close to the beginning of the trial. They allow judges to make directions to facilitate the appropriate treatment and effective participation of a witness or defendant.

It is already expected that a GRH should be held in all cases involving a vulnerable witness. While there is such an expectation, we heard evidence that indicates that judges and advocates do not request GRHs consistently in all appropriate cases.

We think there are benefits to more consistent use of GRHs, including:

1) encouraging parties to engage with issues earlier in proceedings - earlier identification and resolution of issues could lead to efficiency savings; and

2) helping to support the process for accessing measures to assist witnesses and defendants give evidence, and resolve issues in relation to: controlling lines of questioning, improving the style and structure of cross-examination, dealing with applications to admit evidence, or determining the need for expert evidence or additional directions.

There are costs associated with GRHs. Allocating resources to additional GRHs, without expanding court resources, could have knock-on effects elsewhere causing further delays to other proceedings. There could also be time and resource savings (in particular reducing inefficient trials). We also heard particular concerns about the need to ensure there would be sufficient funding for legal representatives to conduct this additional work.

A presumption in favour of a GRH in all sexual offences cases where the complainant is expected to give evidence would improve consistency. However, where an individual complainant's needs are such that the additional support considered at a GRH is not required, the presumption could be rebutted. Further, if the facts of the case mean that no decisions are needed about evidence or questioning, or if these can be dealt with at another hearing, the presumption could also be rebutted.

Recommendation

We recommend that there should be a presumption that a Ground Rules Hearing is held in sexual offences cases.

28 CrimPR, r 3.9.

Holistic reform

It is important to consider how our recommendations work together. First, because they all need to operate effectively within the same trial process. Secondly, because many are interrelated and rely on other measures to fully achieve their purpose and have the necessary impact.

One of the key threats to the integrity of the trial process for sexual offences is the introduction and reliance on myths and misconceptions about sexual violence. We therefore need both to prevent myths and misconceptions from being introduced inappropriately, and to mitigate any negative impact of such myths if they still arise. This is also true for improving the complainant's experience. The trial process should support the complainant's engagement and enable them to give their best evidence. The system should prevent unnecessary distress and inhumane treatment, and unjustified infringement of their right to privacy. However, it cannot remove all potential distress or intrusion into their privacy. In an adversarial system, cross-examination on distressing topics, and some exploration of private information is necessary for a fair trial in sexual offences cases. The system should therefore operate to minimise the harmful effects where they cannot be entirely prevented. Equally, the rights of the defendant must be safeguarded throughout the trial process. Ensuring a fair trial includes protecting the presumption of innocence, the right to challenge evidence, and the ability to present a full defence, principles that are fundamental to justice and must not be compromised. Our recommendations create a system that recognises these considerations.

First, we introduce greater protections under new thresholds for accessing TPM and the use of the evidence we have identified as particularly problematic, including SBE, FAE and CICE. These reforms are supported by additional measures to make them more effective including: providing the complainant with a right to be heard with ILA and ILR; a modest extended right of appeal; the introduction of written reasons for judicial decisions on admissibility of SBE and CICE; improved regulation of advocates' conduct; and greater clarity on the use of judicial directions.

Second, we ensure that the mechanisms in the system are informed by the most up to date evidence. This includes: improving access to jurors to conduct research; ensuring that training and legal advice reflects research into the impact of measures to assist with giving evidence; and permitting the use of expert evidence that will reflect current understandings of responses to sexual violence.

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Third, we recommend measures that improve complainants' engagement in and support for the trial process, that better support their agency and improve their experience. This includes: a right to be heard supported by ILA and ILR for applications that engage their privacy rights the most; extending the same right of appeal from admissibility decisions that currently applies to the defendant and prosecution; clearer more consistent scrutiny of the admissibility of problematic types of evidence; and improved access to measures to assist complainants to give evidence. All these improvements to the system should reassure complainants that the trial process will be fair, transparent, and conducted by appropriately trained professionals.

Fourth, we recommend measures that will improve the wider system beyond individual trials. This includes: guidance and training for court staff, legal professionals and the judiciary; additional example directions; greater clarity on roles including Independent Sexual Violence Advisers; and measures that will support all parties to fulfil their respective duties to the court.

These four aspects work together holistically to improve the trial process for all, and ensure that individual reforms are properly embedded and their full intended impact is realised.

Finally, in formulating our recommendations, we carefully consider the potential impact on the court's resources and any associated delays. We are mindful of the pressures on courts and legal professionals, and we aim to identify solutions that not only address the core issues but also offer efficiencies and long-term benefits. Our approach seeks to balance feasibility with effectiveness, ensuring that any proposed changes are both practical and sustainable