

The Guardian

This article is more than **11 months old**

Prosecutors urged to ditch 'weak' rape cases to improve figures

Exclusive: CPS advice to tackle criticism of low conviction rates alarms experts

Part one: Revealed - less than a third of young men prosecuted for rape are convicted

Part three: Police demands for potential rape victims' data spark privacy fears

Alexandra Topping

Mon 24 Sep 2018 18.07 BST



The Crown Prosecution Service says it is 'completely untrue' to say the advice at its workshops signalled a change of approach to rape cases. Photograph: Getty/VisitBritain

Prosecutors in England and Wales have been urged to take a more risk-averse approach in rape cases to help stem widespread criticism of the service's low conviction rates, the Guardian can reveal.

The controversial advice to take a proportion of "weak cases out of the system" has been given to specialist rape prosecutors in training seminars, which has led some staff to fear the service has undertaken an undeclared change in policy.

The advice has also caused alarm among experts and campaigners, who say it could severely limit victims' access to justice. They warn it could lead to cases involving younger victims, students, or those with mental health issues being less likely to result in a charge.

On Sunday, the Guardian revealed that less than a third of prosecutions brought against young men result in a conviction, with men aged 18 to 24 in England and Wales less likely to be found guilty than older men on trial.

The Guardian has been told the advice was set out by two senior figures in the Crown Prosecution Service, who addressed staff during visits to all 14 of the specialist rape and serious sexual offences units, known as RASSOs.

Sources said the CPS's director of legal services, Greg McGill, and the director of public prosecutions' legal adviser, Neil Moore, urged prosecutors to take a proportion of "weak cases out of the system" to improve conviction rates.

One prosecutor who attended the course claimed staff were told: "If we took 350 weak cases out of the system, our conviction rate goes up to 61%."

According to the source, prosecutors were told the CPS "should be winning more trials than we are losing", and this could be achieved with "a touch on the tiller" when charging decisions were made.

Though it was characterised as a minor adjustment, insiders within the service said it was interpreted as a dramatic shift in CPS policy, for which staff had been given no warning. "It was very troubling. It was characterised as a subtle shift, but what they were talking about was anything but subtle," the prosecutor said.

The CPS confirmed the workshops had taken place and it did not challenge the language used by the senior officials. It said the seminars were part of "ongoing training to ensure our prosecutors have access to the latest information on new and refreshed legal guidance".

It said it was "completely untrue" to say the workshops signalled a change of approach, adding that every decision on whether to charge must be based on the test set out in the code for crown prosecutors. The test states that a charge can be made if a "properly directed" jury is more than 50% likely to convict the defendant. "These workshops were designed to support specialist prosecutors with decision-making in difficult cases," it said.

The Guardian has also learned that the CPS axed a national training course to help prosecutors and police officers deal more effectively with rape cases involving young women who were intoxicated. It was due to launch late last year, but was abandoned without explanation, according to the psychologist Nina Burrowes, who was due to deliver it.

"I am very concerned that this new direction the CPS appears to be taking with its charging decisions will lead to significant barriers to justice for far too many people," she said. "It seems preposterous that this is all happening at a time when the rest of society is beginning

to open its eyes to the true scale of sexual violence in this country. It's as if the CPS wants to move backwards at a time when everyone else is moving forwards."

The CPS said it had decided to scrap the course after a pilot project. "The course was reviewed and it was determined it was not suitable for national implementation," a spokesman said.

The Guardian understands that the CPS training workshops run by McGill and Moore began at the start of 2017 and continued through the rest of the year. The advice to be more selective about prosecutions - which is not spelled out in any public-facing CPS literature - was delivered despite a massive increase in the number of rapes reported in recent years. The total has more than doubled since 2013-14.

It also jarred with staff because of the apparent contrast with previous guidance set out in 2009 and 2013, by the then DPP's principal legal adviser, Alison Levitt QC. She reportedly told prosecutors they should not be put off charging cases because of myths and stereotypes that had in the past led prosecutors to drop cases.

Levitt reportedly said at the time that the CPS could face criticism because they may initially prosecute and lose more cases, they might lose cases on a so-called common sense basis and it could cost more. But if the cases were evidentially strong enough, it was legally and morally "worth it", she argued.

Levitt, now a partner at Mishcon de Reya, said: "It is easy to prosecute a case where a so-called 'perfect' victim is violently attacked by a stranger. The challenge for prosecutors is how to prosecute cases where the victims are vulnerable and arguably more complicated, for example if they have mental health difficulties or chaotic personal circumstances.

"A system that only prosecutes safe cases is sending attackers the message that vulnerable people are open to abuse as the CPS will not prosecute."

From 2009 onward, the CPS promoted a "merits-based approach" to the prosecution of rape which stressed the need for decisions to be guided by evidence rather than outcomes, she said.

A source with significant experience of prosecuting rape cases described the apparent move in recent years to weed out weaker cases, as akin to taking a "bookmakers' approach" - with prosecutors encouraged to take charging decisions based on past experience of similar cases.

"A jury acquittal does not necessarily mean the case was weak, but [the CPS] is saying that jury outcomes are indicative of us charging too many cases. Juries do not provide reasons for their decisions and it is possible that they are influenced by a number of factors which do not relate to the evidential strength of the case," the source said.

"The danger of the focus on trial outcomes is that you become less likely to prosecute those cases where experience shows that juries are reluctant to convict such as in student rape

cases.”

The CPS denied a change of approach, and said it had a duty to ensure fairness for both complainants and suspects. A spokesperson said the decision to run the workshops had been taken by the service’s senior leadership group “to support effective rape and serious sexual offences prosecutions” in an area that had proved particularly challenging.

In recent months, the CPS and the police have been under sustained pressure after a series of high-profile trials involving young men that collapsed after previously undisclosed digital evidence was revealed late in proceedings.

Another concerned CPS staff member said: “Instead of reacting to the press, we need to have confidence in what we are doing. We need to say this is not a CPS problem, it’s societal.”

Campaigners claim the furore has led to many new cases being in effect “put on hold” and complainants saying their cases are being dragged out or dropped.

Sarah Green, the co-director of the End Violence Against Women Coalition, said: “It seems that leaders at the CPS and MoJ have given up. They are in denial about the scale of sexual violence and seem to focus only on the potential for miscarriages of justice against defendants. But any examination of what is really going on shows that the justice crisis is the failure to provide access to justice or to deter rape.”

Topics

- Crown Prosecution Service
- Rape and sexual assault
- Police
- news