

The Guardian

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CPS faces challenge over 'covert policy change' on rape cases

Critics claim prosecutors have modified their decision-making in sexual assault cases

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Mon 10 Jun 2019 06.00 BST



Women's organisations say the CPS is second-guessing jury prejudices. Photograph: Kirsty O'Connor/PA

The Crown Prosecution Service is to face a judicial review challenge over allegedly covert policy changes that are blamed for a dramatic collapse in the number of rape cases going to court.

Fewer than 4% of women who report attacks can now expect their complaint to reach trial, according to a coalition of women's organisations who accuse the CPS of "second-guessing jury prejudices".

While the number of rapes reported to the police nearly tripled between 2014 and 2018, the End Violence Against Women Coalition (EVAW) points out that the number of cases charged and sent to court fell by 44%.

The problem was revealed last year in the Guardian, which reported that CPS leaders were encouraging prosecutors to drop what they termed "weak" cases.

The legal challenge, funded through the CrowdJustice website, argues that the CPS has “covertly changed its policy and practice in relation to decision-making on rape cases”.

A “letter before action” initiating the case has been sent to the CPS. It includes a dossier of 21 cases where decisions have been made not to charge despite allegedly compelling evidence. In some cases suspects were known to be violent.

Sarah Green, of EAW, said: “We have strong evidence to show that CPS leaders have quietly changed their approach to decision-making in rape cases, switching from building cases based on their merits back to second-guessing jury prejudices. This is extremely serious and is having a detrimental impact on women’s access to justice.

“We are witnessing a collapse in justice after rape at a time when increasing numbers of women are speaking out and reporting these crimes. We’re hearing from women who’ve been raped and they are telling us about cases being dropped for reasons that are hard to understand.”

Harriet Wistrich, director of the Centre for Women’s Justice, which represents EAW, said: “We are arguing that the CPS’s systemic failure to prosecute rape is a human rights failure and has a discriminatory impact on women, who are the large majority of rape victims. Failures by the CPS to consult on changes to policy and [disregarding] its own guidance developed to tackle the under-prosecution of rape are, we argue, unlawful.”

Katie Russell, the national spokesperson for Rape Crisis England and Wales, said: “Despite significant increases in the number of victims and survivors of rape and all forms of sexual violence and abuse reporting to the police in recent years, the vast majority of those who’ve been subjected to these traumatic experiences still choose not to pursue criminal justice.”

Claire Waxman, the independent victims’ commissioner for London, said: “If the CPS have changed their policy without consultation and it is impacting victims’ access to justice, then this must be remedied immediately.”

A CPS spokesperson said: “Sexual offences are some of the most complex cases we prosecute and we train our prosecutors to understand victim vulnerabilities and the impact of rape, as well as consent, myths and stereotypes. Decisions to prosecute are based on whether our legal tests are met - no other reason - and we always seek to prosecute where there is sufficient evidence to do so.

“Victims have the right to ask for a review of their case by another prosecutor, independent of the original decision-maker, and this is another way we can make sure we are fair and transparent in what we do.”

A report published by the civil liberties organisation Justice on Monday says extra resources are needed to investigate and prosecute sexual offences because of the increase in digital evidence and the rapid escalation in the number of offences being reported.

The report, containing 57 recommendations, also calls for complainants not to be called

“victims” during prosecutions “to ensure that the policy of believing the complainant until there is ‘credible evidence to the contrary’ does not prejudice the suspect”. Judges authorised to deal with sexual offences should be given additional training, it says.

Ministers, senior police and prosecutors will meet on Monday to discuss how to improve disclosure of digital evidence. It follows a row over the use of consent forms for digital disclosure after warnings that complainants who deny police access to their mobile phone contents could allow rape suspects to escape charges.

The solicitor general, Lucy Frazer QC, the policing minister, Nick Hurd, the director of public prosecutions, Max Hill QC, the Metropolitan police assistant commissioner Nick Ephgrave, the victims’ commissioner, Dame Vera Baird QC, and representatives from the technology industry will meet in London.

Frazer said: “We need to do more to support police and prosecutors to adapt to the increasing volume of digital material in the criminal justice system. The government is also determined to ensure that victims of sexual violence and all other crimes are not deterred from seeking justice because of fear of what could happen to their personal information.”

How victims are being failed

Gina said police encouraged her to report a rape committed by an abusive ex-partner when she contacted them about another incident in 2016. The attack had taken place nearly 10 years earlier. “Bringing it all up again was traumatic,” she recalled. “They assured me they could convict him. I recorded a video statement, which took four hours. I had to collect evidence from people with whom I was at university.

“Later I discovered they had posted me a copy of the statement but sent it to the wrong address. It went to the house I used to share with my ex-partner. Then they said it had been recorded at the wrong speed and the files were corrupted. If it was done again, I was told, the CPS would not accept it as evidence. Eventually it was re-recorded.

“Part of the evidence was my doctor’s notes, which showed I had been complaining about an abusive relationship. The police told me they had the notes but I discovered they had only obtained them for the previous five years - not when the abuse was happening. I told them they had not got the right medical evidence.

“Eventually they said my case was being dropped. One of the reasons was that they thought my allowing the ex-partner to ‘come and stay with me’ was wrong - but he had turned up at 5am banging on my door so the only solution was to let him in to quieten him down.

“I went through two years of pursuing the case. I did exercise the victim’s right to review - challenging the CPS on why they had dropped the case. I took them photocopies of my doctor’s notes.”

She said the prosecutors believed that because she had taken so long to report the rape and continued to be in touch with her ex-partner, it would be viewed negatively in court.

“Afterwards I was contacted by my abusive ex-partner’s family for the first time in 10 years. So this has left me in a more vulnerable position.”

Rebecca was at the beginning of a relationship with a man who initially appeared charming but gradually exhibited more controlling behaviour. He had pretended to be a police officer. One weekend he flipped, becoming jealous over photos on her phone. “He punched me in the back of the head, then he raped me,” she said. “The CPS wanted to know why I didn’t fight back but I froze, I was stunned. It was trauma. He did not leave my side all weekend.

“The second time he attacked me he had a huge kitchen knife, so the violence was escalating. I got out of the flat and called a friend. I said: ‘He’s beating me up.’” The friend rang the police.

“If I was logical I would not have gone back in there but I was more worried about him being in my flat. My passport and money were there,” Rebecca said. When officers arrived she was unable to speak freely.

Rebecca eventually reported him to the police. She was in the police station all day and night giving them details about the attacks. It turned out he was a prisoner released on licence and was well known to them and had a history of violence against women. He was charged with three counts of rape as well as with offences of destroying property, assault by beating and false imprisonment.

“I got a call shortly before Christmas from the investigating detective. She came round and told me that the CPS were dropping the charges. They said that if the jury saw the amicable WhatsApp messages between us [they would not convict]. But those messages were placating him so that I could try and stay alive.”

Her case was dropped in the immediate aftermath of publicity surrounding the prosecution of Liam Allen, who acquitted of rape when messages from the complainant asking him for casual sex were revealed.

“I twice went through the victim’s right to review [to challenge the CPS’s decision to drop the prosecution]. They said they didn’t think the jury would believe me. But he had sent me text messages saying ‘I can’t believe what I have done’. It should be for the jury to decide whether they believe my story. The police believed in my case. The end result is that he’s walking around free.”

Names have been changed to protect identities.

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