



Law & Ethics
Reporting Sexual Offence
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The purpose of this essay is to raise issues in relation to the media coverage of accused sexual offences in the UK and the on-going debate around defendant anonymity.

To fully understand this topic, knowledge of appropriate law is required “If you are accused of committing a sexual offence in the UK, the consequences can be severe and long term. In contravention of The Sexual Offences Act 2003, sexual offences under UK law are extensive and complex and include; sexual abuse, rape, indecent assault, indecent image charges, and historic sexual offences.

“The 2003 Sexual Offences Act is now used to define and determine the severity of all sexual offence committed in the UK and almost entirely replaced the Sexual Offences Act 1956, which was considered to be out of date and out of touch. The severity of the punishment decided in a sexual offence case will be determined on a case by case base. In updating the Sexual Offences Act 1956, the UK government were able to significantly change how certain sexual offences were defined. The severity of cases involving sexual abuse, child abuse and sex trafficking was increased under the new Act, which also defines sexual offences and abuse scenarios that were not covered by the 1956 Act, such as those involving vulnerable adults who are liable to exploitation.” (Titchener, 2018)

Media outlets play an essential role in passing crucial information interlinking all relevant parties “Law does not operate in a vacuum and the ‘what’ and ‘why’ of regulation is driven by our perceptions of dangerousness; both in terms of what may be injurious to wider society and to individuals. Our responses to criminal justice policy have become increasingly called upon to respond swiftly to contemporary concerns. These concerns are shaped by our understanding of what activities pose a threat and the media plays a vital role here. Most of us gain our knowledge of crime statistics, victimisation, sentencing etc., from media sources and these, in turn, draw upon official sources, some more accurately than others. The reliability of these sources and how they present offending behaviour needs to be carefully considered.” (Pegg, Davies, 2016 p9)

Legal and ethical issues that impact journalists directly come from The Sexual Offences (Amendment) Act 1992, section 2 of the Modern Slavery Act 2015 and press regulators, IPSO and IMPRESS.

“All victims of sexual offences, including children, are automatically guaranteed anonymity for life from the moment they make an allegation that they are the victim of a sexual offence. A victim is guaranteed anonymity even when someone else accuses the defendant of the offence. In Scotland, the law is different but the practice of respecting anonymity is the same.

“Anonymity remains in force for the lifetime of the victim, even where the allegation is withdrawn, the police decide to take no action, or the accused is acquitted. The exceptions to this legal protection are very limited and specific:

- the anonymity only relates to the relevant proceedings. A victim may be identifiable in the context of unrelated proceedings
- in certain circumstances, magistrates or the trial judge may lift the automatic rule of anonymity
- victims can choose to waive their right to anonymity, without the consent of the court, so long as they are over 16. The consent must be in writing. Victims under 16 cannot waive their right to anonymity.” (IPSO, 2017)

“When reporting a sexual offences case, journalists will always do their best to remove identifying statements from court reports. These tend to be features specific to the victim, such as age, location or certain dates. Identifying the defendant is in the public interest, particularly when the crime is serious and local. But identifying the defendant can potentially identify the victim. It is a difficult balance, made on a case by case basis. Recent legislative changes leave us in the odd position that anonymity for the victims of sexual offences now encompasses the victims of non-sexual offences under the Modern Slavery Act, but not victims of revenge pornography under the Criminal Justice and Courts Act. I am not aware of editors choosing to name the victims of revenge porn, but given that the victim will almost always be the wife or girlfriend of the defendant, her identity will be obvious to many people. In the case of the Modern Slavery Act, the anonymity granted to the victim will make it especially difficult to identify gang masters who have trafficked forced labour from Eastern Europe, or couples who bring girls from overseas on the pretext of a new life in Britain, but instead force them into domestic servitude. Of course, the alleged victims can waive entitlement to anonymity by giving written consent (if they are 16 or older). Also, it is worth remembering that anonymity does not extend to other proceedings. So if a victim is involved in another non-sexual and non-human trafficking case, that can be reported. And finally, if the court is satisfied that the reporting restriction is a substantial and unreasonable restriction on the reporting of a trial in the public interest, a judge can lift the restriction. To do so will involve applying to a judge to lift the restriction, and all that drafting and arguing such an application entails” (Vale, 2016)

Victims (or alleged victims) are granted automatic anonymity yet the defendant is named in England and Scotland. “The recent prosecutions of British celebrities for sex offences have highlighted the differences between UK anonymity laws and those in Ireland, which prohibit the identification of rape accused before conviction.

The failed prosecutions of two *Coronation Street* actors have reignited a debate in the UK about whether rape accused should continue to be named pre-conviction. And while Ireland shows little desire to adopt the UK system, our anonymity laws are not without their problems. Irish law states that those accused of rape can only be identified publicly if convicted.

However an examination of the UK debate shows there are arguments to be made for removing automatic anonymity for accused. Victim campaigners claim that naming an alleged offender can lead to other complainants coming forward, as shown in the case of [Jimmy Savile](#). They also see the granting of anonymity for accused rapists as perpetuating the myth that many women make false rape claims.” (Gallagher, 2014)

Overall, in the Crown Prosecution Services’ view, false allegations of rape are “serious but rare”. They estimate that there is one prosecution for a false rape claim out of every 161 rape cases prosecuted. That means — according to the best available data — false allegations make up 0.62 per cent of all rape cases. Despite figures such as these there is still discomfort and fear of movements such as #metoo, no matter how displaced it may be.

Case Study 1

Defence of defendant anonymity increased after allegations were made against Sir Cliff Richard, in August 2014 as part of an investigation into a historical child abuse allegation. South Yorkshire Police conducted a raid at Richards' home, police searched his apartment and a helicopter broadcasted the operation live on TV. In 2016, The Crown Prosecution Service decided there was insufficient evidence to prosecute and he would face no charges.

In a statement, Sir Cliff said: "I have always maintained my innocence, co-operated fully with the investigation, and cannot understand why it has taken so long to get to this point. Other than in exceptional cases, people who are facing allegations should never be named publicly until charged. I was named before I was even interviewed and for me that was like being hung out like 'live bait'. It is obvious that such strategies simply increase the risk of attracting spurious claims which not only tie up police resources and waste public funds, but they forever tarnish the reputations of innocent people."

Since the charges were dropped, Sir Cliff Richard has been awarded £210,000 in damages and the licence fee-funded BBC later agreed to pay £850,000 of his legal costs. Richard has since joined the anonymity campaign, **Falsely Accused Individuals for Reform (FAIR)** who believe it is time the law was changed to prevent innocent people being vilified in the media. In a statement he said "Being falsely accused myself and having that exposed in the media was the worst thing that has ever happened to me in my entire life."

The idea of "crying rape" is not something new yet research and statistics say that false reports are rare.

"There is absolutely no evidence to suggest that false accusations are any more of a problem in sexual offences cases than in cases relating to any other crime. And yet, still the idea that women cannot be believed when they report assault persists." (Spratt, 2017)

"If trust in the process of prosecuting sexual offenses is low then 'victims will continue to worry about reporting [these crimes] and the public will continue to be concerned over whether false allegations are being taken forward for prosecution.'" (Westmarland, 2017)

"I can see the argument that the accused does not want publicity when he is arrested because, as happened to Paul Gambaccini, he was never charged and remained on bail for 12 months – an agonising wait. On the other hand, the police do not arrest someone on a whim, particularly when they have such a high media profile. They know what the backlash will be if no charge results.

I have experienced countless occasions when, as a result of publicity about a case, further victims have come forward, thus making the case stronger, and the sentence received by the accused longer.

The law of anonymity does not apply to those accused of murder, manslaughter, robbery, or burglary, so why should a special case be made, and protection be given to celebrities charged with sexual offences?" (Garsden, 2016)

Case study 2

Rugby players, Paddy Jackson and Stuart Olding were accused of raping a woman in June 2016. They were both found not guilty but law lecturer Dr Conor Hanly said: "Their names are now mud. Society's concern for victims should not come at the expense of the defendant's right to a fair trial."

Publishing information online while a case is on-going, in certain circumstances can influence the outcome of a trial, this is called contempt of court. "If you post a link on a social media platform to a report on active/ongoing criminal proceedings you have a legal duty to take reasonable care when doing so under the Contempt of Court Act 1980. When posting links related to ongoing criminal proceedings to social media sites, you should therefore consider how best to warn social media users that they must not post related comments that may prejudice the investigation or a fair trial. A failure to provide a warning could be cited as evidence of a lack of reasonable care should prejudicial comments by readers subsequently be posted on your story." (IPSO, 2017)

The substantive law governing sexual offending in the UK and its associated pieces of legislature create a complex issue and everyone has the right to a fair trial. But it seems that the naming of the defendant helps to charge more sex offenders and considering the percentage of individuals who are actually raped and/or sexually assaulted and the number of individuals who are falsely accused, it seems like an easy decision to make. False accusation of sexual offence can ruin lives. Being sexually abused can also ruin lives, and it has ruined a substantial amount more than those who were wrongly accused and not charged.

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Appendix

Dodd & Hanna Essential Law for Journalists

HH Judge Peter Rook & Robert Ward, Sexual Offences Law and Practice.

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