Victims Commissioner

Jury Directions in Sexual Offence and Domestic Abuse Cases

Amendment 50
Courts and Tribunals Bill

The Victims' Commissioner for England and Wales, Claire Waxman OBE, is calling for the Courts and Tribunals Bill to require judges to direct juries in rape, sexual offence, and domestic abuse cases on relevant myths and stereotypes that may affect the fair assessment of evidence.

Rape myths and harmful stereotypes remain pervasive in society and continue to pose a risk to the fairness of criminal proceedings. The Law Commission has recognised the risk that myths and misconceptions may influence jurors' deliberations, while recent research led by Professor Katrin Hohl demonstrated that progress made through reforms to the investigation and prosecution of rape risks being undermined once cases reach court. We also continue to hear directly from victims who see myths and stereotypes about trauma, consent, and victim behaviour left unchallenged during their experience of the courtroom.

The 2019 London Rape Review highlighted the prevalence of myths and misconceptions and recommended the use of robust jury directions to address this. Since then, there has been positive progress through updates to the Crown Court Compendium, providing guidance on tackling these myths. However, there is significant variation in how this guidance I applied which means that, although this is best practice, directions are not always given.

We are seeking to make it mandatory for judges to direct juries about myths and harmful stereotypes, ensuring juries receive clear guidance at or before the point at which these issues arise. This is an important step towards strengthening fairness in sexual offence trials and ensuring that outdated assumptions about how a victim should behave have no place in our courtrooms.

> "Defence barristers rely on these myths… I lived that reality throughout my trial… we shouldn't have to, but I expected the lazy dissembling of 'you were drunk, what were you wearing, you invited him back, you asked for it, you're easy.'"
>
> **- Morwenna Loughman*, Rape Survivor**

The Issues

Rape myths continue to be deeply rooted across society

2024 CPS research on public understanding of rape and sexual offences found that:

- Few people accurately identified that most rapists know their victim (39%)

*Victims have given permission for their names to be used

- Fewer knew victims will not always seem distressed when talking about what happened to them (26%)
- And even fewer still recognised that few offenders use physical violence (17%)
- Only a third of respondents correctly identified that women rarely make up rape allegations (36%)

Among young people, the figures were even more startling:

- Only half recognised that it can still be rape if a victim doesn't resist or fight back (53%)
- Less than half recognised victims may not immediately report to the police (43%)

It is clear that rape myths and stereotypes remain prevalent in society, making it inevitable that these views are present among jurors deciding serious criminal cases.

Myths and Stereotypes continue to be relied on in court

The Law Commission's 2025 Report on Sexual Offences concluded that there is risk that myths and misconceptions impact juries in sexual offences cases.

There is also significant evidence that rape myths continue to be deployed in trials. In the Law Commission's report, 'JusticeIsNow' stated that Independent Sexual Violence Advisers (ISVAs) from across the country have reported to them that rape myths are used still, to great extent. Another anonymous organisation that works with women who have experienced sexual violence stated, "routinely, rape myths are used to undermine and discredit victim-survivors and excuse the behaviour of perpetrator".

"At sentencing… I remember [the barrister] arguing that being asleep or unconscious means I hadn't been deeply affected by what [the defendant] did to me."

- Juliana Terlizzi*, Rape Survivor

Victim Support's 'Suffering for Justice' report found that three-quarters of survivors of sexual violence are subject to rape myths during cross examination. All victims who took part in that research said that giving evidence was an 'awful, terrifying and traumatic experience with a profound impact'.

"That's the first thing they [defence] said to me, 'Do you have mental health problems? Do you suffer with your mental health?' … Then made out I had a drink problem when I don't drink."

- Victim-survivor, Suffering for Justice report

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"Our research and frontline experience show that rape myths and stereotypes are still used today day in, day out in sexual violence trials. The defendant's (Russell Brand) profile in this case has shone a spotlight on a systemic failing faced by victim-survivors across the country.

[The Brand] case must now be a catalyst for meaningful action, so that no other victim-survivor is subjected to this treatment in future".

- Katie Kempen, CEO of Victim Support

Progress seen in other parts of the justice system is stalling in court

The recent Operation Soteria pilot study, led by Professor Katrin Hohl OBE, examined whether Operation Soteria's victim-centred, suspect-focused approach is being maintained once rape cases reach court.

The report raises concerns that gains achieved through police and CPS reform are not consistently carried through into courtroom practice. The sustainability of Operation Soteria depends upon extending its principles into the courtroom, but the findings suggest courtroom practice has not kept pace with reforms elsewhere in the criminal justice system.

"You're a piece of meat being pulled through the court system."
- Victim-survivor, Suffering for Justice report

Victims are telling us the problem

Through victim engagement, events, surveys, and direct correspondence, the Victims' Commissioner continues to hear from victims of rape and serious sexual offences whose credibility was assessed against stereotypical expectations of how a victim should behave.

Victims have reported concerns that:

- Delayed reporting was treated as undermining their credibility.
- Continued contact with the perpetrator was viewed as inconsistent with having experienced sexual violence.
- Their behaviour following the offence was judged against expectations of how a "genuine" victim should respond.
- Defence questioning focused on perceived inconsistencies in their behaviour rather than the actions of the defendant.
- They felt they were effectively on trial for their personal choices, relationships or communications.

Many victims describe leaving court with the impression that misconceptions about trauma, consent, and victim behaviour continue to feature prominently in sexual offence trials.

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> "There's a particular cruelty with rape trials, because it's not just the scourge of cross-examination you must contend with; it's what is said about you in your absence. You're "just a witness", and yet the crime scene is your body; your trauma, your wellbeing, your trustworthiness as a human being become fodder for ridicule, judgment and speculation. You are the evidence."
>
> **- Morwenna Loughman*, Rape Survivor**

These experiences are consistent with concerns identified by the Law Commission, which concluded that myths and misconceptions about sexual violence continue to present a risk to the fairness and effectiveness of sexual offence trials.

> "During the trial the defence barrister questioned our "pretty good sexual appetite". She also suggested I delayed reporting because I had "nothing to complain about". It is a peculiar experience having to describe an assault and then explain why you did not describe it sooner."
>
> **- Juliana Terlizzi*, Rape Survivor**

Why Guidance Alone is Not Enough

The Law Commission found the discretionary approach to giving directions inconsistent, specifically in which directions are given, their content, and timing.

Current arrangements rely on individual judges identifying myths, deciding whether intervention is required, and crafting directions, creating inevitable inconsistency. The use of rape myths and inconsistency in how they are challenged is also clear from a range of academic research. Some studies have found that Judges "rarely countered rape myths", noting that Judges were able to but "not obliged" to give direction

Despite consulting on a statutory presumption that directions should be given, the Law Commission ultimately recommended that this issue should be addressed in guidance. Specifically, that guidance should state that directions should be given where there is a risk of reliance on a myth, unless no reasonable jury would find the material relevant. The rationale for the recommendation being that directions could then be tailored in each case.

However, the evidence received by the Commission on this point was mixed, and this recommendation appears to be based on principles rather than on an evidence-based finding that a change of law is unnecessary.

This Amendment to the Courts and Tribunals Bill would help to address concerns about the need to tailor directions as Judges would retain a discretion where directions are unnecessary in the specific circumstances of the case.

If we accept that rape myths are pervasive and capable of affecting verdicts, we should not leave protection against them to chance or individual preference.

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Benefits of a Statutory Duty

Greater consistency

Victims and defendants would no longer face a variation in practice depending upon which judge hears a case.

Improved juror understanding

Directions would help jurors understand trauma responses, delayed reporting, and counter-intuitive victim behaviours.

Supports fair trials

Directions do not tell jurors what conclusion to reach. They simply ensure evidence is evaluated without reliance on prejudice or misconception.

Embeds Operation Soteria in the courtroom

The reform would help carry suspect-focused, victim-centred principles from investigation through to trial.

Addresses a problem already recognised by Government and the Law Commission

The existence and impact of rape myths is no longer seriously disputed. The question is whether the justice system responds consistently enough to counter them.

Comparative Approaches

Other jurisdictions already require in law that judges direct juries on rape myths and stereotypes.

In Scotland, since 2017 provision in legislation requires that a Judge must, in sexual offence cases, provide jury directions on particular rape myths. These are set out in Sections 228DA (which explains why a victim may not report or tell others about an offence) and 228DB (which explains out why a victim may not physically resist) of the Criminal Procedure (Scotland) Act 1995.

In Victoria, Australia, the Jury Directions Act 2015 mandates judicial directions in sexual offence cases, focusing on delays in reporting, inconsistencies in accounts, consent and reasonable belief, and post-offence conduct.

Beyond Legislation

While legislative change promoting consistent use of jury directions is an important safeguard, it must be accompanied by wider cultural and operational change across the criminal justice system to ensure myths and stereotypes are recognised and challenged consistently throughout proceedings.

- **Judicial training and guidance should be strengthened.** The Law Commission has recommended that the Judicial College develop guidance to support judges in identifying when lines of questioning rely on myths or misconceptions, including unsupported generalisations and impermissible stereotypes, and on responding appropriately when such arguments are advanced in advocates' speeches (Law Commission Report, Recommendation 65). This should be accompanied by broader training on myths and stereotypes associated with sexual offences, the dynamics of domestic abuse, trauma responses, memory and disclosure patterns, and the impact of intersectional factors. Together, these measures would support more consistent identification of cases where jury directions are required, enable timely interventions when myths or stereotypes arise, and promote greater consistency in the content and delivery of jury directions.
- **Training should also extend to legal practitioners.** The Law Commission recommended that legal practitioners be required to undertake training on myths and misconceptions in order to work on sexual offence cases (Law Commission Report, Recommendation 63). This is essential given that myths and stereotypes can be introduced or reinforced through questioning, submissions and case strategies. Practitioners should be equipped to recognise and appropriately challenge misconceptions about victim behaviour and credibility, including assumptions relating to delayed reporting, trauma responses and the reliability of complainants' evidence.
- **Accountability and oversight should be strengthened** to ensure myths and stereotypes are not left unchallenged and that jury directions are used consistently and effectively in practice. Monitoring implementation would help identify variations in practice and support more consistent application across courts.

Supportive Statements

Victims Commissioner for England and Wales, Claire Waxman OBE

“The idea that rape victims must scream, physically resist or immediately report an offence is a well-established rape myth, rooted in outdated and harmful assumptions about how victims are expected to behave.

“Speaking with victims and those that support them, it’s clear that there is still inconsistent practice, with rape myths and stereotypes going unchallenged, causing victims further distress and undermining confidence in the justice system.

“That’s why I am calling for a legal duty in the Courts and Tribunals Bill, requiring judges to direct juries on rape myths and misconceptions in sexual offence and domestic abuse trials.

“Justice must be grounded in evidence, not misconceptions.”

Baroness Levitt KC

“There are still too many reports from victims saying: ‘I wish I’d never reported it. The whole process of the trial was worse than the rape itself,’”

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“Now we have got to deal with that. And one of the ways of dealing with it is not to prevent people from having a fair defence but to make it absolutely clear to victims that these are not judgments that are going to be made about them as a blanket stereotype about victims generally.

“All you’re doing is you’re saying to the jury: judge it on the circumstances of this case, not on what you may think generally about the way victims should behave.”

Domestic Abuse Commissioner, Nicole Jacobs

“When someone experiences the trauma of abuse and finds the courage to come forward, they do so expecting to be treated with dignity, respect and fairness. It is unacceptable that victim-blaming myths and harmful stereotypes still find their way into our courtrooms, shaping jurors' interpretation of evidence with serious implications for conviction and sentencing.

“This amendment would change that. By requiring all juries to be informed about false and misleading narratives that may influence their decision-making, we can ensure victims are not blamed for the actions of their perpetrator, while taking a vital step forward in rebuilding faith and trust in the criminal justice system.”

Katrin Hohl, Professor of Criminology and Criminal Justice at City St. Georges, University of London and Independent Advisor to UK government on Criminal Justice Responses to Sexual Violence

“Misconceptions about rape can affect how jurors assess evidence, and academic research suggests that judicial directions can help counter them. Current guidance and case law permit judges to give directions on these myths where appropriate, and most judges already do so. This amendment would make such good practice a duty, while retaining judges’ discretion to decide whether a myth is engaged and how best to direct the jury, so that directions remain tailored to each case. It is a sensible, evidence-based step towards greater consistency in jury directions.”

HHJ Peter Rook KC

“These directions are critical in ensuring juries approach evidence without pre-conceived ideas about how victims of sexual assault behave and without adopting illegitimate lines of reasoning"

Harriet Wistrich, Solicitor and CEO of Centre for Women’s Justice

"The Centre for Women’s Justice, which advises and acts on behalf of victims of male violence and has recently been awarded a government grant to run the first national Independent Legal Advice Service for victims of rape and sexual assault, supports the amendment tabled by Baroness Levitt. Whilst we are aware it is common practice for judges to give directions on myths and stereotypes in rape trials, this is not currently mandatory. Furthermore, there is no such requirement in domestic abuse cases where similar myths apply. We therefore strongly endorse the inclusion of domestic abuse.

"We believe that in a culture where misogyny and victim blaming are prevalent, it is necessary for safeguards to apply in any case where domestic abuse or sexual violence are relevant. This should include cases where an alleged victim of male violence becomes a defendant. We are

fortified in this conclusion by last week's decision from the UN Committee CEDAW that finds the UK in violation of its international treaty commitments and calls on the government to bring in new legislation to remedy this."

Ellie Butt, Head of Policy and Public Affairs at Refuge

"Reporting abuse takes an enormous amount of strength, and yet all too often the brave survivors who take this step face unacceptable victim-blaming, and sickening accusations of 'false' claims, compounding the horrific harms they have experienced and preventing them from accessing the justice they deserve.

The trial process is supposed to hold perpetrators accountable, but survivors will continue to be failed if professionals in court are allowed to weaponise harmful myths about abuse. Trauma affects everyone differently and it is sickening that juries are being told that survivors' actions should conform to the dangerous tropes perpetuated by these myths, for them to be believed. This is a horrific form of victim-blaming that completely ignores the reality of abuse and sexual violence.

Strengthening judges' obligations to warn juries about rape myths is a vital step towards ensuring that survivors are not blamed for their own abuse or denied justice because they have not conformed to harmful stereotypes. We cannot allow rape myths to be legitimised under the guise of legal argument - the consequences for survivors are devastating, and the stakes could not be higher."

Deniz Ugur, Deputy Director of the End Violence Against Women (EVAW) coalition:

"It is really appalling to see defence lawyers intentionally lean into a whole range of tired tropes and myths about rape.

"Rape is always about a perpetrator choosing to abuse power.

"There are many reasons why rape victims do not and cannot 'fight back'.

Amelia Handy, Head of Policy and Public Affairs at Rape Crisis England and Wales

"Whilst the police and Crown Prosecution Service have acknowledged how rape myths and stereotypes impact investigations and case-building, too often we see them deployed by barristers in the courtroom.

"Misconceptions about rape and sexual abuse remain deeply embedded in wider society.

"As a cross-section of society, juries won't be immune to these ideas either.

"Too often, attention shifts away from the actions of the accused and onto the credibility and behaviour of the complainant."

Dr Charlotte Proudman, women's rights barrister and founder of Right to Equality

"Our adversarial criminal justice system incentivises the use of rape myths by defence barristers. While the challenges faced by victims of rape and sexual offences in court are easily acknowledged by legal professionals, few will agree on the steps needed to actually address these problems. Strengthening the expectation that judges provide the jury with timely directions

to counteract rape myths is a sensible and unintrusive way to help rebalance the scales and let the jury decide on the basis of evidence, rather than gendered tropes and stereotypes"

Sir Mark Rowley, Metropolitan Police Commissioner, speaking after the Russell Brand verdict

“I strongly support Claire. I think what I’ve heard reported heads towards, it’s getting very close to victim blaming, which is something we’ve thought very hard about in policing and make sure we don’t do.”

Jess Phillips MP

“I’ve sat through many rape trials in my career, and some of the sort of myths and stereotypes around women just misunderstanding badly behaved, boyish behaviour. It was, in this case, also the line of defence that was tried, around ‘why aren’t there more women if this were true’?

Amendment 50 to the Courts and Tribunals Bill

After Clause 10, insert the following new Clause—

“Directions on myths and stereotypes

(1) In a trial on indictment for a sexual offence or an offence involving domestic abuse, the judge must give the jury a direction on myths and stereotypes, unless satisfied that such a direction is unnecessary having regard to the circumstances of the case.

(2) A direction under subsection (1) may be given in general terms or by reference to any issue arising in the proceedings.

(3) Such a direction should ordinarily be given before the prosecution calls evidence, unless the interests of justice require it to be given at another stage of the trial.

(4) Where no direction is given at the commencement of the trial, it must be given when the relevant issue arises.

(5) The judge must, when summing up, give a direction on myths and stereotypes appropriate to the issues in the case, whether or not such a direction has previously been given.”

Member’s explanatory statement

This amendment would require judges in trials for sexual offences and domestic abuse offences to direct juries on myths and stereotypes that may affect their assessment of the evidence, unless such a direction is unnecessary in the circumstances of the case. It makes it clear that such directions should not ordinarily have to wait until the summing up but should be given to assist the jury before or at the time the issue arises.