

Sexual Offences

The Law



Sexual Offences Act 2003

There are 71 sexual offences in the Act, including:

- Rape (s.1)
- Assault by penetration (s.2)
- Sexual assault (s.3)
- Child rape and offences, including grooming
- Abuse of trust offences
- Offences against those with mental disorders affecting choice
- Familial offences
- Prostitution
- Exposure
- Voyeurism
- Offences involving animals and corpses

***Trafficking offences have been replaced by provisions in the Modern Slavery Act 2015

Rape



Note:

C = complainant

D = defendant

ONS – Crime in England and Wales year ending June 2021

Sexual offences recorded by the police 164,763 offences

61,158 police recorded rape - the highest ever

1,972 rape charges

2.1%

The 'attrition rate' = the proportion of rape convictions in comparison reported/recorded rape

Reasons for low reported rates/prosecutions/convictions

(A) Complainants can be deterred from reporting the incident in the first place

- They can't deal with re-living the ordeal
 - Feel ashamed
 - Feel that they are to blame
 - Feel that they will not be believed by the police
 - Believe that the judicial system will put them on trial
- Not helped by media sensationalism of false allegations (see below)

(B) Society and the Criminal Justice System seeing complainants in a negative light, leading to suspicions of Cs

- Media sensationalism about false allegations of rape and attitudes to complainant credibility.....but CPS put the figure at 2%-9%
- The anonymity issue (unfair on the accused)
- The disclosure issue (over emphasis on phone evidence cases and deterring Cs)

(C) Attitudes in the CJS to sexual offending

Police / CPS appear to have dropped the starting assumption that those who report sexual offending are to be believed....

2018: Met abandoned its national policy from 2011 of instructing officers to believe Cs

(D) Rape myths

These are erroneous perceptions as to what 'real' rape involves and how those who have experienced rape and other sexual offences behave. These myths are held by society, including the police, CPS judiciary, juries, complainants and the accused.

These myths can lead to:

- Failure to report an incident (C doesn't recognise the crime)
- Failure to charge
- Failure to prosecute
- Failure to convict

What is not often emphasised is that many rape myths exist because they do not reflect the law (whether that be the legislation or the case law)

Rape is about lust and sex

Rapists are usually strangers

Rape necessarily involves force/violence

Accepting a gift, like a meal paid for in a restaurant signals consent

Sex workers can't be raped

Past sexual relations with D means C consented

A person who does not fight back /cry has not been raped

A person who reports rape after delay is probably making it up

Most rape occurs outside at night

People who wear certain provocative clothes consent/ are to blame

Rapists and sexual offenders: there is a 'type'

A person who consents cannot change their mind

Both men and women can commit rape

Someone who flirts, makes the first move, comes on to D consents/is to blame

Which are rape myths?

Promiscuous people cannot be raped

Saying 'no' often means 'yes'

A person who does not say 'no' has not been raped



So here is the law...

Sexual Offences Act 2003 – s.1

The elements of the offence

- Penetration
- By the penis
- Of the vagina, anus or mouth of C
- Without C's consent
- Voluntary and intentional penetration
- D lacks a reasonable belief in consent

(A) Penetration

Re: penetration of the vagina, loss of virginity not required.

No requirement for ejaculation.

Slightest penetration suffices: *JF [2002]* - some penetration, however slight... beyond threshold of private parts.....

...s.79(9) SOA 2003 defines vagina to include the vulva.

(B) By the penis

Rape myth = a woman can commit rape.

No, she really can't!! – a woman can commit the offence of causing a person to engage in non- consensual sexual activity – s.4 SOA 2003.

A transgender man who has had reassignment surgery can commit rape - s.79(3) refers to “surgically constructed” penis.

Rape myth = rapists are a type.

The only common feature is that all rapists have a penis.

Rape myth – rape is about lust and sex.

Rape is predominantly about control.

(C) Of the vagina, anus or mouth of C (SC)

Vaginal penetration

Gender reassignment surgery from a man to a woman - C can be raped.

Penetration of the mouth

Gaston [1981] this was not rape, only indecent assault – but now rape under the 2003 Act.



Anal penetration

Before 1994 it was indecent assault.

The **1994 Criminal Justice and Public Order Act** amended the **SOA 1956** to include anal penetration.

.....so a man can rape a man (around **12,000** recorded cases per year).

January 2020 **Reynard Sinaga** sentenced to 30 years for more than 150 offences, including **136 rape**, committed against 48 men. Police believe he committed sexual offences against 206 men.

December 2020 the sentence was increased to a minimum of 40 years.

He is the UK's most (known) prolific rapist.

Rape myth - rapists are usually strangers
Rape myth- most rape occurs outside at night

90% of cases are acquaintance rape.

Marital rape

R v R [1991] - a husband can rape his wife.

A [2012] still rape even though D was brought up abroad where marital non-consensual sex is permitted.

(D) Without C's consent

Too often we talk of consent, when the offence requires a lack of consent.

R v Horn [1912] - burden of proof on prosecution to prove lack of consent
BRD – the high standard of proof is why so many cases end in acquittal.....

It almost always occurs in private. Therefore, cases often turn on 'credibility' (who the jury believe) and to this end, cross examination can be brutal.

Section 74 SOA 2003 gives a statutory definition of consent...

C consents if C....

Agrees by choice, and has the freedom and capacity to make that choice”

This question of consent is decided at the time of the relevant act

- For rape this is at the time of the act of penile penetration in the vagina, anus or mouth of C
- For sexual assault this is at the time of the act of sexual touching
- For assault by penetration this is at the time of the act of penetration with something into the vagina or anus of C
- For causing someone to engage in non-consensual sexual activity this is at the time of the sexual act

So....is there consent at that specific time?

Therefore the following are **rape myths** because they do not relate to the act at the time

- Someone who flirts, makes the first move or comes on to D signals consent
- Someone who wears certain sexy or revealing clothing signals consent
- C had past sexual relations with D so consents on the occasion in question
- C's acceptance of a gift, like a meal paid for in a restaurant, signals consent
- Promiscuous people consent

Rape myth – C cannot change their mind...

C can change their mind at any time

This poses a problem....

Because penetration must be a positive act (rather than a failure to withdraw).

However...**s.79(2) SOA 2003** - penetration is a continuing act from entry to withdrawal.

Leaver [2006] D had consensual sex at a bus stop but later changed her mind and failed to withdraw when C withdrew consent – guilty.

Evidence of lack of consent....

Rape myth – C must say “no” and/or fight back

Malone [1998]

- D appealed against his conviction for raping a 16-year-old drunken girl in her bedroom.
- C said she did not physically resist and did not verbally protest, as the drink had disabled her from doing either.
- D argued that C must demonstrate lack of consent by resistance, either by speech or by physical conduct.
- CA rejected this argument: but there must be some evidence of lack of consent.

Rape myth – where C does say “No” it really means “yes.”



The issue of 'no consent' may be decided by reference to certain statutory presumptions.....



Conclusive presumptions

The existence of some circumstances will mean lack of consent is conclusively presumed....not rebuttable

Evidential presumptions

The existence of some circumstances give rise to a presumption there was no consent, but this can be rebutted by evidence to the contrary

These 'presumptions' apply to other sexual offences under ss 2- 4 of the Act, but do not apply to attempted offences

Some relate to lack of capacity

Some to the concept of choice

Some to whether there was freedom

(A) Conclusive Presumptions (irrebuttable) – s.76(1)

There are two circumstances that give rise to a conclusive presumption.....

D intentionally deceives C as to the nature or purpose of the act (penetration for rape) - s.76(2)(a)

D intentionally deceives C by impersonating a person known personally to her - s.76(2)(b)

- *D intentionally deceives C as to the nature or purpose of the act (of penetration) s.76(2)(a)*

Deceptions as to the nature of the act (C unaware what sex is)

Williams [1923]

D choirmaster deceived C (16) into believing that sexual intercourse was an act which would improve her breathing, and therefore her singing voice.

Conviction upheld because of the deception **vitiated** consent.

Linekar [1995]

No deception as to nature of the act where a sex worker consented to sex on the basis of a lie that she would be paid.

- *D intentionally deceives C who thinks that D's purpose is something other than sexual gratification*

E.g. C knows what sex is, but is deceived by a cult leader who says she must have sex to save her soul (and not for sexual gratification)

➤ *D intentionally deceives C by impersonating a person known personally to them - s.76(2)(b)*

Does 'personally known' require intimate knowledge?

Hepburn [2020]

- D went to bedroom to see friend but only girlfriend there
- C awoke to find D's penis in her mouth
- They had oral and vaginal sex
- C thought D was her boyfriend
- When C realised he was not, she pushed him away
- C stated she would not have consented had she known it was D
- Although not addressed in court, you can see that there was no intentional impersonation here

(B) Evidential presumptions (rebuttable) – s.75(1)

If D does the relevant act (penetration for rape) and knows that a relevant circumstance exists, then lack of consent is presumed...

.....unless sufficient evidence is adduced to raise the issue (rebuttable).

Relevant circumstances?

s.75(2)(a) Any person at the time of the penetration or immediately before it, used violence against C or caused C to fear the immediate use of violence

s.75(2)(b) Any person at the time of the penetration or immediately before it caused C to fear that violence was being used, or would be immediately used on another person

s.75(2)(c) C was, and D was not unlawfully detained at the time of the penetration

s.75(2)(d) C was asleep or otherwise unconscious at the time of the penetration

s.75(2)(e) Because of C's physical disability C would not have been able at the time of the penetration to communicate consent to D

s.75(2)(f) Any person has administered, or caused to be taken by C without C's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling C to be stupefied or overpowered at the time of the penetration

➤ s.75(2)(a) Any person at the time of the penetration or immediately before it, used violence against C or caused C to fear the immediate use of violence

Rape myth – rape requires force/violence

All that is required by D is penetration where C does not consent

....But if there *is* violence/ threat of immediate violence this presumption applies...

This affects C's freedom to consent.

Dagnal [2003] - D dragged D off road – D mistakenly thought that as long as he did not hurt her it was not rape.

The presumption may be rebutted by?

Sado masochism.

Some countries do require violence/intimidation for rape..

This included Spain until July 2021.

The law was changed following several cases that caused public outrage where violence was not used, leading to convictions for the lesser offence of sexual abuse.

One case was the Wolf Pack case 5 men were acquitted of gang-raping a teenager because C was unconscious and violence was not used.

Following public outcry - increased to rape conviction.

**Also see #MeToo*



➤ s.75(2)(b) Any person at the time of the penetration or immediately before it caused C to fear that violence was being used, or would be immediately used on another person

D or a third party can make the threat, provided D knows this.

➤ s.75(2)(c) C was unlawfully detained at the time of the penetration

David T [2005] - C's ex-partner kidnapped C and sexually assaulted her.

The presumption might be rebutted by?

Sado-masochism/bondage.

Stockholm Syndrome?..... = a condition in which hostages develop a psychological bond with their captors.

➤ s.75(2)(d) C was asleep or otherwise unconscious at the time of the penetration

This affects C's capacity to consent.

Fotheringham [1988] – D raped babysitter who was asleep.

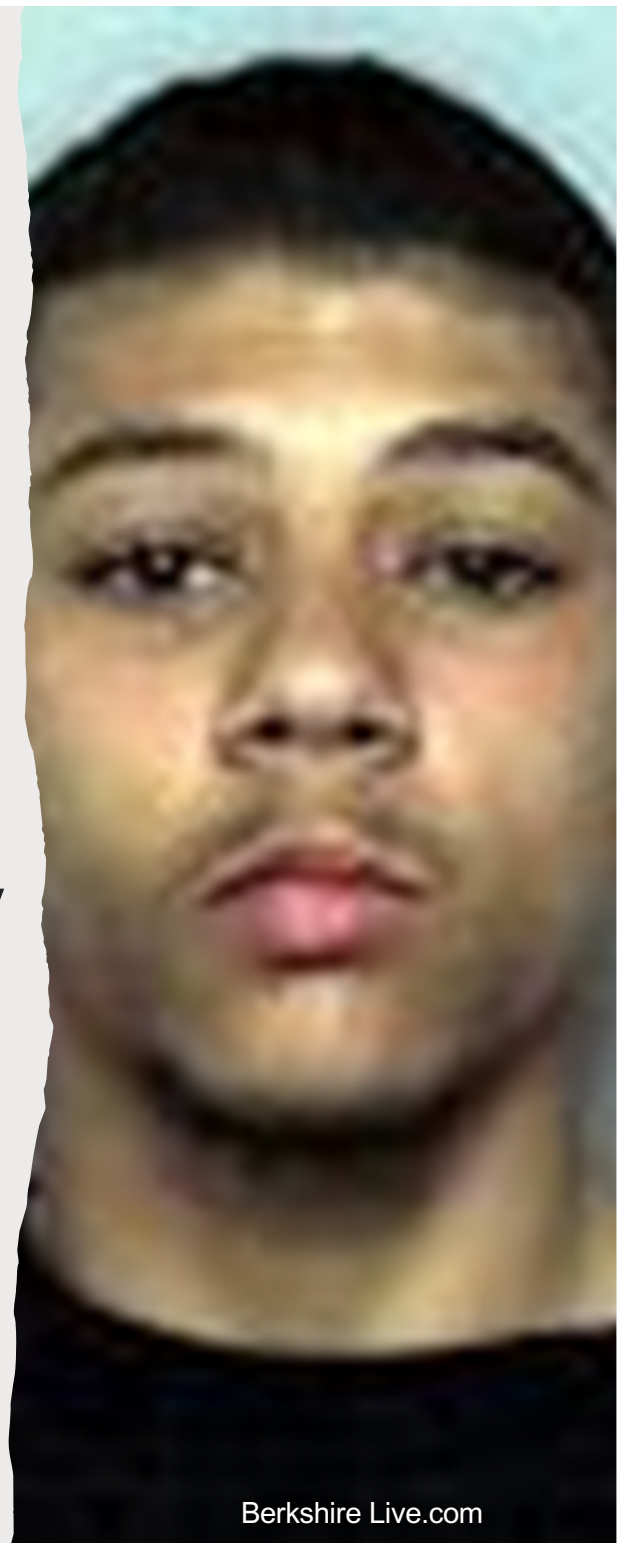
Many cases involve Cs who are unconscious due to alcohol.

Garvey [2004] *Blacklock [2006]* (both cases of digital penetration).

Hepburn [2020] above – D and his friend's girlfriend) convicted of oral and vaginal rape whilst C asleep



Jason McIntyre, was found guilty of raping a sleeping woman. He was sentenced to 5 ½ years.



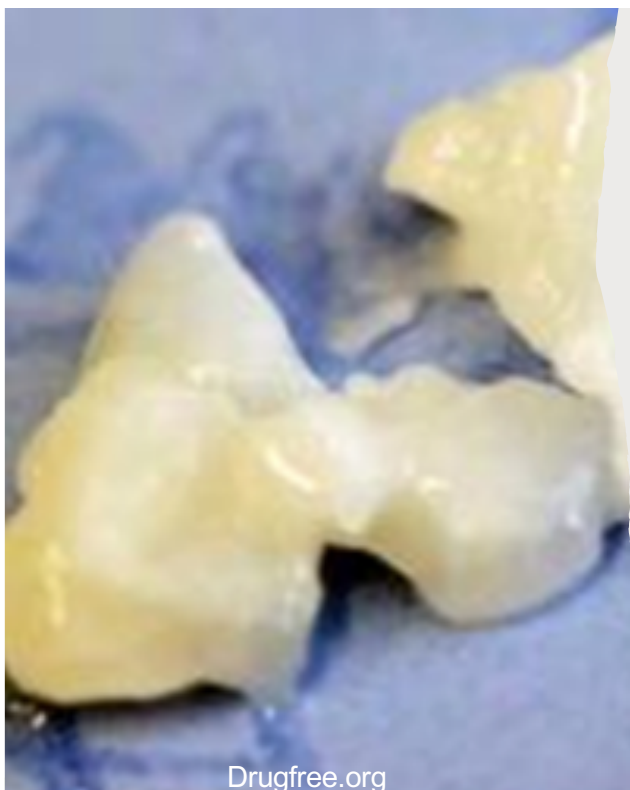
Travis Gotting sexually assaulted 2 women and raped a third (one of the women was in bed with her boyfriend).

- s.75(2) (e) Because of C's physical disability C would not have been able at the time of the penetration to communicate consent to D

We have seen that the absence of consent does not have to be verbally communicated to D; *Malone* [1998]...

..... but this presumption recognises cases where communication is not possible because of physical disability.

- s.75(2)(f) Any person has administered, or caused to be taken by C without C's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling C to be stupefied or overpowered at the time of the penetration



Drugfree.org

This presumption deals with alcohol and 'date rape' drugs like GHB and Rohypnol where C has been administered a drug unknowingly, or is deceived into taking the drug / alcohol.

D must know / be aware that the substance has the said capacity.

The presumption could be rebutted by evidence that C consented anyway.



Increasing use of needles
to inject date rape drugs.

HEMERA TECHNOLOGIES VIA GETTY IMAGES
Syringe with needle



Monkey Business Images/Shutterstock



Worboys [2009]

D black cab driver was found guilty of 19 charges including one rape

In 2018 decision to release D was reversed by the Parole Board after a public outcry and prompted other victims to report attacks.

In 2019 D was sentenced to two additional life sentences for attacks on 4 more women.

Police believe D committed 105 sexual offences against women.

In February 2021 D lost his appeal against the 2 additional life sentences he received in 2019.

Reynhard Sinaga used drinks laced with GHB to make his victims unconscious before he attacked them.



When the presumptions do not apply.....

Jury have to decide as per s.74

“Agrees by choice, and has the freedom and capacity to make that choice”

Other relevant types of evidence that might point to lack of consent.....

Evidence that relates to 'capacity'

Age

The age of consent is 16. This is relevant to both 'choice' and 'capacity.'

Mental Capacity

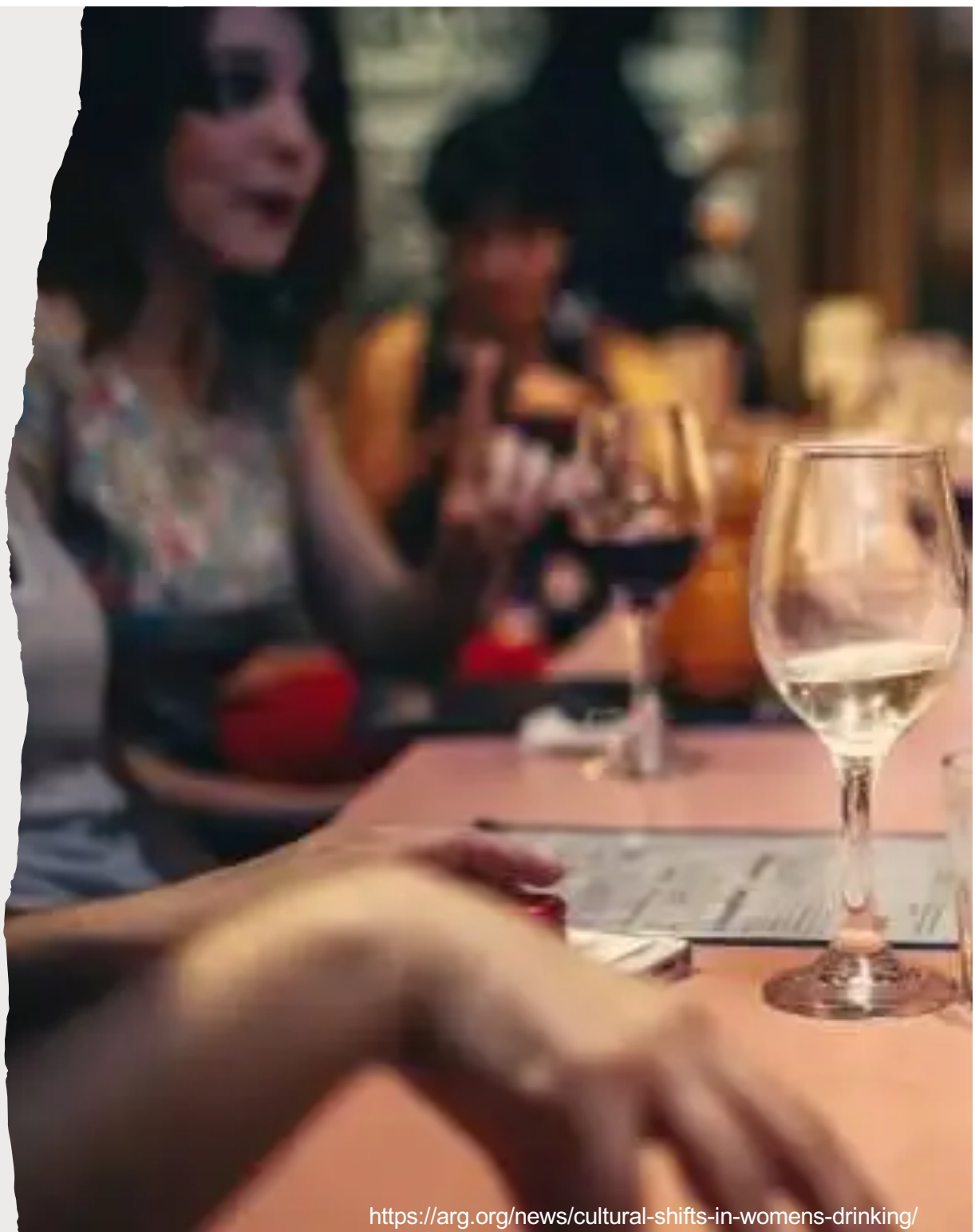
Refers to mental capacity *Cooper* [2009] - at the time, was C capable of weighing up the information?

C was drunk/drugged but not unconscious

Rape myth – drunken consent is still consent.

Here the problem is that lack of consent must be proven beyond reasonable doubt.

Where C is very inebriated and cannot recall the events for certain it leaves the issue uncertain.



Dougal [2005]

- A security guard had sexual intercourse with a student in a corridor after escorting her home from a party.
- C was so intoxicated that she could not remember if she had consented.
- The case was withdrawn from the jury and it was said that a “drunken consent can still be consent”.

Bree [2007]

- D and C had both consumed large amounts of alcohol.
- C had removed her own pyjamas and had responded to a question as to whether she had a condom.
- D's conviction was quashed because C had remained capable of choosing whether or not to consent, the fact that she might have regretted her decision did not invalidate her consent.
- In other words, *her* drunken consent was still consent....
- However... *Dougal* was criticised....
- The capacity to consent can evaporate well before unconsciousness occurs..
- Each case should be decided on its own facts.

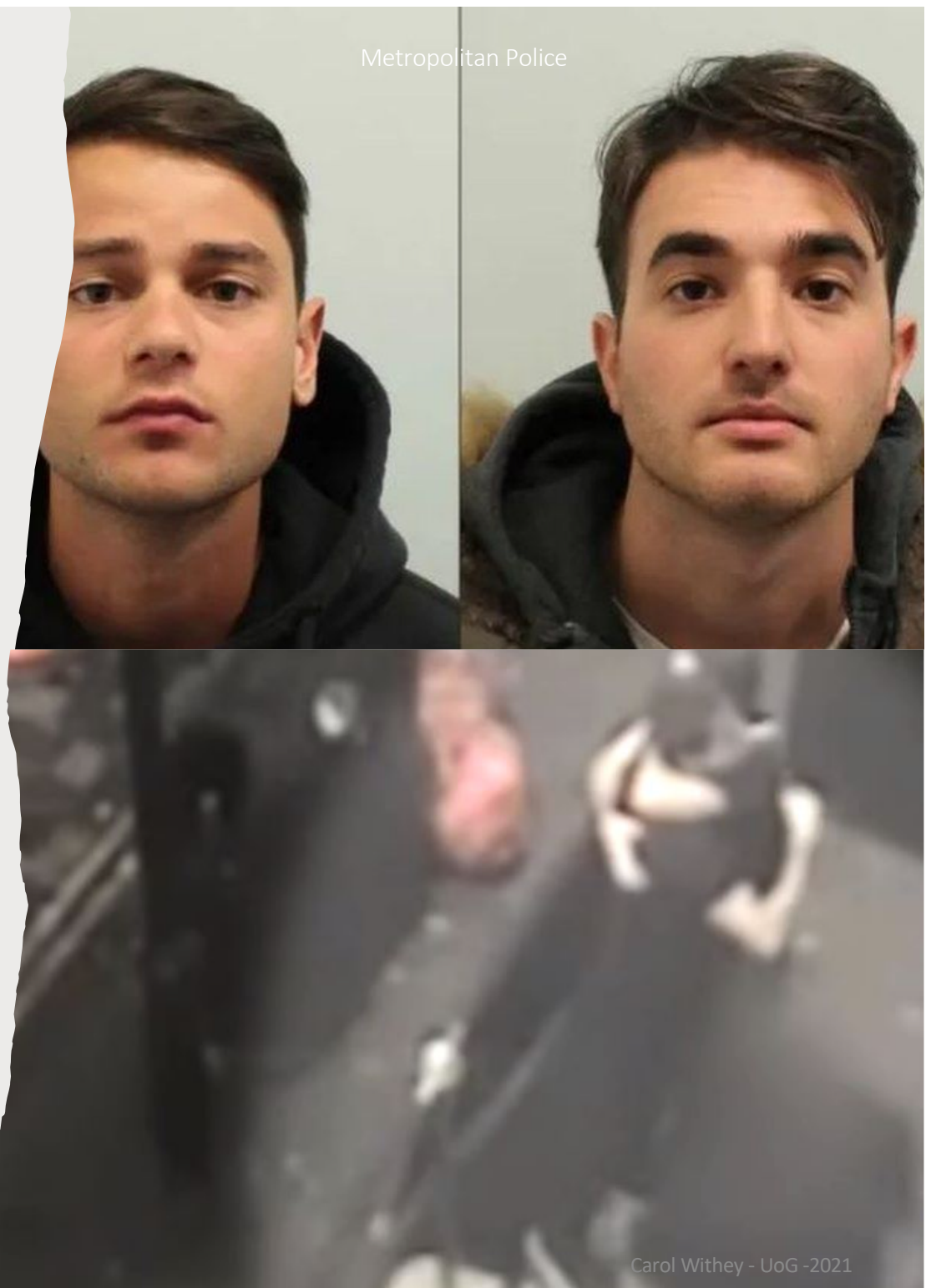
- *Evans (Chedwyn)* [2012]

- C had been drunk, falling over etc, before meeting E one night.
- C went with E to a hotel and had sex.
- E phoned D footballer friend and told D to come to the hotel to have sex with C.
- D did and others who were with D filmed it on a mobile.
- C awoke alone the next morning, had urinated and remembered nothing about the encounter with D.
- D was convicted.
- On appeal in 2016, sexual history evidence about C was adduced that should not have been.
- D was acquitted.



- *Orlando and Costanzo [2019]*

- Ds accused of rape of a woman in a nightclub.
- CCTV showed C was visibly drunk.
- Ds propped C up as they took her to a maintenance room where they had sex with her.
- The attack was so brutal that C needed surgery.
- Ds emerged about 16 minutes later and rearranged C's clothing before supporting her to the female toilets where they left her.
- D's claimed the sex was consensual.
- Ds were convicted and jailed for 7 1/2 years.



Evidence that relates to 'choice'

Some deceptions not covered by the 'presumptions' might vitiate consent

Lies to using a
condom or
ejaculation

Lies regarding sex

Lies regarding a
vasectomy

Lies/keeping quiet
regarding an STI

Lies regarding
identity but without
an impersonation of
someone personally
known to C

Lies regarding
celebrity status

Lies regarding
wealth

Lies regarding D's
job

Lies regarding
relationship status



Deceptions regarding use of a condom/withdrawing

Assange v SPA [2011]

- When deciding if JA could be extradited to Sweden for rape allegations, it had to be decided if there was a crime committed under our law
- Held : where D tells C that sex will be protected, but then fails to use a condom, or removes or breaks it, this is not a deception as to the nature or purpose of the act, but it CAN vitiate consent under s.74
- D could have committed rape and could be extradited

Deceptions regarding ejaculation

R (on the application of F) v DPP [2013]

- C was in an abusive marriage with D
- C did not want another child and as she could not take contraception, they agreed D would use a condom or withdraw
- On one occasion D did not withdraw and ejaculated
- C became pregnant
- Held: C was deprived of choice – no consent

Note- each cases decided on its facts!!!

Deceptions regarding biological sex

McNally [2013] (assault by penetration case)

- D and C teenagers developed a sexual relationship, but D pretended to be a boy (including use of a strap-on dildo)
- C girl subsequently discovered that D was also a girl, as in no penis
- D was convicted
- On appeal, D argued that C had consented and that a deception as to having a penis could not invalidate consent
- Held: C had chosen to have sexual encounters with a boy and her freedom to choose had been removed by D's deception
- Appeal against conviction dismissed

Newland (Gayle)[2017]

(assault by penetration case)

- D identified as male
- D told C scars meant C had to be blindfolded
- Occasions of sex occurred where D penetrated V using a prosthetic penis
- On one occasion C pulled the blindfold off...
- C realised it was actually one of her friends
- D was found guilty as no consent due to the deception re: penis

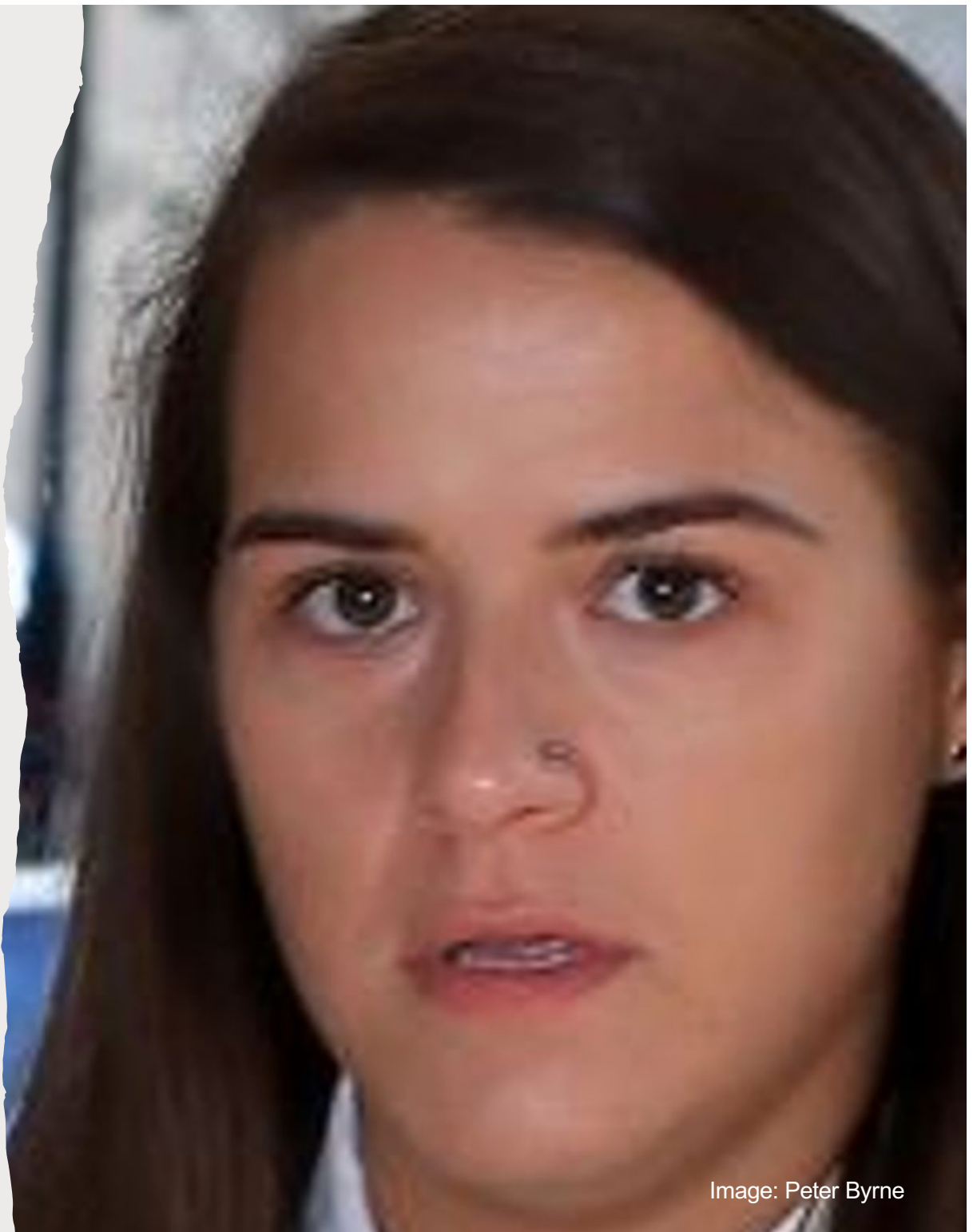


Image: Peter Byrne

- In cases involving transgender defendants the CPS will need to know D's position in relation to the **Gender Recognition Act 2004**.
- Whether there has been a deception as to gender is dependant on how D perceives their gender, what steps they have taken to live as their chosen identity and what steps they have taken to acquire a new gender status..
- When deciding whether to prosecute, whether the offending occurred due to any uncertainty on the part of D about their gender identity and other factors (see CPS website)

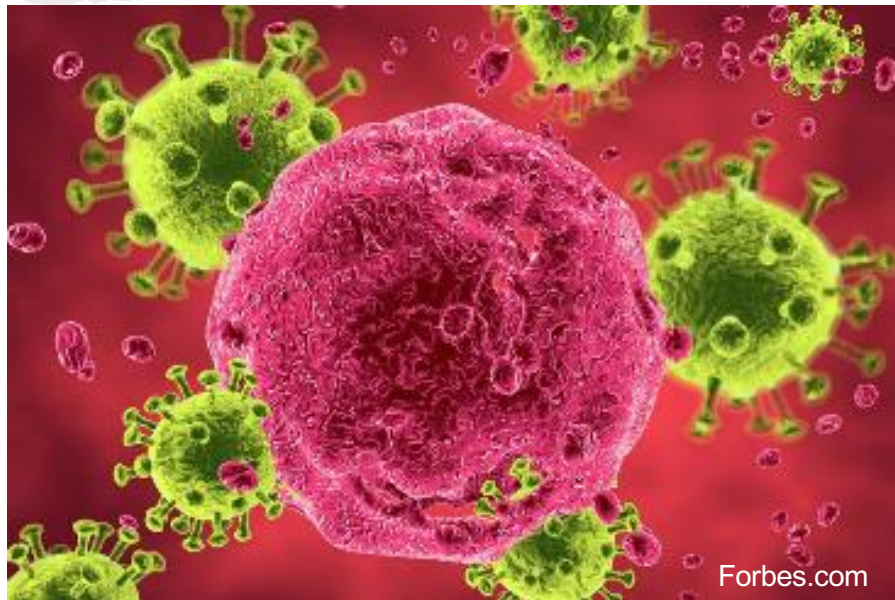
Deception regarding a vasectomy

Lawrance [2020]

- D lied and told C that he had also had a vasectomy
- They had sexual intercourse twice without contraception
- C discovered she was pregnant and underwent a termination
- D convicted of rape but his appeal was allowed as C had given a valid consent....
- D's deception that the ejaculate would not contain sperm was insufficiently connected to the act

Deceptions regarding sexually transmitted infections and diseases (STI/STD)

Gonorrhea



HIV



Syphilis



Dica [2004]

- D passed on the HIV virus to sexual partners knowing he had it
- CA - there is no automatic consent to the harm (it can be the offence of 'reckless infliction of GBH'; **s.20 Offences Against the Person Act 1861**- confirmed in **s.70 Domestic Abuse Act 2021**).
- But....C not guilty of rape as no deception to the act and this does not vitiate consent

***B* [2006]** confirmed D fails to reveal his infected status, no rape.

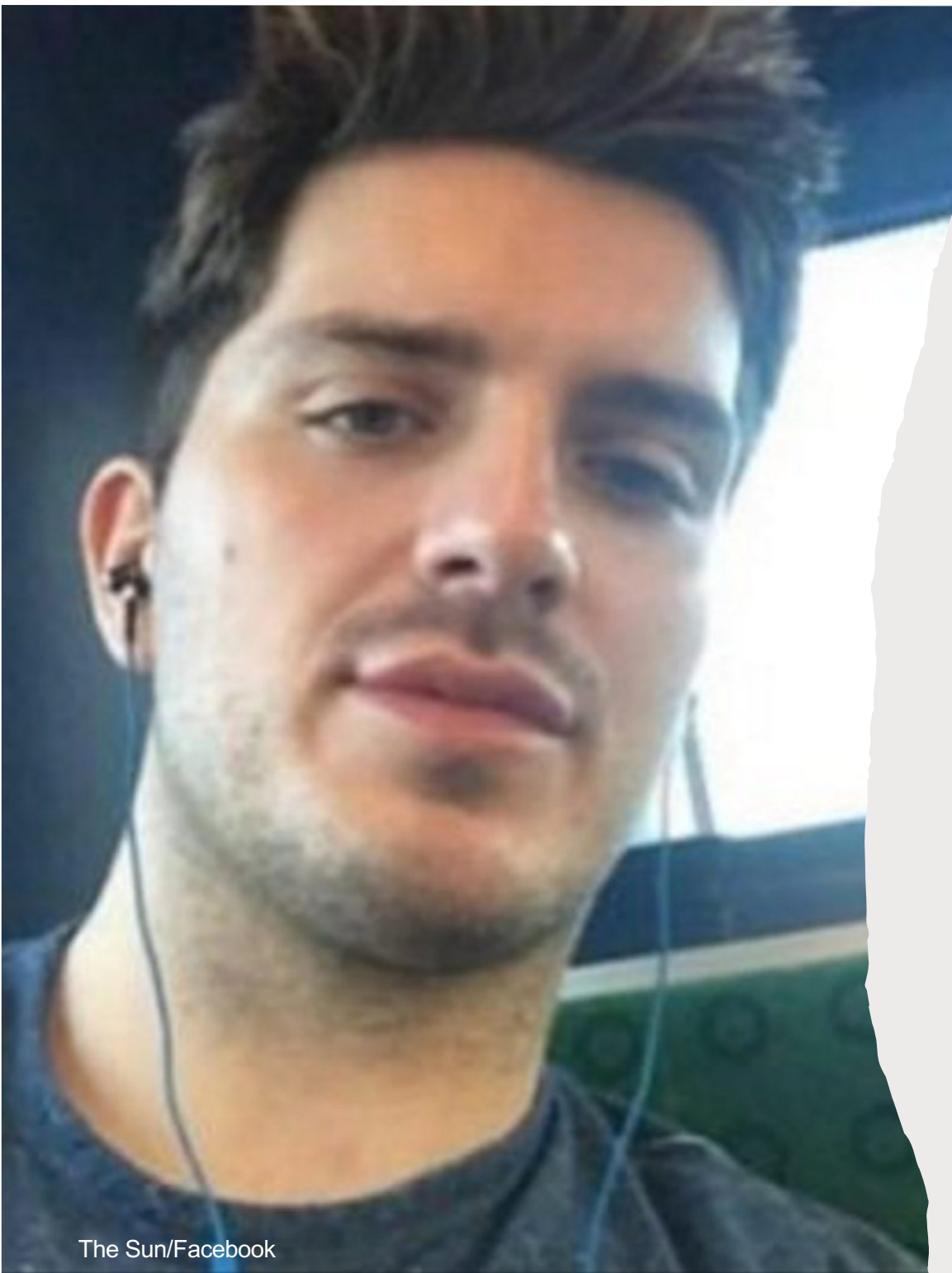


Getty Images

Rowe [2018]

- D had HIV
- D infected at least 5 men and exposed 5 more to the virus
- D then taunted his victims with texts: e.g... *"I have HIV LOL"*
- D convicted of intentional GBH and attempted GBH
- D jailed for life (minimum 12 years)
- D not charged with rape

However, an active lie might now lead to rape where D knows/is aware he has the STI.....this is a very grey area...



- So why does lying about wearing a condom or lies about having a penis potentially vitiate consent but lying about having a vasectomy does not and lying about an STI probably doesn't?
- The answer is that to cancel consent the deception has to closely relate to the physical performance of the act (for rape that's the penetration) rather than its repercussions or surrounding circumstances....or...
- Be fundamentally connected to the act.
- In the condom and ejaculation cases C also placed a condition on D.

Deception re: job/employment

- *R (on the application of Monica) (Claimant) v DPP and Boyling* [2018]
- An undercover officer lied to infiltrate political group and had sex with C
- Not rape
- Although a breach of human rights

Other deceptions

Deceptions as to wealth, celebrity status, religion ...do not vitiate consent

Deception as to relationship (even bigamy) do not vitiate consent , even though C may see these as fundamental in the decision to have sex.

Evidence that relates to 'freedom'

Zafar [1992] - reluctant sex and regretted consent do not vitiate a consent given...but.....

'Submission' is not consent

Submission cases

(a) Where C submits through fear of violence

Where C is scared (but no actual threat of violence) this may be seen as a case of 'submission'.

Olugboja [1981]

- D1 and another met Cs at a disco.
- D1 drove Cs to a bungalow.
- C1 was raped in the car.
- C2 was raped in the bedroom after D1 told her to take down her trousers.
- C2 had not been threatened, but submitted through fear.
- This was submission but not consent.

(b) Where C submits due to undue influence, power and control exerted over C, or grooming...

Kirk and Kirk [2008]

- C aged 14, ran away after abuse from family members.
- In desperation C returned and took £3.25 from one relative for food, in return for sex.
- CA upheld conviction - determining factor was the age of C and her vulnerable situation – submission but not true consent.

Grooming?.....

Ali [2015] D groomed young girls from troubled backgrounds. Held: compliance can mask the lack of true consent ...the level of manipulation can confuse C and exploitation is a factor that the jury can consider when assessing consent.

The nature of power imbalances will be relevant here: reference Harvey Weinstein, Jeffrey Epstein and other grooming cases/gangs.

Grey areas....

- Girls who accept rape as the price of joining violent male gangs?
- An employer who threatens to sack C if they do not sleep with him?
- A threat to break off an engagement if C does not have sex?....
- A threat to expose C's sexuality unless C has sex with D?

Consent apps?

<https://www.independent.co.uk/life-style/consent-apps-problems-dating-uconsent-sexual-assault-legal-court-a8332706.html>

The main criticism is that a person can change their mind at any time...



The guilty state of mind?

Intentional penetration – s.1 (1)(a)

Sleepwalking? (Sexsomnia).

Bilton [2005] D was acquitted.

D does not reasonably believe that C consented (s.1(1) c)

The previous law.....

SOA 1956 - D knew or was aware C did not consent.

D would be acquitted if he honestly believed C was consenting as there was no awareness hereeven if such a belief was unreasonable.

This allowed rape myths to play a part: where the jury believed D when he said that he honestly (but unreasonably) believed C consented on the basis that....

- C wore provocative or sexy clothes
- C made the first move/flirted
- C went back to D's home or D went back to C's home
- C kissed and/or cuddled D
- C had past sexual relations with D

The 2003 Act...

Now all that is required is proof that D **lacked a reasonable belief in consent**

An unreasonable but honest belief in consent will no longer lead to an acquittal...

In cases where a presumption arises regarding consent, a further presumption will follow that D did not have a reasonable belief in consent.

Whether a belief is reasonable is depends on all the circumstances, including any steps that D took to ascertain whether C consented.

‘Circumstances’ will include the circumstances of the situation.....

Smith and O’Neill [2013]

- C was raped by D1 and D2 in a flat
- D3 entered the bedroom 10 minutes after the rapes
- D was acquitted because by then C had given up resisting and this might have led to a reasonable belief in consent

‘Circumstances’ also includes the characteristics of D, which made him think that C consented (age/level of sexual experience)

Rape myth – a drunken or drugged man cannot commit rape
because he does not have a guilty state of mind

Grewal [2010] if D is drunk/drugged D lacks a reasonable belief
in consent....so drunken/drugged men can commit rape even if
very inebriated and have no memory

Rape is about lust and sex

Rapists are usually strangers

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Accepting a gift, like a meal paid for in a restaurant signals consent

Sex workers can't be raped

Past sexual relations with D means C consented

A person who does not fight back /cry has not been raped

A person who reports rape after delay is probably making it up

Most rape occurs outside at night

People who wear certain provocative clothes consent/ are to blame

Rapists and sexual offenders: there is a 'type'

A person who consents cannot change their mind

Both men and women can commit rape

Someone who flirts, makes the first move, comes on to D consents/is to blame

All are rape myths

Promiscuous people cannot be raped

Saying 'no' often means 'yes'

A person who does not say 'no' has not been raped

Sexual Assault



Sexual Assault

Section 3 - Sexual Offences Act 2003

Elements

- D touches C
- The touching is sexual
- C does not consent to the touching
- The touching is intentional
- The touching is intending to be sexual
- D does not reasonably believe that C consents

This offence can be committed by both men and women ('he' is used in the statutory wording to mean both).

Touching'

includes touching

- (a) with any part of the body
- (b) with anything else
- (c) through anything

H (Karl Anthony)[2005] touching of C's clothing (tracksuit bottoms) was sufficient to amount to 'touching'

'Touching' includes 'frottaging' - rubbing genitals against a passenger on public transport, as in *Tanylidiz* [1998]

The touching must be more than minimal though, and C need not be aware of the touching; *H (Karl Anthony)* [2005]

The touching is sexual

Touching or any other activity is sexual if a reasonable person would consider that—

- (a) Whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
- (b) Because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

(a) Whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual

H (Karl Anthony) [2005]

Relates to the intrinsic nature of the act ...

The act must be unambiguously sexual (clear: no room for a different interpretation)

- Using the tongue on a penis or genital area (non consensually receiving a penis orally would be rape)
- Masturbation

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual

(i) The reasonable person must consider that the touching might be sexual. If yes.....

(ii) If the act *might* be sexual under (i), whether it is sexual depends upon whether the RP would consider it sexual because of...

- The circumstances of the act
- The intention of D
- Or both

CW [2004]

- D touched a 13-year-old's belly bar piercing
- Not inherently sexual
- It *might* be seen as sexual
- D's purpose/ circumstances could make it sexual (e.g. if D had sneaked into a room and touched it whilst C was asleep)

Assault by Penetration



Assault by Penetration

Section 2 - Sexual Offences Act 2003

Elements

- D penetrates the vagina or anus of C
- With a part of his body or anything else
- The penetration is sexual
- C does not consent to the penetration
- The penetration is intentional
- The penetration is intended to be sexual
- D does not reasonably believe that C consents

Unlike rape, this offence can be committed by both men and women ('he' is used in the statutory wording to mean both)

An example: a woman uses a bottle in a man's anus.

Penetration is by *any* part of D's body (e.g. finger, hand, tongue, toe).

"Or anything else".....for instance; a vibrator or a tool

'Sexual' has the same meaning as it does for the s.3 offence.

Sexual Offences

The Law

