

Victims, Witnesses, and Justice Reform (Scotland) Bill: factsheet

Rape myths

The [Victims, Witnesses and Justice Reform \(Scotland\) Bill](#) contains a proposal to develop and conduct a time limited pilot of single judge rape and attempted rape trials. This follows a recommendation made by [Lady Dorrian's Review into Improving the Management of Sexual Offence Cases](#).

The [factsheet summarising the pilot](#) explains that one of the reasons for the proposal is the evidence that juries, and their verdicts, are influenced by rape myths. This was set out in [Lady Dorrian's Review](#) which considered the perception by some that rape trial advocacy strategies adopted an approach which 'deliberately targets at any prejudices or rape myths that may exist among the jury'. The Review further noted research indicating that despite being given directions designed to counter them, rape myths may intrude on jury deliberations, observing: 'This accorded with the view of many Review Group members that rape myths remain prevalent amongst jurors and are very difficult to displace'.

This factsheet provides more information on the independent academic research into rape myths, and summarises the main evidence considered, including research referred to within the Lady Dorrian Review as well as research published subsequently.

About rape myths

The term 'rape myth' is commonly used to describe false beliefs and misconceptions about rape, rape victims and rapists. They are beliefs about rape that are untrue and prejudicial. Their existence demonstrates the gulf between what people expect the facts and circumstances of rape to look like, or the way they expect victims to behave, and the reality. Rape myths include false beliefs about how the actions of a victim before, during or after a serious sexual assault, relate to issues of credibility and/or consent.

Rape myths have been the subject of academic investigation and broader debate since the 1970s. They are varied and numerous but have been categorised as:

- beliefs that blame the victim/survivor
- beliefs that cast doubt on allegations
- beliefs that excuse the accused
- beliefs about what 'real rape' looks like

Examples of rape myths

- that women invite rape by the way they dress, how much alcohol they drink or the number of sexual partners they have had
- that in some circumstances, women are partly responsible for their rape
- that genuine victims will scream, fight or get injured
- that false allegations due to revenge or regret are common
- that any delay in reporting rape is suspicious

- that male sexuality is uncontrollable, and rape occurs when men cannot control their sexual urges
- that women often send mixed signals about their willingness to engage in sexual activity
- that rape occurs between strangers and is usually accompanied by violence
- that male rape only occurs between gay men

Research and evidence

A considerable amount of research has taken place within the last 50 years to explore the existence and prevalence of rape myths both in society generally and in relation to the impact on criminal trials and jury reasoning. Three recent articles provide a useful summary of much of this research and list the range of sources and studies considered:

- [What do we know about rape myths and juror decision making?](#) by Professor Fiona Leverick provides a summary of research carried out specifically to explore the impact of rape myths in jury decision making, identifying over 50 studies involving over 15,000 participants
- [Jury Decision Making in Rape Trials: An Attitude Problem?](#) by Willmot et al. considers the empirical evidence around jury decision making in rape trials
- [Intimate Partner Rape: A Review of Six Core Myths Surrounding Women's Conduct and the Consequences of Intimate Partner Rape](#) by Lilley et al. considers rape myths in the context of rape which occurs in relationships

Since publication of the Victims, Witnesses and Justice Reform (Scotland) Bill the Law Commission of England & Wales has issued a [consultation paper](#), which includes its detailed consideration of the evidence around rape myths and how they influence juries.

In relation to specific studies related to juries, research is largely constrained by legal and ethical considerations which do not allow for juries' deliberations to be observed or for jurors to divulge information about those deliberations. The one exception to this is a [recent study from New Zealand](#) where researchers asked jurors about their deliberations in sexual violence trials shortly after those trials concluded (121 participants questioned from 18 sexual violence trials. Researchers also had access to transcripts of opening and closing statements, the judge's summing up as well as notes of the evidence).

In other studies, researchers have taken a range of approaches, including:

Quantitative studies

Quantitative studies are the most common methodology used, (Professor Leverick identifies over 45 studies of this type) consisting of asking participants to answer questions designed to examine their attitudes towards rape and the relationship between these attitudes and attributions of blame or guilt. In many of these studies, participants are asked these questions after watching or reading about a mock criminal trial (usually a recording, live re-enactment or written vignette). These responses are then considered against a scale designed to test belief in rape myths.

The [UCL Jury Project research 2018-19](#) is an example of a quantitative study. This study provides quantitative data derived from surveys of participants who had

recently taken part in jury deliberations (771 discharged jurors) (England and Wales). The questions asked did not relate to the deliberations of the jury they had served on, nor was there a requirement that the participants had been on a jury that had sat in a sexual offences case.

Qualitative studies

There are fewer of these studies have been carried out (Professor Leverick identifies five within her review). These studies consider deliberations directly, again after participants have watched or read about a mock criminal trial as above. This enables aspects of group dynamics to be considered as well as individual perspectives.

The [Scottish Jury Research](#) is an example of a qualitative study. This study provides Scottish specific qualitative data derived from deliberations observed during the largest mock jury experiment conducted in the UK (64 mock jury groups, 863 participants), using simulated trials designed to be as realistic as possible. Half of the participants considered and deliberated on a rape trial which formed the basis of a specific [research paper on the impact of rape myths](#) within these deliberations.

Academic interest and investigation into the prevalence and power of rape myths spans jurisdictions, with research from across the globe demonstrating that rape myths are widely held amongst people in a variety of countries. In their [review of core myths surrounding intimate partner rape](#), published in 2023, Lilley et al noted that: 'Research examining the existence and influence of rape myths is now vast and empirical evidence is reliable enough to conclude that widespread endorsement of rape mythology spans varied societies, cultures, and distinct social groups.'

In Scotland, successive [Scottish Social Attitude Surveys](#) have found evidence that people in Scotland believe rape myths.

In the [2019 survey](#), respondents were asked the following questions:

Question 1: How much, if at all, is a woman to blame if she wears very revealing clothing on a night out and then gets raped?

Answers were given on a scale from one to seven where one was 'not at all to blame' and seven was 'entirely to blame'. 69% of respondents answered 'not at all to blame', with 29% answering that a woman is at least partly to blame in this situation.

Question 2: How much, if at all, is a woman to blame if she is very drunk and gets raped?

Answers were given on a scale from 1 to 7 where 1 was 'not at all to blame' and 7 was 'entirely to blame'. 69% of respondents answered 'not at all to blame', with 30% answering that a woman is at least partly to blame in this situation.

Question 3: To what extent they agreed or disagreed with the statement women often lie about being raped.

Answers were given on a 5-point scale from 'strongly agree' to 'strongly disagree'. 8% of respondents strongly agreed or agreed with this statement, while 29% stated that they neither agreed nor disagreed.

Question 4: To what extent they agreed or disagreed with the statement rape results from men being unable to control their need for sex.

Answers were given on a 5-point scale from 'strongly agree' to 'strongly disagree'. 28% of respondents strongly agreed or agreed with this statement, while 20% stated that they neither agreed nor disagreed.

What the evidence tells us about rape myths and juries

In [her review of over 50 studies exploring the impact of false beliefs about rape on jurors](#), Professor Leverick concludes that there is 'overwhelming evidence that jurors take into the deliberation room false and prejudicial beliefs about what rape looks like and what genuine victims would do and that these beliefs affect attitudes and verdict choices in concrete cases. This evidence is both quantitative and qualitative.'

In their 2021 [Jury Decision Making in Rape Trials: An Attitude Problem?](#), Willmot et al. conclude that 'Overwhelming empirical evidence...indicates that preconceived attitudes towards rape and specific rape myth beliefs have a prejudicial impact upon jury judgements, decisions and deliberative discussions'.

The [review by Lilley et al.](#) similarly observes 'Given the pervasiveness of rape myths throughout global societies, concerns continue to surround the prejudicial impact they may have upon complainant allegations and legal decisions within global justice systems. A concern not lacking in empirical support.'

However, it would be wrong to suggest that there was a unanimous academic view on the issue. Professor Thomas asserts that the [UCL Jury Project research 2018-19](#) reveals that the claim that "Research shows that jurors accept commonly held rape myths resulting in many incorrect not guilty verdicts" is incorrect. The research also reveals that previous claims of widespread "juror bias" in sexual offences cases are not valid.'

Further detail on some of the available evidence is provided below.

Court observations reveal the use of rape mythology by trial lawyers

[Willmott et al.](#) reviewed a number of contemporary studies which found that in attempting to persuade jurors, trial lawyers continue to rely upon rape myths. Noting findings from one study: 'Defence lawyers routinely drew upon myths in an effort to discredit witnesses, asking jurors to consider whether the complainant's level of distress was consistent with what would be expected from a 'real rape' victim and whether a lack of physical resistance should be considered suspicious.'

Relying on people's stated views in the abstract has limitations

[The New Zealand study](#) underlines the importance of investigating jury deliberations, and noted the limitations of relying on people's stated views in response to questions designed to determine if they believed common rape myths: 'When confronted with the difficulties of a real case, even those who might think they do not subscribe to cultural misconceptions about sexual violence may nonetheless fall back on those misconceptions. For example, our results include comments containing such misconceptions from a juror who had worked for Rape Crisis, and at least one juror who had been sexually assaulted. This happens because, even if jurors do not

explicitly believe in misconceptions about sexual violence, these deeply embedded cultural assumptions can still "provide sources of meaning upon which [they] draw often unconsciously."

Studies consistently show the prevalence and power of common rape myths:

Rape myth: Genuine victims will fight back or call for help

Participants frequently cast doubt on the complainer's credibility where they did not physically or verbally resist the accused. For example, 28 of the 32 mock jury groups that deliberated a rape trial as part of the [Scottish Jury Research](#), raised concerns about a perceived lack of physical resistance by the complainer.

Studies by Ellison and Munro (Study 1 from 2009 involving 27 mock jury groups using over 200 participants, and Study 2 from 2011 involving 20 mock jury groups using 160 participants) provide further qualitative data. Both studies found that participants not only routinely expressed the view that 'real' rape victims would resist their assailant but also found evidence that participants expected victims to possess injuries consistent with their attempts to fight back even where expert testimony challenged this assumption. While such views were countered by other participants, this was not found to occur consistently and, where challenge did occur, appears to have had little impact on the course of jury deliberations. In ["Telling Tales": exploring narratives of live and law within the \(mock\) jury room"](#), a paper based on Study 2, the researchers observed that: 'Not-guilty votes and verdicts continued...to be frequently justified by reference to the absence of the evidence of more serious or extensive injuries to both trial parties.'

The [New Zealand research](#), the only study to question jurors about their deliberations in sexual offences cases, found that the extent to which a complainer resisted their attacker affected jurors' assessment of their credibility in 11 of the 18 juries studied with one juror expecting 'a consistent message of non-consent – screaming, and repeated reiterations of, "no, I don't want this"'.

Rape myth: False allegations are common

The [Scottish Jury Research](#) found the belief that women routinely make false rape allegations emerged in 19 of the 32 mock juries although it did find that this view was often challenged by other jurors. The findings from this study led the researchers to conclude: 'within the jury room, the spectre of female fabrication still looms large, fuelled by disproportionate media coverage of rare but sensational cases in which allegations are shown to be false.'

The [first Ellison and Munro study](#) recorded participants seeking to rationalise their perspective on why a woman might report a false allegation of rape (e.g. participants identified anger at the breakdown of a relationship, the complainer being emotionally disturbed or regretful sex as potential reasons why a woman might make a false allegation). In this study, the suggestion that a rape allegation was fabricated by the complainer because they were 'vindictive', a 'psycho' or otherwise emotionally disturbed was identified in 9 of the 27 deliberating groups. There is no evidence that false allegations of rape are common and whilst it may be an appropriate consideration in deliberating individual cases, the frequency with which it is referenced by participants in studies indicates a more generalised belief or misconception which as applied to all rape cases is untrue and prejudicial.

The [UCL Jury Project research 2018-19](#) also found evidence that jurors hold false beliefs about the prevalence of false rape allegations with 12% of participants agreeing with the statement that ‘many women who claim they were raped agreed to have sex and then regretted it afterwards’, a further 47% indicated that they were unsure whether they agreed with this statement.

Rape myth: Delays in reporting a rape are suspicious

False beliefs about the response of a ‘real’ victim in the aftermath of being raped, particularly how long they would take to report the offence, were also found in the qualitative studies. In the [Scottish Jury Research](#), concerns were raised about the fact that the complainer had taken 40 minutes to report the offence to police in 13 of the 32 mock jury groups despite receiving explicit directions from the judge that there are good reasons why a complainer might not immediately report an offence. While the study found that this perspective was challenged in 10 of 13 mock jury groups in which it was expressed, researchers noted concerns about the effectiveness of this challenge in changing perceptions about the impact of the delay on the complainer’s credibility.

Delays in reporting the rape to police were also found to impact a complainer’s credibility with participants in both Ellison and Munro studies noted above. It was consistently raised as a red flag during deliberations among the jury groups. [One participant](#) stated, ‘I can’t get over why she didn’t go straight to the phone when he went out of the door, she went and got changed’. It is important to note that in both studies, concerns expressed about delays in reporting were frequently challenged by fellow participants.