

This is a draft of an article accepted for publication in the Journal of Criminal Law.

**Purported false allegations of rape, child abuse and non-sexual violence: Nature, characteristics and implications**

**Abstract**

The subject of false rape allegations is a subject shrouded in anxiety, confusion and misunderstanding. Despite a growing body of quality research there continue to be significant gaps in our knowledge about the topic, including the phenomenon of false allegations beyond rape and other sexual offences. The purpose of this article is to seek to deepen our understanding by examining a unique dataset comprising 701 cases involving individuals who purport to have been the subject of false accusations of rape, child sexual abuse, child abuse/neglect and other forms of wrongdoing. This article aims to provide an insight into the nature and characteristics of these allegations and explore the implications of the data for several research and policy questions. It will also critically examine some of the current literature and scholarly claims in this area, particularly around the commonality of false allegations and critique claims that discussion of this topic is dangerous and best avoided. Finally, the article sets out a future research agenda in which the complex issues raised by false allegations can be carefully considered, and the scale, impact and pathways to accusation can be better understood.

Key words: rape, child abuse, sexual assault, false allegation, accused

## **Purported false allegations of rape, child abuse and non-sexual violence: Nature, characteristics and implications\***

*Philip N.S. Rumney, Professor of Criminal Justice, University of the West of England*

*Kieran F. McCartan, Associate Professor of Criminology, University of the West of England*

### **Introduction**

In 2010, a report issued by the Ministry of Justice found that there was 'insufficient reliable empirical findings on which to base an informed decision on the value of providing anonymity to rape defendants.'<sup>1</sup> The report noted that there were significant gaps in the available evidence on the nature, prevalence, police recording of false rape allegations and several other issues.<sup>2</sup> Since that time, research has been conducted on the rate of false allegations compared to other serious offences,<sup>3</sup> the number of alleged false allegations of rape and domestic violence prosecuted by the Crown Prosecution Service,<sup>4</sup> the impact of false allegations on those accused,<sup>5</sup> the motivations of false accusers<sup>6</sup> and police perceptions of false allegations.<sup>7</sup> The subject of false allegations continues to be a matter of raised by those who favour a change in the law to grant anonymity to rape defendants<sup>8</sup> and is a feature of instances where rape complainants are harassed and threatened.<sup>9</sup> The issue is also the subject of an ongoing campaign objecting to the prosecution of those accused of

\*We would like to thank the director of the support and advice organisation who provided the anonymised spreadsheet data used in this article. The authors wish to acknowledge the helpful comments of Candida Saunders on an earlier version of this paper. All errors remain our own.

<sup>1</sup> Ministry of Justice, *Providing anonymity to those accused of rape: An assessment of evidence* (2010) 34.

<sup>2</sup> Ministry of Justice, *ibid.* 34-36.

<sup>3</sup> M. Burton, 'How different are "false" allegations of rape from false complaints of GBH?' [2013] Crim. L.R. 203; M. Burton *et al*, *Understanding the Progression of Serious Cases through the Criminal Justice System: Evidence Drawn from a Selection of Casefiles* Ministry of Justice Research Series 11/12 (2012).

<sup>4</sup> A. Levitt QC and CPS Equality and Diversity Unit, *Charging Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Rape and Domestic Violence Allegations* (2013).

<sup>5</sup> C. Hoyle *et al*, *The Impact of Being Wrongly Accused of Abuse in Occupations of Trust: Victims' Voice* (2016).

<sup>6</sup> E.N. O'Neal *et al*, 'The truth behind the lies: The complex motivations for false allegations of sexual assault' (2014) 24 *Women & Criminal Justice* 324.

<sup>7</sup> C.L. Saunders, 'The Truth, the half-truth, and nothing like the truth: Reconceptualizing false allegations of rape' (2012) 52 *British Journal of Criminology* 1152; L. McMillan, 'Police officers' perceptions of false allegations of rape' (2016) *Journal of Gender Studies* 1; C. Spohn *et al*, 'Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Reports' (2014) 48 *Law & Society Review* 161.

<sup>8</sup> For discussion of these issues by politicians, see: P. Rumney and R.A. Fenton, 'Rape, Defendant Anonymity and Evidence-Based Policy Making' (2013) 76 *MLR* 109.

<sup>9</sup> One of the worst contemporary examples involves the complainant in the Ched Evans case. The abuse directed at her, including death threats, led her to repeatedly change her name and move home: 'Ched Evans's rape victim had to change name and move five times, says father' *The Guardian* 28 December 2014. See also: BBC News, Ched Evans: Nine admit naming rape victim on social media 5 November 2012 <http://www.bbc.co.uk/news/uk-wales-north-east-wales-20207408> [last accessed 19 May 2017].

making false accusation,<sup>10</sup> amid suggestions that women are ‘aggressively’ prosecuted by the Crown Prosecution Service (hereafter CPS).<sup>11</sup>

The purpose of this article is to further deepen our understanding of the topic by examining a unique data set that explores the nature and characteristics of 701 cases involving individuals who purport to have been falsely accused of rape, child sexual abuse, child abuse/neglect and other forms of wrongdoing.<sup>12</sup> The article aims to provide an insight into the nature and characteristics of these purported false accusations, which were reported to an organisation that exists to provide support and advice to the falsely accused. The article proceeds by first, critically examining a range of contextual issues, including the labelling of false allegations, trends in the current scholarly literature and the suggestion that discussing false allegations is dangerous and an issue best ignored. Second, the article discusses the methodological challenges posed by the research featured in this article and goes on to detail the findings derived from the quantitative data. Finally, the implications of the findings for policy development are discussed, along with suggestions for future research.

### 1. The importance of terminology

Whatever term is used to refer to false allegations of criminal and other misconduct, the phenomenon covers a great deal of ground. The notion of ‘false’ in the sense of a deliberate fabrication does not accurately describe all false allegations and the use of the word ‘allegation’ may also be inappropriate in certain instances. In police, social service or medical-forensic investigations there may be no allegation at all. Instead, there may be cases where there is suspicion, but no direct accusation. However, those caught up in the investigative process may feel that they are being accused.<sup>13</sup> Amid the references to ‘false allegations’ in the research and practitioner literature, there exist a bewildering array of other words and terms.<sup>14</sup> Some studies combine the notion of falsity with the motives underpinning an allegation when referring to malicious allegations.<sup>15</sup> Other studies acknowledge the uncorroborated or uncertain nature of an allegation which may or may not be true by referring to ‘unsubstantiated’,<sup>16</sup> ‘unproven’,<sup>17</sup> ‘unconfirmed’<sup>18</sup> allegations or

<sup>10</sup> The group Women Against Rape has been campaigning for an end to the prosecution of women who have allegedly made false allegations of rape, arguing *inter alia* that in several cases, women have been prosecuted for perverting the course of justice when they were, in fact, genuine victims of rape. See: <http://womenagainstrape.net/campaign/false-allegations-or-miscarriages-justice> [last accessed 19 May 2017].

<sup>11</sup> S. Hayden, ‘Campaigners say British Authorities Must End ‘Aggressive Pursuit’ of Women for Fae Rape Claims’ Vice News 3 December 2014. The CPS’s prosecution data would tend to cast doubt on the aggressive prosecution claim. See: Levitt *et al*, *supra* n 4.

<sup>12</sup> This article will refer to the 701 as either cases or participants depending on the context.

<sup>13</sup> Davies, *infra* n 132.

<sup>14</sup> For discussion of various sources of meaning, see: M.M. Aiken, ‘False allegation: A concept in the context of rape’ (1993) 31 *Journal of Psychosocial Nursing and Mental Health Services* 15.

<sup>15</sup> Burton *et al*, *supra* n 3.

<sup>16</sup> Y-L. Chiu *et al*, ‘Allegations of maltreatment and delinquency: Does risk of juvenile arrest vary substantiation status?’ (2011) 33 *Children and Youth Services Review* 855.

<sup>17</sup> C.A. Plummer and J. Eastin, ‘The effect of child sexual abuse allegations/investigations on the mother/child relationship’ (2007) 13 *Violence Against Women* 1053, 1061.

<sup>18</sup> L. Ahlgrim-Delzell and J.R. Dudley, ‘Confirmed, unconfirmed, and false allegations of abuse made by adults with mental retardation who are members of a class action lawsuit’ (2001) 25 *Child Abuse & Neglect* 1121.

those involving ‘no evidence of assault’.<sup>19</sup> There are also distinctions in terminology based on who makes the allegation. Some labels refer to a pathway to accusation, for example, ‘mistaken’ allegations arising partly or wholly from professional error.<sup>20</sup> In other instances, the label includes the means by which the allegation is made. For example, reference is sometimes made to the dissemination of ‘social allegations’ or rumours concerning a particular person in a community.<sup>21</sup> Such categories are not discreet because false allegations have differing characteristics and may have more than one underpinning cause or motive.<sup>22</sup>

Further, whatever the label, uncertainties abound. Reference to ‘unsubstantiated’, ‘unproven’ or ‘unconfirmed’ accusations may mean that the allegation is entirely untrue, partially true or wholly true, although that is not to suggest that these options are equally likely. In a criminal justice context, rape suspects may not be charged due to the absence of corroborating evidence, but this does not mean that they are factually innocent. Similarly, an acquittal in a criminal trial cannot be equated with the factual innocence of the defendant. Acquittals may result from many differing factors. In *R v Z*, Lord Hobhouse pointed out that the acquittal of a guilty rape defendant can occur because: ‘The evidence relating to one incident taken in isolation may be unconvincing. It may depend upon a straight conflict of evidence between two people. It may leave open seemingly plausible explanations. The guilt of the defendant may not be proved beyond reasonable doubt’.<sup>23</sup> Despite these (and other) reasons for the acquittal of the guilty, it is not uncommon, following an acquittal in high profile rape or sexual abuse cases to see calls for the prosecution of the complainant. This suggests a poor understanding of the factors that can lead to a not guilty verdict.<sup>24</sup>

The discussion of false allegations sometimes involves a claim that they are common and easily made.<sup>25</sup> It is argued that such beliefs are informed by negative cultural attitudes

<sup>19</sup> L. Kelly *et al*, *A Gap or a Chasm? Attrition in Reported Rape Cases* (London: Home Office, 2005) 46. For further discussion, see *infra* nn 33-35 and accompanying text.

<sup>20</sup> *Re R and Q* [2015] EWFC 26 (Fam) paras. 132-139 (a Family Court judge stating that she was ‘dismayed’, ‘troubled’ ‘perturbed’ and ‘bemused’ over a doctor’s medical diagnosis of child sexual abuse and the doctor’s conduct).

<sup>21</sup> Hoyle, *supra* n 5, 19.

<sup>22</sup> O’Neal *et al*, *supra* n 6.

<sup>23</sup> *R v Z* [2000] 2 A.C. 483, 508E. Of course, there are other reasons for guilty rape defendants being found not guilty. For example, a jury might be influenced in its deliberations by factors beyond the evidence presented in the trial, such as rape myths. For discussion, see: L. Ellison and V. Munro, ‘Reacting to Rape: Exploring mock jurors’ assessments of complainant credibility’ (2008) 49 *The British Journal of Criminology* 202.

<sup>24</sup> For discussion of these issues, see: A. Sims, ‘Ched Evans: Suggestion woman at centre of case should be prosecuted “intellectually flawed”’ *The Independent* 15 October 2016 (discussing the Ched Evans case and noting *inter alia* the absence of actual evidence of a false allegation in the case). The Evans case is a particularly egregious example of calls for a rape complainant to be prosecuted. As noted by one commentator: ‘X has never asserted that she was raped. She has always simply maintained that she had no memory of what happened. It was the prosecution case – the case theory of the Crown Prosecution Service – that she was raped’: ‘10 myths busted about the Ched Evans case’ 14 October 2016 <https://thesecretbarrister.com/2016/10/14/10-myths-busted-about-the-ched-evans-case/> [last accessed 19 May 2017].

<sup>25</sup> McMillan, *supra* n 7; Rumney, *infra* n 48.

towards women in which they are portrayed as unbelievable, malicious liars<sup>26</sup> and that these beliefs impact on social and institutional responses to rape.<sup>27</sup> The depiction of women as malicious liars is contradicted by existing data which suggests that allegations arising from a malicious motive are a relatively small subset of the total number of false accusations.<sup>28</sup> Indeed, to be properly understood it is important to note that there are a number of types of non-malicious false allegation which likely comprise most cases. First, there is a distinction to be made between a maliciously motivated false accusation and errors made in good faith by professionals<sup>29</sup> or complainants who genuinely believe they have been raped but this belief is rooted in some form of psychiatric condition.<sup>30</sup> Second, there are false allegations that result from a desire for sympathy, attention or some form of assistance.<sup>31</sup> Third, a good faith false accusation might be made by a third party arising out of a genuine concern for the safety of another person whom they believe has been raped.<sup>32</sup>

A fourth type of non-malicious allegation involves a complainant who goes to the police, but is unsure as to whether non-consensual sex took place when they were heavily intoxicated. After investigation there appears to be no evidence to corroborate the suspicion.<sup>33</sup> Kelly *et al* excluded such cases from the category of false allegations and created a separate category of 'no evidence of assault'.<sup>34</sup> It is certainly the case that in many genuine rapes, there is no forensic or other corroborating evidence.<sup>35</sup> As such, 'no evidence of assault' cases do not fit easily within the false allegation category because the allegations itself is uncertain and it is therefore inappropriate to label the allegation as false. A fifth type of non-malicious allegation is a 'false account' which is an allegation that is partially, but not wholly untrue.<sup>36</sup> Sixth, a false allegation may result from mistaken identification by

<sup>26</sup> L. Kelly, 'The (in)credible words of women: False allegations in European rape research' (2010) 16 *Violence Against Women* 1345.

<sup>27</sup> D.A. Weiser, 'Confronting Myths About Sexual Assault: A Feminist Analysis of the False Report Literature' [2017] 66 *Family Relations* 46.

<sup>28</sup> Kelly *et al*, *supra* n 19, 48-49 (discussing allegations involving a revenge motive and noting that such a category does not 'do justice to the complexity of the circumstances involved').

<sup>29</sup> N.M.C. Bala *et al*, 'Sexual abuse allegations and parental separation: Smokescreen or fire?' (2007) 13 *Journal of Family Studies* 26. The US based National Registry of Exonerations provides data which indicates that false or misleading forensic evidence is a contributing factor in exonerations in child sexual abuse and sexual assault cases <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> [last accessed: 19 May 2017].

<sup>30</sup> P. Hays, 'False, but Sincere Accusations of Sexual Assault made by Narcotic Patients' (1992) 60 *Medico-Legal Journal* 265; O'Neal *et al*, *supra* n 6.

<sup>31</sup> O'Neal *et al*, *supra* n 6, 332-334.

<sup>32</sup> M. Burton *et al*, *Understanding the Progression of Serious Cases through the Criminal Justice System: Evidence Drawn from a Selection of Casefiles* Ministry of Justice Research Series 11/12 (2012) 20.

<sup>33</sup> Kelly *et al*, *supra* n 19, 46-47. Here, suspicion is arguably a better word to use than allegation.

<sup>34</sup> *Ibid*. No evidence of assault cases are not limited to this type of scenario and include instances where someone is found with injuries and rape is suspected, but it becomes clear that no rape occurred (at 46).

<sup>35</sup> For example, numerous studies have found a significant proportion of victims do not suffer physical injury. For discussion, see: Kelly *et al*, *supra* n 19, 22; Feist *et al*, *Investigating and Detecting Recorded Offences of Rape* (2007) 22; I.T. Bownes, 'Rape: A Comparison of Stranger and Acquaintance Assaults' (1991) 31 *Med. Sci. Law* 102, 106; C.M. Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000* (2002) 2.

<sup>36</sup> Saunders, *supra* n 7.

witnesses.<sup>37</sup> In this category of case a rape has occurred but the wrong person is identified as the perpetrator.<sup>38</sup> Lastly, a person may wrongly allege rape without understanding what the legal definition of rape entails.<sup>39</sup> Recognising the existence of non-malicious allegations is an important means of challenging social attitudes that presume a malicious motive. However, altering perceptions of rape and false allegations requires a willingness to educate and engage with this subject matter.

## 2. False allegations as a legitimate topic of scholarly concern?

It has been argued that discussing the issue of false rape allegations is dangerous because it may feed into societal myths concerning women as untrustworthy, malicious liars.<sup>40</sup> It is also claimed that discussing falsity may lead to a 'backlash against believing victims'.<sup>41</sup> The spectre of false allegations can impact on perceptions of rape<sup>42</sup> and there is contemporary domestic evidence that some police officers believe that a very large number of rape allegations are false.<sup>43</sup> Evidence from North America suggests that for some police officers, a belief that an allegation is untrue might be influenced by stereotypical beliefs about how a genuine victim of rape should behave. Such beliefs may also impact the investigative process.<sup>44</sup> Given such misunderstandings, it is not unreasonable to argue that a focus on the issue, particularly if it is ill-informed, could fuel stereotypical beliefs and influence the treatment of rape complainants by criminal justice professionals<sup>45</sup> and wider society.

<sup>37</sup> National Registry of Exonerations, *supra* n 29 (data shows that witness identification error is a contributing factor in exonerations in child sexual abuse and sexual assault cases).

<sup>38</sup> G. Topham, 'Man wrongly convicted of sexual assault is freed after 17 years in jail' *The Guardian* 13 December 2013 <https://www.theguardian.com/uk-news/2013/dec/13/man-wrongly-convicted-sexual-assault-freed-17-years> [last accessed: 19 May 2017].

<sup>39</sup> P. Rumney *et al*, *A Comparative Analysis of Operation Bluestone: A Specialist Rape Investigation Unit – Final Report* (2017).

<sup>40</sup> L. Kirkham, 'The Dangerous Ramifications of *Newsweek's* Rape Accusations Story' 12 December 2015 <http://www.theestablishment.co/2015/12/12/the-dangerous-ramifications-of-newsweeks-story-on-rape-accusations/> [last accessed 19 May 2017] (arguing *inter alia* 'Our continued fixation on the ruined lives of those accused of rape is not just wrong; it's actively dangerous').

<sup>41</sup> J. Bindel, 'Britain's Apologists for Child Abuse' *Standpoint Magazine* September 2015. For a related point, see: Curtis, *infra* n 120.

<sup>42</sup> C. Gunby *et al*, 'Regretting it After? Focus Group Perspectives on Alcohol Consumption, Nonconsensual Sex and False Allegations of Rape' (2013) 22 *Social & Legal Studies* 87, 96 (noting 'Almost all participants argued they were likely to be infrequent due to there being "no real reward" ... and that women would not want to go through the intrusive physical examination that would stem from making a claim').

<sup>43</sup> McMillan, *supra* n 7, 3-4 (officers estimating a false allegation rate of between 5-90% of reported rapes, with a mean of 53%).

<sup>44</sup> R.M. Venema, 'Police officer schema of sexual assault reports: Real rape, ambiguous cases, and false reports' (2016) 31 *Journal of Interpersonal Violence* 872.

<sup>45</sup> Such arguments are often made in the context of police responses to rape: P. Johnston, 'Rape convictions at record low in "culture of scepticism"' *The Telegraph* 25 February 2005 <http://www.telegraph.co.uk/news/uknews/1484361/Rape-convictions-at-record-low-in-culture-of-scepticism.html> [last accessed 19 May 2017]. P. Peachey, "'A culture of disbelief": New figures reveal wide variations in how different police forces treat reported rapes nationwide' *The Independent* 31 January 2014 <http://www.independent.co.uk/news/uk/crime/a-culture-of-disbelief-new-figures-reveal-wide-differences-in-how-police-forces-treat-reported-rapes-9097339.html> [last accessed 19 May 2017]. References to a 'culture of disbelief' in the police recording of crime was made in 2014 following the publication of a report by Her Majesty's Inspectorate of Constabulary: HMIC, *Crime-recording: making the victim count* (2014). The report



Further, it has been argued that focusing on false allegations is a diversion from the much more common problem of sexual violence<sup>46</sup> and the mischaracterisation of false allegations risks undermining all rape complainants.<sup>47</sup>

To argue that discussions around false accusations are dangerous fails to distinguish careful, evidence-based approaches to the topic from ill-informed discussions, informed by myths and mischaracterisations. In an area where there is clear evidence of confusion and mistaken assertions of fact, it is important that errors are challenged, and counter-arguments are properly made.<sup>48</sup> Further, the danger argument fails to take account of the interests of those who are falsely accused. The falsely accused have a legitimate basis for arguing that they are victims of wrongdoing. In some instances, this victim status is recognised in law. Criminal charges relating to perverting the course of justice and wasting police time reflect the wastage of resources and harm done to the criminal justice process that relies on truth telling by witnesses.<sup>49</sup> When a case involves a targeted false allegation,

suggested that a significant number of rape allegations, as well as some other serious crimes were wrongly recorded by the police. A journalist asked a spokeswoman whether this suggested a ‘culture of disbelief’ amongst police officers. She agreed that there ‘is something around that’, but did so by citing a report on the police response to the allegations surrounding Jimmy Savile, not the 2014 report: D. Barrett, ‘Concern as report exposes huge variation in way police handle rape cases’ *The Telegraph* 31

January 2014 <http://www.telegraph.co.uk/news/uknews/crime/10607416/Concern-as-report-exposes-huge-variation-in-way-police-handle-rape-cases.html> [last accessed 19 May 2017].

<sup>46</sup> C. Emmott, ‘How Not to Report on False Rape Allegation Statistics - BBC Newsbeat Shows Us How’ *HuffPost Blog* 13 March 2013 [http://www.huffingtonpost.co.uk/chloe-emmott/false-rape-allegation-statistics-bbc-newsbeat\\_b\\_2878392.html](http://www.huffingtonpost.co.uk/chloe-emmott/false-rape-allegation-statistics-bbc-newsbeat_b_2878392.html) [last accessed 19 May 2017]. P.G. Jaffe *et al*, ‘Custody disputes involving allegations of domestic violence: Toward a differentiated approach to parenting plans’ (2008) 46 *Family Court Review* 500 (discussing allegations of partner violence).

<sup>47</sup> Glosswitch, ‘False rape allegations are rare – rape is not. Stop using the case of Jemma Beale to discredit all women’ *The Independent* 25 August 2017 (criticising judicial comments which the author argues ‘reinforc[e] the idea that one very unusual case [involving a false allegation] should have repercussions for victims of a far more common crime’) <http://www.independent.co.uk/voices/jemma-beale-woman-lie-about-rape-ten-years-in-prison-not-all-woman-liars-not-all-men-rapists-a7912766.html> [last accessed 19 September 2017].

<sup>48</sup> For discussion of some of these problems, see: P. Rumney, ‘False Allegations of Rape’ (2006) 65 *The Cambridge Law Journal* 128. There are numerous examples of errors and exaggerated claims in media commentary on the issue. See, for example, E. Wiseman, ‘The truth about women “crying rape”’ *The Guardian* 31 March 2013 <https://www.theguardian.com/lifeandstyle/2013/mar/31/truth-about-women-crying-rape> [last accessed 19 September 2017] (describing as ‘fiction’ the assertion that women lie about rape, then later shifting to an acknowledgement that there are ‘real cases of false allegations, but the idea that it is a widespread problem, a weapon women use, is fiction’). This apparent denial of the existence of malicious allegations is as factually incorrect as her first fiction claim. It might be that similarly to the first claim, she means that they are not widespread. This may well be closer to the truth of the matter). Elsewhere claims are made regarding a supposed ‘epidemic’ of false allegations or that most rape allegations are false: C. Young, ‘Crying Rape’ *Slate.com* 18 September 2014 [http://www.slate.com/articles/double\\_x/doublex/2014/09/false\\_rape\\_accusations\\_why\\_must\\_be\\_pretend\\_t hey\\_never\\_happen.html](http://www.slate.com/articles/double_x/doublex/2014/09/false_rape_accusations_why_must_be_pretend_t hey_never_happen.html) [last accessed 19 May 2017]. Some Men’s Rights Activists also make extraordinary claims about false rape allegations: ‘Flooded by false rape allegations’ <http://www.angryharry.com/Flooded-By-False-Rape-Allegations.htm> [last accessed 19 May 2017] (claiming *inter alia* that ‘the vast majority of rape and “abuse” allegations made to the police are false’). See also: A. Campbell, ‘Most Rape Accusations Are False, Idaho Sheriff Says’ *Huffington Post* 16 March 2016 [http://www.huffingtonpost.com/entry/most-rape-accusations-consensual-idaho\\_us\\_56e96c58e4b065e2e3d7faf6](http://www.huffingtonpost.com/entry/most-rape-accusations-consensual-idaho_us_56e96c58e4b065e2e3d7faf6) [last accessed: 19 May 2017]. See also: McMillan, *supra* n 7 (discussing the views of police officers).

<sup>49</sup> *R (on the application of Ram) v DPP* [2016] EWHC 1426 (Admin) para. 21 (counsel for the claimant referring to the offence of perverting the course of justice as ‘striking at the heart of the criminal justice system’).

the person who is falsely accused is a secondary victim of this criminal conduct. Such a person has legal standing to request a review of a Crown Prosecution Service decision to refuse to prosecute a person who makes a false allegation<sup>50</sup> and while it cannot be assumed that large numbers of false allegations are directed at a specific individual, this is no comfort to those who are targeted, arrested and charged.<sup>51</sup> The falsely accused, along with family members, may suffer a range of serious consequences,<sup>52</sup> including social stigma, stress and anxiety,<sup>53</sup> threats, violence,<sup>54</sup> harassment<sup>55</sup> criminal investigation,<sup>56</sup> social service intervention<sup>57</sup> court proceedings and imprisonment.<sup>58</sup> In some extreme cases, false allegations can result in the target of the allegation being killed.<sup>59</sup> There is also evidence emerging that false and seemingly malicious allegations of wrongdoing are sometimes made in the course of racial harassment.<sup>60</sup> As such, the severity of potential or actual harm resulting from false allegations provides a further basis for seeing the falsely accused as legitimate victims.

The suggestion that the discussion of false allegations is dangerous for victims of sexual violence runs counter to crucial trends in the training of professionals working in criminal justice, medicine and other specialist fields where the risks associated with poor

<sup>50</sup> *Ibid.*

<sup>51</sup> The evidence on this specific issue is mixed. Kelly *et al* found a small number of false allegations involved the naming of specific individuals, with few being arrested or charged: *supra* n 19, 47. More recent research has found a much higher rate of suspect identification and arrest, but like Kelly *et al*, few cases leading to charge: Rumney *et al*, *supra* n 39.

<sup>52</sup> Hoyle, *supra* n 5, 6-7; J. Wells, ‘“Guilty until proven innocent”: life after a false rape accusation’ *The Telegraph* 28 October 2015 <http://www.telegraph.co.uk/men/thinking-man/11912748/Guilty-until-proven-innocent-life-after-a-false-rape-accusation.html> [last accessed 19 May 2017]; R. Mendick, ‘Fire chief jailed after being falsely accused of historic child sex abuse blames police for his wife’s death’ *The Telegraph* 25 February 2017 <http://www.telegraph.co.uk/news/2017/02/25/fire-chief-jailed-falsely-accused-historic-child-sex-abuse-blames/> [last accessed 19 May 2017].

<sup>53</sup> *Ibid.*

<sup>54</sup> Hoyle *et al*, *supra* n 5, 18-19.

<sup>55</sup> *Ibid.* 19.

<sup>56</sup> *R v Weiner* [2011] EWCA Crim 1249, para. 15 (featuring an individual who had indecent imagery of children planted on his computer. During a sentencing appeal involving the person who planted the material, the Court of Appeal referred to the ‘enduring harm which the allegations have caused to [the victim] and his wife’).

<sup>57</sup> Hoyle *et al*, *supra* n 5.

<sup>58</sup> ‘Woman jailed for 10 years for making series of false rape claims’ *The Guardian* 24 August 2017 (male sentenced to 7 years’ imprisonment for rape that was later confirmed to be a false allegation).

<sup>59</sup> *R v Duggan* [2013] EWCA Crim 1202 (sentencing of defendants for offences related to the killing of a male who was the subject of a retracted allegation of rape two years’ earlier). In July 2013, Bijan Ebrahimi was falsely accused of being a paedophile by a neighbour and a short time later he was beaten to death by the same neighbour. Following his death and the conviction of his killer, the Independent Police Complaints Commission referred the actions of several police officers and a Police Community Support Officer to the Crown Prosecution Service. Two of these referrals resulted in prosecution and convictions for misconduct in public office and the officers were imprisoned: G. Bennett, ‘Two Bristol police officers jailed for their failings surrounding the murder of Bijan Ebrahimi’ *Bristol Post* 9 February 2016 [no web link available]. For discussion of the events surrounding the murder, see: *R v James and Norley* 28 November 2013 (Sentencing remarks of Mr Justice Simon) and Hoyle *et al*, *supra* n 49.

<sup>60</sup> *Ibid.* C. Funnell, *Racism by stealth: The construction of racist hate crimes* PhD Cardiff University (2013) 223-224, 229-230.



professional decision making and work practices are widely recognised.<sup>61</sup> For example, there exists a large literature concerning the accurate identification of cases involving child abuse and neglect in order to assist professionals in the avoidance of error.<sup>62</sup> The impact of errors that give rise to false accusations has led to it being recognised as a cause of miscarriages of justice.<sup>63</sup> Indeed, exoneration data from North America suggests that false and misleading forensic evidence, official misconduct, perjury or false allegations, mistaken witness identification and false confessions are a contributory cause of wrongful convictions in sexual assault, child sexual abuse and other criminal cases.<sup>64</sup>

The importance of developing robust working practices to minimise the risk of error also exist in other contexts. Research has examined the problem of police officers asking leading questions of child sexual abuse complainants and the danger this poses for the credibility of their evidence in legal proceedings.<sup>65</sup> The need for appropriate questioning in child sexual abuse cases has led to the training and accreditation of officers, along with guidance on appropriate interviewing practices.<sup>66</sup> Research has found that human memory can be flawed and may be externally influenced by such things as manipulation or trauma.<sup>67</sup> While this is an area of controversy, there is little doubt that some memories of sexual violence and abuse are inaccurate or even completely false.<sup>68</sup> Research has also examined the issue of

<sup>61</sup> Within the relevant literature, the risks associated with poor professional judgment or working practice are often not discussed by reference to false allegations. They are however, recognised pathways to false allegation.

<sup>62</sup> The literature in this area is voluminous. See for example, K.J. Horselenberg *et al*, 'The memorandum of good practice: Theory versus application' (2001) 25 *Child Abuse & Neglect* 669; M.E. Lamb *et al*, 'The effects of intensive training and ongoing supervision on the quality of investigative interviews with alleged sex abuse victims' (2002) 6 *Applied Developmental Science* 114; T. Sanders and C. Cobley, 'Identifying non-accidental injury in children presenting to A&E departments: an overview of the literature' (2005) 13 *Accident and emergency nursing* 130; N. Trocmé, 'Differentiating Between Substantiated, Suspected, and Unsubstantiated Maltreatment in Canada' (2009) 14 *Child Maltreatment* 4; W. O'Donohue *et al*, 'Analyzing child sexual abuse allegations' (2013) 13 *Journal of Forensic Psychology Practice* 296.

<sup>63</sup> M. Naughton, *The innocent and the criminal justice system: a sociological analysis of miscarriages of justice* (Palgrave Macmillan, 2013) ch. 3.

<sup>64</sup> Data from the National Registry of Exonerations indicates that there are multiple contributing factors for wrongful convictions. In 69% of sexual assault cases and 14% of child sexual abuse cases mistaken witness identification was a contributing factor to the miscarriage of justice. See: 'Exonerations by contributory factor': <http://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> [Last accessed 19 May 2017].

<sup>65</sup> E.G. Mart, 'Common errors in the assessment of allegations of child sexual abuse' (2010) 38 *The Journal of Psychiatry & Law* 325. In a 2014 joint review of police interviewing of child sexual abuse complainants it was found that interviewing officers asked 'inappropriate leading questions' in 28 of 60 case files: HMCPSP and HMIC, *Achieving Best Evidence in Child Sexual Abuse Cases - A Joint Inspection* (2014) para. 7.18. See also Appendix B re leading questions.

<sup>66</sup> For discussion of a range of issues pertaining to improving the conduct of Achieving Best Evidence interviews, see: HMIC, *ibid*.

<sup>67</sup> M. Crespo and V. Fernández-Lansad, 'Memory and Narrative of Traumatic Events: A Literature Review' (2016) 8 *Psychological Trauma: Theory, Research, Practice and Policy* 149.

<sup>68</sup> This is an area characterised by significant levels of disagreement. See for example, E. Loftus and K. Ketcham, *The myth of repressed memory: False memories and allegations of sexual abuse* (Macmillan, 1996); Scoboria *et al*, *infra* n 169. It has been recently suggested that false memories of childhood events are less common than previously thought: C.R. Brewin and B. Andrews, 'Creating Memories for False Autobiographical Events in Childhood: A Systematic Review' (2016) *Applied Cognitive Psychology*. For one of several critical responses to this claim, see: R.A. Nash *et al*, 'Misrepresentations and flawed logic about the prevalence of false memories'

retractions in self-reports of sexual victimisation and why a disclosure of victimisation at one point may be retracted when the survey is repeated at a later time.<sup>69</sup> Finally, there is an emerging literature that examines the under-researched area of avoiding false positive results in quantitative studies of sensitive life events, including sexual violence.<sup>70</sup>

All these areas of research or efforts to improve professional practice possess elements that could be used to fuel cynicism around rape or sexual abuse allegations and promote disbelief in the testimony of victims. Thus, they could all be seen as potentially dangerous. To criticise ill-informed attitudes concerning false allegations and also suggest that the topic should not be discussed for fear of fuelling disbelief of victims, is a flawed approach. Silence on the topic only serves to perpetuate myths and stereotypes the critics seek to challenge. There exists a large academic and practitioner literature in this area which serves to educate, identify poor professional practice and suggests improved evidence-based approaches to reduce error and better understand risk and the pathways to false accusation. This approach also improves the accuracy of professional decision making, as well as the results of police officer interviews with complainants. Indeed, to take one example, researchers have noted the existence of a 'heathy debate' concerning the substantiation of child maltreatment allegations and issues of future risk.<sup>71</sup> The research literature and associated debates has furthered the development of new knowledge and understanding.

### 3. How common are false allegations?

The rate at which false allegations are said to occur is highly dependent on the measure that is used to count them, sampling techniques and other methodological issues. Most domestic studies examine the prevalence or incidence of false allegations in the context of rape and a small number consider other criminal wrongdoing such as assault<sup>72</sup> and domestic violence.<sup>73</sup> There are limitations to our current knowledge on the prevalence or incidence of false allegations because research studies use measures of falsity that vary in terms of

(2017) 31 *Applied Cognitive Psychology* 31. For a response by the original authors, see: B. Andrews and C.R. Brewin, 'False Memories and Free Speech: Is Scientific Debate Being Suppressed?' (2017) 31 *Applied Cognitive Psychology* 45.

<sup>69</sup> B. Krahe *et al*, 'Measuring Sexual Aggression: The Reliability of the Sexual Experiences Survey in a German Sample' (1999) 14 *Journal of Interpersonal Violence* 91 (explaining that retractions are likely to be false negatives). Studies that have examined child abuse allegations have found that false negatives are significant in number, whereas false positives are difficult to identify and are probably rare: J. Hardt and M. Rutter, 'Validity of adult retrospective reports of adverse childhood experiences: review of the evidence' (2004) 45 *Journal of child psychology and psychiatry* 260; R.J. Pinto and A.C. Maia, 'A Comparison Study between Official Records and Self-Reports of Childhood Adversity' (2013) 22 *Child Abuse Review* 354, 355; N. Pereda *et al*, 'The prevalence of child sexual abuse in community and student samples: A meta-analysis' (2009) 29 *Clinical Psychology Review* 328, 229, 335; D.M. Fergusson *et al*, 'The stability of child abuse reports: a longitudinal study of the reporting behaviour of young adults' (2000) 30 *Psychological Medicine* 529.

<sup>70</sup> The problem of false positives appears unlikely in well conducted studies: M.E. Berzofsky *et al*, 'Local Dependence in Latent Class Analysis of Rare and Sensitive Events' (2014) 43 *Sociological Methods & Research* 137; M.P. Koss *et al*, 'Revising the SES: A collaborative process to improve assessment of sexual aggression and victimization' (2007) 31 *Psychology of Women Quarterly* 357.

<sup>71</sup> Chiu *et al*, *supra* n 16, 855.

<sup>72</sup> See for example, Burton, *supra* n 32.

<sup>73</sup> Levitt, *supra* n 4.

reliability,<sup>74</sup> with few authors recognising this problem or the differing measures of falsity used by researchers and criminal justice professionals.<sup>75</sup> All the studies in this area have two inherent limitations. The first is that false allegations are hard to identify in the absence of evidence establishing that an allegation is untrue. As such, without the existence of evidence proving falsity it is almost impossible to identify such cases unless the complainant later retracts the allegation. The second limitation is that retractions may not be genuine and could result from threats or manipulation. Therefore, researchers are hampered in identifying a true false allegation rate. Further, it cannot be assumed that these two limitations offset each other. In addition to these limitations, there is little consistency in the methodologies adopted in the false allegation studies conducted around the world and many studies have little, or no credibility.<sup>76</sup> This partly explains the enormous variation in the falsity rates which are as low as 0.6%<sup>77</sup> and as high as 90%.<sup>78</sup> Reviews of the more rigorous international studies suggest a false allegation rate of 2-8%<sup>79</sup> and 2-10%<sup>80</sup> of rape offences initially recorded as crimes by the police. While most of the studies that produce results within this lower range are better than those suggesting much higher rates of falsity, the inherent methodological limitations of existing study methodologies mean that the data should be read with caution.

Domestic research has used a range of measures when determining the rate of false allegations of rape. Some studies use the Home Office Counting Rules (HOCR) criteria which stipulate that when the police are determining whether to 'cancel' a recorded offence of rape (that is, to remove it as a recorded offence) they may do so *inter alia* where 'additional verifiable information [AVI] determines that no notifiable crime occurred'.<sup>81</sup> Essentially, this is a proxy measure for false allegations,<sup>82</sup> and is arguably the best means by which to measure falsity. The absence of corroborative evidence of rape does not fulfil the AVI standard and where there is uncertainty as to what has occurred the HOCR stipulates that the 'rape must remain recorded'.<sup>83</sup> Instead, falsity must be proven through the use of such things as CCTV evidence, compelling witness evidence or a genuine retraction of the allegation by a complainant.<sup>84</sup> The AVI standard cannot be made out due to an investigating

<sup>74</sup> Rumney, *supra* n 39, 134-135. See *infra* n 88 and accompanying text.

<sup>75</sup> Saunders, *supra* n 7, (noting a difference between false *accusations* and false *accounts*. False accusations are simply untrue; false accounts involve a genuine allegation but includes a falsehood or omission).

<sup>76</sup> Lonsway *et al*, *infra* n 79, 1.

<sup>77</sup> This figure is based on the number of cases over a 17-month period prosecuted for a criminal offence related to a false allegation of rape (35) as a percentage of prosecuted rape cases (5,651): Levitt, *supra* n 4, 6.

<sup>78</sup> C.H. Stewart, 'A retrospective survey of alleged sexual assault cases' (1981) *Police Surgeon* 28, 32.

<sup>79</sup> K. Lonsway *et al*, 'False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault' The National Center for the Prosecution of Violence Against Women (2009) 2 [http://ndaa.org/pdf/the\\_voice\\_vol\\_3\\_no\\_1\\_2009.pdf](http://ndaa.org/pdf/the_voice_vol_3_no_1_2009.pdf) [last accessed 19 May 2017]. See also: C. Spohn *et al*, *supra* n 7 (the authors found a rate of 4.5%).

<sup>80</sup> D. Lisak *et al*, 'False allegations of sexual assault: An analysis of ten years of reported cases' (2010) 16 *Violence Against Women* 1318, 1330.

<sup>81</sup> Home Office, *The Counting Rules for Recorded Crime* (2017) section C.

<sup>82</sup> This fits with the language used in the HOCR and the Home Office guidance on crime recording that gives two examples of AVI cases, both of which involve false allegations: *ibid*.

<sup>83</sup> *Ibid*.

<sup>84</sup> A genuine retraction is one that is made freely, in the absence of coercion and is an acknowledgement that no rape took place.

officer's hunch<sup>85</sup> or by ignoring relevant evidence when deciding to cancel an allegation.<sup>86</sup> Two domestic studies using the AVI standard have found false allegation rates of 7.9%<sup>87</sup> and 7.7%.<sup>88</sup> In the largest domestic study of its type, Kelly *et al* found a false allegation rate of 3% 'possible' or 'probable' false rape allegations.<sup>89</sup> Research by Burton *et al* also found a 3% false reporting rate in rape cases and a 2% rate in assault cases based on a definition of falsity involving a malicious motive.<sup>90</sup> Thus in these four studies there appear to be three differing measures of falsity. Burton *et al*'s counting of malicious allegations is a narrower measure of falsity than that adopted by Kelly *et al* or the two AVI studies (Kelly *et al* and the AVI studies appear to use similar, though not identical measures). As a result, Burton *et al* may have underestimated the rate of false reporting in their sample of cases because false allegations encompass a much broader range of motivational and casual factors, than malice alone.<sup>91</sup>

A 17-month Crown Prosecution Service (CPS) study of false allegations of rape and domestic violence in which the accuser was prosecuted for perverting the course of justice or wasting police time, identified 121 suspects. Of these, '35 were prosecuted: 25 for perverting the course of justice and ten for wasting police time.'<sup>92</sup> This research has been widely cited in media reporting as confirming false allegations are rare,<sup>93</sup> 'extremely rare'<sup>94</sup> and that all allegations outside of the narrow category of prosecutions are true.<sup>95</sup> The CPS report authors acknowledged that analysis of data in this area is 'not an exact science'<sup>96</sup> but rejected the suggestion that false allegations of rape or domestic are 'rife.'<sup>97</sup> In critiquing the report, it is important to consider whether prosecutions are a reliable measure of falsity and whether there exist factors that may impact on the reliability of the CPS data.

First, as a general observation it should be acknowledged that the CPS study adopted an unusual measure to count false allegations: criminal prosecution. While the measure has the

<sup>85</sup> HMIC, *Crime-recording: making the victim count* (2014) 75.

<sup>86</sup> *Ibid.* 75-76.

<sup>87</sup> Rumney *et al*, *supra* n 39, 5.

<sup>88</sup> A. Feist *et al*, *Investigating and Detecting Recorded Offences of Rape* (2007) 39. The study rounded up the figure to 8%. Given that police casefile data is normally used in false allegation studies, the use of the HOCR and AVI standard seem the most appropriate measure of falsity.

<sup>89</sup> Kelly *et al*, *supra* n 13, 50. Based on 'some evidential basis' and 'primarily' based on complainant's account.

<sup>90</sup> Burton, *supra* n 3, 21, 20. See also Burton *et al*, *supra* n 32.

<sup>91</sup> O'Neal, *supra* n 6; McNamara, *infra* n 108; A. De Zutter *et al*, 'Motives for filing a false allegation of rape' (2017) *Arch. Sex Behav.* 1 (noting the complex motives underlying false allegations and that 20% of respondents could not identify a reason for their false allegation).

<sup>92</sup> Levitt, *supra* n 4, para. 11). There were also 11 cases involving out of court disposals. The findings are somewhat complicated by the fact that not all the report's 'rape' allegations were in fact allegations of rape. Six involved some other sexual offence: Levitt, *supra* n 4, 5, n 6.

<sup>93</sup> For one of many examples, see: Rape Crisis England and Wales, 'CPS confirms false rape allegations are very rare' 13 March 2013 <http://rapecrisis.org.uk/news/cps-confirms-false-rape-allegations-are-very-rare> [Last accessed 19 May 2017].

<sup>94</sup> Crown Prosecution Service, 'Under the spotlight: perverting the course of justice and wasting police time in cases involving allegedly false rape and domestic violence allegations' 13 March 2013 [http://www.cps.gov.uk/news/latest\\_news/under\\_the\\_spotlight/](http://www.cps.gov.uk/news/latest_news/under_the_spotlight/) [Last accessed 19 May 2017].

<sup>95</sup> L. Pennington, *Everyday Victim Blaming* (EVB Press, 2014) 38.

<sup>96</sup> Levitt, *supra* n 4, 3-4, para. 4.

<sup>97</sup> *Ibid.* para. 63.

important advantage of requiring an evidential basis before describing an allegation as false, prosecutions are not normally used to measure criminality. The reason is that such a narrow point of measurement will miss criminality that does not come to the attention of prosecutors. Second, there is the possibility that some of those who are prosecuted may be genuine victims of rape.<sup>98</sup> As such, a prosecution cannot be equated with guilt. Third, a study of prosecutions will only concern those cases that have satisfied the CPS charging guidelines, including the need for a reasonable prospect of conviction and the prosecution must be in the public interest.<sup>99</sup> In some instances, however, evidence of falsity will not exist - it is difficult to uncover evidence to prove a negative. Indeed, it has been noted that 'attempts to determine whether a person is falsely charging a rape may be unfalsifiable.'<sup>100</sup>

Fourth, in determining whether it is in the public interest to bring a prosecution, the CPS guidance to prosecutors states that prosecutions will be 'extremely rare'<sup>101</sup> and encourages them to take account of a broad range of vulnerability factors: 'The vulnerabilities of the suspect under consideration must be properly assessed and taken into account. Mental health issues, learning difficulties, age, maturity and substance misuse issues may have an impact at both stages of the Full Code test'.<sup>102</sup> This echoes the wider literature which suggests that many false accusers are vulnerable in the sense of being young<sup>103</sup> or suffering from mental health problems,<sup>104</sup> Munchausen by Proxy,<sup>105</sup> learning disabilities,<sup>106</sup> or narcotic addiction.<sup>107</sup> In their analysis of 30 cases involving false allegations, McNamara *et al* found false claims were made in relation to a range of criminal offences<sup>108</sup> and resulted from such factors as mental illness and financial problems. Both males and females also made false allegations to gain 'attention and sympathy.'<sup>109</sup> Such people, they argue 'utilise an event they believe will yield the strongest response from others.'<sup>110</sup>

Thus, it can be argued that there are legitimate welfare concerns that arise in the context of prosecuting false accusers. The CPS report acknowledged the 'complex nature'<sup>111</sup> of false

<sup>98</sup> In recent times, there has been at least one prosecution of a rape complainant who retracted truthful allegations: *R v A (RJ)* [2012] EWCA Crim 434.

<sup>99</sup> CPS, Guidance for Charging Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Allegations of Rape and/or Domestic Abuse [http://www.cps.gov.uk/legal/p\\_to\\_r/perverting\\_the\\_course\\_of\\_justice\\_-\\_rape\\_and\\_dv\\_allegations/#a04](http://www.cps.gov.uk/legal/p_to_r/perverting_the_course_of_justice_-_rape_and_dv_allegations/#a04) [Last accessed 19 September 2017].

<sup>100</sup> J. Belknap, 'Rape Too Hard to Report and Too Easy to Discredit Victims' (2010) 16 *Violence Against Women* 1335, 1339.

<sup>101</sup> CPS, *supra* n 99, para. 3.

<sup>102</sup> *Ibid.* para. 7.

<sup>103</sup> Levitt, *supra* n 4, 11, Table 2 (51% of the false accusers were 21 years' or younger and dropping to 26% for allegations of domestic violence).

<sup>104</sup> O'Neal *et al*, *supra* n 6.

<sup>105</sup> H. A. Schreier, 'Repeated False Allegations of Sexual Abuse Presenting to Sheriffs: When is it Munchausen by Proxy?' (1996) 20 *Child Abuse & Neglect* 985.

<sup>106</sup> C. Jones, 'More Than One Victim: When People with Learning Disabilities Make False Allegations of Sexual Abuse' (2007) 12 *Learning Disability Review* 28.

<sup>107</sup> Hays, *supra* n 30.

<sup>108</sup> J.J. McNamara *et al*, 'Characteristics of False Allegation Adult Crimes' (2012) 57 *J. Forensic Sci.* 643.

<sup>109</sup> *Ibid.* 646.

<sup>110</sup> *Ibid.*

<sup>111</sup> Levitt, *supra* n 4, 4 and para. 61.



allegation cases and the vulnerability of many false accusers only adds to this complexity.<sup>112</sup> The CPS report also notes that prosecutors need to take ‘great care’ before criminalising a young person who has made a false allegation.<sup>113</sup> More generally, the stigma of a criminal conviction may have a particularly onerous impact on a young, vulnerable person. Indeed, the prosecution of the vulnerable may aggravate existing mental health conditions and lead to self-harm or suicide.<sup>114</sup> It might also be that a mentally ill person has made a false allegation in the genuine belief that they have been raped.<sup>115</sup> In such cases, it might will be inappropriate to charge a person with a criminal offence. These types of factors may have resulted in the police not forwarding case files to the CPS for its consideration, thus impacting the number of false allegation cases considered for prosecution.<sup>116</sup> Therefore, it can be argued that there are good reasons why cases might not be prosecuted, but lack of prosecutions cannot be equated with the absence of false accusations. For these reasons, the CPS study is not a reliable source of information on how often false allegations are made.

This leaves us with a contentious area of policy and research where uncertainties abound and gaps in our existing understanding of the topic, remain. Despite scholarly claims that the rate of false allegations is ‘extremely rare’<sup>117</sup> the limitations inherent within the existing research literature mean that it is impossible to know the accuracy of this assertion.<sup>118</sup> The existing estimates, even when derived from research using the best methodologies available, are still only estimates, with factors potentially inflating or deflating the estimates. This suggests a need for caution. This does not mean, however, that there is a robust empirical basis for arguing that the rate is much higher. If the estimate range of 2-8 % or 2-10% was much higher, for example, 30-40% then this would create some pressing concerns for the police, prosecutors and Parliament that the lower rates do not.<sup>119</sup> It can therefore be argued that the lower range tells us *something* important. For example, it can be stated that there is no robust evidence pointing beyond the high-end estimates of 8-10%. As such, any

<sup>112</sup> *Ibid.* 4 and paras.15, 22-24.

<sup>113</sup> Levitt, *supra* n 4, para. 39-41.

<sup>114</sup> For discussion, S. Marsden, ‘“I know it's selfish but I can see no way out”: Note left by woman, 23, who killed herself as she faced trial accused of false rape claim’ *MailOnline* 17 March 2015 <http://www.dailymail.co.uk/news/article-2998808/I-know-s-selfish-no-way-Note-left-woman-23-killed-faced-trial-accused-false-rape-claim.html#ixzz4fStnpIVQ> [Last accessed 19 May 2017].

<sup>115</sup> Hays, *supra* n 30.

<sup>116</sup> *Ibid.*

<sup>117</sup> K. Hohl and E.A. Stanko, ‘Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales’ (2015) 12 *European Journal of Criminology* 324, 327. The authors cite only studies that suggest a low false reporting rate (the Levitt and Kelly *et al* studies), while ignoring studies with higher rates. See: Feist *et al*, *supra* n 88 and HMCPSI/HMIC, *Without Consent: A Report on the Joint Review of the Investigation and Prosecution of Rape Offences* (2007) (producing figures of 7.7%, 8.1% and 8.3% respectively). As is common in this area, no methodological justification is offered for citing one group of (low rate) findings while neglecting other studies suggesting a higher rate.

<sup>118</sup> Hohl and Stanko cite Saunders as supporting their claim that false allegations are ‘extremely rare’. Saunders notes that while most of her interviewees thought false accusations were rare, she rightly observes: ‘prevalence of false allegations of rape is far from empirically settled’ and the ‘only thing we know with any certainty about the prevalence of false allegations of rape is that we do not know how prevalent they are’: Saunders, *supra* n 7, 1153, 1169.

<sup>119</sup> It is likely that the wastage of police resources, redress for the falsely accused, prosecution of accusers and defendant anonymity would be questions raised were the proven rate to be of that level.



generalised suspicion of rape complainants is unwarranted. However, two points remain. First, while the data tells us something, we do not know how much we can trust the data because of its methodological weaknesses. Telling an imperfect story is not the same thing as establishing a scientifically reliable truth. Second, there is a risk that the uncertainties around the lower end estimates will be ignored and the interests of the accused side-lined to focus primarily on the interests of rape victims.<sup>120</sup> In reality, protecting the interests of the accuser and accused are not mutually exclusive. Further, due process protections for the accused do not rest on the existence of false or malicious accusations, they exist out of a need to restrain the power of the state and ensure procedural justice, irrespective of guilt or innocence. The interests of accuser and accused are better served by a careful reading of evidence and the avoidance of claims that false allegations are a ‘fiction’, ‘extremely rare’ or an ‘epidemic’.<sup>121</sup>

There is a need for caution when citing any of the better studies in this area and avoiding characterisations of the findings as suggesting certainty, when none exists. The limits of adopted methodologies matter, and it is better to acknowledge uncertainty where it exists. This may encourage a more responsible use of data, particularly in the use of the higher end estimate data, which is generally of poor quality and should be avoided. Those who favourably cite a widely referenced higher estimate study conducted by Eugene Kanin often ignore its limitations<sup>122</sup> and the fact that Kanin himself urged caution in the interpretation of his results. He pointed out that ‘our intent is not to suggest that the 41% incidence found here be extrapolated to other populations, particularly in light of our ignorance regarding the structural variables that might be influencing such behavior’.<sup>123</sup> Kanin is one of the few authors to make explicit reference to the limited application of his own findings and it is indicative of the way false allegation data is used that few people favourably citing his work acknowledge Kanin’s own words of caution. This article will proceed by discussing the data that is the subject of the article and includes a detailed discussion of the adopted methodology.

#### 4. Methodology

This research is based upon data provided by a support organisation for individuals who purport to have been falsely accused of criminality, including: rape, child sexual abuse, child abuse/neglect, assault and other wrongdoing. This data is comprised of a self-selecting

<sup>120</sup> See for example, A. Marcotte, ‘4 Things You Should Know About Fake Rape Accusations’ AlterNet 10 December 2014. The author accuses those who support due process rights for those accused of rape as ‘dishonest’ and attempting to ‘scare people into silence’ as part of a ‘continuing pressure on rape victims not to speak out’. She uses due process in a similar manner to those who argue that the real problem is rape, not false allegations and suggests that if due process advocates were sincere they should be ‘clamoring for *more* investigations and *more* trials’ (emphasis in original). See also: A.E. Curtis, ‘Due Process Demands as Propaganda: The Rhetoric of Title IX Opposition’ (2017) 29 *Yale Journal of Law and the Humanities* 101, 115 (arguing *inter alia* that due process advocates use myths and stereotypes, along with the issue of false allegations to criticise the way in which US colleges deal with campus sexual assault with the effect ‘of reducing empathy for victims’).

<sup>121</sup> See *supra* n 48 and n 94 and accompanying text.

<sup>122</sup> For a **critical** analysis of this study, see: Rumney, *supra* n 48, 139-140.

<sup>123</sup> E.J. Kanin, ‘False Rape Allegations’ (1994) 23 *Arch. Sex Behav.* 81, 89.

sample of persons as part of 701 cases from 2008 (n=361) and 2010 (n= 340). All the quantitative data is derived from individuals who contacted the support organisation for assistance with their case.<sup>124</sup> As a result, the research population is self-selecting and cannot be taken to be representative of those who purport to be falsely accused, generally. The support group gathered the data over the phone or via email at the point of first contact by a representative of said organisation.<sup>125</sup> The data provided to the authors was not collected with evaluation in mind. This means that the dataset is limited in terms of its scope and in some respects, incomplete. The data was obtained, stored and used in accordance with appropriate university ethics rules.

An obvious limitation to the adopted methodology is that there is no way of objectively proving that a person who contacted the support organisation was a victim of a false allegation. Similar issues are acknowledged in the context of research involving sexual violence. Russell and Bolen note that research participants may falsely claim to be victims of sexual violence but argue that it is unlikely because the motives that lead people to make false allegations (for example, revenge) are absent in research interviews.<sup>126</sup> This is true, but does not preclude false claims in order, for example, to gain attention.<sup>127</sup> Russell and Bolen are an exception in the field: they acknowledge that research involving victim self-reports may include participants who falsely claim victim status. Indeed, for methodological reasons it is often not possible for researchers to verify what they are told. Some studies do gather information from multiple sources to better understand criminal victimisation and agency responses or design surveys to enhance the reliability of quantitative findings.<sup>128</sup> However, to require such a standard in all research would make it difficult, if not impossible to conduct studies of the victim experience<sup>129</sup> and thereby impede the acquisition of valuable information.

In this study, it is possible that the data includes some individuals who were not falsely accused. Some of those who contacted the support organisation may have sought advice and support as part of their unwillingness to confront their own criminal behaviour or wrongdoing, while others could have been attention seeking. Those engaged in sexually abusive conduct may deny an accusation because they may fear becoming 'despised and rejected',<sup>130</sup> they may fear the legal consequences of an admission or may deny the impact,

<sup>124</sup> Occasionally, third parties contacted the support organisation claiming a child or other person was falsely accused of wrongdoing. The data pertains to the person or persons accused, not the person who made contact.

<sup>125</sup> The authors of this article did not participate in this process but have access to the anonymised spreadsheet provided by the support organisation.

<sup>126</sup> D.E.H. Russell and R.M. Bolen, *The Epidemic of Rape and Child Sexual Abuse in the United States* (London: Sage Publications, Inc., 2000) 28.

<sup>127</sup> For discussion of the motivations of those who make false allegations involving sexual offences and other crimes, see: McNamara *et al*, *supra* n 108, 646; O'Neal, *supra* n 6.

<sup>128</sup> *Supra* n 69.

<sup>129</sup> This is particularly the case where the victims being studied have not previously disclosed their experiences of victimisation or where data from other sources is inaccessible.

<sup>130</sup> N.J. Blagden *et al*, "'No-one in the world would ever wanna speak to me again": an interpretative phenomenological analysis into convicted sexual offenders' accounts and experiences of maintaining and leaving denial' (2011) 17 *Psychology, Crime & Law* 563, 568.

responsibility or participation in wrongdoing.<sup>131</sup> However, some of these factors (e.g. the legal consequences of an admission) are probably less likely to drive denial in a support context, than in legally-related environments.

The support organisation makes clear that it exists to assist innocent people and not offenders. However, this may not prevent actual offenders from seeking assistance. Thus, the data presented here, as with data derived from other self-identified victim studies, might be wholly accurate, wholly inaccurate or somewhere in between. For example, it might be that some of those who claimed to have been falsely accused had not been specifically accused of anything. Instead, they may have been under suspicion during a police or social services investigation and may have *felt* accused, but without any direct allegation being made. In such circumstances, there may be little difference in how the falsely accused and falsely suspected experience the situation.<sup>132</sup> However, one cannot reject the method adopted in the current study simply because it involves people who purport to be victims of false allegations when data from self-identified victims is widely used in other areas of study, including sexual violence research.

A previous study of false allegations adopted a method to gain some degree of verification of the claim of being falsely accused by examining only cases resulting in certain outcomes, including acquittal or a decision not to prosecute.<sup>133</sup> More recently, a study by Hoyle *et al* only included participants who were deemed 'legally innocent'. In addition to signing a declaration of innocence, participants had to fulfil three criteria: they were not charged, were acquitted or a conviction was overturned on appeal but not for reasons 'unrelated to innocence'.<sup>134</sup> As with other measures of falsity, these criteria have their limitations<sup>135</sup> but offer a means of reducing the chances of including participants who are legally guilty. The current study data included a relatively small number of cases with those who said they were convicted or charged (3.5% and 7.4% respectively), but did not include data on appeals against conviction, successful or otherwise.<sup>136</sup> Nor did the data include information on the eventual outcome of criminal charges. While such cases may increase the likelihood that the data includes those who are falsely denying criminal behaviour, miscarriages of justice involve both charge and conviction. Further, charging is not itself, a measure of actual guilt, hence the need for a criminal trial. Given the heavily anonymised nature of the data it has not been possible for the authors to seek further information on outcomes.

<sup>131</sup> S.L. Schneider and R.C. Wright, 'Understanding denial in sexual offenders: A review of cognitive and motivational processes to avoid responsibility' (2004) 5 *Trauma, Violence, & Abuse* 3.

<sup>132</sup> The emotional turmoil, fear, pain and uncertainty of being under suspicion should not be underestimated: P. Davies, 'The impact of a child protection investigation: a personal reflective account' (2011) 16 *Child & Family Social Work* 201 (a mother discussing the impact of being under suspicion following a head injury to her son).

<sup>133</sup> L. Schultz, 'One Hundred Cases of Unfounded Child Sexual Abuse: A Survey and Recommendations' (1989) 1 *Issues in Child Abuse Accusations* [http://www.ipt-forensics.com/journal/volume1/j1\\_1\\_4.htm](http://www.ipt-forensics.com/journal/volume1/j1_1_4.htm) [last accessed 19 May 2017].

<sup>134</sup> Hoyle *et al*, *supra* n 5, 22.

<sup>135</sup> For example, a decision not to prosecute or acquit may reflect a lack of evidence, not actual innocence.

<sup>136</sup> Contact with the support organisation was also made in a small number of cases at the point of sentence or sentencing appeal (totalling 2.8%).

Finally, it must be acknowledged that the data was obtained through a self-selecting sample. This means that the individuals as part of the 701 cases<sup>137</sup> may not be representative of the population at large and therefore cannot be used to accurately generalise beyond this particular sample. However, self-selecting samples are quite common in social science research<sup>138</sup> and not unexpected in the current research given the sensitivity and nature of the topic. The authors recognise that while this is the largest dataset of its kind, the findings are not readily generalisable.<sup>139</sup> Instead, this research should be seen as a case study of individuals who purport to be falsely accused and have contacted a support organisation for help.

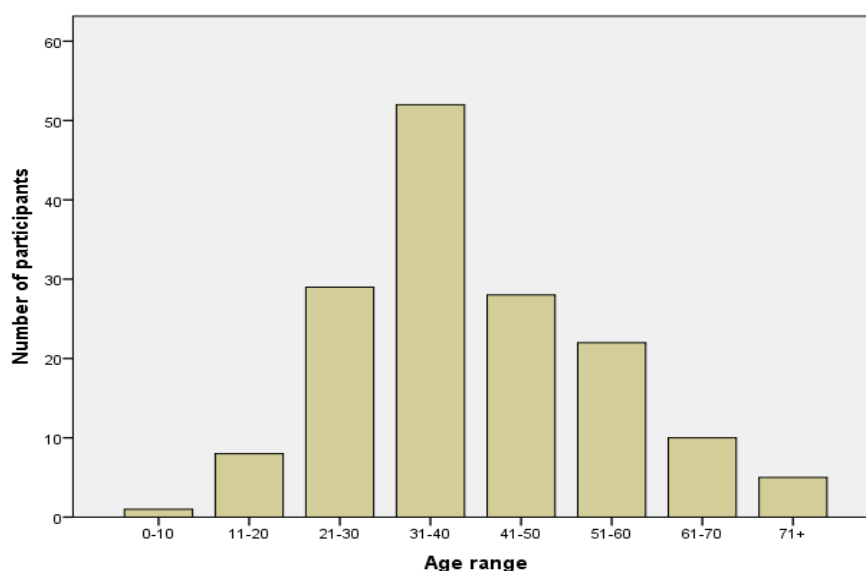
## 5. Quantitative findings

The data discussed below is based on the total participant population of 701 cases. However, there is some missing data which is why there are not complete data sets for each category of analysis and the size of the sample in each analysis differs.

### A. Frequencies

Age of accused: Data from 155 participants, which is 22.1% of the total participant population, indicates that allegations of rape and sexual assault are not limited to a narrow age range, instead the sample involved accused ranging from 2–85 years of age.<sup>140</sup> The mean age boundary was between 31–40 years old (28% of the total participant population).

**Bar Chart 1: Age of the accused**



<sup>137</sup> 'Participants' and 'cases' are used interchangeably in the text.

<sup>138</sup> C. Robson and K. F. McCartan, *Real World Research* 4<sup>th</sup> Edition (Chichester: John Wiley & Sons, 2016).

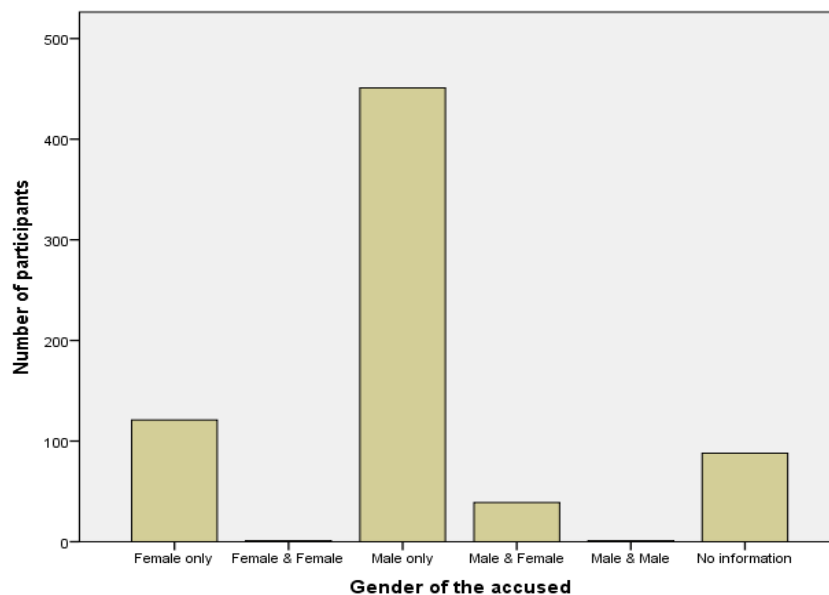
<sup>139</sup> Robson and McCartan have noted that it is possible to argue that results from particular samples are generalisable to a wider population: *ibid* 92. This is a tempting approach given that some of the themes in this research are identifiable in other sources discussed in this article. However, the authors are taking a more cautious approach by pointing out that it would be unwise to generalise on the basis of a self-selected sample.

<sup>140</sup> Clearly, for a small number of those falsely accused the contact with the support organisation was made via a third party.

### Gender of the accused

Data from 613 participants, which is 87.5% of the total participant population, indicates that the majority of accused were males (451 participants, 64.3% of the total participant population), females (121 participants, 17.2% of the total participant population), a male and a female (39 participants, 5.5% of the total participant population) two males (1 participant, 0.1% of the total participant population) and two females (1 participant, 0.1% of the total participant population).

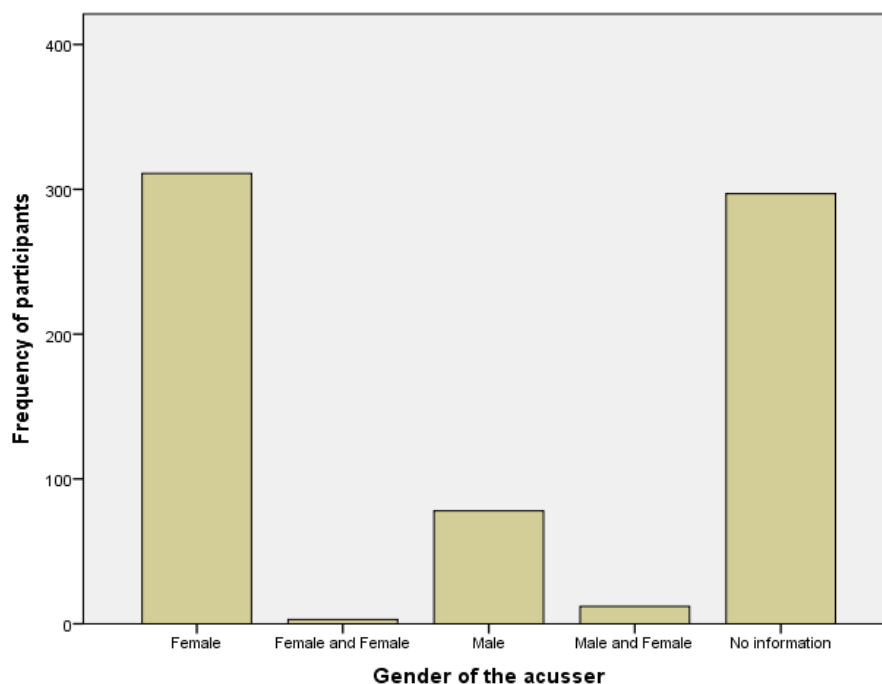
**Bar Chart 2: Gender of accused**



### Gender of the accuser

Data from 404 participants, which is 57.3% of the total participant population, indicated that the majority of accusations were made by females (311 participants, 44.3% of the total participant population), males (78 participants, 11.1% of the total participant population), a male and a female (12 participants, 1.7% of the total participant population) and two females (3 participants, 0.4% of the total participant population).

**Bar Chart 3: Gender of Accuser**



### Relationship between accuser and accused

Data from 631 participants, which was 90.0% of the total sample, indicated that the majority of accusers were family members (354 participants, 50.4% of the total participant population), professionals that worked with the accused (55 participants, 7.8% of the total participant population), friends (47 participants, 6.7% of the total participant population), ex-partners (22 participants, 3.1% of the total participant population), current partners (18 participants, 2.5% of the total participant population), clients (12 participant, 1.7% of the total participant population), acquaintance (11 participant, 1.5% of the total participant population), stranger (7 participant, 0.9% of the total participant population) and other (105 participant, 14.9% of the total participant population).

### Type of wrongdoing alleged

Data from 681 participants, which is 97.1% of the total participant population, indicated that in the majority of cases the accusation related to child abuse/neglect<sup>141</sup> (198 participants, 28.2% of the total participant population), rape (100 participants, 14.2% of the total participant population), child sexual abuse (85 participants, 12.1% of the total participant population), sexual assault (70 participants, 9.9% of the total participant population), access issues<sup>142</sup> (46 participants, 6.5% of the total participant population), domestic violence (45 participants, 6.4% of the total participant population), indecent assault<sup>143</sup> (24 participants,

<sup>141</sup> This refers to physical abuse and/or neglect and not sexual abuse.

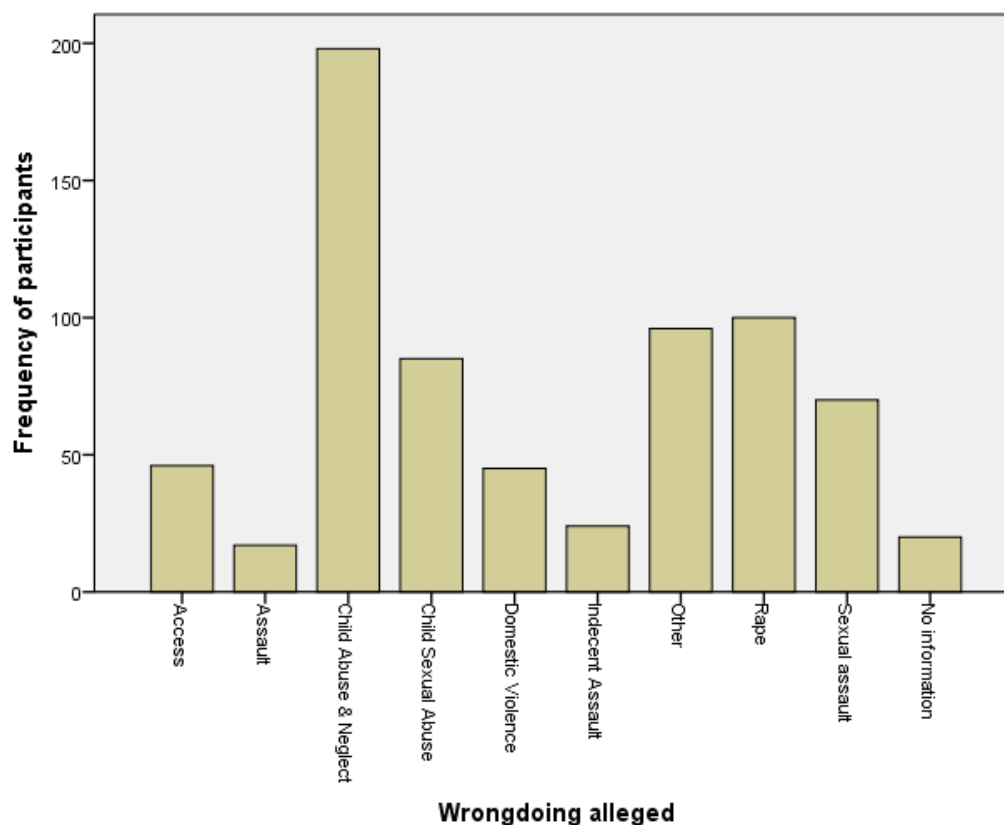
<sup>142</sup> These purported false allegations concerned a refusal by one parent to allow parental access by the other parent or family members.

<sup>143</sup> The phrases 'sexual assault' and 'indecent assault' were used by 13% of those who contacted the support organisation. Given that indecent assault is no longer a criminal offence (with the exception of historic cases where it might still be charged), it is likely that many of these cases would fall under s.3 of the Sexual Offences



3.4% of the total participant population) and other wrongdoing (96 cases, 13.6% of the total participant population).

**Bar Chart 4: Type of Wrongdoing alleged**



#### **Point of contact with the organisation**

Data from 612 participants, which is 87.3% of the total participant population, indicated that the majority of individuals who contacted the organisation did so when they were initially accused (374 participants, 53.3% of the total participant population), when they had been bailed (53 participants, 7.5% of the total participant population), charged (52 participants, 7.4% of the total participant population), when a child had been removed from them (40 participants, 5.7% of the total participant population) and when they had been convicted (25 participants, 3.5% of the total participant population).<sup>144</sup>

Act 2003 and be classified as sexual assault. However, we have chosen to respect the self-labelling of participants.

<sup>144</sup> The remaining contacts points were: when they were arrested (16 participants, 2.2% of the total participant population), when they were released (14 participants, 1.9% of the total participant population), when they were appealing their sentence (10 participants, 1.4% of the total participant population), when they had been sentenced (10 participants, 1.4% of the total participant population) , when they had been acquitted (9

## B. Chi-Squared Findings

A series of cross tabulations were carried out on the six main variables 'type of wrongdoing alleged', 'gender of accuser', 'gender of accused', 'relationship of accuser to accused', 'point of contact with organisation' and 'type of wrongdoing alleged'. These generated some important findings and give a much more detailed understanding of the relationship between these variables.<sup>145</sup>

A *Chi-Sq between the gender of the accuser and the gender of the accused*<sup>146</sup> indicated that males were more likely to be accused by females (in 267 cases, which comprised 86% of the allegations by females and 59% of allegations against males) than by males (in 52 cases, which comprised 67% of the allegations by males and 11% of allegations against males). Interestingly, although on a smaller scale, this pattern ran true with more females being accused by females (in 32 cases, which comprised 10.3% of the allegations by females and 26.4% of allegations against females) than by male accusers (in 20 cases, which comprised 25.6% of the allegations by males and 16.5% of allegations against females).

A *Chi-Sq between the gender of the accuser and their relationship with the accused*<sup>147</sup> indicated that family members were more likely to be accused (in 177 cases, which comprised 57% of the allegations by accuser and 50% of allegations within relationships). When the gender of accuser was factored in, family members came out as the largest group for both female (in 224 cases, which comprised 63% of allegations within relationships) and male accusers (in 47 cases, which comprised 60% of the allegations by accuser and 13% of allegations within relationships).

A *Chi-Sq test between the gender of the accuser and type of wrongdoing alleged*<sup>148</sup> indicated that the most common types of wrongdoing reported were child abuse/neglect (in 198 cases, which comprised 28.2% of allegations, child sexual abuse (in 85 cases, which comprised 12.1% of allegations) and rape (in 100 cases, which comprised 14.2% of allegations). When we examined it by gender of accuser we can see that females were the most likely to report child abuse (in 71 cases, which comprised 22% of the allegations by female accusers and 36% of child abuse/neglect allegations), child sexual abuse (in 50 cases, which comprised 16% of the allegations by female accusers and 59% of child sexual abuse allegations) and rape (in 63 cases, which comprised 20% of allegations by female accusers

participants, 1.2% of the total participant population), as part of family court proceedings (8 participants, 1.1% of the total participant population) and when their partner had left home (1 participant, 0.1%).

<sup>145</sup> Please note that all the Chi-Sq test results were significant with medium to large effects. However, they all had assumptions violated, but because they all had variables with levels between 4-6 and all cells had expected counts of at least 1, and 50% or fewer of the cells had expected counts of less than 5 this means that the results are trustworthy.

<sup>146</sup> A Chi-Sq test for independence indicated a significant association between the gender of the accuser and the gender of the accused,  $X^2(20, n = 701) = 180.7, p = .00, Cramers V = .25$ .

<sup>147</sup> A Chi-Sq test for independence indicated a significant association between the gender of the accuser and their relationship with the accused,  $X^2(36, n = 701) = 142.5, p = .00, Cramers V = .22$ .

<sup>148</sup> A Chi-Sq test for independence indicated a significant association between the gender of the accuser and type of offence accused of,  $X^2(20, n = 701) = 123.9, p = .00, Cramers V = .21$ .

and 63% of rape allegations); whereas males were most likely to report child abuse/neglect (in 22 cases, which comprised 28% of the allegations by male accusers and 11% of child abuse/neglect allegations) and child sexual abuse (in 19 cases, which comprised 24% of the allegations by male accusers and 22% of all child sexual abuse allegations).

In terms of the gender of the accused, females were more likely to be accused of child abuse/neglect (in 72 cases, which comprised 59.5% of the female accused and 36.4% of all child abuse/neglect allegations) than with child sexual abuse (in 4 cases, which comprised 3.3% of the female accused and 4.7% of child sexual abuse allegations) or domestic violence (in 4 cases, which comprised 3.3% of the female accused and 8.9% of domestic violence allegations). Males were more likely than females to be accused across a range of wrongdoing: child abuse/neglect (in 92 cases, which comprised 20.4% of the male accused and 46.7% of child abuse/neglect allegations) and domestic violence (in 33 cases, which comprised 7.3% of the male accused and 73.3% of domestic violence allegations). The prominence of male accused was particularly marked in the context of sexual offences: rape (in 92 cases, which comprised 20.4% of the male accused and 92% of rape allegations) and child sexual abuse (in 74 cases, which comprised 16.4% of the male accused and 73.3% of child sexual abuse allegations).

A *Chi-Sq* test between the gender of the accused and the stage that they contacted the organisation<sup>149</sup> indicated that the most common point of contact with the support organisation for the accused was at the point of allegation (in 374 cases, which comprised 53% of those who contacted the organisation). This was the same for females (in 81 cases, which comprised 67% of the female accused and 22% of those who contacted the organisation when accused) and males (in 247 cases, which comprised which comprised 54% of the male accused and 66% of those who contacted the organisation when accused).

A *Chi-Sq* test between the type of wrongdoing accused and the stage the organisation was contacted.<sup>150</sup> As previously noted, the most common point of contact for the accused was at the point of allegation (in 374 cases, which comprised 53% of those who contacted the organisation). When this was broken down into the type of wrongdoing to which someone was accused, this was highest for child abuse/neglect (in 140 cases, which comprised 61% of those accused of child abuse/neglect and 13% of those who contacted the organisation at the point of allegation), followed by rape (in 48 cases, which comprised 59% of those accused of rape and 13% of those who contacted the organisation at the point of accusation) and sexual assault (in 41 cases, which comprised 59% of those accused of sexual assault and 11% of those who contacted the organisation at the point of accusation).

## 6. Implications and a future research agenda

The data set out in this article indicates that the majority of purported false accusations were by females against males who were family members or intimates concerning child

<sup>149</sup> A *Chi-Sq* test for independence indicated a significant association between the gender of the accused and the stage that they contacted the organisation,  $X^2(48, n = 701) = 116.7, p = .00, Cramers V = .20$ .

<sup>150</sup> A *Chi-Sq* test for independence indicated a significant association between the type of wrongdoing accused of and the stage that organisation was contacted,  $X^2(108, n = 701) = 413.9, p = .00, Cramers V = .26$ .

abuse/neglect and sexual offences (child sexual abuse, rape, indecent and sexual assault) with the majority of those accused seeking support and advice at the point of accusation.<sup>151</sup> The prominence of purported false allegations within the family environment and intimate relationships may reflect interpersonal dynamics, along with the opportunity to falsely accuse. Reaching out for support at the point of accusation suggests that those who purport to be falsely accused experience accusation as a challenging life event for which they need support and advice. Indeed, evidence suggests that the immediate impact of being accused involves ‘falling into a state of shock, experiencing nausea and nervousness, and feeling “stunned” and “surreal”, as if being in “a bad dream”’.<sup>152</sup> Assuming similar responses in this study sample, it is unsurprising that so many participants made contact and did so at the point of accusation. The point of contact data also suggested that many of the allegations involved formal investigation or some form of legal proceedings.

Further, the data indicated that 31-40 years was the largest age category, but accused people included senior citizens and a small number of children who were purported to be falsely accused. One issue that does arise in the context of children accused of criminal wrongdoing is the potential harm that publicity and resultant stigma could cause. While the anonymity of most children is already protected, it cannot be assumed that there are no gaps in current protections. In a recent review of the youth justice system, it was recommended that the Ministry of Justice examine whether to extend automatic reporting restrictions operating in the Youth Court to the Crown Court to ensure child suspects under police investigation are not identified.<sup>153</sup> The presence of children in the study data also raises questions concerning their appropriate support needs.

The data highlights the wide range of purported false allegations that were reported, including allegations involving criminal offences such as rape, physical and sexual assault. Overall, females were more likely than males to make allegations against males and other females, but accusations by males were sizeable: 11% of child abuse/neglect and 24% of child sexual abuse accusations were made by male accusers. The large number of female accusers in the current study reflects other research which suggests that females are more likely to make false allegations than males in the context of sexual offences.<sup>154</sup> The data in the current study goes beyond such a narrow range of alleged wrongdoing, thereby making broader comparisons with previous research difficult. However, the new data in this study does point to the need for a more nuanced picture of who makes purported false allegations and the nature of the alleged wrongdoing.

The data also reveals a phenomenon largely ignored in previous research: females who purported to have been falsely accused of criminality and other wrongdoing.<sup>155</sup> Much discussion on false allegations tends to focus on males who are accused by females of

<sup>151</sup> This mirrors the findings of the CPS charging study: Levitt, *supra* n 4, Table 3, 12 (findings 53% of false allegations involved a family member or intimate partner). Given the small number of false allegation cases in this study, this data must be read with caution.

<sup>152</sup> Hoyle, *supra* n 5, 37.

<sup>153</sup> C. Taylor, *Review of the Youth Justice System in England and Wales* (2016) para. 107.

<sup>154</sup> Levitt, *supra* n 4, para. 14; De Zutter *et al*, *supra* n 91.

<sup>155</sup> There is some discussion of this in the literature, mainly in relation to allegations of child neglect or abuse. See for example, Davies, *supra* n 132, 205.

crimes such as rape or child sexual abuse. This reflects an empirical reality: most accusations involving sexual offences, genuine or otherwise, tend to be made by females against males. Despite this, several previous studies have made reference to false allegations made by males,<sup>156</sup> as well as against females.<sup>157</sup> In the current study, out of those cases where information was available, one-in-five purported false accusations (19.7%) were made against females. There were also a small number of allegations directed at men and women together (5.5%). There are several possible explanations for the number of females found in the data, particularly in the context of allegations pertaining to child abuse and neglect. First, there is the role of women as the primary carers of children. As primary carers, they may be more likely to be accused or come under suspicion, compared to someone with less contact with a child.<sup>158</sup> Second, another possible explanation involves domestic violence or coercive control cases in which a male makes a malicious allegation of child abuse or neglect against a female partner, particularly in cases of relationship breakdown.<sup>159</sup>

The third reason for the larger number of females in the current study, compared to earlier research<sup>160</sup> is the inclusion of a wider range of wrongdoing. The findings differ significantly from the CPS charging study discussed earlier which found that 98% of those falsely accused were male. This can be explained by the fact that the CPS study focused primarily on accusations of rape<sup>161</sup> and domestic violence. Thus, it excluded a wide range of criminal behaviour and other wrongdoing that is covered in the current study data. While this data broadly supports the existing gendered narrative, the picture is more complex and requires recognition of allegations that go beyond those made by females against males. Indeed, the context and impact of false accusations on females is poorly understood and requires further examination.<sup>162</sup>

In addition to the issues already directly raised by the study data, there are several other topics that require further consideration, but cannot be answered using the current study data. The stigma and associated harms that attach to those who are convicted of violent crimes, along with family members has been the subject of careful scholarly analysis.<sup>163</sup> Indeed, the judiciary has acknowledged that the 'criminal activities of a parent can bring misery, shame, and disadvantage to their children. Innocent parents suffer from the criminal

<sup>156</sup> McNamara, *supra* n 108; Levitt, *supra* n 4; Hays, *supra* n 30.

<sup>157</sup> See for example, N. Thoennes and P.G. Tjaden. 'The extent, nature, and validity of sexual abuse allegations in custody/visitation disputes' (1990) 14 *Child Abuse & Neglect* 151. See also: Hoyle *et al*, *supra* n 5, 25.

<sup>158</sup> Interestingly, women whose children have been sexually abused by another person report feeling blamed and distrusted by those working for state agencies, even though they played no part in the abuse: Plummer and Eastin, *supra* n 17, 1061-1063.

<sup>159</sup> This issue has been noted in previous research: Y. Mazeh and M. Widrig, 'The Rate of False Allegations of Partner Violence' (2016) 31 *J. Fam. Violence* 1035, 1036.

<sup>160</sup> For example, Schultz found a rate of 8% in cases involving child abuse: *supra* n 133, 3.

<sup>161</sup> Levitt, *supra* n 4, para. 16. This is unsurprising given that under s.1 Sexual Offences Act 2003 a female cannot physically commit the act of rape. Females can aid, abet, counsel or procure rape: R v. Ram and Ram (1893) 17 *Cox CC* 609.

<sup>162</sup> Recent research by Hoyle *e al* examined the experiences of 30 falsely accused individuals, included 6 females. For discussion of these women's experiences, see: *supra* n 5.

<sup>163</sup> See for example, R. Condry, *Families Shamed: The Consequences of Crime for Relatives of Serious Offenders* (Abingdon: Routledge, 2011); R. Tewksbury, 'Collateral Consequences of Sex Offender Registration' (2005) 21 *Journal of Contemporary Criminal Justice* 67.

activities of their sons and daughters. Husbands and wives and partners all suffer all suffer in the same way'.<sup>164</sup> By contrast, there is less known about the extent to which *accusations* are stigmatising and lead to other harms. The data that does exist suggests that accusations can have a wide range of serious effects including: illness, social isolation, loss of social support, job loss, financial hardship, stress and family breakdown.<sup>165</sup>

The current dataset does not provide information on the pathways to false allegation. The wider literature suggests that there a range of factors that lead to false allegations, including: psychological factors,<sup>166</sup> poor interviewing skills by professionals,<sup>167</sup> professional error,<sup>168</sup> implanted memories,<sup>169</sup> intoxication<sup>170</sup> and mental health problems or learning disabilities.<sup>171</sup> One future direction of research would be to use a large dataset to examine the pathways to accusation in terms of who makes an initial allegation, its characteristics, impact on the accused and nature of any institutional intervention. This may yield important data on the impact of allegations, the origins of purported false allegations and the tracking of case outcomes, including arrest, prosecution and conviction. The current dataset suggests that few purported false accusations lead to a clear criminal justice outcome, but the data cannot provide a robust explanation.

Another issue that often arises in discussions concerning false allegations is the subject of anonymity for those who are accused of serious criminal offences, usually sexual offences.<sup>172</sup> The data in the current study does provide findings that might be of particular interest to those opposed to anonymity in sexual offence cases.<sup>173</sup> The study data points to purported false allegations going beyond sexual offences and involving a wide range of other crimes or wrongdoing. For example, the largest category of alleged wrongdoing

<sup>164</sup> *In re Trinity Mirror plc and others* [2008] EWCA Crim 50 [33].

<sup>165</sup> See for example, J. Prosser, 'A case Study of a UK Family Wrongly Accused of Child Abuse' (1995) 7 *Issues in Child Abuse Accusations* [http://www.ipt-forensics.com/journal/volume7/j7\\_3\\_2.htm](http://www.ipt-forensics.com/journal/volume7/j7_3_2.htm) [last accessed 19 May 2017] (discussing the experience of family members who claimed to have been treated poorly by social workers, medical staff and other professionals while under investigation for child sexual abuse). See also: D. Richardson, 'The Effects of a False Allegation of Child Sexual Abuse on an Intact Middle Class Family' (1900) 2 *Issues in Child Abuse Accusations* [http://www.ipt-forensics.com/journal/volume2/j2\\_4\\_7.htm](http://www.ipt-forensics.com/journal/volume2/j2_4_7.htm) [last accessed 19 May 2017]; Hoyle, *supra* n 5; Plummer and Eastin, *supra* n 17. See also the sources in *supra* n 52.

<sup>166</sup> W.T. O'Donohue *et al*, 'Psychological and Investigative Pathways to Untrue Allegations of Child Sexual Abuse' (2016) *Forensic Interviews Regarding Child Sexual Abuse* 257.

<sup>167</sup> E.G. Mart, 'Common errors in the assessment of allegations of child sexual abuse' (2010) 38 *The Journal of Psychiatry & Law* 325. Interestingly, false claims can occur in properly conducted interviews with trained professionals: J. Ost *et al*, 'False reports of childhood events in appropriate interviews' (2005) 13 *Memory* 700.

<sup>168</sup> Mart, *ibid*.

<sup>169</sup> A. Scoboria *et al*, 'A mega-analysis of memory reports from eight peer-reviewed false memory implantation studies' (2016) 25 *Memory* 146, 147, 160. See also *infra* n 170, 105-106.

<sup>170</sup> J. Engle and W. O'Donohue, 'Pathways to False Allegations of Sexual Assault' (2012) 12 *Journal of Forensic Psychology Practice* 97, 107-108.

<sup>171</sup> W. O'Donohue and A.H. Bowers, 'Pathways to false allegations of sexual harassment' (2006) 3 *Journal of Investigative Psychology and Offender Profiling* 47.

<sup>172</sup> For discussion of the history of the law in this area, see: J. Temkin, *Rape and the Legal Process* (Oxford: Oxford University Press, 2000) 305-314.

<sup>173</sup> The case for rape defendant anonymity often includes reference to false allegations. In reality, this is not an issue of central importance, despite repeated references to it. The stigma associated with accusation is more significant because at the point of allegation, the guilt or innocence of the accused is unknown.



concerned child abuse/neglect which at 29% of cases where information is available is double the rate of purported false allegations involving child sexual abuse (14%). One way in which the issue of false allegations is raised in the debate over anonymity is to link it to a claim that allegations of rape or child sexual abuse are *uniquely* stigmatising.<sup>174</sup> During the parliamentary debates that followed a 2010 government proposal to re-introduce anonymity for rape defendants, a number of MPs pointed out that the proposal was ‘singling out’ rape and would only be appropriate if the false reporting rate was higher than for other crimes.<sup>175</sup> Indeed, one MP argued that it was likely that other crimes, not only allegations of rape can have a ‘deleterious effect on one's reputation, on one's standing in society, and on one's capacity to hold down a job, hold a family together and live a normal life’.<sup>176</sup>

Some Parliamentary proponents of anonymity linked stigma and false allegations by referring, for example, to the ‘extreme suffering ... caused ... to those falsely accused’.<sup>177</sup> The issue of stigma is undoubtedly an interesting one. The current research on this specific topic is limited. In 2013, it was noted that the stigma associated with paedophilia has been an area neglected by scholars.<sup>178</sup> Recent research exploring this subject suggests that the label ‘paedophile’ attracts strong social stigma<sup>179</sup> and that this stigma is greater than that which attaches to some other stigmatised groups.<sup>180</sup> It is the case however, that significant gaps remain in our understanding of these issues and more research is necessary.<sup>181</sup> Indeed, there is an absence of robust research on the stigma associated with accusations of serious criminality generally, including violent crime. Further, there is a need for more nuance in the discussion of the topic. Issues of age, gender, the identity of the accuser, nature of alleged wrongdoing and their relationship to stigma raise crucial issues that require robust comparative research. There is currently no empirically-based case for singling out rape or other sexual offence cases given the range of purported false allegations found in this study.

Another gap in the existing research literature is whether purported false allegations made to the police have differing consequences for falsely accused suspects, compared to those under suspicion in the context of social service or medico-legal investigations. There is currently no research that robustly compares how criminal and child protection investigations are experienced by those under suspicion, nor whether the safeguards offered to criminal suspects under the Police and Criminal Evidence Act 1984 and Codes of

<sup>174</sup> For discussion of this claim, see Rumney and Fenton, *supra* n 8.

<sup>175</sup> One MP argued that such ‘singling out’ of rape rested on a claim of uniqueness: ‘[t]he benefits of the proposal could only be strong only if we could prove that the false reporting of rape is systematic and widespread above and beyond that of any other crime ...’ Deb HC col 555 8 July 2010. Col. 600

<sup>176</sup> Deb HC 8 July 2010 col 564.

<sup>177</sup> Deb HC cols 577-581 8 July 2010 cols 572-573.

<sup>178</sup> S. Jahnke and J. Hoyer, ‘Stigmatization of people with pedophilia: a blind spot in stigma research’ (2013) 25 *International Journal of Sexual Health* 169.

<sup>179</sup> R. Imhoff, ‘Punitive Attitudes Against Pedophiles or Persons with Sexual Interest in Children: Does the Label Matter?’ (2015) 44 *Arch. Sex Behav.* 35.

<sup>180</sup> S. Jahnke *et al*, ‘Stigmatizing of People with Paedophilia Two Comparative Surveys’ (2015) 44 *Arch. Sex Behav.* 2.

<sup>181</sup> K.F. McCartan, ‘The Anonymity Debate’ *sajrt.blogspot* 22 August 2014; *ibid*.

Practice lessen the emotional and psychological impact of criminal investigations compared to social service or medic-legal investigations.

## 7. Conclusion

The data discussed in this article provides fresh insight into the nature and characteristics of purported false allegations of rape, child sexual abuse, child abuse/neglect and other forms of wrongdoing. The data indicates that most of those accused are male, and most accusers, female. However, there are other findings that require acknowledgement. As a proportion of cases where data was available, 19.7% of those purported to be falsely accused were female, 6.3% were jointly accused with a male, with 1 case involved a female accused with another female. Further, males made up a sizeable minority of those who made purported false allegations. As a proportion of cases where data was available, 19.3% of those who made allegations were male and in 2.9% of cases a male made an allegation with a female.<sup>182</sup> These findings enable us to do two things. First, it provides a basis to be able to challenge misunderstandings about who makes allegations that are purported to be false and against whom. While the data supports existing gendered narratives, the number of male accusers and females accused does suggest that there is a need for a more nuanced narrative around the issue.

The findings also suggest that there is a need to move beyond a narrow focus on purported false rape or child sexual abuse accusations, which are often raised in debates over defendant anonymity. While many accusations in the data fall within the realm of sexual offences, other areas of alleged wrongdoing are also in evidence. This may serve to challenge the framing of debates concerning anonymity: the singling out of rape as a particular problem in regards to false allegations is difficult to justify when there exists data showing that a wider range of wrongdoing also attracts purported false allegations.

Finally, this article has sought to legitimise the measured, evidence-based discussion of false allegations. Discussion of the topic is required otherwise it will continue to be shrouded in confusion and error. Framing the discussion of the subject in terms of danger or to claim that it is not the 'real' issue of concern is not a robust basis from which to challenge rape myths, help victims of crime, the falsely accused or guide policy development. The subject should be discussed using evidence, rational argument and with an acknowledgment of methodological limitations and resultant uncertainty, where it exists. To remain silent on a controversial topic in the face of myths and ignorance is likely to do more harm than good in terms of societal attitudes and professional practice.

<sup>182</sup> For the raw data and findings based on the total participant population, see the Frequency findings section above.