

**WRITTEN QUESTION TO THE ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 29th MARCH 2021
ANSWER TO BE TABLED ON WEDNESDAY 7th APRIL 2021**

Question

“Following the disclosure that there had been 650 sexual assaults against women reported to the States of Jersey Police in the last five years, resulting in only 72 convictions, will H.M. Attorney General advise (from the perspective of the Law Officers) why so many of these cases fail to be brought to court, and explain the relatively small number of convictions arising from these cases?”

Answer

Sexual assaults, including rape and other serious sexual offences, are some of the most complex cases the Law Officers’ Department (LOD) prosecutes.

While there has been progress in how the criminal justice system responds to these offences, more needs to be done to encourage victims to report abuse with confidence which will ensure support to them through the legal process, and to bring more offenders to justice. It takes enormous courage for a victim to report the case as such an event can be deeply violating and distressing. The LOD is all too aware of the barriers many faces when deciding whether to report offences relating to sexual assault. These often include, shame, guilt, fear of the process, fear of not being believed, shock, cultural context, embarrassment, language barriers and fear of reprisal from the community.

In 2021, rape and serious sexual offending remains one of the most misunderstood forms of criminality in society. The evidence shows that this type of offending is commonly perpetrated by someone known to the victim. In many cases, there will be no visible sign of injury to support an allegation. Additionally, many offences occur in a domestic setting which presents additional challenges for proceeding to prosecution, Psychological evidence shows that the neurological response to the trauma of rape and sexual assault can impact a victim’s ability to give a clear and coherent account of the event. However, this evidence runs counter to many societal myths and stereotypes regarding rape and serious sexual offending which continue to persist.

Each case referred to the LOD for advice is reviewed by a Legal Adviser in accordance with the ‘Code on the Decision to Prosecute (‘the Code’)' and whether there is a realistic prospect of a conviction. Where a case is not prosecuted, it will be because it did not meet the test under ‘the Code’.

The legal and evidential requirements needed to proceed with a rape or sexual assault prosecution effectively, efficiently, and fairly can be significant to overcome. The prosecution must succeed in proving its case beyond reasonable doubt. Sexual offences typically occur in a private place between two individuals where there is little or no other direct corroborating evidence. It is necessary under the law for the prosecution to provide evidence not only that a person did not consent to the act, but that the perpetrator did not reasonably believe that they were consenting.

Perceptions about who a victim is; how they dress and act both during and after an assault can be a focus for the defence. However, these perceptions play no part in decision-making by the LOD on whether criminal charges should be brought.

Often both the complainant and accused are known to each other, and in many cases, they are the only direct witnesses. These issues are not insurmountable barriers to prosecution but demonstrate the very real challenges that the LOD face when building cases to charge and prosecute rape and sexual assaults.

Any decision to prosecute requires careful and detailed assessment of all relevant evidence. This might involve scrutiny of accounts given of the event, forensic evidence and careful consideration of digital material and any CCTV coverage. The growth of social media presents both significant evidential opportunities and challenges given the huge volumes of personal material which is now potentially available. The prosecution must ensure all reasonable lines of enquiry are followed and appropriate material is identified and disclosed so the accused is able to have a fair trial in accordance with Article 6 ECHR. All parties must have confidence that they will be treated fairly by the prosecution and wider justice system.

The key to a successful prosecution, notwithstanding the difficulties set out above, is by seeking to fully understand the impact of myths and stereotypes and by countering them so victims can get justice.