**EVERYONE’S INVITED AND THE CRIMINAL JUSTICE SYSTEM**

Over the last fortnight or so it has been hard to avoid the media furore over the revelations of widespread sexual abuse throughout UK schools. The reports published anonymously on website, ‘[Everyone’s Invited](https://www.everyonesinvited.uk/)’, by (mainly) girls, about the sexual assaults and harassment perpetrated by (mainly) boys during their school years has prompted an avalanche of questions about the so-called ‘rape culture’ within our schools. Questions have peppered the media such as what the role of schools is in preventing this behaviour and safeguarding children; what responsibility parents have to teach their children about sexually acceptable and unacceptable behaviour; and what obligation there is on individuals, parents and schools to report such unacceptable behaviour to the police.

If a school or parent were to report a student, or if one of the hitherto anonymous complainants on ‘Everyone’s Invited’ were to come forward, to the police, the matter would enter the criminal justice system. This article considers the criminal process, and hurdles, that both potential Defendants and potential Complainants should be aware of.

Many of the reports made on the website disclose some form of sexual assault. Others make allegations of sexual harassment. This article will focus on sexual assault. Whilst there have been previous scandals involving historic sexual offences, the majority of those reported here appear to be recent. As such, this article will focus on offences which would arise under the Sexual Offences Act 2003 (the 2003 Act).

The precise provision of the 2003 Act to be considered largely depends on the behaviour alleged, and crucially, the ages of the complainant and perpetrator. Broadly, the offences alleged in the reports are sexual assault, assault by penetration, and rape. There are also offences of sexual activity with a child and causing a child to engage in or watch sexual activity.

The age of consent to sexual activity in England is 16. Therefore, anyone who engages in sexual activity with a person under the age of 16 may be committing an offence.

Sections 5 to 8 of the 2003 Act pertain to sexual offences committed against children under the age of 13. These are strict liability offences as children under this age do not have the capacity to consent to sexual activity. Sections 9 to 12 of the 2003 Act relate to children aged between 13 and 16. Again, the children cannot lawfully consent to sexual activity if they are aged under 16; however, if the alleged perpetrator reasonably believed the child to be over 16, they may have a defence. Under section 13, even if the alleged perpetrator of an act in sections 9 to 12 is under 18, they still commit an offence. Where both complainant and perpetrator are over the age of 16, the relevant offences would be sections 1 to 3 of the 2003 Act.

The CPS has published extensive guidance on [sexual offences](https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-7-key-legislation-and-offences) and [youth offenders](https://www.cps.gov.uk/legal-guidance/youth-offenders). This highlights the complex balancing exercise the CPS must undertake in making a charging decision in cases of potential child-on-child sexual offences.

Some of the allegations contained within the reports on ‘Everyone’s Invited’ are clear cut cases of rape and assault in which there could be no question that the Complainant was consenting or that the perpetrator thought that they were. These include the cases, for example, where the Complainant has become unconscious after drinking alcohol and wakes up, naked, with the perpetrator next to her, and a vague recollection of what he has done to her.

However other scenarios are more nuanced.

Where the act is not consensual, a positive charging decision is far more likely. Many disclosures made on the website involve the Complainant having said no, or having physically pushed the perpetrator away. These are serious offences and the public interest is likely to weigh in favour of prosecution. It must be noted, however, that these decisions may fall foul of the test as to whether there is a realistic prospect of conviction given the frequency of the issue in the matter being one person’s word against another. Where there is a lack of evidence such as first complaint evidence or where there was a previous or ongoing friendship or relationship between the individuals, it can be more challenging for an allegation to pass the threshold test which the CPS apply in order to make a charging decision. Were the matter to proceed to trial, a lack of corroborative evidence may make it harder for a jury to be sure about a Defendant’s guilt.

More complex, is where the act appears to have been consensual. In some of allegations on ‘Everyone’s Invited’ the Complainants have stated that they let the act happen. Some Complainants stated that they consented to the act at the time as they thought it was expected or did not want to say no, possibly due to embarrassment or pressure; however they now feel that it was wrong and should not have happened. This adds complexity for those offences where the Complainant is over the age of 16 as it may be possible for any alleged perpetrator to argue that they had a reasonable belief in consent. It also makes it more complicated for Complainants aged between 13 and 15. Although legally they cannot consent, the CPS Guidance is clear that if a sexual act were to happen between, for example a 14 and 15 year old which was in fact consensual, this is unlikely to be prosecuted. The CPS would consider the relative ages of the individuals involved, as well as their development and emotional and sexual maturity. However where the factors are considered and the act appears genuinely consensual, prosecution is unlikely to be appropriate. This is due to the lack of public interest in prosecuting given that Parliament did not intend to punish children unnecessarily. An important factor to weigh up in considering whether an act was genuinely consensual and whether a prosecution would be appropriate is whether there has been any coercion or exploitation.

Therefore, for both acts that appeared to be consensual, and acts where the Complainant states that they were not consensual, the presence of what the media has termed ‘rape culture’ may pose problems for the CPS in making charging decisions and for juries in cases which go to trial.

‘Rape culture’ is defined as an “environment whose prevailing social attitudes have the effect of normalizing sexual assault and abuse”. Where this behaviour is normalised, it may be that Complainants either did consent, or appeared to consent, at the time of the act due to it being normal or expected within the environment. They may have considered that the actions of the perpetrator were normal or acceptable because it was all that they were used to seeing and in those circumstances, consented, but with hindsight consider that they were pressured or coerced due to the environment. It is debatable whether this subsequent view would act to negate the consent given at the time. Equally, it may be that the perpetrator believed the complainant to have consented within the culture where, for example, in the environment around him he has seen peers’ relationships or interactions where a woman has initially resisted sexual activity but nonetheless continued with it and then returned or carried on as normal. Whether this belief is reasonable would require significant consideration (though this will only be relevant where the complainant is aged over 16).

It remains to be seen the extent to which the fallout from this website and the reports and allegations it contains will give rise to criminal allegations made to the police; however for the cases which do lift the website’s anonymity and reach the criminal justice system, complex analysis will need to be undertaken to consider public interest, realistic prospect of conviction, and the issue of consent.

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