



Consent / Coercive Control & Sexual Offences

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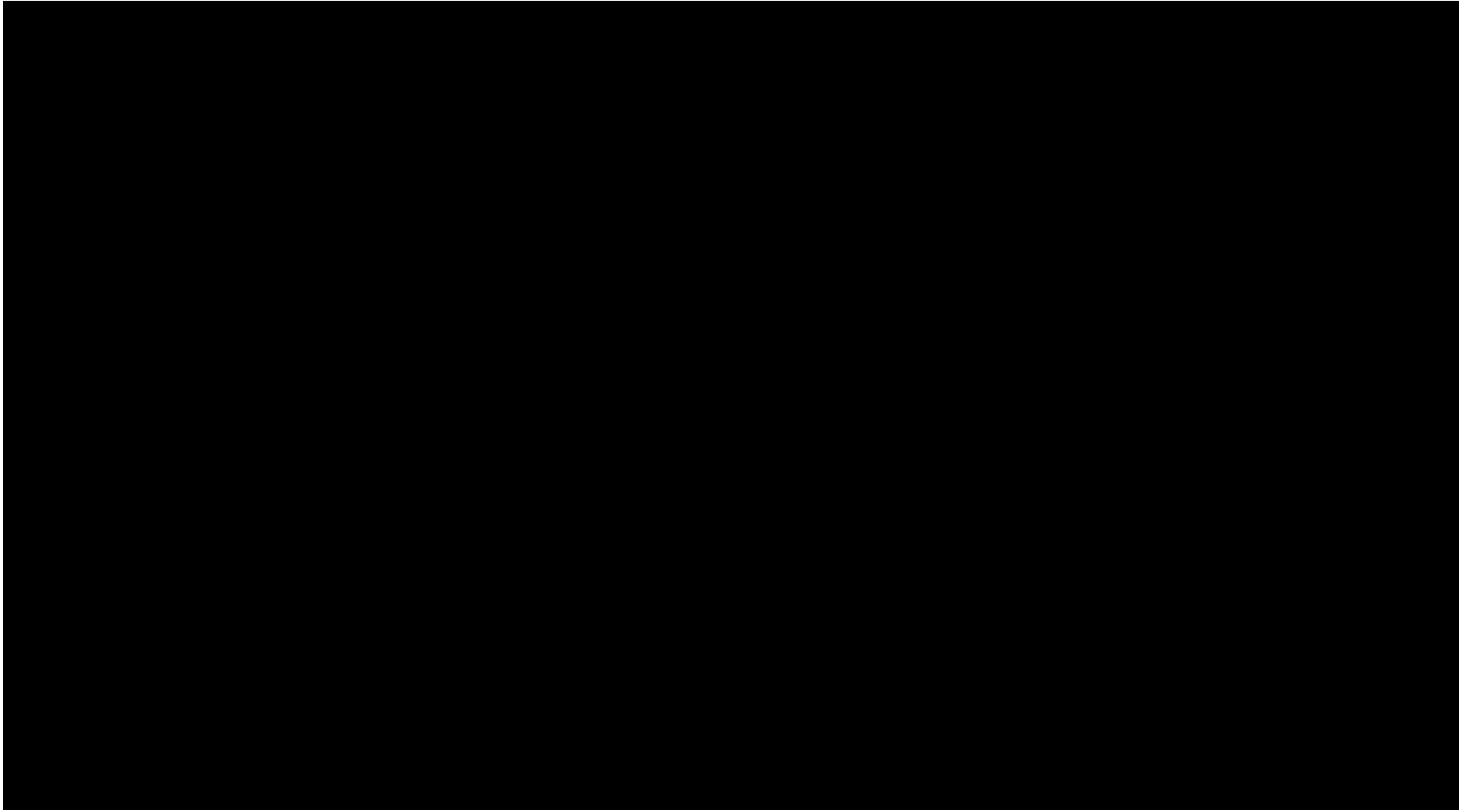
Aims of presentation

- Gain an understanding of the law around consent
- Understand coercive control
- Gain an understanding of sexual offences relating to children
- Understand possible outcomes for children of being a sexual offender

Consent

- The age you can have sex is called 'the age of consent'. In the UK it is 16 years old. This means that according to the law, only those who are aged 16 or over are able to freely agree to any sexual activity, in full understanding of the consequences of having sex. This applies if you want to have sex with someone of the opposite sex, or the same sex.
- Consent is when a person freely gives their permission or agrees to something, after having carefully thought about whether or not they want to do something. This decision should have been made without that person being: pressured or bullied, encouraged to use drugs or alcohol to influence their decision, or manipulated or made to feel stupid.
- In the UK the law says that both people must give their consent before any physical closeness or sexual activity.

Consent, as easy as a cup of tea



<https://www.youtube.com/watch?v=pZwvrXVavnQ>



Consent (it's not always easy)

R v Bree

- The defendant, Bree (B), visited his brother at University and went for an evening out with him and others, including the complainant (C). Both B and C consumed considerable quantities of alcohol, before returning to B's brother's home. Whilst C's memory from this point is poor, she recalls vomiting and having B and his brother help wash the vomit from her hair. Her next memory is of her and B having sexual intercourse. C contended that, although she had not specifically said 'no' to intercourse, she had not consented. B contended that he had reasonably believed she was consenting as she had undressed herself, appeared willing and been conscious throughout the event.



Bree Continued

- At first instance, B was convicted by the Court of rape under the **Sexual Offences Act 2003 s.1**, on the grounds that C had not consented to sexual intercourse. Notably, at first instance, the Crown initially contended that C had been unable to consent as she was unconscious for much of the event. However, following the delivery of evidence at trial, the prosecution's approach changed to submit that C did have the capacity to consent, and had made it as clear as possible, given her inebriated state, that she did not consent to sexual intercourse with B.

Bree – The Appeal

- The issue of appeal, as brought by B, was that at first instance the Court had not clarified to the jury that a person may still be capable of consenting, even where voluntarily heavily intoxicated. Rather, B viewed that the Court had implied heavy intoxication sufficed to remove one's capacity to consent, regardless of other factors. This would be contrary to the law on consent in the **Sexual Offences Act 2003**.
- Held
- The Court of Appeal upheld B's appeal, making two main points.
- First, the **Sexual Offences Act 2003 s.74** defines consent as where a person:
 - "... agrees by choice, and has the freedom and capacity to make that choice" (**Sexual Offences Act 2003, s.74**).
- Where a person loses their capacity to consent due to intoxication, they indeed cannot consent. However, it is possible that a person may be heavily intoxicated, having voluntarily consumed a large quantity of alcohol, and still be capable of deciding to have intercourse. Further, the specific facts of each case must be examined in deciding whether consent is deemed to have been given, alongside the mental states of the defendant and complainant. Simply being intoxicated does not remove one's ability to consent, and equally, simply to be conscious does not mean one has the capacity to consent.

Bree – The Outcome

- Sir Igor Judge commented that:
- "[W]hen someone who has had a lot to drink is in fact consenting to intercourse, then that is what she is doing, consenting: equally, if after taking drink, she is not consenting, then by definition intercourse is taking place without her consent." (***R v Bree* [2007] EWCA Crim 256 [a]**)
- Secondly, that the Court at first instance had failed to properly direct the jury as to the legal matters relevant to this case. Specifically, little or no guidance had been given on how consent is examined in the context of voluntary heavy intoxication, despite this being crucial to delivering a verdict. Further, little or no guidance had been given on dealing with the Crown Prosecution's significant change in approach, as occurred during the case. Subsequently, it was unclear whether the jury still believed C to be unconscious at the time of the sexual activity. The Court of Appeal was critical of the earlier Court for failing to establish that alcohol may alter someone's behaviour, and heavy intoxication does not automatically mean a person cannot consent.

Coercive Control



<https://www.youtube.com/watch?v=KLcgEBx1JEg>



Coercive Control

- The Home Office describes controlling behaviour as:
- ... a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
- The Home Office definition of coercive behaviour is:
- ... an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

Examples of controlling or coercive behaviour



- constant criticism
- humiliation
- jealous or possessive behaviour, eg, frequent phone calls to check where the victim is and what they are doing, or checking activity on the victim's phone or social networking accounts
- controlling family finances and withholding money from the victim
- isolating the victim by not allowing them to visit friends and family
- restricting a victim's movements, eg, confining them to a room
- dictating what a victim wears or how they do their hair
- dictating a victim's routine or schedule, eg, timing school runs or shopping trips
- preventing the victim from working outside the home or monitoring them at work
- restricting access to communications, eg, phone or computer
- manipulating the police, eg, scene-setting or getting into character before they arrive, reinforcing the victim's fear that they will not be believed.



The crime

- Section 76 of the Serious Crime Act 2015 creates an offence in relation to a person who repeatedly or continuously engages in behaviour towards another (this person being personally connected to them), that is controlling or coercive.

76(1) A person (A) commits an offence if -

- (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,**
- (b) at the time of the behaviour, A and B are personally connected,**
- (c) the behaviour has a serious effect on B, and**
- (d) A knows or ought to know that the behaviour will have a serious effect on B.**

Child Sex Offences



- **Rape and other offences against children under 13**
 - 5 Rape of a child under 13
 - 6 Assault of a child under 13 by penetration
 - 7 Sexual assault of a child under 13
 - 8 Causing or inciting a child under 13 to engage in sexual activity

Child sex offences

- 9 Sexual activity with a child
- 10 Causing or inciting a child to engage in sexual activity
- 11 Engaging in sexual activity in the presence of a child
- 12 Causing a child to watch a sexual act
- 13 Child sex offences committed by children or young persons
- 14 Arranging or facilitating commission of a child sex offence
- 15 Meeting a child following sexual grooming etc
- 15A Sexual communication with a child



Sexting



- Sexting is a term used to refer to the sending or receiving of a sexually explicit text, image or video on a mobile phone, usually in a text message.
- This isn't an offence in itself if the images are not prohibited by virtue of obscenity, are of adults and have been shared with the consent of the individuals featured in them. Where such images are shared without the consent of the sender, offences under S33 of the Criminal Justice and Courts Act 2015 may have been committed. Where images shared through sexting feature children under 18, IIOC offences may be made out.



YOUTH PRODUCED SEXUAL IMAGE

All persons involved (victim and suspect) are 13-17 years old

EITHER CHILD IS UNDER 13 YEARS OLD

Sufficient details for Children and Young Persons to be taken

Referral made directly to Force MASH referrals (RMS 602405) for grading and allocation

END

AGGRAVATING FACTORS

Details taken for children and young persons; children and young persons task sent to Force MASH referrals (RMS 602405) for grading and allocation

Images initially produced for romantic/attention-seeking reasons but aggravating factors emerge or aggravating factors were present from the outset – adult involved, vulnerable victim, multiple victims, type image/video threats, grooming, exploitation

Develop an investigation plan. This is likely to include early arrest/seizure of evidence and submission of phones, computers, to High Technical Crime Unit (HTCU), ensure all parties remain updated

Finalise investigation:

- Seek victims views
- Consider most proportionate outcome
- Is prosecution or OOC required?
- Seek disclaimer for devices
- Consult with HTCU if forfeiture order required
- Crime in accordance with NCRS/CDI
- Ensure victim/offender correctly identified
- Consider further safeguarding
- Ensure all parties are updated

EXPERIMENTAL

Details taken for Children and Young Persons; CYP persons task sent to Force MASH referrals (RMS 602405) / multi-agency safeguarding hub (MASH)

Images produced for romantic or attention-seeking reasons with no identifiable aggravating factors:

- Victim and/or suspect are not at high risk of children sexual exploitation or other vulnerabilities
- There has not been further/persistent contact from suspect
- Content of conversation appears age appropriate
- No coercion, control, threats, harassment evident
- Images only distributed between each other
- Type of image sent
- Consider victims/parental views

Consult CAIT supervisors in cases of uncertainty

IF SUSPECT IS AGED OVER 18 YEARS OLD

Sufficient details for Children and Young Persons to be taken

Referral made directly to Force MASH referrals (RMS 602405) for grading and allocation

END

Proportionate investigation focused on:

- Education of both parties
- Confirm victim/parental views
- Engage parents
- **DEVICE SHOULD NOT BE SEIZED**
- Relevant images deleted in presence of police/parents
- Crime in accordance with NCRS/CDI
- Record relevant parties as SUBJECTS on RMS
- Use outcome 21

Case to be closed without the need for forensic examination of phones etc. Most cases will result in no formal action. Inform victims/suspects on the potential likelihood of sharing details with the Disclosure and Barring Service

Review investigation: is case now considered experimental?

NO

YES

No aggravating factors established?

NO

YES

Sex Offenders / MAPPA



- **Category 1 - Registered Sex Offenders (RSO)**
- Offenders convicted or cautioned since 1st September 1997 of a sexual offence listed in Schedule 3 of that Act





How long on the register?

Sentence	Adult	Juvenile (under 18)
Is sentenced to 30 months or more imprisonment	An indefinite period	An indefinite period
Is admitted to hospital subject to a restriction order	An indefinite period	An indefinite period
Sentenced to more than 6 months but less than 30 months	10 years	5 Years
Sentenced 6 months or less	7 years	3 years 6 months
Admitted to hospital without a restriction order	7 years	3 years 6 months
Cautioned	2 years	1 year
Conditional discharge	Length of discharge	Length of discharge
Any other disposal e.g. fine	5 years	2 years 6 months



Schedule 3 Offences

- 1 Rape
- *Assault*
- 2 Assault by penetration
- 3 Sexual assault
- *Causing sexual activity without consent*
- 4 Causing a person to engage in sexual activity without consent
- *Rape and other offences against children under 13*
- 5 Rape of a child under 13
- 6 Assault of a child under 13 by penetration
- 7 Sexual assault of a child under 13
- 8 Causing or inciting a child under 13 to engage in sexual activity
- *Child sex offences*
- 9 Sexual activity with a child
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Continued



- 16 Abuse of position of trust: sexual activity with a child
- 17 Abuse of position of trust: causing or inciting a child to engage in sexual activity
- 18 Abuse of position of trust: sexual activity in the presence of a child
- 19 Abuse of position of trust: causing a child to watch a sexual act
- 20 Abuse of position of trust: acts done in Scotland
- 21 Positions of trust
- 22 Positions of trust: interpretation
- 23 Sections 16 to 19: marriage exception
- 24 Sections 16 to 19: sexual relationships which pre-date position of trust
- *Familial child sex offences*
- 25 Sexual activity with a child family member
- 26 Inciting a child family member to engage in sexual activity
- 27 Family relationships
- 28 Sections 25 and 26: marriage exception
- 29 Sections 25 and 26: sexual relationships which pre-date family relationships



Continued



- 30 Sexual activity with a person with a mental disorder impeding choice
- 31 Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity
- 32 Engaging in sexual activity in the presence of a person with a mental disorder impeding choice
- 33 Causing a person, with a mental disorder impeding choice, to watch a sexual act
- *Inducements etc. to persons with a mental disorder*
- 34 Inducement, threat or deception to procure sexual activity with a person with a mental disorder
- 35 Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception
- 36 Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder
- 37 Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception



Continued



- 38 Care workers: sexual activity with a person with a mental disorder
- 39 Care workers: causing or inciting sexual activity
- 40 Care workers: sexual activity in the presence of a person with a mental disorder
- 41 Care workers: causing a person with a mental disorder to watch a sexual act
- 42 Care workers: interpretation
- 43 Sections 38 to 41: marriage exception
- 44 Sections 38 to 41: sexual relationships which pre-date care relationships
- 45 Indecent photographs of persons aged 16 or 17
- 46 Criminal proceedings, investigations etc.
- *Abuse of children through prostitution and pornography*
- 47 Paying for sexual services of a child
- 48 Causing or inciting child prostitution or pornography
- 49 Controlling a child prostitute or a child involved in pornography
- 50 Arranging or facilitating child prostitution or pornography
- 51 Sections 48 to 50: interpretation



Continued



- 52 Causing or inciting prostitution for gain
- 53 Controlling prostitution for gain
- 54 Sections 52 and 53: interpretation
- *Amendments relating to prostitution*
- 55 Penalties for keeping a brothel used for prostitution
- 56 Extension of gender-specific prostitution offences
- *Trafficking*
- 57 Trafficking into the UK for sexual exploitation
- 58 Trafficking within the UK for sexual exploitation
- 59 Trafficking out of the UK for sexual exploitation
- 60 Sections 57 to 59: interpretation and jurisdiction
- Administering a substance with intent
- 62 Committing an offence with intent to commit a sexual offence
- 63 Trespass with intent to commit a sexual offence
- *Sex with an adult relative*
- 64 Sex with an adult relative: penetration
- 65 Sex with an adult relative: consenting to penetration



Continued



- Exposure
- 67 Voyeurism
- 68 Voyeurism: interpretation
- 69 Intercourse with an animal
- 70 Sexual penetration of a corpse
- 71 Sexual activity in a public lavatory

