

Who are We Can't Consent to This, and what is the 'rough sex' defence?

A growing number of women are being seriously injured and killed during so-called 'sex games gone wrong'. 1996 two women per year were killed or injured during what the defendants called "consensual rough sex"; by 2016 this had rocketed to 20 women per year – **a tenfold increase**¹.

A case, *R v Brown*, established the legal precedent in England and Wales that a person **cannot consent to more than transient or trifling injury**. But this is not yet on the statute books, and the prosecutions of men who kill and injure women during sex **do not reflect this precedent**.

However, in **45% of cases** where a man kills a woman during sex and claims she consented to it, *this defence works*. This results in the killing being prosecuted under a lesser charge – such as manslaughter – or even not treated as a crime at all.

In the 5 years from 2014, 20 women and girls have been killed in what what the perpetrators defended as consensual sexual violence. **Of the 20 women killed, only 9 men were convicted of murder**, 9 were convicted of manslaughter, and one case resulted in no conviction.

What's more, the Crown Prosecution Service don't keep data on this, so [We Can't Consent To This](#) – a volunteer-led organisation – have researched this awful trend. **Now MPs will have a chance to stop this: there are proposals before the Domestic Abuse bill committee**, and the Government have committed to come back with their own proposals to end this trend.

We ask you to support our call to end these claims, by signing up to the Domestic Abuse bill amendments NC4-NC11.

What is the scale of the problem?

We've found 67 recent cases of people in the UK who were killed during so-called 'sex games gone wrong'; 60 of those killed were female. We have found many more women injured in non-fatal assaults which those accused say they consented to. **Everyone who has used this claim in a defence in a UK homicide or non-fatal assault is male.**

Of the women killed, half were in relationships with the men who killed them. Most of those men had a history of abuse. And many of these defendants had other convictions for serious violence – rape, murder, kidnap – of women.

Extraordinarily, the latest Femicide Census² catalogued eight women killed in sexually sadistic homicides in 2018. **Six of those eight men accused of sexually sadistic homicides in 2018 used a 'rough sex' defence.** These murders would have a 30-year minimum life term starting point³ so there is a strong incentive to rebrand this conduct as consensual.

And [in new research on non-fatal assaults](#), we've found 115 people who have had to attend court where it's claimed they consented to violent injury – all but one of them women, and 67 injured in just the last ten years. **All of those say they didn't consent. The violence used in non-fatal assaults includes waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching, and kicking, and in one case, a shotgun fired intimately at a woman.** It appears fairly common for those with history of domestic abuse who are accused of violence like beating or wounding to tell police that the woman's injuries were in fact due to rough sex.

But still those claims worked, in a lighter sentence because the defendant believed she was consenting, dropped prosecutions because the woman may have discussed a "sex fantasy" – and [as reported on Sunday](#): a woman told by the CPS that her horrific assault wouldn't be prosecuted because the courts may overturn the existing case law, and say she consented to it. Strangulation in these cases is rarely prosecuted at all, or as common assault: it should be tried as ABH or above. And in many cases, the victim's sexual history viewed in court, and reported in the news, with her name.

And this is at a time of a shocking rise in violent assault of women in sex: BBC research reveals that 38% of UK women under 40 have experienced unwanted slapping, choking, gagging, or spitting during consensual sex.⁴ **This is 3.6 million UK women** who have been violently assaulted, and most of the men⁵ who do it say they are influenced to do so by porn. Every day women write to us [sharing their experiences](#): sexual violence against women is being *normalised*. Few of those women have yet contacted police, although we've heard anecdotally of a 'huge' increase in reports seen by police, and appallingly of women told by some officers that you "can consent to" strangulation now.

¹ [We Can't Consent To This Research 2018-2020](#)

² [Femicide Census of 2018 - February 2020](#)

³ [Section 5 of Schedule 21 of the 2003 Criminal Justice Act](#)

⁴ [A man tried to choke me during sex without warning' - BBC 5 Live/Savanta ComRes Research November 2019](#)

⁵ [BBC 5 Live and Disclosure/Savanta Comres 2020](#)

The particular harm of strangulation and asphyxiation

Strangulation and asphyxiation is an overwhelming feature of the homicides claimed to be rough sex – around two thirds of those women have been strangled. In Non Fatal assaults, strangulation is explained away as “consensual”.

Although it is common for strangulation to leave no visible signs of injury, [new research](#) sets out the terrible harm suffered by victims of non-fatal strangulation, with the onset of symptoms sometimes delayed by days or weeks. Harms can include stroke, cardiac arrest, miscarriage, incontinence, seizures, paralysis, speech disorders, and other forms of long term brain injury. This research by NHS clinician researchers⁶ terrifyingly sets out:

- Up to 10% of the population have experienced strangulation.
- **This rises to over 50% of women subject to routine domestic abuse, and up to 20% of women who have been sexually assaulted.**
- Strangulation is an overwhelmingly gendered crime: in a review of 300 forensic records in San Diego, 298 involved a man strangling a woman.
- **if a woman has been strangled, the chance of her subsequently being murdered rises eightfold.**
- Neck structures are alarmingly fragile: blocking the jugular vein can take less pressure than opening a can of Coke.
- **Consciousness can be lost within as little as 4 seconds of arterial pressure. Losing consciousness indicates at the very least a mild brain injury.** Consciousness was lost in between 17% and 38% of strangulation incidents identified.
- It is thought **strangulation might be the second most common cause of stroke in women under 40.**

In one “rough sex” case where the defendant was not prosecuted for strangulation: – *“Her idea was to involve the violence with the sex. She insisted on strangulation. She just wanted more and more and more”*. She didn't agree she consented. He was found not guilty of all charges which were brought - wounding and threats to kill - at court.

Strangulation is widely underprosecuted⁷ and we support the introduction of a specific, serious, strangulation offence.

What do we want to happen now?

We believe that defendants who use these rough sex claims do so because they **see it working**.

We need wide ranging measures to stop the success of these claims: where they results in no investigation by police, or charges dropped by prosecutors, violence – including strangulation – not prosecuted even where he admits doing it, a sentencing benefit, the woman's sexual history used against her and reported in press.

MPs Harriet Harman, Laura Farris, and Mark Garnier – the family MP for Natalie Connolly, a young woman killed with a rough sex defence - have worked together to set out amendments to the Domestic Abuse bill now before bill committee. These move and clarify the current law in statute, ensure prosecution decisions are reviewed in these homicides, make strangulation a specific, serious offence, and protect victims from having their sexual history used against them in court. These amendments have cross party and significant [public support](#).

We want MPs to support these, as they are strong proposals which can begin to end the success of rough sex claims.

But the Government are considering their own proposals. **We know the Government know how serious this is, and that they can, and must, go further than the amendments proposed to date.** We must protect women who'd just met the perpetrators, who wouldn't be covered by the scope of the Domestic Abuse bill, protect victims of common assault too from having their sexual history used against them, and ensure that data is collected so the Government know whether their measures have succeeded.

What can I do about it today?

- **Sign up to Mark, Laura and Harriet's DA Bill Amendments NC4 – NC11.**
- **Share your support online, and ask your colleagues to support our call.**

[Consult our detailed briefing](#)

[We Can't Consent To This](#) - [Twitter](#) - [Instagram](#)

⁶ [A Systematic Review](#) of the neuropsychological outcomes of non-fatal strangulation in domestic and sexual violence

⁷ [Domestic Abuse bill, the need for an offence of non-fatal strangulation](#); Centre for Women's Justice 2020