



Opinion Police

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# The sexual behaviour of undercover police fits the definition of rape

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The case law shows that undercover police officers who slept with protesters are on dangerous legal ground

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📷 Bob Lambert, an undercover police officer, cradles his son in a maternity ward in the 1980s. The baby's mother has been deeply traumatised after discovering his real identity after he vanished from her life. Photograph: Guardian

One of the 11 women who are currently suing the police after being tricked into having sexual relationships with men later revealed to be undercover officers said that she felt that she had been "raped by the state". "We were sexually abused," she said, "because none of us gave consent."

Chief Constable Mick Creedon, who is leading an inquiry into the units in question, acknowledges that officers might be prosecuted as a result of some undercover activities, but says of the sexual involvement that it is a bit like men lying about whether they are married: "It happens."

Nick Herbert, when minister for police and criminal justice, claimed that a specific ban on undercover officers having sexual relationships would provide "a ready-made test for the targeted criminal group to find out whether an undercover officer was deployed among them".

When police lie their way into criminal gangs, pretending to be willing participants in wrongdoing in order to disrupt it or apprehend wrongdoers, that level of undercover work has far fewer moral question marks over it. But these police have lied their way into women's intimate lives. Some of the suits against the police call this inhuman and degrading treatment, as well as deceit, assault, breach of privacy and misfeasance in a public office.

There will need to be detailed examination of each case in court, but these relationships appear to have been deliberately donned as aspects of the undercover identity. Although deceived as to whom their sexual partner was, a female protester could nonetheless give him credibility in the world he wanted to infiltrate. Wear a woman as part of your disguise.

Rape is sex without consent in which the perpetrator does not reasonably believe that the complainant is consenting. It is common sense that these sexual acts fit that definition of rape and it could be the legal position too.

Consent is agreement by choice by someone who has the freedom and capacity to give it. And as the Irish rape case of Dee said a century ago: "The person by whom the act was going to be performed was part of its essence." One is surely deceived in multiple ways about that "essence" as a protester conned into sex with a policeman on duty, to bolster his believability.

In a case called Jheeta in 2007, a plea of guilty was correct when a man knew that his cooling girlfriend would not have had sex if he had not sent texts, from a fictitious other person, pretending to warn that the man would kill himself if she didn't comply. It was a deception undermining consent and he admitted it.

Discussing the Julian Assange extradition case in 2011, the divisional court said that a man could face prosecution for rape if he knew a woman would only consent to sex with a condom and he had sex without one, for her

consent was absent and he knew it. In the case of R v A from April this year, a man whose wife, afraid both of him and of pregnancy, would only have sex if he withdrew as contraception, had not consented to sex in which he always intended to ejaculate.

Chief Constable Creedon may be sweeping too much up into his summary that deception happens in sex without making it rape. The position of these officers is very vulnerable indeed. If anyone wanted to test the law as it relates to rape and undercover policing, then all bets are off. And that extends to their superiors if they conspired in or condoned their deception.

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