



# WE Party Conference

15 – 18 October 2020

**Title:** An affirmative consent law

**Proposed by:** Mandu Reid, Leader of the Women's Equality Party

**Type of motion:** Policy motion

**Motion text:**

1 In light of:

2 A. The continued decline in the number of reported rapes making it to court, despite increased  
3 reporting, and the fact that a tiny fraction result in a conviction, and

4 B. The legal challenge brought by the Centre for Women's Justice on behalf of the End Violence  
5 Against Women coalition, which the Court of Appeal has allowed to proceed, accusing the CPS  
6 (Crown Prosecution Service for England and Wales) of adopting a secret policy in rape  
7 investigations to drop supposedly "weak" cases,

8 Conference recognises:

9 1. A person consents to sexual activity only if they agree by choice, and they have the freedom  
10 and the capacity to make that choice;

11 2. Currently, in rape cases, the *absence* of consent has to be proven;

12 3. When applying the law on consent in rape cases, prosecutors are required to assess what the  
13 suspect *believed* when the alleged rape took place. The prosecution must prove that the suspect  
14 *did not* have a reasonable belief that the complainant was consenting.

15 Conference reaffirms:

16 i. The seriousness of rape and sexual violence.

17 ii. The Women's Equality Party's commitment to ending all forms of violence against women and  
18 girls so that every woman may live free from the fear of violence.



19 Conference calls on the Westminster and Holyrood Governments to:

- 20 • Introduce affirmative consent laws, where the defence must prove that the suspect had actively  
21 sought and received consent.
- 22 • Invest in comprehensive education on affirmative consent and incorporate this into  
23 relationships and sex education in schools.

### **Motion rationale:**

24 In her 2019 – 20 annual report, the Victim's Commissioner (whose remit covers England and  
25 Wales) said "In effect, what we are witnessing is the de-criminalisation of rape."<sup>11</sup> Over the past  
26 five years, cases reported to police and initially recorded as rape have risen sharply to 59,747.  
27 However, the proportion making it to court (prosecutions) in that time has more than halved and  
28 the conviction rate for 2019-20 was just 2.6%<sup>12</sup>.

29 Myths about false accusations have resulted in the emergence of discriminatory practices, such as  
30 the so-called "digital strip search", and the evidentiary threshold for cases to be prosecuted has  
31 become so high that both police forces and prosecutors are unwilling to bring charges<sup>11</sup>.  
32 Thousands of victims are being let down by the justice system and criminals are being allowed to  
33 re-offend. We need not only to change the practice of the law but the law itself, as well as the  
34 norms and culture within which the law operates.

35 Current laws put the onus on the prosecution to prove an absence of consent<sup>10</sup>, rather than  
36 requiring the accused to prove affirmative consent. This creates a culture in which victims are  
37 treated with suspicion, their behaviour is investigated as much, if not more, than the accused, and  
38 acquaintance rapes (which form the majority) are less likely to be believed than stranger rapes. In  
39 this context, reasonable belief is in danger of becoming a proxy for the requirement for victims to  
40 have shown that they resisted.

41 An affirmative consent law would require active, conscious and voluntary agreement to be given  
42 by both parties to sexual activity each time sexual activity takes place, by way of clear,  
43 unambiguous words or actions. This would not only shift the burden of proof away from the victim,  
44 potentially improving the number of cases that are prosecuted and victims' experience of the  
45 criminal justice system, it would also contribute to a significant culture change where the women's  
46 right to control her sexuality is respected.

### **Supporting Research:**

1. <https://www.theguardian.com/society/2020/jul/30/convictions-fall-record-low-england-wales-prosecutions>
2. <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandanddwales/yearendingmarch2020>
3. <https://www.cps.gov.uk/publication/cps-data-summary-quarter-4-2019-2020>
4. <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandanddwales/2015-07-16>



5. <https://www.heraldscotland.com/news/18348577.sexual-assault-conviction-rate-reaches-ten-year-low-according-official-scottish-government-statistics/>
6. [https://www.holyrood.com/news/view,sexual-crimes-in-scotland-reach-highest-level-since-records-began\\_10853.htm](https://www.holyrood.com/news/view,sexual-crimes-in-scotland-reach-highest-level-since-records-began_10853.htm)
7. <https://www.gov.scot/publications/thematic-review-investigation-prosecution-sexual-crimes/pages/1/>
8. <https://www.gov.scot/publications/recorded-crime-scotland-2018-19/pages/15/>
9. <https://www.independent.co.uk/news/uk/crime/rape-victims-uk-justice-system-record-low-a9646261.html>
10. <https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-3-consent>
11. <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2020/07/Victims-Commissioners-Annual-Report-2019-20-with-hyperlinks.pdf>
12. <https://www.bbc.co.uk/news/uk-48095118>