

Exploring experiences of, and perspectives towards, alcohol intoxication and non-consensual sex amongst a student and legal population

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## Abstract

The association between consuming alcohol and experiencing non-consensual sex is now largely established. Little research however has addressed English students' experiences of non-consensual sex when drinking and the alcohol related strategies used to procure intercourse. Study one of the PhD therefore carried out an online survey to address students' (N=1,079) attitudes, understandings and experiences of alcohol involved non-consensual sex, also gaining insight into men's non-consensual encounters; a previously neglected participant group. The consumption of alcohol prior to rape impacts on perceptions of complainant credibility and academics have questioned the contribution of the Sexual Offences Act 2003 in the prosecution of alcohol involved rape cases specifically. Study two consequently carried out interviews with barristers (N=14) to establish the barriers that exist to the successful prosecution of alcohol involved rape cases, the application and usefulness of provisions introduced by the 2003 Act and where problems in the law of intoxication were still perceived to exist. Research documents that individuals endorse beliefs around false rape allegations being frequently made and surmise that alcohol consumption increases the potential for a false rape report. Study three therefore carried out focus group discussions with students to develop further understanding of alcohol involved non-consensual sex and the perceived role of alcohol within the false rape reporting process. Findings indicated that 30.7 percent (N=329) of participants had experienced at least one act of alcohol involved non-consensual oral, anal, or vaginal sex since the age of 14, that provisions introduced by the 2003 Act were not always being utilised as intended and that it was the perceived impact of alcohol on sexual inhibitions that was deemed central in encouraging individuals to behave in ways they would not if sober, regret those actions the next day, and increase the potential for a false rape report to be made. Studies emphasised that alcohol consumption disproportionately impacted on the credibility of the complainant, rather than the culpability of the defendant, and that future messages must emphasise the responsibility placed on defendants to take proactive steps in ensuring consent.

## **Chapter 1: general introduction to the PhD research**

### Public health and legal perspectives

Sexual offences are a universal public health and criminal justice problem that affect society in a profound way and which impact on individuals of all ages and social groupings (Finney, 2004; The Stern Review, 2010). The impact of sexual offences on psychological and physical health can be catastrophic, long lasting and potentially fatal (Abbey, Zawacki, Buck, Clinton, & McAuslan, 2001). Victims of rape make up the largest proportion of individuals suffering from Post Traumatic Stress Disorder which results in an array of accompanying symptoms including feelings of anger, shame and denial, difficulties forming and maintaining new relationships, substance dependence and increased levels of depression. In the most extreme instances depression can lead to suicide (Foa & Riggs, 1994; Petrak, Doyle, Williams, Buchan, & Foster, 1997). The health consequences associated with sex crimes are also vast and may include physical injury, sexually transmitted infections and unwanted pregnancy (Cybulska, 2007). English and Welsh crime survey data demonstrates that women fear being the victim of rape more than any other offence (Walby & Allen, 2004) whilst scholars argue rape is still one of the most prevalent, yet least recognised, human rights issues in the world today (Roze, 2000).

The consumption of alcohol is recognised to be a risk factor for experiencing a sexual offence. Kelly, Lovett and Regan (2005) found from English police data that in around half of rape cases the complainant had been drinking. American research also suggests that if one member of the drinking dyad is consuming alcohol prior to a non-consensual experience, typically both will be (Abbey, McAuslan, & Ross, 1998). Alcohol involved non-consensual sex has become a widely recognised form of assault, especially amongst American college students where commentators have argued that heavy episodic drinking is the most important public health issue facing the student population (Mohler-Kuo, Dowdall, Koss, & Wechsler, 2004). Whilst American students' experiences of non-consensual sex when drinking have received much research attention, little UK research has thus far addressed English students' experiences of alcohol involved non-consensual sex. This is therefore an important area for future research to investigate, to enable a UK perspective to be gained.

The previous three decades have seen significant changes to the way rape and sex crime is dealt with in England and Wales, as well as many other jurisdictions across the western world. Reforms to the laws of sexual offences, the introduction of special measures to assist victims in giving their evidence in court, improved practices and protocols for working with survivors and an increased number of services being accessible to individuals post assault, have all been introduced to try and improve a rape victim's experience (The Stern Review, 2010). Many of

these reforms were led by the 'second-wave' feminist movement in the early 1970s. The women's Liberation Movement at this time demanded recognition and change for sexual offence survivors. In their campaign for the equal treatment of women, sexual offences were recognised to be a major priority. The feminist movement re-formulated the concepts of rape and sexual assault, arguing that they were the consequence of a deep seated disrespect for women which permeated society (Kitzinger, 2009). Indeed, the feminist perspective placed explanations for rape within the context of a rape supportive, patriarchal culture (Burt, 1980). That is, the social structure of many societies that placed male superiority and dominance at the top of the hierarchy, were seen to perpetuate sexual violence against women (Brownmiller, 1975). It was argued that such societies have exacerbated rape, and continue to do so, through the nurturing of aggression in men and passivity in women and that under such a dominant-submissive, sex-role stereotyped culture rape would be the inevitable conclusion (Burt, 1980). Rape myths, or, negative stereotyped attitudes that keep hidden the reality and harm of sex crime were also conceptualised via the feminist movement (Brownmiller, 1975; Burt, 1980) and have become the foundation for much subsequent research. Attitudes that obscure the rape offence and which hold women accountable for their victimisation have been subject to much debate (Burt, 1980; Ellison & Munro, 2009a; 2009b; Finch & Munro, 2005; 2006; 2007; Lonsway & Fitzgerald, 1994; O'Byrne, Hansen, & Rapley, 2008; Temkin & Krahe, 2008). Feminist have long argued that the rape of women has historically, and still is, condoned by the state through institutions such as the legal system and the criteria they adopt in relation to the handling of sexual offences. As a consequence of the activism initiated via the feminist movement, the criminal law was also forced to re-evaluate its position on sexual offences.

In England and Wales, the legislation that governs sexual offences is the Sexual Offences Act 2003. This Act dramatically altered the legal landscape relating to sexual offences generally and the offence of rape specifically. It was rationalised that the previous law was not only out of date, but potentially fostered unfairness, with attention being drawn to the dramatic decrease in the rape conviction rate from 25 percent in 1985 to seven percent in 2000 (Home Office, 2002). The government white paper 'Protecting the Public' suggested that this decrease correlated with an increase in the reporting of 'acquaintance rapes' (Home Office, 2002). That is, rape that occurs between individuals who have some form of established prior relationship or familiarity. In comparison to 'stranger rape' cases (where no prior relationship exists), the complainant's lack of consent in an acquaintance offence is overwhelmingly the pivotal issue and the previous labour government were keen to introduce greater clarity and coherence in relation to the issue of consent. For the first time, the 2003 Act introduced a statutory definition of consent along with a range of presumptions, or circumstances, relating to the absence of consent. Throughout the reform process, it was implicated that these amendments would help to remedy the problem of low rape convictions (Home Office, 2002).

Despite the amendments made to law, concern around the rape conviction rate remained and the impacts of the 2003 legislation were questioned (Elvin, 2008; Finch & Munro, 2004; Tadros, 2006; Temkin & Ashworth, 2003). Still of particular concern are issues relating to intoxication and rape, especially cases in which the complainant was voluntarily and exceptionally intoxicated at the time of the incident. Studies continue to indicate that people are reluctant to believe a woman who states she was raped when drunk or hold her in some way accountable and are therefore reluctant to convict the accused (Finch & Munro, 2005; 2007; Opinion Matters, 2010a). Further empirical work is therefore needed to help ascertain the contribution of the 2003 amendments to date, their role in the prosecution of alcohol involved rape cases specifically, and to highlight if, and where, problems in the law still remain.

Inevitably linked to third parties reluctance to believe an intoxicated female's account of rape are assumptions around the possibility of the accusation being false, or, the consequence of a sober retraction of consent. Indeed, the notion that women (and to a lesser extent men) frequently lie about having been raped is deeply embedded within the law, media and society at large (Burt, 1980; Rumney, 2006). Fear of not having a rape complaint believed both motivates complainants to withdraw their cases early on in the criminal justice process, prevents them from reporting to the police initially and seeking services to deal with the trauma experienced (Kilpatrick, Resnick, Ruggiero, Conoscenti, & McCauley, 2007). It may also be argued that the government's recent discussions around bringing in anonymity for those accused of rape were premised at least in part on notions that women frequently lie about rape (Bindel, 2010). In light of such significant implications it is necessary to further investigate the attitudes and perceptions held around false rape reporting and to illuminate the perceived role of alcohol within the false rape allegation process.

### The social representations perspective

Social psychology research has attempted to address the benefits to identity that adherence to certain attitudinal perspectives (negative, stereotypical or otherwise) may serve and how these world views come into being. The theory of social representations (Moscovici, 1976) specifically aims to address an individual's social context, the role of communication and the mass media in the construction of that individual's attitudes, values and belief systems. Central to the theory is the idea of 'sense-making'. That is, the turning of unfamiliar ideas, abstract events and concepts into something knowable and which can be understood within existing frameworks of knowledge. Whilst social representations theory has not previously been applied to the area of rape, it can legitimately be suggested that the approach is appropriate in helping to better explain an individual's endorsement of negative or inaccurate rape blaming perspectives.

how these develop and the factors that sustain their repetition. Indeed, when individuals are presented with the often unfamiliar event of a rape, social representation processes are likely to be triggered and existent knowledge called upon to try and make sense of the rape event. The current PhD therefore aims to utilise social representations theory to conceptualise a more social, societal explanation for the construction of an individual's beliefs, attitudes and understandings around rape. The theory will be applied to the qualitative research studies of the PhD specifically, in recognition that social representations are expressed, and become identifiable, through an individual's social interactions (Moscovici, 1976).

### Study aims and objectives

In recognition of the literature discussed the PhD set out the following aims and objectives:

**Aims of study one:** To identify a UK student samples experiences of, attitudes towards, and understandings around, alcohol involved non-consensual sex.

#### **Objectives:**

- To conduct an online survey of university students in order to ascertain experiences of, attitudes towards and understanding around, alcohol involved non-consensual sexual experiences.
- To compare differences in experience, attitude and understanding by gender (males vs. females) and drinking status (high vs. low drinkers).

**Aims of study two:** To identify the barriers that exist to successfully prosecuting alcohol involved rape cases and to explore how certain amendments made to the law via the Sexual Offences Act 2003 have been perceived, work in practice and their overall contribution in terms of improving the law of alcohol involved rape.

#### **Objectives:**

- To conduct interviews with barristers who prosecute and defend in rape cases in order to investigate attitudes towards the prosecution of alcohol involved rape cases, the use and usefulness of certain 2003 reforms, their impact in improving the law of alcohol related rape and establishing where problems in the law still exist.
- To consider the benefits to identify that endorsement and repetition of certain perspectives may serve.

**Aims of study three:** To examine attitudes and understandings held by students in relation to alcohol consumption and non-consensual sex and to explore the perceived contribution of alcohol in the false rape allegation process.

#### **Objectives:**



- To conduct focus groups with university students to investigate attitudes and understanding around alcohol involved non-consensual sexual experiences and the role of alcohol in the false rape reporting process.
- To identify differences in attitude and understanding by gender (males vs. females).
- To consider the function and benefit to identity endorsement and repetition of inaccurate or negative rape blaming perspectives may serve and to consider the origins of these perspectives.

### The researcher's position

In recognition that the current PhD will be aiming to address participants' experiences through the use of qualitative research methods, and to establish the meaning of specific phenomena as they appear to those participants, it is necessary to address the researcher's background and acknowledge that this may impinge on the research process. In addition, Carter and Little (2007) argue that it is best practice to specifically articulate ones epistemological position, that is, the researcher's perspective on knowledge, what knowledge is and how it is constructed. Carter and Little (2007) argue that it is impossible to engage in knowledge creation without first making explicit ones underlying assumptions on the topic, stating that these assumptions influence the formulation of research questions, the adoption of methodologies and methods, the researcher's visibility, the construction of meaning from the data and the data quality checks adopted. It is therefore necessary to state that in line with Wall, Glenn, Mitchinson and Poole (2004), the current researcher accepts that it is somewhat inevitable that they will bring their own background experiences, attitudes and preconceptions to the qualitative research paradigm. Indeed, the investigator had an extensive research background in both the investigation of violence against women and the evaluation of interventions that aim to reduce the perpetration of sexual offences by men. The researcher had also spent several years carrying out one-to-one practitioner work with men and women who had experienced sex crime and still sits on the management committee for Rape Crisis Leicester, making these issues both pertinent and the necessary motivators that drove the decisions to undertake the research. Whilst recognising this background it is still argued that it is possible to conduct qualitative work in a way that is as generalisable as possible (although neither of the qualitative studies strive for generalisability in isolation) and although knowledge construction may partially relate to the time and place in which research is conducted, generally, it is possible to access participant's beliefs and understanding and to elucidate the essence of an experience as it appears to a participant. Indeed, this process is made possible via the inclusion of procedures that limit biases (as has been done throughout) such as the use of open ended, non-leading questions, reliability coding checks and through overt attempt to put ones previously acquired preconceptions to one side. The current PhD is not entirely qualitative in nature but adopts a mixed methods approach

which recognises the importance of combining multiple types of data to best provide an understanding of the research questions. As Creswell (2003) notes, by recognising that all methods have limitations, biases inherent in one particular approach can to some extent be neutralised care of the inclusion of alternative methods. The current PhD adopts what Creswell (2003) refers to as a 'sequential procedure.' That is, it begins with the use of quantitative methods in which specific issues are identified as pertinent. These tested concepts are then followed up via qualitative methods that involve detailed exploration of emergent issues. This approach enables data triangulation to become visible. That is, a convergence in findings across the different approaches adopted, enhancing the robust nature of assertions made in relation to these findings.

### Terminology and definitions

It is necessary to consider the definitions and terms of reference used throughout the PhD. A number of key definitions are considered here but will also be expanded upon throughout the PhD. The terms 'sexual offence', 'sex crime' and 'non-consensual sexual experience' are used as umbrella expressions throughout to encompass any of the four adult sexual offences as defined by the Sexual offences Act 2003. These are: rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without their consent. Whilst the focus of the PhD is on adult and college students' experiences of rape, the other three offences are also drawn upon and warrant definition here. Section 1 of the 2003 Act states that 'a person (A) commits an offence of rape if – (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consent' (S1. Sexual Offences Act, 2003). Discussion around the meaning of the terms 'reasonable belief' and 'consent' will take place in the later chapters along with consideration of the evolution of the rape definition. However, the issue of significance at this point is that rape constitutes non-consensual penile penetration of the mouth, vagina or anus and it is these acts which will be recorded onto English and Welsh police databases as being constitutive of the rape offence. Assault by penetration is defined as 'A person (A) commits an offence if – (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else, (b) the penetration is sexual, (c) B does not consent to the penetration, and (d) A does not reasonably believe that B consents' (S2. Sexual Offences Act, 2003). This offence would cover the circumstance whereby fingers or objects such as bottles are used to penetrate a man or woman. Whilst rape remains a gender specific offence and requires penile penetration, assault by penetration is a gender neutral crime and would therefore cover the instance of a woman intentionally penetrating a man or another female with an object or part of their body.

The 2003 Act defined sexual assault as: ‘A person (A) commits an offence if – (a) he intentionally touches another person (B), (b) the touching is sexual, (c) B does not consent to the touching, and (d) A does not reasonably believe that B consents’ (S3, Sexual offences Act, 2003). The final offence of causing a person to engage in sexual activity without their consent is defined as; ‘A person (A) commits an offence if – (a) he intentionally causes another person (B) to engage in an activity, (b) the activity is sexual, (c) B does not consent to engaging in the activity, and (d) A does not reasonably believe B consents’. The activity must involve ‘(a) penetration of B’s anus or vagina, (b) penetration of B’s mouth with a person’s penis, (c) penetration of a person’s anus or vagina with a part of B’s body or by B with anything else, or (d) penetration of a person’s mouth with B’s penis’ (S4, Sexual Offences Act, 2003). Again, this offence is gender neutral and would cover the instance of a man or woman forcing a victim to perform sexual acts on a third person or forcing a third person to perform the specified sexual acts on the victim.

It is recognised that the terms ‘victim’, ‘survivor’ and ‘complainant’ are all used interchangeably within the research literature to describe an individual who has experienced rape or some other form of non-consensual sexual experience. Whilst the term ‘victim’ does for some, invoke notions of disempowerment (Gill, 2009), certain individuals choose to retain the label on the grounds that it emphasise the harm they have experienced or because this is how the individual has come to be identified via the process of officially reporting the offence (Horvath & Brown, 2009). In recognition of these debates, and there being no one term more appropriate than the other, the current PhD uses the expressions ‘victim’ and ‘survivor’ interchangeably to describe those men and women who acknowledge having experienced a sexual offence, irrespective of whether that act has been reported to the police. The term ‘complainant’ is also used, especially in relation to discussions around the legal process - thus reflecting the official language of the law. The terms ‘perpetrator’, ‘defendant’ and ‘accused’ are also used interchangeably to describe an individual who has either been accused of rape or is standing trial for the offence. The term ‘offender’ is also applied to those who have been convicted, even though it is recognised that due to the difficulties of gaining rape convictions (Kelly et al., 2005) defendants may still be ‘offenders’ even if the legal process finds them not guilty, and by default, fails to attribute the label.

### Structure of the PhD

The following chapter of the PhD synthesises and reviews the key research literature in the area. The chapter is divided into four parts: the first of which addresses the extent and nature of sexual offences, the recording of rape and sexual assault by the police and the loss of rape cases as they progress through the Criminal Justice System. Part one also considers the role of alcohol

within a non-consensual sexual experience and the coercive sexual encounters that American college student populations have been found to incur. Part two considers the multiple pathways that link alcohol consumption with non-consensual sex and addresses the pharmacological impact of alcohol on cognitive functioning, as well as the effects we anticipate as a consequence of drinking. Part two further considers the role of alcohol in the misinterpretation of sexual intent cues and its impacts on memory functioning. Part three of the review addresses the law of sexual offences in England and Wales, how the law has evolved and criticisms around the application and usefulness of the Sexual Offences Act 2003. It also considers how issues of intoxication are dealt with via the law. Part four considers rape myths and negative stereotypical attitudes; how these relate to rape case attrition and negative attitudes that specifically surround female intoxication and drinking women. Chapter three provides an overview and discussion of social representations theory and suggests that this approach may be applied to better understand endorsement and repetition of negative or inaccurate rape blaming perspectives. Chapter four details the PhD's first study: an online survey that explores students' experiences, attitudes and understandings around alcohol involved non-consensual sex. This chapter details the study methods, analyses the results in accordance to gender and drinking status and provides a discussion of the key findings. Chapter five details the PhD's second study: interviews with barristers around the alcohol involved rape cases they represent. This chapter again provides details of the study methods and an overarching analysis and discussion of these findings, with reference to the key literature. Chapter six addresses the third PhD study: focus groups with students around their understandings of alcohol involved non-consensual sex and the perceived contribution of alcohol in the false rape reporting process. Again, study methods are discussed and a critical analysis and discussion of the findings provided. Chapter seven draws together the three studies providing an overarching discussion, whilst reflecting on the limitations of the methods adopted. Chapter eight concludes the PhD and makes recommendations that are applicable to the disciplines of law, public health and education.

## **Chapter 2: the literature review**

### Part 1: the extent and nature of sexual offences

Sexual offences are experienced at alarmingly high rates and this section of the literature review aims to provide an introduction, and overview of the extent of such offences in the UK and beyond. In doing so, statistics recorded by police forces will be considered along with other forms of non-police reported crime data. The issue of attrition will also be considered, that is, the degree to which rape cases fall out of the Criminal Justice System as they pass from the point of investigation through to the Crown Prosecution Service, who is responsible for deciding whether to charge cases, and throughout the trial process. This section will also look at alcohol consumption and its association with non-consensual sexual outcomes and go on to describe research that has addressed coercive sexual behaviour on the university/college campus. Specific attention will be paid to the presence and role of alcohol within these coercive events.

#### The extent of sexual offences

It is possible to measure the extent of sex crime through police recorded crime data. Police recording practices in England and Wales are governed by the National Crime Recording Standard and the Home Office Counting Rules. These procedures aim to ensure a standardised approach to the recording of crimes across different English and Welsh forces. Based on the amalgamation of police force data, statistics for 2007/2008 recorded 41,460 'most serious' sexual offences in England and Wales (including rape, sexual assault and sexual activity with a child). In the same year, 12,080 'other sexual offences' were also reported to the police (including exposure, soliciting and exploitation of prostitution). The 41,460 'most serious' offences accounted for just under one percent of the total number of recorded crimes in 2007/2008 and of this total, 11,648 cases were instances of rape against a female whilst 1,006 offences accounted for rape of a male. Sexual assault of a female constituted 20,534 offences and sexual assault of a male totalled 2,642 offences (Kershaw, Nicholas, & Walker, 2008). Whilst the statistics reveal that women experience higher rates of sexual assault and rape than men, it is evident that males are also the victims of these offences. Although it is recognised that both men and women often fail to report sex crimes to the police, it is frequently argued that under reporting is enhanced amongst male populations due to stigma and attitudes surrounding masculinity (Davies & Rogers, 2006). Stereotypes such as 'only homosexual men can get raped' impact on the potential for disclosure. Indeed, rape remains one of the most under-reported and under-recorded crimes both in the UK and beyond (Finney, 2004). Estimates suggest that as many as 75-95 percent of rape cases are never disclosed to police authorities (Her Majesties

Crown Prosecution Service Inspectorate (HMCPSTI, 2007). Problematically for the UK, no independent national random sample study of rape prevalence has been conducted. Those studies that have looked at the extent of rape are typically part of larger surveys such as the British Crime Survey. The British Crime Survey is recognised to be a representative survey of people in England and Wales and a robust source of information for capturing non-reported victimisation experiences (Nicholas, Kershaw, & Walker, 2007). The 2001 British Crime Survey, although now dated, is still recognised to provide one of the most comprehensive insights into rape and sexual assault in England and Wales (Temkin & Krahe, 2008). This nationally representative sample of 22,463 women and men aged 16-59 involved self-completion of a computerised questionnaire that asked about experiences of sexual violence in the previous year, since the age of 16 and during the lifetime (Walby & Allen, 2004). This was also the first time that men were asked at a national level about their non-consensual sexual experiences. The 2001 survey highlighted that in the preceding 12 months, two percent of females had experienced a 'less serious' sexual assault (defined as any incident of flashing, sexual threats or touching that caused fear, alarm or distress) with 0.5 percent having been subject to a 'serious' assault (defined as unwanted penetration of the body without consent). Of the 0.5 serious assaults, 0.3 percent constituted experiences of rape. Once extrapolated, these figures equated to an estimated 190,000 incidents of serious sexual assault with an estimated 79,000 victims, highlighting the significant levels of repeat victimisation amongst the sample. Of the 79,000 serious sexual assault victims, 47,000 constituted female victims of rape and attempted rape. Men within the sample accounted for 0.2 percent of all serious and less serious sexual assaults combined.

The 2001 survey data that addressed lifetime experiences of rape and sexual assault identified that 24 percent of women and five percent of men had been subject to some form of sexual offence at least once in their lifetime. Seven percent of sample women had been subject to a serious sexual assault, five percent had been raped and three percent had experienced another type of assault that involved non-consensual penetration. Lifetime experiences for men indicated that 1.5 percent of males had experienced a serious sexual assault with 0.9 percent reporting rape (Walby & Allen, 2004). Amongst those women who had been subject to serious sexual assault 52 percent experienced depression and emotion problems as a consequence of their victimisation, five percent attempted suicide and four percent experienced unwanted pregnancy. Comparable figures were not provided for male victims as numbers were too small to allow for meaningful statistical analysis (Walby & Allen, 2004). The 2001 survey highlighted that only 15 percent of female rapes were reported to the police with 40 percent of women telling no one at all. If rape was disclosed, it was typically to friends or family members with only a small minority of individuals accessing specialist services such as rape crisis (Walby & Allen, 2004). The survey confirmed that women were more frequently raped by men

they knew (current or former husbands/partners in 54 percent of cases and other known individuals in 29 percent of cases) and experienced repeat assaults by the same individual. Only 17 percent of rapes were committed by strangers, complementing a significant body of research that highlights women most frequently experience rape at the hands of a known individual or intimate partner (Feist, Ashe, Lawrence, McPhee, & Wilson, 2007; Temkin & Krahe, 2008). The findings of the 2005/06 British Crime Survey build upon the findings of the 2001 survey by highlighting that strangers were responsible for perpetrating 63 percent of the less serious female sexual assaults (including exposure, sexual threats and unwanted touching) and 51 percent of the less serious male assaults. However, serious sexual assaults were more frequently committed by someone known to the victim with more than half of the serious female sexual assaults being committed by a current or ex-partner. For men, serious sexual assault was most frequently perpetrated by a know individual, for example, friends or acquaintances (in 58 percent of cases) with 36 percent of cases being perpetrated by a current of ex-partner. These findings suggest that for women at least, the more serious the sexual offence, the more likely it is to be perpetrated by someone the victim knows intimately (Coleman, Jansson, Kaiza, & Reed, 2007).

The 2001 British Crime Survey identified that only 43 percent of those who had experienced an act that met the legal definition of rape classified their experience as such. Rates of rape classification were even lower when the perpetrator was a current or ex-partner (31 percent). However, 62 percent of individuals defined the incident as rape if a physical injury had also been sustained at the time. As will be discussed in greater depth later in the literature review, accepted lay definitions and conceptualisations of what constitutes 'real rape' continue to be those acts committed by a stranger and where physical injury has been sustained (Kelly et al., 2005). This lay conceptualisation is typically assimilated into the victim's perception and impacts on the labelling of their own assaultive experience. Failure to recognise or label an event as rape ultimately influences the decision to report the incident (HMCPSI, 2007) and it may follow that police officers come to see those rape cases that fit the 'real rape' stereotype more frequently. Such exposure may serve to reinforce narrow understandings of rape, rather than challenge such perspectives (Kelly et al., 2005).

American research has used the National Crime Victimization Survey to address rape prevalence rates within the United States. This survey collates data on crimes perpetrated against men and women aged 12 years and above from nationally representative households. Like the British Crime Survey, the National Crime Victimization Survey captures instance of both police recorded and non-reported crime. The 2005 survey findings were based on a mix of telephone and face-to-face interviews with approximately 134,000 randomly selected household individuals. The survey recorded an average annual instance of 115,570 cases of rape and

attempted rape, again revealing that many women were the victims of repeat assault. Of this total, 64,080 cases were of rape alone (United States Department of Justice, 2006). Canadian community-based research has helped to increase levels of sexual offence disclosure through a stated focus on violence against women, as opposed to crime experiences. Statistics Canada conducted a random sample investigation of 12,300 women who were telephone interviewed about their experiences of physical and sexual violence since age 16. Johnson and Sacco (1995) analysed the sexual offence data to reveal findings that paralleled those of the British Crime Survey and American data. That is, women were found to more frequently experience sexual offences at the hands of a known man and to experience repeat assaults by the same perpetrator. The study also revealed that whilst one in three women had experienced a sexual assault, only six percent of women disclosed to the police.

#### Methodological consideration with sexual offence survey research

Whilst the British Crime Survey and National Crime Victimization Survey provide informative insights into experiences of sexual assault and rape, it is still likely that the statistics recorded within them are conservative. They do not cover sexual offences against individuals outside of specific age brackets (for the British Crime Survey those over 59 or under 16 years of age). They are also household based survey and therefore do not address the experiences of homeless individuals, members of the prison population, those living in hostels, refuges or temporary accommodation. Individuals in this type of accommodation may be those who are at higher-risk of having experienced sexual assault initially. Use of telephone interview methodologies also raises the possibility of reduced disclosure if an abusive partner resides at the given premises. Schwartz (1997) argues that inconsistencies in rape prevalence estimates can be attributed to the mode of survey administration. That is, whether the survey is administered face-to-face, via a questionnaire that is completed in isolation or via a telephone approach. Prevalence estimates will also vary across time as a consequence of changes in rape definitions and will be dependent upon the time period of observation and non-consensual experience being investigated. That is, experiences of rape and sexual assault since the age of 16 are difficult to compare against life time experiences that also include attempts at rape. Disparities between the number and content of survey questions asked also impacts on disclosure. Indeed, the National Crime Victimization Survey identifies non-consensual sexual experiences through a series of screening questions. Certain researchers have argued that these screen questions are not sufficiently nuanced to provoke all women's recollections of rape or other non-consensual experience (Fisher & Cullen, 2000; Koss et al., 2007). In addition, sexual offences are known to be under-reported in surveys that specifically state they are asking about crime (Kelly et al., 2005), possibly due to concerns regarding repercussions of disclosure. These factors should all be considered when interpreting the statistics discussed.



## The recording of rape by the police and the issue of attrition

Whilst official police figures are likely to underestimate significantly the extent of sexual offences, the number of rapes coming to the attention of English and Welsh police authorities has been increasing in a steady fashion for more than 20 years (MHCPSI, 2007). In 1997 there were 6,281 instances of police reported rape, by 2003/04 there were 12,354 (Dodd, Nicholas, Povey, & Walker, 2004). Less tolerance towards rape, changes in the police response and the development of Sexual Assault Referral Centres to provide joined up medical and counselling services to victims, have all helped to increase disclosure. Countries outside of England and Wales have seen similar increases in official reporting. Between 1970 and 1982 reports of rape increased from 37,860 to 77,763 in the United States. By 1992 police figures peaked at 109,062 reports whereby there was an annual decrease until 2000 where figures again began to rise. By 2006 the official figure stood at 92,455 police reported rapes (Federal Bureau of Investigation, 2006). Despite the annual increase in reporting behaviour, the conviction rate for rape remains exceptionally low in the UK, currently around six percent in England and Wales and four percent in Scotland (Kelly et al., 2005). Indeed, despite increases in reporting, conviction rates have remained constant implying a decrease in the proportion of rapes resulting in conviction. Rape convictions have decreased from 33 percent in 1977 to 7.5 percent in 1999 to 5.2 percent in 2004 (Office for Criminal Justice Reform, 2006). This discrepancy between the number of cases being reported and the small number of convictions has been termed the 'justice gap' (Temkin & Krahe, 2008) and subject to much academic and government commentary. Rape conviction rates within the United States have also been shown to fall below those of other violent crimes with arrests more likely in stranger rape cases (Koss, Bachar, Hopkins, & Carlson, 2004).

The low conviction rates for rape are complex; high levels of attrition (the rate at which cases are dropped or lost as they proceed through the Criminal Justice System) are especially pertinent (Gregory & Lees, 1996; Kelly et al., 2005). The largest degree of attrition may be viewed as those cases that fail to be disclosed to the police initially. However, of those rapes that do come to the attention of police authorities research has demonstrated that a significant proportion of reported cases have been categorised by the police as 'no-crime' having occurred. When this code is applied a reported rape will not be recorded as an offence and will therefore not enter the official crime statistics, further acting to keep hidden the extent of rape (Gregory & Lees, 1996; Smith, 1989). Despite a number of provisions having been implemented to try and address the no-crime classification problem, Kelly et al. (2005) have highlighted that its inaccurate application continues to exist. This large scale study into rape case attrition utilised data from the Manchester St Mary's Sexual Assault Referral Centre database, along with

information from six other research sites to track cases prospectively over 17-27 months as they passed through the Criminal Justice System. The sample consisted of 3,527 rapes and was supported with data from other key informants and police officers. Of the total number of rapes analysed in the study, 75 percent (2,643 cases) had been reported to the police. This high level of reporting is perhaps unsurprising in light of police data being used and one of the primary ways of accessing a Sexual Assault Referral Centre is via signposting from the police. Of this 75 percent, analysis revealed that around one quarter of cases were classified as a no-crime with inconsistency noted in the way the category was applied. The no-crime category was found to include cases of victim withdrawal and insufficiency of evidence. These findings have recently been replicated by research that commissioned Her Majesty's Inspectorate of Constabulary and Crown Prosecution Service Inspectorate to review the quality and effectiveness of the investigation and prosecution of rape cases in England and Wales. This review found that despite the introduction of tightened Home Office Counting Rules, there was still a high degree of variation in the application of the no-crime code across seven police forces (HMCPSI, 2002; HMCPSI, 2007). Within the sample of cases reviewed, an important factor influencing officers' decisions to classify a case as a no-crime included the view that the victim was not credible due to discrepancies in their account or due to having been drinking heavily prior to the offence.

Due to the no-crime category including cases designated false allegations, there is concern that the overzealous level of no-criming is also inflating the perception that false rape reports are commonplace amongst police officers (HMCPSI, 2007). Kelly et al. (2005) noted that from the 2,643 rapes reported to the police, 216 cases were classified by officers as false (eight percent). Comparing those sample cases designated false with those cases that proceeded through the system revealed that cases involving 16-25 year olds were more frequently in the false category. Individuals with a disability (including learning disability and mental health problem) were also twice as likely to be in the false allegation group. Police Counting Rules dictate that a complaint must only be classed false if there is a credible admission of falsity by the complainant or where there is a strong evidential basis to deem it false. On these grounds Kelly et al. (2005) reanalysed those cases where information was available as to the reasons for the false classification (N = 144). Findings indicated that the false complaint could be deemed probable (those allegations where there was reference to the complainant's admission) in 44 cases, possible (where there was some evidential basis for the false classification) in 33 cases and uncertain (victim characteristics - mental health problems, use of alcohol or drugs during the offence, inconsistencies in the victim's account being used to suggest the case was false) in 77 cases. If the rate of false allegations was recomputed based on the possible and probable cases, levels of false reporting at three percent are obtained. The limitations of the case information available need to be borne in mind when interpreting this statistic. Both the three and eight percent figures were considerably lower than the levels of false reporting perceived by officers

who were interviewed for the study. Indeed, interviews revealed a culture of scepticism regarding false allegations, the knock on effect of which could be poor communication and loss of confidence between victim and officer. Twenty three percent of officers interviewed for the study raised the issue of inconsistencies in victim's accounts arguing that such inconsistency had implications in terms of victim believability. There appeared to be the assumption that inconsistencies denoted 'lying'. This is noteworthy in light of previous research with rape survivors revealing that victims may hide or conceal certain 'wrong-doing' in order to make them look more believable when reporting to police (Jordan, 2001). It is somewhat unclear whether police consider inconsistency to be as problematic in the prosecution of other, non sexual crimes and this is an area for further investigation to explore.

The Kelly et al. (2005) study identified that around 80 percent of study cases failed to proceed beyond the point of police investigation. Evidential issues accounted for over one third (N = 662) of police decisions not to proceed with cases. This included insufficiency of evidence (in 21 percent of cases), the offender having not been identified (13 percent of cases) and there being no prospect of conviction (two percent of cases). A further third (N = 633) of cases were found to be lost at the investigative point due to victims declining to take part in the initial investigative process (N = 315, such as not making a formal complaint, not allowing forensic examination, the complainant refusing to name their attacker) or because of early victim withdrawal (N = 318). The reasons given for withdrawal included fear of the court process and giving public testimony whilst fear of the Criminal Justice System and not being believed were key factors related to not completing the initial investigative processes. The Crown Prosecution Service discontinued six percent of rape cases because they did not meet one of the two-level tests required; the evidential or public interest test. Crown Prosecution decisions are made on the basis of the Code for Crown Prosecutors. Only cases which meet the evidential test, namely, that there is a realistic prospect of conviction, are taken forward. If a case passes the evidential stage it must be decided whether a prosecution is in the public's interests. A prosecution will typically take place unless there is strong reason to suggest that it is not to the advantage of the public. The finding that the Crown Prosecution Service discontinued only six percent of cases did not fully reflect their decision-making input however as they were often consulted on case files early on in the investigative process (the Crown Prosecution Service have received criticism for their handling of rape cases. Discussion of this issue however is beyond the remit of the current PhD. For a review see HMCPSI, 2002 and HMCPSI, 2007). The study also revealed that only 12 percent (322) of the 2,643 cases were scheduled for trial proceedings. Of these a proportion failed to progress further due to withdrawal or discontinuation at this late point. Where a full trial did take place (N = 181), an acquittal was more likely than a conviction (104 acquittals compared to 77 convictions). This finding has also been supported more recently

by the HMCPSI (2007) review which suggested that of those rape cases which involve adults and reach court, around one third to a half will result in acquittal (HMCPSI, 2007).

The Stern Review (2010) is perhaps the most recent document to critique the rape conviction rate arguing that the frequently sighted six percent statistic is somewhat of a misnomer. In line with the findings of a recent Ministry of Justice research project (Thomas, 2010), the Stern Review argued that the rape conviction rate actually stood at 58 percent with variance in estimates being due to the manner in which the rate is calculated. Whilst the six percent statistic relates to those cases which are reported to the police and end in a conviction, the 58 percent figure is based solely on cases which proceed to trial. Hence, provided a rape case reaches the trial stage, a conviction is argued to be no less unlikely than it is for any other serious offence (The Stern Review, 2010). As noted, this argument was also raised by Thomas (2010) who based upon 4,310 jury verdicts in rape cases across all courts in England and Wales during 2006-2008, argued that juries convicted more often than they acquitted (55 percent conviction rate) and that offences such as attempted murder and manslaughter had lower conviction rates than rape. These findings were used to suggest that juror adherence to real rape myths are not principally responsible for the low rape conviction rate, and that juror bias fails to impact disproportionately in rape cases. Whilst adherence to rape myths will be discussed later in the chapter, the 58 percent statistic quoted by The Stern Review (2010) still represents an 18 percent decrease in convictions since 1979 (Temkin, 2002). Furthermore, a very small percentage of rape cases proceed to trial with attrition significantly impacting in the rape offence. The 58 percent statistic in isolation can therefore be seen to obscure the unique biases that relate to rape cases as they progress through the Criminal Justice System.

Other factors known to impact on the potential reporting and progression of a rape case through the Criminal Justice System include whether the complainant was drinking or drunk at the time the rape occurred. Kelly et al. (2005) noted that alcohol consumption was implicated in a significant number of rape cases they analysed, related to the application of the no-crime code and police officer assumptions that complainants lacked credibility (HMCPSI, 2007). In light of these findings and Kelly et al. (2005) arguing that the contribution alcohol plays in the attrition process must be examined further, a more comprehensive discussion surrounding alcohol and its association with sexual offences is warranted.

### Alcohol consumption

Alcohol use had been identified as a risk factor for experiencing sexual offences with Lovett and Horvath (2009) arguing that in certain environments, the consumption of alcohol may act as a facilitator to rape. Data from the Strategy Unit (2003) estimates that there are 19,000 alcohol

related sexual assaults in England and Wales each year with American survey data also confirming that a large proportion of rape cases are associated with alcohol use. Whilst estimates vary, it has been proposed that at least half of all assaults involve alcohol consumption by the victim, perpetrator or both (for a review see Abbey, Zawacki, Buck, Clinton, & McAuslan, 2004). Ullman (2003) argues that alcohol involved rapes most commonly involve individuals who are recently acquainted, as opposed to in an intimate relationship, and who meet within the context of a bar or party environment. In light of alcohol consumption typically occurring in social settings where individuals who do not know each other well meet and drink, this claim is perhaps unsurprising. American survey research by Abbey et al. (1998) documents that in 81 percent of student sexual assaults, both the perpetrator and victim had been drinking alcohol together prior to the offence. Conclusions were drawn from this data to suggest that if either the victim or perpetrator is drinking, then typically both will be. More recent research by Lovett and Horvath (2009) which assessed experiences of rape and sexual assault reported to police and Sexual Assault Referral Centres in England and Wales identified that victims more frequently consumed alcohol and drugs than perpetrators. This study was not specifically looking at student populations and disparity in findings may be a consequence of the population demographic; especially when viewed against statistics that indicate students continue to drink more heavily than their non-student peers (Dawson, Grant, Stinson, & Chou, 2004).

The specific role alcohol plays in a sexual offence is somewhat confused by widely held societal ideas regarding alcohol and its impact on sexual situations. Alcohol is considered by many to be an effective tonic for loosening sexual inhibitions (Bellis & Hughes, 2004). Western society is pervaded by alcohol-sexuality images that promote the message, at least via advertising, that alcohol and sex go hand in hand (George & Stoner, 2000). These messages imply that alcohol can enhance sexual activity and this notion is supported by research that finds alcohol is often used by drinkers, especially youths, to facilitate sexual encounters and produce sexual effects (Bellis et al., 2008; Sumnall, Beynon, Conchie, Riley, & Cole, 2007). Bellis et al. (2008) reported that men and women aged 16-35 years living across nine European cities admitted strategically consuming drugs and alcohol. Around one quarter of females and a third of male participants reported using alcohol to increase their likelihood of meeting someone and having sex with them. Whilst Bellis et al. (2008) failed to define explicitly what 'to facilitate a sexual encounter' incorporated, Sumnall et al. (2007) included in their definition a range of acts including to lower inhibitions and to increase self-esteem and confidence to sexually experiment. This research did not however specifically address whether such tactics were perceived by parties to be assaultive or indeed whether such lowering of inhibitions impacted on the ability to provide meaningful sexual consent. Indeed, research needs to expand upon this work to help highlight the continuum of alcohol related social/sexual behaviours and the many points on that continuum whereby alcohol may transgresses from being a social lubricant used

in convivial social situations to a substance intentionally used for the purposes of enabling assault.

### Drug-facilitated sexual assault

The term drug-facilitated sexual assault has seeped into the public conscious over the last several years through media coverage of such cases. It can be argued that the term has been assimilated into public understanding as describing the surreptitious administration of drugs, typically Rohypnol (or more specifically, the benzodiazepine flunitrazepam) or GHB (Gamma Hydroxy Butyrate), by a predatory male into an unsuspecting victim's drink for the purpose of procuring sex from an unconscious individual (Finch & Munro, 2003; 2005; Horvath & Brown, 2007; Neame, 2003). This stereotype remains despite toxicological research demonstrating that in cases of drug-facilitated rape, alcohol is the most frequent substance found. Based on an American sample, Slaughter (2000) found that from 2,003 specimens, GHB and Rohypnol were evident in less than three percent of cases. However, alcohol was present in 63 percent and marijuana in 30 percent. In a UK study, Scott-Ham and Burton (2005) analysed 1,014 cases of alleged drug-facilitated sexual assault. Findings indicated that alcohol (either alone or with a medicinal/illicit drug) was present in 46 percent of cases (N = 470) and illicit drugs in 34 percent (N = 344). Cannabis was the most commonly detected drug (26 percent of cases), followed by cocaine (eleven percent). In only two percent of cases (N = 21) was a sedative or disinhibiting drug identified which could have been attributed to intentional spiking, once voluntary consumption had been discounted.

The popular portrayal of drug-facilitated sexual assault is therefore somewhat misleading and unhelpful. It creates the perception that victims infrequently have their drinks spiked with alcohol, as well as neglecting the more common cases where drugs or alcohol are consumed voluntarily by the victim (Finch & Munro, 2003; 2005; Horvath & Brown, 2007; Lovett & Horvath, 2009). Indeed, these findings are complemented by American and UK studies that have found a proportion of men acknowledged using alcohol to increase the likelihood of encouraging an initially reluctant woman to engage in sex, or that they deliberately targeted intoxicated women due to their perceived vulnerability (Kelly et al., 2005; Mosher & Anderson, 1986). Further, American survey research has also identified a proportion of men who have been sexually exploited by women when they were too intoxicated to consent (Struckman-Johnson, Struckman-Johnson, & Anderson, 2003), and these cases are not typically conceived of within a definition of drug-facilitated sexual assault.

Whilst sexual offences are experienced throughout the life span, American and UK research indicates that they are most common in late adolescence and early adulthood, that is, between

the ages of 16-24 years (Abbey et al., 2004; Koss, Gidycz, & Wisniewski, 1987; Myhill & Allen, 2002). The vast majority of research to address this age group's experiences of rape and sexual assault comes from American college and university student samples. This research demonstrates that sexual offences and coercion are a frequent reality for American student populations (Abbey, 2002). The college/university environment is often one that promotes alcohol consumption combined with peer pressure to engage in sexual activity and this combination of factors has been proposed to relate to the coercive experiences reported by students (Adams-Curtis & Forbes, 2004). Indeed, the related literature has looked generally at students' coercive sexual encounters, rather than focusing specifically on instances of rape - to better reflect the spectrum of unwanted acts they encounter - and which may include non-consensual touching, threats or verbal pressure being applied to procure sex through to attempted and fully achieved rape. Whilst this spectrum of behaviours may all be distressing to experience, not all would constitute non-consensual crimes in the eyes of the law. For example, it is unlikely that the use of verbal pressure to end a relationship if a partner does not agree to sex, would be recognized by the English and Welsh legal system as being sufficient to vitiate consent in isolation. It is necessary to consider these points when reviewing the following studies and to be aware of the differences in perceived 'seriousness' of certain actions, as attributed via a legal sanction.

#### Coercive sex and rape amongst college/university samples

Muehlenhard and Linton (1987) examined the prevalence of sexual aggression in male against female college dating relationships, through the use of anonymous questionnaires. Findings indicated that from a sample of 341 women, 78 percent had experienced some form of coerced sexual activity when on a date. This ranged from non-consensual kissing and touching through to rape; indeed, 15 percent of women reported being forced into non-consensual penetrative sex. The study also documented that sexually assaultive dates were more likely to involve heavy alcohol consumption by both members of the dating dyad. This finding complements more recent work of Mohler-kuo et al. (2004). This American study used data from 119 schools participating in a college alcohol survey. This randomly selected sample included 8,567 females from the 1997 survey, 8,425 from the 1999 survey and 6,988 women from the 2001 survey. Findings indicated that heavy episodic drinking (defined as consuming five or more drinks in a single sitting for men and four or more drinks for women) was the strongest predictor of rape. Both frequent and occasional heavy episodic drinkers were more likely to be raped while intoxicated (and to be raped when not drunk) compared to non-heavy episodic drinkers. Findings were extrapolated to indicate that one in 20 sample women had experienced rape since the beginning of the college year with 72 percent of these rapes taking place when the woman was too intoxicated to consent.

Perhaps the best-known and most methodologically rigorous study of sexual coercion amongst American college students was conducted by Koss, Gidycz and Wisniewski (1987). This study of 2,972 male and 3,187 female students aged 18-24 years used the Sexual Experiences Survey (SES), which incorporates behaviourally specific questions, to address women's experiences of sexual coercion and men's experiences of perpetrating coercive sexual acts. A total of 53.7 percent of women were found to have experienced some form of sexual victimisation since the age of 14. Of this group, 15.4 percent of women reported having been raped and 12.1 percent reported having experienced attempted rape. In contrast, 25.1 percent of college males revealed perpetrating some form of sexual aggression with 7.7 percent of men reporting perpetrating acts that met the legal definition of rape and attempted rape. Koss et al. (1987) suggested that college men report perpetrating lower rates of sexual coercion than are actually identified by women in victimisation surveys, partly because a proportion of men view a woman's consent as either insincere or ambiguous and believe their sexual behaviour was legitimate and consensual. This highlights the importance of incorporating men into preventative work, in order to reduce the problem of sex crime. Only five percent of the rapes reported by victims were disclosed to the police with 42 percent of individuals telling no one at all. Five percent of women were found to have utilised specialist victim support services and only 27 percent were found to define their experience as rape. Koss (1988) draws attention to 74 percent of sample perpetrators and 55 percent of rape victims having been drinking alcohol at the time the offence took place. A proportion of women also reported being given alcohol or drugs by the perpetrator in order to obtain sex with a proportion of men reporting having intentionally given intoxicants to the woman in order to procure intercourse.

A more recent study of student sexual coercion was conducted by Fisher, Cullen and Turner (2000). This study involved national stratified random sampling of 4,446 American college women. Using a telephone interview methodology, Fisher et al. (2000) reported that 1.7 percent of their female sample had been raped in the previous seven-month period with an additional 1.3 percent of women having experienced attempted rape. Fisher et al. (2000) also asked about experiences of sexual victimisation that had occurred prior to starting college or university. These findings indicated that 10.1 percent of women had experienced rape with a further 10.9 percent reporting attempted rape. The study also documented that 48.8 percent of women did not label their experience as rape despite the act perpetrated against them meeting the legal definition. Although the reasons for not labelling experiences were not explored, Fisher et al. (2000) hypothesised that factors such as not understanding the legal definition of rape or not wanting to define someone they knew as a rapist potentially impacted. The study also documented that rape offences were most frequently committed by someone known to the victim, principally classmates. Low levels of official police reporting were found; fewer than



five percent of rapes and attempted rapes were reported to the police. The most frequent reasons for not reporting were a lack of proof that the incident had taken place, a fear of being treated with hostility and fear that they would not be taken seriously. Fisher et al. (2000) reports lower frequencies of rape and attempted rape than those documented by Koss et al. (1987). However, it should be noted that Koss et al. (1987) included specific questions that asked about sex that occurred when someone was incapacitated by drugs or alcohol. These questions were not asked in the Fisher research and in light of the relationship between alcohol and non-consensual sexual outcomes, this is a major limitation. In addition, Koss et al. (1987) looked at coercive experiences since the age of 14 and during the last year whilst Fisher et al. (2000) looked at 'life time' experiences and those that had occurred during the previous seven months. Studies cannot be fully evaluated without reference to their methodological differences which make summaries of the literature difficult.

Perhaps the most recent study utilising an American college sample and specifically addressing the impact of alcohol and drug intoxication in rape cases is by Kilpatrick et al. (2007). This study, through the use of a telephone interview methodology, aimed to identify how many women in the general American population (N = 3,001) and attending American colleges and universities (N = 2,000) had experienced rape that involved force (forcible rapes), the deliberate administration of alcohol or drugs by the perpetrator (drug-facilitated rape) or that occurred when the victim was experiencing self-induced intoxication (incapacitated rape). Findings indicated that 6.4 percent of female college/university students had been the victim of drug-facilitated rape or incapacitated rape at some point during their life. When looking at rape experiences in the previous 12 months, 3.58 percent of college women were found to have experienced drug-facilitated or incapacitated rape. Rape was associated with an increased risk of experiencing all types of mental health problems including Post Traumatic Stress Disorder and major depression and was equivalent for all types of rape. That is, drug-facilitated rape and incapacitated rape resulted in comparable psychological trauma as forced rape. Whilst alcohol related rapes may be viewed as less traumatic or more deserving by third parties (ICM, 2005; Opinion Matters, 2010a; Sims, Noel, & Maisto, 2007) the research demonstrates that these types of rape are as detrimental to victim's health and should be treated accordingly. The study also revealed that incapacitated rape is more prevalent than drug-facilitated rape for both adult women and college women and that alcohol is the most frequently used substance in drug-facilitated/incapacitated rapes. Amongst the college sample, approximately 12 percent (226) of rapes were reported to the police. College victims of forced rape were more likely to disclose their offence than victims of drug-facilitated and incapacitated rape. The degree of recollection for the offence was also linked to college students reporting behaviour. Twenty-two percent disclosed when they could remember the incident 'extremely well' compared to 6.7 percent who could only remember it 'very well'.

One of the only, and most recent, UK studies to address students' experiences of harassment, stalking, violence and sexual assault at a national level was that carried out by the National Union of Students (2010). This online survey of 2,058 college and university females aged 16-60, identified that five percent of respondents had been raped during their time as a university/college student, two percent had faced an attempted rape and just under one percent had experienced assault by penetration. Follow-up questions identified that 76 percent of serious sexual assaults (rape, attempted rape and assault by penetration combined) took place in the survey respondents, a friends, partners or ex-partners home and in 81 percent of cases the perpetrator was a known individual, typically a male student. Only ten percent of serious sexual assaults were reported to the police and the primary reasons for not reporting included not thinking the event was serious enough, not thinking what had happened was a crime, feeling ashamed and fear of not being believed. If participants did disclose it was most frequently to friends and family members although 43 percent of participants were found to tell no one at all. In 50 percent of cases the survey participant believed the perpetrator had been drinking alcohol prior to the offence and in 19 percent of cases they were unsure. Nine percent of respondents believed they had been given alcohol or drugs prior to the assault with a further nine percent of participants again being unsure whether this was the case. Whilst the survey documents that alcohol and drugs were given to the survey respondent 'against their will', no further analysis of this point was made. It therefore provides no insight into whether alcohol and drugs were surreptitiously administered by the perpetrator or whether verbal/physical pressure was placed on the complainant to consume them.

It is apparent from the discussion thus far that the research agenda has focused on women as the victims of coercive sexual behaviour and men as the perpetrators of such acts. Whilst this agenda has been justified through reference to the higher levels of sex crime experienced by women, this approach acts to mask the perpetration of non-consensual same-sex experiences and coercive behaviours perpetrated by women against men (Koss et al., 2007). Indeed, men's coerced encounters require further consideration.

#### Men's experiences of sexual coercion

A significantly smaller body of research has tried to address men's unwanted sexual experiences. Struckman-Johnson (1988) for example surveyed American university students to establish that 16 percent of 268 men and 22 percent of 355 women reported being coerced into intercourse when on a date with a member of the opposite sex. The coercive strategies used to obtain sex included the use of psychological pressure such as demands and blackmail; psychological pressure combined with physical restraint or force; physical force in isolation and

no consent due to intoxication. That is, sex occurred when the person was too drunk or affected by drugs to give informed consent. A survey of 433 Canadian college students found that in the previous 12 months, 24 percent of men and 42 percent of women had been pressured or forced into some form of sexual contact within the context of a heterosexual dating dyad. This study found that compared to men, women reported more negative reactions to the coercive event (O'Sullivan, Byers, & Finkelman, 1998). A small body of research has explored the coercive strategies used by women to obtain sex from men. Research by Anderson and Aymami (1993) for example measured 212 college women's use of tactics to initiate sexual activity with males. In 79 percent of cases women reported attempting to sexually arouse the male through sexual touching and the removal of clothes. Half of the women in the sample reported initiating sex with a drunken man whilst 15 percent reported intentionally getting a man drunk. Only six percent reported using physical force. This latter finding is perhaps unsurprising in light of the weight and size differential that may exist between men and women in most cases.

A selection of studies have addressed the perspectives of men regarding the tactics used by women to obtain coerced sexual activity. Struckman-Johnson and Struckman-Johnson (1998) found that from a sample of 318 surveyed college men, 43 percent had experienced at least one sexually coerced act since the age of 16 years. Of this total 75 percent of the men had been verbally coerced, 40 percent had been encouraged to get drunk, threats that affection or the relationship would be withdrawn accounted for 19 percent of cases with eight percent of males saying they had been physically restrained. Studies to have compared the coercive tactics experienced by men and women have also been conducted. For example the O'Sullivan et al. (1998) study found that more women than men were the recipient of unwanted sex due to continual arguments and verbal pressure (26 percent vs. seven percent respectively). There were no differences however in terms of the proportions of men and women who reported attempted or completed sexual intercourse as a result of drug and alcohol intoxication. A more recent study by Struckman-Johnson et al. (2003) surveyed 275 men and 381 women from two universities to investigate experiences and perpetration of coercive sexual tactics. Survey findings indicated that more women than men (73 percent vs. 54 percent) had been subject to tactics of sexual arousal, for example, persistent unwanted kissing and touching, a greater proportion of women than men (71 percent vs. 44 percent) had been subject to at least one tactic of emotional manipulation such as repeated requests. More women than men (44 percent vs. 30 percent) had been the recipients of at least one intoxication tactic with more women reporting being taken advantage of when drunk (42 percent of females vs. 30 percent of males) and more women reporting being purposefully intoxicated (25 percent vs. 11 percent). In terms of perpetration tactics, more men than women reported using a sexual arousal tactic (40 percent vs. 26 percent respectively), using at least one tactic of emotional manipulation (32 percent vs. 15 percent) and using alcohol to obtain sex. Thirteen percent of men reported taking advantage of

an intoxicated woman compared to five percent of females with six percent of males reporting purposefully getting a woman intoxicated compared to one percent of women.

From the body of studies discussed, the research demonstrates that sexually coercive behaviours and acts which include criminal offences such as rape are prevalent amongst male and female student samples. However, females appear to more frequently be subject to the full range of tactics by male perpetrators ranging from verbal pressure through to rape. From the research reviewed, females appear to experience these tactics more frequently and more severely whilst men appear to perpetrate such acts more often. This is not however to neglect or downgrade those cases of male victimisation or female sexual aggression. There are methodological issues that should be raised; much of the research has adopted a cross-sectional survey approach which do not allow for causal conclusions to be drawn. Individuals' memories of events may also have been influenced by the passage of time or the alcohol consumed. There is also the possibility of limited disclosure if participants do not recognize or wish to label their behaviour as assaultive. These issues should be considered when drawing conclusions from the studies reviewed.

## Conclusion

The research reviewed in this section demonstrates that sexual coercion, rape and sexual assault are experienced by many women. Men, although to a lesser extent, are also the victims of sex crime and their non-consensual experiences must be recognised. Police statistics often 'keep hidden' the extent of sexual offences and non-police reported data is also likely to underestimate the full extent of sex crime. The issue of rape case attrition has been considered and its impact on the rape conviction rate. Measures that have been introduced to try and tackle problematic issues, such as the inaccurate application of the no-crime code, continue to be inaccurately applied and this acts further to obscure the extent of sexual offences. Alcohol use is frequently associated with non-consensual sexual outcomes and American research demonstrates that university and college samples experience high levels of non-consensual sex, including coercive acts which may not fall under the legal threshold of criminal. Significantly less UK research has addressed students' experiences of non-consensual sex and the contribution of alcohol in these offences and this is an area where additional research should focus, especially in light of the different cultural and political climates across these countries which makes generalisations problematic. Alcohol has been identified as a substance that is strategically used to procure sex and the specific pathways which may lead from alcohol consumption to assault need to be explored further, in order to understand this complex relationship. The following section of the literature review therefore provides an account of some of the key research in this area.

## **Literature review part 2: the relationship between alcohol consumption and non-consensual sex**

Explanations for the link between alcohol consumption and sexual offences focus on a number of possible pathways which include the pharmacological effects of the substance on cognitive processes (Abbey et al., 2004; Giancola, 2004; Taylor & Chermack, 1993) and theories that emphasise the role of alcohol expectancies (Abbey, Zawacki, & McAuslan, 2000). This section of the literature review therefore focuses on alcohol's impact on perception and thought and its potential for increasing the misperception of a victim's sexual intent cues. The effect of intoxication on a victim's cognitive capacities will also be considered and how this may increase an individual's vulnerability to assault. Consideration will be paid to the psychological literature that focuses on alcohol expectancies as well as discussion around the impacts of alcohol on memory processes.

### Pharmacological explanations of alcohol's effect on behaviour

Alcohol produces effects on human social behaviour and emotions which vary across and within individuals. Alcohol can produce extreme aggression (Pernanen, 1991; Taylor & Chermack, 1993) whilst also relieving anxiety and tension (Levenson, Sher, Grossman, Newman, & Newlin, 1980). In attempting to explain how alcohol can produce such varied social psychological effects, Steele and Josephs (1990) proposed the model of alcohol myopia. This model suggests that the effects produced by alcohol stem from alcohol's general impairment of perception and thought. Within this theory, intoxication is viewed as affecting behaviour and emotion through an interaction between the myopia it produces – the short sighted information processing produced by intoxication – and the nature of the environmental cues impacting on the individual when drunk. Therefore, whether an individual is morose as a consequence of drinking one evening or elated when drinking the next, is dependent upon the cues that influence behaviour and emotion during that period of intoxication, cues that vary across individuals, occasions and cultures (Steele & Josephs, 1990). Alcohol's influence on behaviour and emotion is therefore attributed to both pharmacological and environmental processes.

Intoxication frequently makes people self-disclose more, be more socially assertive and aggress more frequently than when sober with this latter point having been the subject of much experimental and correlational investigation (Pernanen, 1991; Hoaken & Pihl, 2000; Taylor & Chermack, 1993). As stated, impairment in perception and thought is proposed to be the key explanation for the occurrence of excessive behaviours within the myopia model. Alcohol intoxication disturbs information processing skills and has been shown to impair higher-order cognitive processes central to the maintenance of inhibitory control over behaviour. Giancola

(2004) suggest that the cognitive capacities affected by alcohol include attentional control, goal planning, abstract reasoning (the ability to analyse information and solve problems on a thought-based level), hypothesis generation and inhibition. These capacities form part of a general higher order construct involved in the self-regulation of behaviour, called 'executive functioning' (Giancola, 2004). In his study of 310 American social drinkers Giancola (2004) measured the impact of executive functioning on aggression. Following the administration of executive functioning measures, an alcohol or a placebo beverage (participants are told they will receive alcohol but unknowingly receive a non-alcoholic beverage) were administered to participants who participated in a modified version of the Taylor Aggression Paradigm. That is, participants were required to complete competitive tasks with an opponent (who unbeknown to the participant was a fictitious opponent working to a pre-determined schedule) in which mild electric shocks are administered or received. Aggression is defined in terms of the level of shock administered by participants to their opponent. Findings indicated that a low level of executive functioning was related to aggressive responding in men, irrespective of their beverage consumption condition. That is, alcohol increased aggressive behaviour in men but only for those men who had lower executive functioning scores initially. The belief that alcohol had been ingested was found to suppress aggression in female respondent. Indeed, whilst alcohol was found to increase aggression for some women with lower levels of executive functioning, it was more frequently the case that the placebo condition suppressed aggression in these women. These findings not only demonstrate gender differences in aggression when intoxicated, they support assertions that alcohol is not an inevitable precursor to male aggression but more likely to occur in individuals predisposed to behave in an aggressive manner initially (Pernanen, 1991). Many factors will mediate the relationship between alcohol and male and female aggression including personality variables, environment cues and the nature of the intoxicant itself. Swedish research by Gustafson (1999) found that intoxication induced by drinking spirits resulted in more aggressive responding on a computerised version of the Taylor Aggression Paradigm than that produced by beers or wine. The amount of alcohol consumed also impacts on response with alcohol myopia (or impairment of perceptual and cognitive functioning) being found to increase with dosage (Jones & Vega, 1972).

Within the myopia theory, two specific impairments are central to the model. When intoxicated, individuals attend to and encode fewer available cues in their environment and secondly, intoxication reduces the ability to process and extract meaning from the information and cues that are perceived. When intoxicated, individuals are therefore less able to code incoming information, relate it to knowledge and extract meaning from it (Steele & Josephs, 1990). As a result of this cognitive narrowing, immediate aspects of experience have a disproportionate influence over behaviour and emotion. Attention is drawn away from peripheral cues in the environment that may contain embedded meaning, to the most salient. Therefore, when the

salient cues elicit violence and peripheral ones act to inhibit the response, intoxication is likely to release aggressive/uninhibited responding. Steele and Southwick (1985) tried to identify the specific situations in which alcohol myopia would result in aggression. They concluded that it would be situations whereby if the individual was sober, the situation would involve some element of conflict or provocation. Indeed, provocation has been described as the most potent predictor of aggression in both lab and non-experimental settings (Giancola, Helton, Osborne, Terry, Fuss, & Westerfield, 2002). Giancola et al. (2002) confirmed this hypothesis with a sample of 102 American social drinkers who competed on the Taylor Aggression Paradigm following the consumption of alcohol or a placebo. Provocation on the part of the fictitious opponent (the setting of high intensity shocks following the loss of a trial) was found to result in increased levels of aggression for both men and women, irrespective of whether they had consumed alcohol or not. Whilst men were more aggressive than women under no or low provocation conditions, men and women were equally aggressive under conditions of high provocation. Provocation may consequently be deemed a stronger predictor of aggression than either gender or alcohol consumption. However, men were found to be more aggressive by degree, more frequently administering the highest intensity shock to opponents than women. Explanations for these findings were again proposed to be differences in gender role expectations which may constrain females from using extreme aggression (maximum shock level 10). Alternatively, hormonal differences between men and women may also be a possible explanation. Studies frequently find a positive relationship between aggression and levels of the male hormone testosterone (Archer, 1991).

The alcohol myopia model helps to explain how the cognitive deficits associated with alcohol ingestion may be linked to sexual offence perpetration by men, as well as aggression. Indeed, the cognitive disruption caused by alcohol consumption, especially high doses, is likely to focus an intoxicated man's attention onto the more salient cues in their environment whilst impacting on the ability to process distal factors. After alcohol ingestion, these prominent cues may be ones of sexual arousal. Abbey et al. (2001) hypothesise that this will indeed be the case, arguing that a man's immediate focus will be on sexual arousal and feelings of entitlement as opposed to less salient cues which, under non-drinking circumstances, may inhibit a socially unacceptable response; for example, concern for inappropriate behaviour, consideration of the ramifications of inappropriate acts and empathy towards a victim. In such situations, alcohol induced feelings of disinhibition coupled with a reduction in self-appraisal and a focus on arousal are suggested to increase the potential for aggression and pressure or force to be used by men to obtain sex (Ito, Miller, & Pollok, 1996; Permanen. 1996). It should be reiterated that alcohol consumption by men is not an inevitable precursor to aggression or sexual assault with a number of individual and circumstantial variables mediating any relationship. Almost no research has attempted to explain how the myopia model may be used to account for those examples of

sexual aggression or coercion perpetrated by women (Struckman-Johnson & Struckman-Johnson, 1998). It is currently unknown how the alcohol induced cognitive deficits in those women impact on their sexual arousal. Further work is necessary to help understand the role of female aggression, its relationship to alcohol consumption and the possible perpetration of unwanted sexual acts. It is also necessary to look beyond pharmacology and at the expectancies that are associated with drinking alcohol in order to legitimise the argument that men, more so than women, will focus on their sexual arousal when consuming alcohol.

### Alcohol expectancies

In a review of the relevant literature George and Stoner (2000) emphasise that both men and women to some degree believe alcohol consumption increases the likelihood of obtaining sex. Alcohol expectancies – or the anticipated consequences associated with drinking – have been found to be important precursors to drinking behaviour. The anticipation that alcohol decreases nervousness and improves sex motivates the decision to drink in certain situations (Bellis et al., 2008; Sumnall et al., 2007). It has also been hypothesised that beliefs about the disinhibiting effects of alcohol on behaviour serve to increase the likelihood of alcohol acting as a disinhibitor when it is consumed (Seto & Barbaree, 1995).

Abbey et al. (2001) argue that whilst alcohol's effects on aggression are to a large degree pharmacological, alcohol's impact on sexual behaviour is largely psychological. Research demonstrates that men who believe they have consumed alcohol experience greater physiological and subjective sexual arousal when viewing erotic material compared to men who believe they have ingested no alcohol, irrespective of what has actually been consumed (Abbey et al., 2001). Gross, Bennett, Sloan, Marx and Juergens (2001) examined the role of alcohol expectancies using a sample of 160 American male undergraduates. The Balanced Placebo Design was used to address the role of alcohol expectancies on perceptions of women's sexual arousal. The Balanced Placebo methodology has frequently been used to separate the pharmacological impact of alcohol from psychological effects, similar to the Taylor Aggression Paradigm. Within this design participants are randomly assigned to one of four conditions. These include: participants expect and receive an alcoholic beverage; participants expect an alcoholic beverage but receive a non-alcoholic alternative; participants expect a non-alcoholic but receive an alcoholic beverage and participants expect and receive a non-alcoholic beverage. Following random allocation to conditions study participants were presented with an audio tape recording of a heterosexual rape that followed a date. Participants were asked to signal the point at which they believed the male should stop his sexual advances. Results indicated that participants who had consumed alcohol or who expected to consume alcohol took significantly longer to identify the point of sexual inappropriateness compared to those who had not drunk. It



was also noted that as the intensity of the woman's refusals increased across four set points of the date (from polite requests to stop the sexual behaviour, through to angry refusals and adamant shouts), participant's ratings of her sexual arousal decreased. However, relative to non-drinkers, those who had consumed alcohol rated her arousal higher during the first two phases of lower-level refusal. Study results lend support to the argument that in sexual situations alcohol can impact on the ability to process and respond to lower-level inhibitive refusal cues. However, under higher intensity refusals, this may not be the case. In support of the myopia theory, it appeared that in the early stages of the date, alcohol may have resulted in less focus on inhibitory cues (the woman's polite refusal) and a greater focus on disinhibiting cues (namely sexual arousal). However, as the woman increased her level of resistance, inhibiting cues became stronger and potentially overrode sexual arousal cues, resulting in a more realistic evaluation of her degree of sexual interest. Gross et al. (2001) argued that alcohol consumption, or the belief that alcohol had been consumed, appeared to relax the standards for acceptable social behaviour and may be used as a potential excuse for unacceptable acts. This study however did not control for participant's prior alcohol expectancies and the degree to which they subscribed to beliefs about the disinhibiting effects of alcohol on sexual behaviour. Such a control would have been able to establish possible differences in response between those who subscribe heavily to such beliefs and those who held less accepting views.

Significantly less research has looked at the role of expectancies on sexual behaviour in women and those that have produce somewhat inconsistent findings (George & Stoner, 2000). Whilst research testifies to the female belief that alcohol enhances sexual behaviour (Bellis et al., 2008; Taylor & Leigh, 1992; Sumnall et al., 2007), in a review of the literature, Norris (1994) argues that studies to have explored women's expectations in the laboratory using the balanced placebo design, do not typically demonstrate effects of expectancy set. That is, whilst certain men, who believe they have consumed alcohol, even when they have not, experience greater physiological and subjective responses to sexually explicit material, these effects do not tend to appear in women. Again, Norris (1994) draws attention to arguments surrounding the societal restriction of female sexuality, negative attitudes surrounding drinking women, fears over pregnancy and awareness of females enhanced risk of experiencing sex crimes which all inhibit and conflict the expression of a woman's sexuality. Norris (1994) argues that such conflict may explain why women are less likely than men to yield to these expectancies, despite subscribing to similar beliefs about the effects of alcohol in sexual situations generally: the influence of expectancies in isolation is not deemed adequate to override internal inhibitions and conflict.

Many of the lab-based studies discussed above have been criticised for their proxy sexual assault measures such as the time taken by participants to articulate the point of inappropriateness in a date rape scenario (Abbey et al., 2001). Ethically, it is impossible to study

sexual assault directly so such approximations are required. However, it should be borne in mind that responses to a fictitious scenario may not reflect how people would behave in a real-life sexual offence situation. In addition, lab studies are restricted as to how intoxicated they can make the participant. Studies typically exclude high levels of intoxication, inducing blood alcohol level of typically .01 which is equivalent to around five standard drinks consumed over an hour (Abbey, Clinton, McAuslan, Zawacki, & Buck, 2002). This has important implications; it may take higher levels of intoxication for alcohol to disinhibit men's and specifically, women's subjective sexual arousal and aggression (Norris, 1994). Survey research (Bellis et al., 2008) also has its methodological shortcomings and may for example be biased by inaccurate recall and distorted accounts which mitigate blame or embarrassment (Abbey et al., 2001). It is therefore necessary to use a range of methods to allow for full exploration of this area.

### The misperception of sexual intent cues

Sex crimes often occur following social interactions in which alcohol has been consumed (Ullman, 2003). As such, it is realistic to surmise that in certain cases, sexual assault occurs in situations in which consensual sex is also a potential outcome. Therefore, a man and woman's interpretation of this social engagement may influence the potential for assaultive behaviour. Rooted into male and female interactions is the relevance of societal scripts which dictate the 'etiquette' of dating behaviour. Lees (1993) argues that western societal sexual scripts dictate that women are responsible for setting sexual limits and providing 'control' over the time and place of sex whilst men are socialised to seek and initiate sexual encounters. Whilst modern day western society does not inevitably conform to this standard, with there being many instances of female initiated sex and reciprocal sexual interactions, this traditional gender script is still argued to underpin and guide many sexual exchanges (Abbey et al., 2001; O'Byrne et al., 2008). Irrespective of who initiates sexual contact, the cues used by men and women to signify attraction are typically ambiguous which serves to mitigate potential rejection. Misperceptions may easily occur in the interpretation of ambiguous cues such as smiling and interest in the conversation and these may be taken as an indicator of sexual interest. Such misperception is likely to be exacerbated when alcohol disrupts cognitive processes making it more difficult to evaluate complex stimuli and situations (Steele & Josephs, 1990).

The ways in which sexual consent is communicated is a nuanced issue. Sexual consent has been described as a 'freely given verbal or non-verbal communication of a feeling of willingness to engage in sexual activity' (Hickman & Muehlenhard, 1999, p. 259. The following section of the literature review addresses the legal stance on consent and the statutory definition specifically). This therefore refers to behaviours and communication that take place at the point prior to sex, and not the behaviours engaged in during the social interaction which may lead to this point

(although the two may not be mutually exclusive). Sexual consent, as emphasised by the definition, is more complex than saying 'yes' to a sexual act. A diversity of behaviours are used to show consent including direct and non-direct verbal and non-verbal behaviours, the removal of clothing and deliberate non-response (Beres, 2007; Lim & Roloff, 1999). Non-verbal behaviours such as smiling and kissing back can reflect numerous meanings and misunderstanding can therefore occur in both the interpretation of sexual consent messages and the earlier stage sexual interest cues, potentially leading to sexual assault (Abbey, 2002). Whilst men and women are used to these indirect forms of articulating sexual consent and interest, and are typically able to make clear their intentions, when cues are subtle - misperception is possible - especially if communication skills are impaired by alcohol (Abbey et al., 2001).

Although the miscommunication model has been criticised on the grounds that misunderstanding can be used as an 'excuse' to justify behaviours which men clearly understand to be constitutive of a lack of consent (O'Byrne et al., 2008). Abbey et al. (2000) used the Balanced Placebo Design with unacquainted college students to support the importance of the role of misperception in sexual interactions. Here male and female American students were assigned to one of the experimental conditions and asked to converse for 15 minutes with an opposite sex partner (a total of 88 dyads). Study findings indicated that men perceived their female partner to be behaving in a more sexual manner towards them (for example flirting) during the 15 minute interaction than the female reported herself to be doing. Women reported opposite effects, viewing less sexual interest from their male partners than men themselves reported attempting to convey. Such findings have frequently been replicated (for example, Edmondson & Conger, 1995) and support arguments that suggest men are more likely to interpret actions as having sexual intent, or, seeking sexual interpretations. When alcohol had been consumed in the Abbey et al. (2000) study, both men and women were found to view their partner and themselves as acting more sexually compared to when alcohol was not consumed. suggesting sexual judgements were influenced by alcohol consumption. During the fifteen minute interaction between participants independent trained observers coded participant's use of 'dating availability cues' such as comments related to seeing each other again as well as participant's 'attentive cues', defined as less obvious signals of possible sexual interest or just platonic friendliness. These cues interacted with alcohol consumption in that those who had consumed alcohol overemphasised the meaning of strong dating availability cues but ignored the importance of ambiguous attentive cues when making judgement about their partner's degree of sexual interest towards them. This again supports the alcohol myopia theory and ideas that alcohol can increase the focus on the most salient cues in the environment at the expense of distal ones (Steele & Josephs, 1990).

Whilst the literature discussed provides an insight into the misperception of a partner's level of sexual interest, its focus is again on men as the perpetrators of sexual offences and women the victims. Men are deemed to be the sex that misinterprets female cues and the explanations for this are linked to gender scripts. This focus again means that little research has attempted to explain how the miscommunication model could be applied to men who are the victims of sexual offences, to gay and lesbian assaults or to females who perpetrate sexual offences. Indeed, alcohol was found in the Abbey et al. (2000) study to affect women's judgements of their own, and partner's, degree of sexuality. It may be possible that this misperception will lead to the perpetration of an offence by certain women. It is important for future research to try and reconcile these instances within current frameworks to help promote the robustness of the given model as well as to help explain sexual offences that fall outside the traditional male to female dynamic.

Whilst the above perspective emphasises the role of misperception, it does not explain fully how this misperception then links to the perpetration of a sexual offence. In order to address this issue fully it is necessary to consider the impact of victim misperception as well as addressing the pharmacological impact of alcohol on a victim's cognitive capacities.

#### Effects of alcohol on a victim of sexual assault

Alcohol produces the same cognitive impairments in a potential victim of rape and a further mechanism by which alcohol may contribute to an increased risk of sexual assault is through the victim's impaired ability to detect risky sexual interest cues (Loiselle & Fuqua, 2007). Testa and Livingston (1999) used qualitative interviews and analysis of survey data to establish that American women who had experienced a sexual assault often described how assaults occurred after they had behaved in ways they later assessed as 'too risky'. Women reported engaging in behaviour such as accepting a lift home with a man they did not know well and allowing him into their apartment. Women reported missing danger cues early on that they believed they would have picked up on were they not intoxicated (which may have been the consequence of alcohol's impact on the victim's executive functioning processes). It can therefore be suggested that alcohol may also facilitate rape by increasing the potential for engaging in risky behaviours that may lead to assault. This is particularly pertinent in light of evidence that suggests early detection and recognition that a situation may become threatening can help prevent sexual offences. Indeed, American research that examined 152 female college student's ability to detect risk cues in dating situations indicated that early verbal and physical refusals were of significant importance in successfully preventing an assault (Norris, Nurius, & Graham, 1999). This may be because non-consent cues are indicated early and clearly and misperception is not allowed to develop. This suggestion would also fit the findings of Gross et al. (2001) and

assertions that more direct intensity refusals will impact on evaluations of a woman's degree of sexual interest. Again, failure to acknowledge men as victims of sexual offences means it is currently unknown whether early male verbal and physical resistance will prevent a coercive experience. It may be presumed that this would depend on whether the offence was perpetrated by a male or female and the type of assaultive act taking place; namely, a stranger or acquaintance offence. Again, further research is needed to help explore these avenues.

The pharmacological impact of alcohol on the victim's cognitions can impede the process of detecting and rectifying a perpetrator's misperceived cues (Abbey et al., 2004). If a victim does become aware of a possible mismatch between their own and a perpetrator's sexual intent, this does not necessarily mean the misconception is resolved. Issues surrounding social expectancy, not wishing to offend the other party and wanting to avoid confrontation can limit the number of responses available to the woman (Broach, 2004). This may lead to indirect communication which can easily be dismissed by the other party as part of the expected sexual interplay (Broach, 2004). This lack of early explicit clarification on the part of the woman is again problematic in light of the argument that the longer a man perceives a woman to want consensual sex, the more likely it is for him to feel justified in forcing sex when it is realised she actually means 'no' with such justifications relating to having felt 'led on' (Abbey et al., 2004). This assertion is supported by research which has compared college students' dates that involved sexual assault with those that involved no assault (Muehlenhard & Linton, 1987). Men reported that women on whom they had forced sex had led them on to a greater degree than dates that did not involve forced sex. Similarly, women who had experienced non-consensual intercourse were more likely to say that they believed the man had felt led on, even though this was not their intention. This scenario may reasonably constitute a provocative or conflict situation in the eyes of the other party. As discussed, situations of provocation have been found to be one of the most likely elicitors of both male and female aggression (Giancola et al., 2002).

Should a problematic sexual situation arise, a drinking individual may not be able to effectively fight off a perpetrator, due to alcohol's effects on motor skills (Abbey et al., 2004). Based on a review of American college student sexual offence research, Abbey (1991) found that alcohol can diminish a victim's capacity to generate coping responses including verbal and physical resistance. If alcohol impacts on these skills then the ability to articulate refusal is confounded. This again has important implications due to clear physical and verbal statements of refusal being important in preventing sex crime (Gross et al., 2001; Norris et al., 1999). As well as the noted impact of intoxication on motor skills and other cognitive functions, alcohol exerts a profound impact on memory processes and therefore requires further consideration.

## The impact of alcohol on memory

Alcohol produces detectable memory impairments, even after one or two drinks with these impairments becoming more pronounced with increasing age (White, 2003). This has important implications in terms of being able to accurately and effectively recall details of a sexual assault if it occurred during a period of intoxication. To address the effects of alcohol on memory it is necessary to address a model of memory storage and functioning. Atkinson and Shiffrin (1968) provide one such approach, elements of which are found in most current models of memory formation. Atkinson and Shiffrin (1968) argue that memory functioning is associated with a number of stages which include the initial sensory memory store (information is contained here for a matter of seconds) moving to short-term memory (information is retained here from seconds to minutes depending on whether the information is repeated and the degree to which it is processed) and through to long-term memory. Research on alcohol related memory impairment suggests that the impact of the substance on the formation of new long term explicit memories, namely memory of facts and events, is far more pronounced than on the ability to recall already established memories or to hold information in short-term memory (White, 2003). In essence, alcohol interferes with the transference of new information from short-term memory to long-term storage. Ryback (1971) suggests that when doses of alcohol are small to moderate, the effects on memory are also moderate and may manifest in memory lapses including the forgetting of names. As alcohol dose increases the effects on memory can become more significant, potentially resulting in blackout. Blackouts have been defined as periods of time in which individuals are unable to remember key events or elements of an event that occurred whilst intoxicated (White, Jamieson-Drake, & Swartzwelder, 2002). They do not involve loss of consciousness but involve periods of anterograde amnesia, during which individuals are able to partake in salient events which they are later unable to recollect (White et al., 2002). Two types of blackout have been documented; 'en block' and 'fragmentary'. En block are associated with the inability to remember any aspect of an event which occurred whilst intoxicated. Information relating to these events appears not to be transferred into long term storage. Alternatively, fragmentary blackouts involve partial remembering of events. Individuals may become aware they are missing aspects of an event when they are reminded of that event later (White, Signer, Kraus, & Swartzwelder, 2004).

The impact of alcohol on the ability to form new long-term memories and recall events, or aspects of events, has important implications for officially reporting an alcohol related sexual offence. Leippe, Romanczyk and Manion (1992) state that persuasive arguments rest largely on the validity of an individual's memory and that perceptions of memory credibility are especially important in terms of their impact on judges and jurors who have to establish whether to accept a complainant's account. Before a case comes to court an individual's memory of events has be

retold to police officers and lawyers where inconsistencies or gaps in knowledge will be highlighted. At nearly every stage in the reporting and trial process, the accuracy of a victim's testimony can have significant consequences in terms of whether an individual is perceived credible (Leippe et al., 1992) with inconsistencies in account often being viewed as a potential indicator of fabrication or incredibility (HMCPST, 2007; Kelly et al., 2005). This emphasises the tension between the expectations of the Criminal Justice System and the limits of memory functioning. This is also noteworthy in light of the frequency of blackouts and behaviours engaged in during; White et al. (2002) found that 51 percent of their American student sample had experienced a blackout at some point in their life with 40 percent experiencing a blackout in the year prior to the study. Students were found to engage in a number of hazardous activities that they did not later fully remember including vandalism, driving a car and engaging in some form of sexual activity (just over 24 percent of participants reported engaging in this latter activity). This study also noted that in the two weeks prior to the study, an equal number of males and females experienced blackouts despite men drinking more frequently and heavily, thus suggesting that females may be at increased risk of experiencing a blackout. These findings have been replicated more recently by White et al. (2004) with UK research also identifying that around 50 percent of problem drinkers had experienced a blackout in the previous six months prior to survey administration (Morleo, Harkins, Lushey, & Hughes, 2007).

Whilst the studies discussed provide an insight into blackouts, the White et al. (2002) study did not control for the possibility of other substances having been taken and results cannot be viewed as a pure measure of the effects of alcohol in isolation. In addition, whilst the studies highlighted a number of participants engaged in sexual activity, and a proportion of males and females engaged in unwanted intercourse, it was not established whether this sex crossed over into being non-consensual or if alcohol had impacted on the ability to offer meaningful consent. These are important issues for consideration when researching the impacts of alcohol on sexual activity and will be considered in the following section of the literature review.

## Conclusion

The evidence considered here highlights a number of possible pathways that seek to explain the relationship between alcohol consumption and sexual offences. Alcohol can interfere with higher order cognitive processes resulting in a reduction in attentional capacities, or myopia. Individuals who have consumed alcohol may therefore focus on the most salient cues in their environment at the expense of distal factors. When drinking, these cues may be ones of sexual entitlement and aggression. An individual's beliefs surrounding the anticipated effects of alcohol consumption are also likely to impact on behaviour and alcohol may be used as an 'excuse' to engage in exploitative behaviours. The effects of alcohol on a potential victim of

rape can hinder their ability to detect and correct sexual misperception as well as impact on the ability to effectively monitor risky situations. Should a problematic sexual situation arise, a victim may not be able to effectively resist, due to the impact of alcohol on motor skills, verbal and coping responses. Alcohol produces detectable memory impairments, impacting on the ability to recall events clearly and accurately. This has important implications in terms of reporting an alcohol related offence and being considered a credible witness if entering the criminal justice process.

The arguments discussed were located within gendered theories which make it difficult to account for non male against female sexual offence experiences. Indeed, the areas of male sexual assault and female initiated assault require further research attention to help explain the mechanisms that drive these experiences and how they relate to the theories discussed. Questions regarding alcohol's impact on the capacity to freely engage in sexual behaviour and to offer informed sexual consent also need to be addressed, along with the way in which these issues are structured and dealt with via the law. Legislation that specifically relates to sexual offences in England and Wales must be considered in order to evaluate the degree of protection offered to rape victims, especially those who have consumed large quantities of alcohol prior to a sexual offence. It is these issues that the following section of the literature review considers.



### **Literature review part 3: the law on sexual offences**

This section of the review aims to provide an overview of the legislation that relates to sexual offences in England and Wales. In doing so, it addresses certain provisions introduced into law by the Sexual Offences Act 2003. Central to these provisions is the discussion of consent and the capacity to consent to sex when alcohol has been consumed. This section therefore provides a review and critical analysis of these key areas. As has been highlighted thus far, the impact of rape and sexual assault on psychological and physical health can be catastrophic. The law consequently has a responsibility to acknowledge the damage done by sexual offending whilst also recognising an individual's right to an autonomous sex-life (Home Office, 2004).

The Sexual Offences Act 2003 represented the first major overhaul of sexual offence legislation for more than a century (Home Office, 2004). It was largely accepted that the previous statute, the Sexual Offences Act 1956 (as amended), was outdated, incoherent and failed to reflect current social attitudes (Home Office, 2002). It contained unacceptable 'gaps' and a number of its maximum penalties were deemed to be set too low (Card, 2004). It was argued to be a 'patchwork quilt of provisions', some having been introduced as recently as 1994 whilst others dated back to the nineteenth century (Home Office, 2000, p. iii). The 2003 Act emerged from the recommendations of the Home Office review 'Setting the Boundaries' (Home Office, 2000). The white paper 'Protecting the Public' (Home Office, 2002) was subsequently devised from this review and set out the previous labour government's proposals for strengthening and improving the law around sexual offending. A number of the white paper's provisions were criticised in its passage through parliament and modified before its royal assent (Temkin & Ashworth, 2004). The aims of the 2003 Act were to provide clear and coherent categories of sex offences that protected all individuals, to ensure offenders were appropriately punished and to bring 'clarity' to the meaning of the term consent (Home Office, 2002, p. 9), in recognition of its pivotal role within both the actus reus and mens rea of rape. The Act also aimed, as far as possible, to make offences gender neutral and to assist victims in reporting rape. It was implicated throughout the reform process that the law should help to improve rates of rape conviction by providing a clearer legal framework for juries to follow (Home Office, 2002). Many amendments have been made to sexual offence legislation by the 2003 Act; review of all is beyond the scope of the current PhD. The following arguments therefore centre on the statutory definition of consent, paying particular attention to the capacity construct and the laws handling of extreme alcohol intoxication prior to rape. The evidential and conclusive presumptions are also considered, along with the defendant's belief in consent, and requirement that this belief now be 'reasonable'. Whilst sections 1-4 of the 2003 Act set out the four main sexual offences, discussion will focus specifically on the offence of rape. It is acknowledged

that at the heart of all offences is the issue of non-consensual activity. As such, a number of the arguments made in relation to rape will extend across to the other crimes.

### The act of rape: the actus reus

To secure a rape conviction in England and Wales it is necessary to prove beyond reasonable doubt that the accused committed an act that meets the legal definition of rape, that the individual did not consent to the sexual act and that the accused did not reasonably believe the victim was consenting (S1 Sexual Offences Act, 2003). The former two points relate to the act of sexual intercourse and lack of consent (the actus reus) whilst the later point relates to the criminal intent of the action (the mens rea). The actus reus of rape has undergone considerable transition since the Sexual Offences Act 1956. Prior to 1976 there was no statutory definition of rape, simply a legal statement proclaiming 'it is an offence for a man to rape a woman' (S1 (1) Sexual Offences Act, 1956) and that 'a man who induces a married woman to have sexual intercourse with him by impersonating her husband commits rape' (S1 (2) Sexual Offences Act, 1956). These statements were amended in 1976 to emphasise the significance of consent in the sexual decision-making process. Rape was redefined as 'unlawful sexual intercourse with a woman, who at the time of the intercourse does not consent to it' in conjunction with the mens rea element of the accused knowing 'that she does not consent to the intercourse or he is reckless as to whether she consented to it' (S1 (1) Sexual Offences Amendment Act, 1976). The Criminal Justice and Public Order Act 1994 codified rape within marriage as illegal and saw non-consensual anal intercourse with a man or woman become incorporated into statute. Whilst rape remained gender-specific with regard to the perpetrator of the offence (it requires a penis), the widening of the actus reus saw rape become gender-neutral with regard to the victim (S1 (1) Sexual Offences Act 1956 as amended by Criminal Justice and Public Order Act, 1994).

The 2003 Act extends the definition of rape further. Rape can now apply to transsexuals and individuals who have had their genitalia surgically reconstructed (S79 (3)). The term 'penetration' replaces 'sexual intercourse' in recognition that sex is 'a continuing act' and whilst it may start off consensually, if consent is retracted at any point and the man does not withdraw, this will be rape (S79 (2)). This amendment officially codified existing case law, for example *Kaitamaki* (1984), where the rape defendant argued that at the time of penetration he believed the woman was consenting. When however he realised consent was no longer present, he did not withdraw his penis. The court held that rape was a continuing act and that once the defendant realised the complainant was not consenting (thus forming the mens rea) he should have stopped with the intercourse. The definition of rape was extended by the 2003 Act to acknowledge that the slightest degree of penetration is sufficient to constitute rape and the vagina has now been defined to include vulva, confirming that full entry is not necessary (S79

(9)). The Act also included non-consensual oral penetration of a woman or man by the penis as being constitutive of rape. This recommendation was made in light of arguments that penile penetration of the mouth was as 'demeaning' and 'traumatising' as other forms of penile penetration (Home Office, 2000, p. 15). The full definition of rape as now stated in section 1 of the 2003 Act is: 'A person (A) commits an offence if (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) if B does not consent to the penetration, and (c) A does not reasonably believe that B consented'. The Act states that whether a belief is 'reasonable' is determined by 'having regard to all the circumstances, including any steps A has taken to ascertain whether B consents' (S1 (2)). The 2003 Act therefore requires the prosecution to prove three things; intentional penetration, absence of consent and absence of a reasonable belief in consent.

### Consent and the presumptions of the 2003 Act

A lack of consent is the most frequent line of reasoning that defence arguments rest on in rape cases (Baird, 1999; The Stern Review, 2010; Westmarland, 2004). Despite the central importance of consent, it is a concept difficult to define and somewhat nuanced. Whilst sexual consent is generally recognised to denote some form of agreement to engage in sexual acts (Beres, 2007), questions remain regarding how such agreement should be conceptualised and communicated and whether factors such as the length and quality of a relationship have a bearing on a person's consent (Humphreys, 2007). Whilst men and women have both been found to use non-verbal actions more frequently than direct verbal expressions to communicate their consent to sexual activity (Beres, 2007; Hickman & Muehlenhard, 1999), men have been found to more frequently use kissing, sexual touching and the removal of clothing as methods for seeking their partners consent. Women in contrast more frequently allow a partner to remove their clothing, kiss their partner back and do not express a 'no' response to the sexual activity as ways of communicating their consent and desire to continue (Beres, 2007; Hickman & Muehlenhard, 1999). The reliance on such indirect behaviours continues despite both men and women agreeing that overt verbal 'yes' and 'no' communication provides a less ambiguous expression of consent, despite this not being a normative action (Lim & Roloff, 1999). Certain studies also indicate that females, more than males, believe explicit sexual consent, including the verbalising of a 'yes' and 'no', is necessary during sexual encounters (Humphreys, 2007). Consent has come to be defined by certain theorists as principally attitudinal: that is, it is deemed to be an attitude or mental state formed within the mind of the consenter (Hurd, 1996). Therefore, only if an individual's state of mind is consistent with wanting to have sex, will that consent be valid. Alternative arguments suggest that consent is principally related to action. Consent for Brett (1998) is about giving permission via speaking or behaving in ways which visibly articulate consent and communicate permission to engage in sexual acts. Consent here is

more than a state of mind, it is related to what individuals say and do. To define consent as purely attitudinal causes difficulties in terms of addressing ambivalent mental states or indeed addressing how consent is to be genuinely recognised (Cowan, 2008). Defining consent as entirely performative however may negate certain coercive contexts which pressure an individual into articulating a desire for sex, even if this is not consistent with their state of mind. This is the back-drop to which discussions surrounding sexual consent are located and which highlight the complexities that surround the construct and its somewhat knowable, yet indefinable nature.

Prior to the 2003 Act no statutory definition of consent existed. Rather, rulings in relation to consent derived largely from the case of *R v Olugboja* (1981). In this case the rape complainant did not scream or physically resist her attack due to the fear associated with having been raped by the defendant's friend earlier in the evening and having also witnessed her friend get raped. The defendant argued that the complainant's lack of protest was consistent with her consenting to the sex. The Court of Appeal ruled that a woman is not required to show signs of physical resistance and that consent can encompass a range of states from 'desire' through to 'reluctant acquiescence' (Olugboja, 1981, p. 350). It was stated that the jury must use their 'good sense, experience and knowledge of human nature and modern behaviour' in determining whether consent was present in the given circumstances (Olugboja, 1981, p. 351). It was also stated that the jury should be directed towards assessing the complainant's state of mind immediately before the act and to look at the circumstances surrounding, and leading up to the incident, in helping them to form their conclusions. This ruling clearly encompasses the perspectives of Hurd (1996), that is, it acknowledges the state of mind of the individual prior to the sexual activity. The ruling can also be argued to address the issues raised by Brett (1998) in that whilst the Olugboja (1981) complainant did not protest, she neither communicated permission through her actions. The Olugboja case can be argued to respect sexual autonomy by not providing 'rules' that dictate the types of pressure that are likely to negate consent, and instead focuses on the victims state of mind. However, the Olugboja ruling has equally been criticised for leaving the issue of consent entirely up to the jury and providing no framework to denote those situations when consent should conclusively be assumed absent (Westmarland, 2004). Elliott and de Than (2007) argue that the degree of discretion left to the jury under the Olugboja ruling was too great and thus served to undermine personal autonomy. Temkin (1999) also argued that Olugboja individualised cases and moved away from a legal standard of non-consent, potentially introducing individual subjectivity when asking jurors to make judgements in relation to the consent construct.

The 2003 Act recognised a number of the concerns articulated above and aimed to provide clarity and coherence by rejecting the Olugboja approach for a statutory definition of consent.

Similar to the approach adopted in a number of Australian states, it was decided that the consent definition should be accompanied by a list of non-consent situations intended to help structure arguments around the construct, whilst also assisting the jury with the fundamental question of whether the complainant consented to the intercourse (Home Office, 2000). Consent was defined in section 74 as: 'a person consents if he agrees by choice, and has the freedom and capacity to make that choice'. In section 75(2) the Act provides six 'rebuttable presumptions' where consent and belief in consent are presumed absent unless sufficient evidence is raised by the defence to argue otherwise. The circumstances include: if the defendant was using or threatening to use violence at the time of the act or immediately before it against the complainant themselves (a); or another person (b); if the complainant was being unlawfully detained at the time of the act (c); if he or she was asleep or otherwise unconscious (d); if he or she was unable to communicate consent because of a physical disability (e); or if he or she had been administered an overpowering or stupefying substance (f). Once the prosecution establishes that one of the listed circumstances existed, it will be presumed that the complainant did not consent and that the defendant did not have a reasonable belief in consent. In such circumstances, the burden is passed to the defence who are required to demonstrate the steps they took to ascertain consent, potentially rebutting the presumption. Although not directly stated in the 2003 Act, academic commentary and the Judicial Studies Board (who provide key reference material and publications in relation to judicial issues) indicate that it is the judge who will determine whether a presumption arises and whether it has been rebutted by the defence (Card, 2004). If it is not rebutted, the jury are directed to convict, provided the prosecution have proved the existence of the relevant circumstances. How much evidence is required for the defence to fulfil the evidential burden is currently unclear (Finch & Munro, 2004; Tadros, 2006). If the amount is small, there is little point having the burden. Alternatively, if it is substantial and the defence cannot raise sufficient evidence, this impacts on the presumption of innocence (Tadros, 2006). The case of Zhang (2007) which involved a heavily intoxicated rape complainant, and in which section 75(2)(d) was addressed, suggested that there must be 'sufficient' evidence to rebut a presumption and that the defendant's own testimony may be appropriate (Zhang, 2007, p. 4). However, this does not fully answer the question of how demanding the defendant's testimony would need to be. Finch and Munro (2004) suggest that the burden is unlikely to be too challenging, although this is an area that requires further investigation in order to help establish the usefulness of the provision.

Section 76(2) of the Act creates two 'conclusive presumptions' where consent and belief in consent is conclusively presumed to be absent. Namely if, (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act, or (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant. Hence, once it is proved that the defendant committed the

relevant act and either of the circumstances existed, a lack of consent is conclusively established and the defence will not be able to argue consent was present or that they reasonably believed it to be present. Initial findings from the Home Office (2006) stocktake into the effectiveness of the 2003 Act thus far suggested that the conclusive and evidential presumptions are infrequently utilised at trial. Additional research is necessary to clarify whether this situation still persists and if so, to establish why.

The exhaustive list of presumptions has come under criticism for there being no scope for new instances to be added through case law (Temkin & Ashworth, 2004). The Home Office review *Setting the Boundaries* recommended that the presumptions develop through the common law as different circumstances arose (Home Office, 2000). This was rejected by the government on the basis that those instances contained within sections 75 and 76 sent out a clear message of those specific circumstances in which sexual activity was not acceptable (Home Office, 2002). It can be argued however that this is somewhat restrictive and will fail to help assist the jury when new ways of procuring sex without consent arise. The circumstance of spiking drinks with sedative substances for example is an activity which has only received widespread media notoriety within the last ten years. Awareness of the use of this strategy has now been acknowledged by the law and encompassed within presumption (f). It can be argued that other strategies which may become apparent over time will not be deemed appropriate for codification within the laws interpretation of 'not acceptable'. As noted, to prove absence of consent the prosecution can now proceed by one of three routes. That is, to bring the circumstances within one of the conclusive presumption, to bring the circumstance within one or more of the rebuttable presumptions or to rely on the statutory definition and argument that consent was absent (Tadros, 2006). It can be asked whether structuring the law in this way casts important moral judgements on the seriousness of certain rape cases over others, for example, whether obtaining sex by deception is worse than taking advantage of an unconscious person. The conclusive presumptions argue for a categorical absence of consent and belief in consent when there is deception but a mere irrebuttable presumption in the latter circumstance of unconsciousness (Temkin & Ashworth, 2004). This structuring can be taken to imply that certain moral weight has been attributed to certain types of rape.

It has been questioned whether the circumstances set out in section 76 denote the worst types of fraud and deception compared, for example, to deceptions of power and status (Temkin & Ashworth, 2004). Prior to the 2003 Act there were numerous cases of obtaining consent by deception (for example, Tabassum, 2000). The 2003 Act followed the common law and established that if the victim is induced to consent through misrepresentation as to the 'nature' or 'purpose' of the act and 'identity' of the defendant, there is no consent. Therefore, all other types of deception will be dealt with under the section 74 definition of consent. This raises

important questions as to what other types of fraud vitiate consent. The case of *R v. Jheeta* (2008) helps highlight this point and the confusion surrounding the application of the phrase 'deceived... as to the nature or purpose of the relevant act'. Here, the defendant (Jheeta) embarked on a process of deception in order to maintain his failing relationship. This consisted of sending text messages to the complainant pretending they were from the police; informing her that the defendant was suicidal and to prevent him from killing himself, she must 'do her duty' (Jheeta, 2008, p. 2585) and continue to have sex with him and that failure to do so, would result in a legal penalty. The complainant, convinced by the deception, reluctantly continued her sexual relationship. When the truth was identified, on legal suggestion, Jheeta was advised to plead guilty to rape on the grounds that his behaviour fell within the remit of conclusive presumption (a). The Court of Appeal however stated that the advice was inaccurate and that the complainant had not been deceived about the nature or purpose of the intercourse. The court argued that 'the complainant was sexually experienced. She was aware of the nature and purpose of intercourse and the identity of the applicant' and she had only been deceived about the situation in which she had found herself (Jheeta, 2008, p. 2589). However, the court upheld the rape conviction on the basis that through the defendant's own admission, intercourse had taken place on occasions when the complainant was 'not truly consenting' (Jheeta, 2008, p. 2591).

The Court of appeal argued that section 76(2)(a) is only relevant in those few cases where the complainant is deceived about the genuine nature or purpose of the sexual act itself. Examples from the common law help to illustrate this ruling; the case of *Flattery* (1877) helps to clarify the meaning of the term 'nature'. Here, a rape conviction was upheld on the grounds that sex took place after the young female complainant was deceived into believing that the defendant was performing a surgical procedure that would help alleviate the fits she was experiencing. The complainant agreed to have sex believing the act was a surgical one; she had been deceived as to the genuine nature of sexual activity. Deception as to the 'purpose' is highlighted through the case of *Tabassum* (2000). Here, women consented to take part in a breast screening programme on the basis that they believed (inaccurately) the defendant was medically qualified. The women consented to the examination but not to sexual touching by a non-qualified stranger. They understood and consented to the nature of the act but not to its specific purpose. The above cases demonstrate the infrequency with which the conclusive presumptions are likely to apply. The case of *Linekar* (1995), for example, would not fall within them. Here, the Court of Appeal argued that the deception associated with the defendant promising to pay the complainant £25 for having sex with him, and then not making this payment, was not sufficient to negate the complainant's consent. Whilst the complainant may have been deceived she was not misled as to the nature of the sexual act or to the identity of the defendant. Circumstances similar to the case of *Linekar* would now be dealt with under the 2003 Acts general definition of consent

where it would seem logical to conclude that the complainant did not consent to the sex through choice. However, when such circumstances arise the definition of consent takes on greater importance and this may prove problematic in light of arguments that suggests the statutory definition is both ambiguous and unclear (Tadros, 2006). Choice, for example, is a concept that has not been quantified within the legislation and this raises important questions regarding the degree to which a person's choice is constrained by their given circumstances.

Despite the concerns noted in relation to the presumptions, it can be argued that the 2003 Act has helped to structure the law and place greater responsibility on the defence. Finch and Munro (2004) argue that by stipulating a person must have the 'freedom' and 'capacity' to make a choice the Act acknowledges that consent cannot be removed from the circumstances under which that choice is made. Indeed, this permits a more comprehensive analysis of the pressures and power dynamics impacting on an individual's ability to freely and capably make sexual decisions. This has important implications for alcohol related rapes. If consent cannot be removed from the circumstances in which that choice is made, the law must acknowledge that intoxication can impact on an individual's state of mind when making consent related judgements. As discussed, alcohol affects decision-making capacities (Steele & Josephs, 1990) and terms such as freedom and capacity appear to allow for an assessment of how far alcohol may have impacted on a complainant's ability to capably and freely choose to have intercourse. Whilst this can be viewed as a positive advancement to the law, numerous concerns surrounding the statutory definition of consent have been raised.

#### Contentions surrounding section 74, the alcohol applicable presumptions and intoxication

Tadros (2006) and Elliot and de Than (2007) argue that the statutory consent definition is both ambiguous and paradoxical. Elvin (2008) and Temkin and Ashworth (2004) draw attention to the ambiguity of the terms 'freedom' 'choice' and 'capacity', arguing these are philosophical constructs that raise complex questions in terms of how they are to be quantified. Questions concerning the capacity of the complainant at the time of intercourse, and the extent to which their freedom and choice may have been impinged, are pivotal to understanding when consensual sex crosses over to rape. However, the 2003 Act provides little guidance on how to interpret these constructs (Tadros, 2006) and no further explanation is provided through a Judicial Studies Board direction. The difficulties of quantifying capacity are exacerbated when a complainant is heavily intoxicated. Alcohol impacts on inhibitions and decision-making processes presenting difficulties identifying the point at which an individual can no longer be deemed capable of giving valid consent (Cowan, 2008; Finch & Munro, 2004; Wallerstein, 2009). Finch and Munro (2006) have highlighted the difficulties experienced by mock jurors when asked to interpret and apply the capacity term, following a rape trial reconstruction.



Indeed, the requirement that the complainant must have the capacity to make a choice, in the absence of specific guidance as to what level of consciousness, communication or self-awareness this required, created the application of a flexible and unpredictable legal test.

As noted, the 2003 Act creates two presumptions which are relevant to alcohol intoxication and include 75(2)(f) where consent is presumed absent if: 'any person has administered to or caused to be taken, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act', and 75(2)(d): 'the complainant was asleep or otherwise unconscious at the time of the act'. These presumptions reflect the pre-2003 common law that stated the complainant must be capable of giving consent through the exercising of a rational decision (see the case of *Larter & Castelton*, 1995). However, the common law may be viewed as narrowly interpreted within presumptions (d) and (f). It is clear that neither circumstance encompass the situation whereby an individual has become intoxicated through voluntary alcohol consumption and to a point of extreme intoxication, but one that falls below the level of unconsciousness. Indeed, capacity may evaporate before a complainant reaches such a threshold and the ability to make a rational judgement may equally be eradicated through self-induced intoxication (Bree, 2007). Section 75 however remains silent with regard to the impact of excessive but voluntary alcohol intake and its implications for consent.

As structured, it may be suggested that the alcohol applicable presumptions reflect stereotypical notions of passive female victims and predatory men looking for innocent women to render unconscious for the purpose of procuring sex. This message keeps hidden the reality of alcohol involved rape offences: namely, that they are typically perpetrated by a known individual after alcohol has been voluntarily consumed. Presumptions (d) and (f) as they currently stand may be argued to reinforce narrowly defined constructions of drug-facilitated sexual assault. Finch and Munro (2004) state that it is currently unknown how far presumption 75(2)(f) will help in the prosecution of alcohol involved rape cases. This may largely depend on how a number of the presumptions terms come to be interpreted in practice and whether circumstances of broader scope than the stereotypical unknown defendant surreptitiously administering a substance such as Rohypnol or GHB, come to be included within its remit. It is currently unestablished whether a distinction will be drawn between the terms 'administered' and 'caused to be taken'. 'Caused to be taken' suggests an activity of broader application than 'administration' so calls into question whether less surreptitious administration of an intoxicant such as encouragement, social pressure and the intentional buying of double measures instead of single are included within it (Finch & Munro, 2004). Such an interpretation would acknowledge the different ways in which intoxicants are used in modern-day sexual relations and would be a positive advancement to the law. Finch and Munro (2004) also ask whether the range of situations

encompassed by the term 'without the complainant's consent' would include the circumstance whereby an already drinking complainant unknowingly consumes higher quantities of alcohol than intended, due to the defendant's misrepresentation. Here the complainant will be consenting to drink alcohol but will not be consenting to consume the particular strength of alcohol given. Again, it is unestablished whether such circumstances currently fall within the presumptions remit - creating ambiguity as to the scope and usefulness of the provision.

Setting the Boundaries recommended that section 75 should contain within it the situation whereby a complainant was 'too affected by alcohol or drugs to give free agreement' (Home office, 2000, p. 19): the situation presumption (f) captures is however far narrower. The decision made by the Home Office to reject this presumption was made on the basis that it could encourage 'mischievous accusations' (Office for Criminal Justice Reform, 2006, p. 12). The idea that false rape allegations are commonplace is firmly ingrained within the Criminal Justice System where an array of provisions have been implemented to protect defendant from possible false rape reports (Kelly et al., 2006). Notions around false allegations being exacerbated when alcohol has been consumed are also pervasive. Within the context of the Criminal Justice System, alcohol is often viewed as a substance that will increase the likelihood of a woman agreeing to sex, regretting that behaviour when sober and retrospectively revoking her consent (Cowan, 2008). Temkin and Ashworth (2004) argue that the decision to reject Setting the Boundaries recommendation places those who consume alcohol and drugs voluntarily in a different moral category from those who have intoxicants intentionally administered to them with the presumptions appearing to protect those victims construed as 'innocent'. By drawing distinctions between voluntary and involuntary intoxication the law fails to challenge stereotypes regarding innocent and deserving victims (Stevenson, 2004), inevitably making the prosecution's job of achieving convictions more difficult.

The catalyst for the UK's focus on intoxicated consent was the case of *R v Dougal* (Dougal, 2005). Here the trial judge directed the jury to acquit the defendant after it became apparent that the complainant could not remember whether she consented to sex, due to her extreme drunkenness (Office for Criminal Justice Reform, 2006). This case, along with governmental concern regarding binge-drinking culture and under age alcohol consumption, culminated in the Office of Criminal Justice Reform (2006) consulting on whether the term 'capacity' should be defined in legislation. The consultation paper recognised that the term raised problems in relation to the validity of alcohol induced consent. The consultation also asked whether the evidential presumptions should be extended to include within them the circumstance of extreme voluntary intoxication to help the jury better decide whether the complainant, at the time of intercourse, lacked the capacity. Prior to publication of the consultations findings, the difficulties of establishing capacity when parties are voluntarily intoxicated was highlighted in

the case of *R v. Bree* (2007). Here the complainant and defendant had been drinking heavily together and intercourse took place. The complainant argued that she did not consent to sex but agreed she did not say 'no' on the grounds that she did not feel she was functioning within her own body and did not know how to stop the intercourse. The prosecution case initially stated that the complainant was unconscious throughout periods of the event and therefore lacked the capacity to consent. After testifying it was evident that the complainant had not been unconscious, but had not consented to the intercourse. The complainant's recollection was hampered by blackout and memory loss throughout. Bree's defence was that the complainant had welcomed his advances. He believed she was lucid enough to consent, that she did so and that he reasonably believed she was consenting. Bree was convicted of rape although the Court of Appeal quashed the conviction on the grounds that the jury were not given sufficient direction to enable the verdict reached to be regarded as safe. The Court of Appeal argued that:

'the jury should have been given some assistance with the meaning of 'capacity' in circumstances where the complainant was affected by her own voluntarily induced intoxication and also whether, and to what extent, they could take that into account in deciding whether she had consented' (Bree, 2007, p. 168).

In its analysis of the case the court referred to the case of *Dougal* (2005) and stated that 'a drunken consent is still consent' (Bree, 2007, p. 166) but that if the complainant had 'temporarily lost her capacity to choose', she could not be deemed to be consenting (Bree, 2007, p. 167). Further, where the complainant had consumed even vast quantities of alcohol but remained capable of choosing whether to have sex and indeed agreed to do so, this would not be rape. It was also acknowledged that 'capacity to consent may evaporate well before a complainant becomes unconscious' (Bree, 2007, p. 167). The court concluded that the issue of whether the complainant was incapable of consent, due to her intoxication, was a decision for the jury to decide. The court argued that the difficulty lay in establishing the point of incapability but stated that the law had gone far enough and that it would be 'unrealistic' to develop a 'grid system' to indicate at which point an individual becomes incapable of consent (Bree, 2007, p. 167). Indeed, different individuals have a greater or lesser capacity to cope with alcohol and the Court of Appeal argued that certain areas of human behaviour cannot be captured within legislative structure and attempts to do so may result in 'patronising inferences' which invade individual's sexual autonomy (Bree, 2007, p. 167). Whilst the difficulties of effectively framing the capacity term are evident, Finch and Munro (2005: 2006) have shown that a lack of statutory guidance can undermine women's claims of non-consent. Therefore, putting the issue of capacity entirely in jurors' hands may be problematic. Elvin (2008) argues that the Bree (2007) ruling in relation to 'patronising inferences' towards sexual autonomy disproportionately focuses on the positive aspects of autonomy. That is, the freedom to have sex

with whom one chooses, at the expense of the negative aspects (the right to refuse sex and for that refusal to be accepted). Elvin (2008) argues that the law as it currently stands fails to protect the negative dimensions of an individual's right to sexually self-govern.

The case of *Bree* (2007) does not necessarily address the core concern with the current statutory framework which is lack of judicial direction. *Bree* has established that the capacity to consent when intoxicated voluntarily is an issue to be established by the jury with some, but as of yet, un-established direction (Elvin, 2008; Rumney & Fenton, 2008). However, the more nuanced question of what 'not having the capacity' actually means, and its impact on consent, remains unanswered. As pointed out by Cowan (2008), *Bree* (2007) and *Dougal* (2005) seem to suggest that if the complainant cannot remember saying no to a sexual advance or indeed remember any of the events that took place, then providing the complainant was conscious for at least periods of the intercourse, she will be presumed to have consented or at least, the defendant's argument that they reasonably believed she consented will be deemed legitimate. In these circumstances it may be argued that consciousness is taken as the marker of capacity. While wholly unacceptable to convict an individual for an offence they have not perpetrated, it appears equally unacceptable to leave unchallenged the notion that a complainant who has experienced blackouts, sickness and periods of unconsciousness can be deemed to have the capacity to consent. It may also be argued that in the cases of *Bree* (2007) and *Dougal* (2005) the focus during the trial was predominantly placed on the complainant's intoxication, as opposed to whether the defendant's belief in consent was reasonable and the steps he had taken to ensure consent was present. In rape cases involving excessive drunkenness, it may be argued that the possibility of a complainant having offered 'drunken consent' is a possibility that may override the more significant questions of whether the complainant had the capacity to consent in the first place and the actions a defendant may have taken to establish this position. As Cowan (2008) argues, the implication of *Bree* (2007) is that whilst a complainant may not be sufficiently intoxicated to be rendered incapable by her drinking, she is perceived sufficiently disinhibited to provide 'drunken consent'.

In light of the arguments raised in the *Bree* (2007) case it is perhaps unsurprising that the government decided against a statutory definition of capacity and the introduction of a rebuttable presumption in the case of extreme drunkenness. The consultation argued that the Court of Appeal had provided sufficient guidance in relation to capacity with the statement that argued 'if through drink (or for any other reason) the complainant has temporarily lost her capacity to choose whether to have intercourse on the relevant occasion, she is not consenting' (Office for Criminal Justice Reform, 2007, p. 10). However, as addressed, the Court of Appeal fails to provide assistance on where the specific point of incapacity may reside. Cowan (2008)

argues that at the very least, the judge in Bree (2007) should have directed jurors on the principles of awareness, understanding and ability and how these related to the facts of the case.

### Absence of a reasonable belief in consent

The 2003 Act made considerable amendment to the defendant's belief in consent. Section 1 (2) of the Sexual Offences Act 1956 (as amended) stated that a man commits rape if 'at the time he knows that the person does not consent to the intercourse or is reckless as to whether the person consents to it'. The 2003 Act however replaces the notion of reckless knowledge with the requirement to prove the absence of 'a reasonable belief in consent' (S1 (1c) Sexual Offences Act, 2003). The reasonableness of a defendant's belief is to be determined in light of 'all the circumstances' including 'any steps' taken by the defendant to establish whether the victim consents (S1 (2) Sexual Offences Act, 2003). In deciding whether this is an improvement to the law of rape, it is necessary to consider why the previous approach, advocated through the case of DDP v. Morgan (1975), was deemed unsatisfactory. In this case, a husband colluded with three friends in the raping of his wife. The defendant told his friends that his wife would struggle, resist and say 'no' to the intercourse but that this was part of the sexual fantasy and they should continue. The accused friends argued that they honestly believed the wife was consenting to intercourse and that they did not intend to rape her. Despite the three men being convicted, the case ruled that individuals should be judged on the facts as they believe them to be, and not on the facts they have not given consideration (Morgan, 1975). Therefore, if a man honestly believed a woman was consenting to sex, irrespective of how unreasonable this belief may be, he should not be found guilty of rape because the mens rea, or guilty mind, would not be present. This 'mistaken belief' clause, as it has come to be informally known, was deemed unsatisfactory and arguments raised that in the case of sexual offences, a mistaken belief should not negate liability. Indeed, out of respect for one's partner and sexual autonomy, it was rationalised that an individual should take specific steps to ensure the other party was consenting (Tadros, 2006). In response to increased expressions of dissatisfaction with the pre-2003 law, the 2003 Act shifted emphasis from a subjective belief in consent as held by the defendant in favour of a test of what is reasonable in the circumstances. The rationale behind the move away from the subjective test was to avoid miscarriages of justice and that the subjective test contributed in part to the low rape conviction rate (Home Office, 2002). Indeed, this approach can be praised for placing greater responsibility onto defendants through a focus on the steps taken to ascertain consent. The approach according to Tadros (2006) also allows for differing levels of defendant intellectual capability and cultural difference to be taken into consideration when deciding whether the defendant appreciated the victim was consenting.

It is perhaps still too early to fully recognise the impacts of this change and a lack of empirical research in relation to the pre-2003 mens rea position makes it difficult to evaluate the contribution of the provision and its impact on conviction rates. However, Temkin and Ashworth (2004) ask whether the new test will place greater responsibility on the prosecution, arguing that this may be determined by how the term 'all the circumstances' comes to be interpreted. The white paper *Protecting the Public* argued that the Morgan approach did not reassure victims that they would receive justice and consequently discouraged individuals from reporting and pursuing offences (Home Office, 2002). However, it is unclear how the test of reasonableness is likely to provide the necessary impetus to resolve these problems. Indeed, the phrase 'all the circumstances' invites the jury to analyse all aspects of a victim's behaviour in order to establish whether there was any action that could have indicated a reasonable belief in consent. In theory, by examining the conduct of the complainant leading up to intercourse, there is room for factors such as the complainant's prior relationship with the accused and potentially flirtatious behaviour to be examined (Temkin & Ashworth, 2004). This is especially pertinent when considering the issue of alcohol involved rape and findings that confirm a substantial number of offences are perpetrated by known individuals after parties have been drinking together (Kilpatrick et al., 2007; Mohler-Kuo, 2004). The 2003 Act appears to provide little protection in terms of preventing the jury from drawing upon stereotypes when making decisions upon what is relevant and reasonable. If this is the case, it may be suggested that the new element of reasonable belief will place greater responsibility on the prosecution who will have the difficult task of trying to compete with juror prejudices. This again is an area of the law which requires further investigation in order for these issues to be fully examined.

## Conclusion

The law around sexual offences needed modernising; however, it is debatable whether the 2003 Act has managed to accomplish all of its intended aims in relation to improving sexual offence legislation. Whilst the Act endeavoured to add clarity to the meaning of consent, ambiguity surrounds the statutory definition and how the terms capacity, freedom and choice are to be quantified. Judging the presence or absence of these concepts becomes all the more complex when alcohol is factored into a sexual offence. Whilst the presumptions of the 2003 Act have raised noted concerns and the level of evidence required to fulfil section 75 is yet unknown, they do make important statements about certain sexual behaviours that must not be tolerated. In terms of increasing the reporting of sexual offences and conviction rate generally, changes in the law are likely to have moderate impact. Inviting jurors to scrutinise 'all the circumstance' surrounding a sexual offence is a potentially daunting process for a victim where irrelevant circumstantial evidence may be used to make inappropriate value judgements. It is still reasonably early days in the life of the 2003 Act and further research is essential in order to test

a number of the speculations that have been presented. It is clear however that further legislation is not a 'cure all' solution. Legal change has to be combined with public education before legislation can fully impact. Societal change must also address the many negative myths and stereotypes that surround rape, especially alcohol related rapes, and which are frequently used to condone and justify sexual offences. It is these issues that the final section of the literature review considers.

## **Literature review part 4: victim blaming attitudes and rape myths**

The final section of the review aims to address the role of negative victim blaming attitudes and rape myths in the rape case attrition process, as previously discussed. In doing so, emphasis will be placed on constructions of, and subscription to, the 'real rape' stereotype. This section also builds upon the previous discussion of English and Welsh sexual offence law and the embodiment within legislation of stereotypes regarding innocent and deserving rape victims. Examples of rape myths will be provided and their function considered along with the specific myths, attitudes and research that relates to alcohol involved rape and rape victims.

Judgements regarding the legitimacy of a rape claim are, to a large extent, based on appraisals regarding the credibility of the accounts given by the victim and perpetrator. However, such appraisals made are not purely data driven (based on the facts that exist) but also influenced by societal beliefs and attitudes surrounding rape (Krahe, Temkin, & Bieneck, 2007). Pivotal to the issues of attrition are stereotypical attributions related to victim culpability. Holding the rape complainant in some way responsible is a robust occurrence, established to be pervasive in a number of countries including Canada (Jenkins & Schuller, 2007; Schuller & Wall, 1998), America (Norris & Cubbins, 1992; Sims, Noel, & Maisto, 2007), the UK (Finch & Munro, 2005; 2007) and beyond (Spain: Frese, Moya, & Megias, 2004; Germany: Krahe, Temkin, & Bienech, 2007). An unsympathetic public attitude towards rape and rape victims has long been proposed to contribute to the problems of low rates of conviction. Indeed, societal attitudes about what rape is, who rapists are and the gendered appropriateness of sexual behaviour significantly impacts on whether sexual offences are acknowledged, reported, prosecuted and found guilty (McGregor, 2005).

### Attitudes in relation to the 'real rape' script

Restrictive definitions regarding 'real rape' - that is, theories held by the lay public regarding the nature or characteristics of 'genuine' rape case, rape victims and perpetrators - influence judgements about individual rape cases (Kelly et al., 2005). A typical rape scenario may be described by a member of the lay public as an act committed by a stranger, involving the use of force or a weapon, which occurred outside and where the victim sustained visible physical injury. Indeed, this is how student participants have been found to depict a rape incident when asked to write about a 'typical rape' (Ryan, 1988; Temkin & Krahe, 2008). This representation has been termed the 'real rape' stereotype. It is a generalisation that is contrary to the evidence discussed - namely, that female rape is most frequently committed by an intimate partner or acquaintance, infrequently involves the use of a weapon, commonly occurs indoors and involves threats as well as other types of coercion that fall short of physical assault (Feist et al.,



2007; Myhill & Allen, 2002; Walby & Allen, 2004). Kelly (2001) identifies a collection of myths that coalesce to form the real rape script and are documented in table 1:

**Table 1:** Contemporary rape myths

<b>Rape myth</b>
Rape is committed by a stranger
Rape happens at night, outside and involves a weapon
Injuries are always sustained
Someone being raped will always physically resist
Women exacerbate rape through their behaviour and dress and taking unnecessary risks
All victims respond to rape in the same way
Someone who is sexually promiscuous is less trustworthy and more likely to lie about rape
Someone who is sexually promiscuous has less right to choose who they have sex with compared to someone who is not sexually promiscuous
Women tend to lead men on and are to blame if men then fail to resist their natural urges
False allegations of rape are easily made and are more common than false allegations made in relation to other crimes

**Taken from: Kelly (2001) Routes to injustice: A research review on the reporting, investigation and prosecution of rape cases, p. 4**

As argued by Temkin and Krahe (2008) the real rape stereotype is prescriptive in nature and dictates the parameters that a rape must meet in order for it to be deemed legitimate. The further an individual case deviates from the script, the less likely third parties are to classify the offence as rape. In addition, the more inclined individuals will be to attribute blame to victims for the events that took place (Burt & Albin, 1981; Temkin & Krahe, 2008). The research literature recognises that rape case attrition relates to pervasive subscriptions regarding what constitutes real rape (Brown, Hamilton, & O'Neill, 2007; Jordan, 2001; Temkin & Krahe). Kelly et al. (2005) argues that at each stage of the investigation and prosecution process, the above stereotypes play an important role in rape case decision-making. The real rape script is a shared representation and the media reporting of rape cases plays a pivotal role in the propagation of the script. The Lilith project (2008) analysed the content of 136 news articles on rape and sexual assault which appeared in mainstream newspapers and on the BBC Online news site during 2006. They found that media constructions of rape, rape victims and perpetrators were contradictory to all crime statistics and research evidence. Rape was most frequently reported to occur outdoors and be perpetrated by a dangerous, deviant stranger who used extreme violence. There was frequent over reporting of false rape allegations, rapes perpetrated by non-British nationals and rapes which led to a conviction. Female victims often had to demonstrate their 'innocence' or lack of responsibility through their actions before, during and after the assault

with the complainant's level of resistance, emotional trauma and conduct being closely scrutinized. It can be argued that such reporting has a damaging impact on public perception which may serve to set up unrealistic expectations and understandings around sexual offences.

Kelly et al. (2005) found that women who experienced rape that deviated from the real rape script less frequently reported the incident to the police with their experiences subsequently failing to enter official crime statistics. This finding is complemented by the results of the 2001 British Crime Survey and American research that consistently demonstrates that individuals whose rape experiences diverge from the real rape stereotype are less likely to classify themselves as rape victims and more likely to blame themselves for the events that occurred (Bondurant, 2001; Myhill & Allen, 2002). Research that has extended these findings has examined the experiences of women who classify their sexual assaults as rape with women who do not. American research by Kahn, Jackson, Kully, Badger and Halvorsen (2003) for example used the Sexual Experience Survey to identify whether women from their sample had experienced rape. Following the identification of rape experiences, questionnaire and open-ended descriptions were used to establish what happened during the assaults of 33 women who labelled their rape experience as such, and 56 women who did not. Findings indicated that acknowledged rape victims less frequently knew the perpetrator, experienced the use of more physical force, had stronger negative emotional reactions to the experience and were more likely to blame the assailant. In contrast, when the assault involved a boyfriend, the woman was severely impaired by alcohol and if the offence involved oral penetration, women were unlikely to classify the situation as rape. Whilst no explanation was speculated upon for this latter finding, it may be related to an individual's lack of awareness surrounding the legal definition of rape. UK research utilising a student sample has demonstrated that forced oral penetration is infrequently recognised to be part of the rape definition (Withey, 2008). More recent UK survey research also demonstrates that from a sample of 1,061 Londoners aged 18-50 years, 18 percent did not know whether it was rape if a man makes his long-term partner have sex which they do not consent to (Opinion Matters, 2010a). A subsequent study by Opinion Matters (2010b) also demonstrated that from a sample of 1,012 Londoners aged 18-25, one in eight (12 percent) did not believe it was rape when one person says no, yet the other continues with the penetrative sexual act. It is realistic to suggest that a proportion of women fail to report a sexual offence because they do not appreciate that what they have experienced is legally defined rape.

The Kahn et al. (2003) sample women who acknowledged that they were too intoxicated by alcohol to physically resist the sex that took place, and who did not classify the incident as rape. noted in their open-ended descriptions that they did not believe they were at risk during the event. They did not attribute the sex that occurred to their partner's pressure, force or wrongdoing but to their own lack of ability to think logically at the time and to physically stop

what was happening. Kahn et al. (2003) suggested that these participants presumed men would have sex with them unless they overtly protested in some way. Because the women did not protest, due to their intoxicated state, they did not interpret the experience as rape, despite there being no consent. This issue was raised in the case of *R v Bree* (Bree, 2007), as discussed in the previous section. The Court of Appeal stated that the direction that appeared in the case of *R v Malone* (Malone, 1998) would have been appropriate for use with the Bree jury. This direction stated:

‘Submitting to an act of sexual intercourse, because through drink she was unable to physically resist though she wished to, is not consent. If she submits to intercourse because of the drink she cannot physically resist, that, of course, is not consent’ (Bree, 2007, p. 607).

Whilst English and Welsh law may then denote the behaviour described by a proportion of the Kahn et al. (2003) sample as lacking consent and therefore being constitutive of rape, this is not inevitably the perspective adopted by individuals who experience these acts. The Kahn et al. (2003) findings perhaps highlight the complexities associated with consent based rape definitions and the potential dissonance between the law, peoples lived experiences and classification of those experiences.

It is clear that the real rape stereotype impacts on an individual’s self-identification as a rape victim. Indeed, awareness surrounding the existence of individuals who do and do not label their experience, has led to the assumption that acknowledging and classifying an event as rape is beneficial and necessary to aid the recovery process (Gidycz & Koss, 1991). However, the research is somewhat disputed. Kahn et al. (2003) acknowledges that labelling increases the awareness of the extent of rape at a societal level, enables the perpetrator to be officially identified and held accountable for their behaviour as well as increasing the likelihood of the victim seeking services to help them manage the emotions that may ensue from the event. However, Kahn et al. (2003) also noted that intoxicated women in the sample who did not label their experience as rape did not include within their descriptions the same levels of trauma found in the reports of women who did label. This finding may be interpreted in several ways; Kahn et al. (2003) for example suggests that intoxicated non-labelling women may have been less traumatised by the experience and therefore may not have felt the event was equivalent too, or representative of a rape act, hence did not apply the label. Alternatively, labelling an experience as rape may bring with it negative emotional consequences due to the stigma associated with the term. McMullin and White (2006) argue that the possible benefits of labelling may include a decrease in problematic behaviours over time and that labelling is a beneficial process, and one that should be encouraged (Gidycz & Koss, 1991).

The real rape stereotype impacts on how victims are expected to react in response to rape. Third party observers report expecting a victim to contact the police immediately and show visible signs of emotional distress. Failure to conform to these norms can result in reduced appraisals of victim credibility (Ellison & Munro, 2009a; Temkin & Krahe, 2008). Such expectations remain despite the majority of rapes never being reported to the police (Walby & Allen, 2004) and those which are reported, often being delayed due to feelings of confusion and trauma immediately experienced. Jordan (2001) found that from her interviews with 48 women who had experienced and reported sexual assault and rape, only six percent told the police before anyone else. Over half reported their assault immediately or at least within the same day; however, in 38 percent of cases there was a delay in reporting. Whilst half of this latter group reported within two weeks of the assault the rest took significantly longer with three women taking over ten years. Many victims of rape do not show visible signs of emotional distress immediately after the offence. Emotional-numbing is one symptom of Post-Traumatic Stress Disorder which is frequently experienced post assault (Foa & Riggs, 1994). To correct such gaps in the public's knowledge and to dispel attitudes about appropriate victim responses the suggestion of introducing expert testimony in rape trials is frequently considered with research being conducted to establish the possible contribution of such educational guidance (Ellison & Munro, 2009b). In England and Wales the Office for Criminal Justice Reform (2006) consulted on whether expert evidence should be introduced in order to place juries in a more informed position when asking them to assess complainant credibility. The response to the consultation noted that expert testimony could raise public awareness, dispelling myths, increasing convictions, and address the imbalance that currently exists within the Criminal Justice System for rape complainants. Counter arguments however included giving the prosecution an unfair advantage which would increase miscarriages of justice, the possibility of the defence calling for expert evidence which could suggest genuine victims do not fit the 'true victim' model, confusing the jury and causing jurors to focus disproportionately on the expert evidence. Whilst acknowledging the possible benefits of expert evidence, the review concluded that substantial risks were posed by the introduction of such evidence at this time and that continued exploration was necessary to help formulate an appropriate government response (Office for Criminal Justice Reform, 2007).

### Rape myths continued

Burt (1980) first described rape myths as 'prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists' (Burt, 1980, p. 217). Burt was one of the first authors to highlight that societal attitudes about rape are shaped by widely held misconceptions regarding the act of rape itself and the victim's role within the offence. In their review of the literature Lonsway and Fitzgerald (1994) argued that Burt's definition failed to answer questions about the ways in

which beliefs were prejudicial, to whom and what specifically characterised them as mythological. Lonsway and Fitzgerald (1994) provided a revised definition of rape myths stating they were 'attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women' (Lonsway & Fitzgerald, 1994, p. 134). A more recent definition has been offered by Gerger, Kleg, Bohner and Siebler (2007) which emphasises the specific content and function of rape myths and depicts them as 'descriptive or prescriptive beliefs about sexual aggression (about its scope, causes, context, and consequences) that serve to deny, downplay or justify sexually aggressive behaviour that men commit against women' (Gerger et al., 2007, p. 423). The term Rape Myth Acceptance is frequently used to describe the endorsement of these myths.

As previously noted, theories around rape myths emerge from the feminist sociocultural research perspective that placed explanations for rape within the context of a rape supportive, patriarchal culture (Brownmiller, 1975). However, the reality that men also experience rape and are subject to rape blame is difficult to reconcile within this traditional feminist explanation. Myths that relate to male rape victims and which blame men for their non-consensual experiences are also pervasive (Davies & McCartney, 2003). In a review of the relevant research literature Davies and Rogers (2006) noted that men frequently hold other men more responsible for being raped than female respondents will, irrespective of whether a stranger rape, acquaintance rape or prison rape scenario is depicted. Whilst such findings remain unaccounted for within traditional feminist explanations of rape blame, they do emphasise the importance of assumptions and attitudes made in relation to male sexual offences that may come to have a bearing on attributions of responsibility. Indeed, more recent theories that focus on the marginalisation of specific groups and the construction of masculinity have evolved to better account for male rape. The construction of masculinity is deemed pivotal to understanding the rape of men as well as women. Connell (1995) challenged the assumption that masculinity is a one dimensional construct and identified different forms of masculinity that co-exist and develop together. Institutions such as school, work and sports teams include and exclude certain men resulting in the development of dominant masculinities and more subordinate forms. Connell (1995) draws attention to hegemonic masculinity, the aggressive form that is dominant in western capitalist societies, arguing that other masculinities are marginalised in relation to this type. Lees (1997) argues that male rape, along with female rape, may be a way of promoting this dominant hegemonic masculinity and carried out in pairs or as part of a group, rape may be viewed as a method of enhancing the group relationship and by humiliating the victim, identifying oneself as the 'real man'. For Connell (1995) hegemonic masculinity is defined and exerted not only through the subordination of women but also those men or masculinities perceived to be marginalised: namely, men deemed weaker and less aggressive.

As the information in table 1 highlights, there are many examples of rape myths. Those which are perhaps most central to the current debates include the commonly held notion that women frequently lie about having been raped (Burt, 1980; Lonsway, Archambault, & Lisak 2009; Rumney, 2006). Research by Burton, Kitzinger, Kelly and Regan (1998) found that 74 percent of English survey respondents aged 14-21 years agreed that females often or sometimes 'cry rape' when really they just have second thoughts about sex that has taken place. More recently, the Opinion Matters (2010a) survey identified that 18 percent of respondents agreed with the statement that most claims of rape are probably not true. American research demonstrates that the fear of not being believed is a key factor related to a complainant's decision not to pursue a case through the criminal justice route (Kilpatrick et al., 2007). Kelly et al. (2005) and Jordan (2001) also suggest that anxieties around not being believed can motivate complainants' to modify their stories in order to align them more closely to the real rape script, in an attempt to make them look more credible. Clearly, adjusting a story in this way can create evidential problems and enhances the possibility of inconsistencies being introduced into accounts. As discussed, inconsistency impacts on police officers perceptions of victim credibility (Kelly et al., 2005; Leippe et al., 1992). Subscriptions to attitudes around the regularity of false rape allegations are often indirectly confirmed through the isolated incidents of false rape accusations that are widely publicised in newspapers (Kitzinger, 2009; Lilith Project 2008; Lonsway & Fitzgerald, 1994). However, there is little empirical basis to suggest that false rape reports are commonplace (Kelly et al., 2005). In a review of related studies, Lonsway et al. (2009) argue that research conducted in the UK, America and Australia indicates that the percentage of false rape reports across these countries converges at around the two-eight percent mark. Rumney (2006) also points out that previous studies which have documented high levels of false rape reporting have been hampered by their reliance on unreliable methodologies and have often used disparate criteria for judging an allegation to be false, and therefore cannot be considered reliable findings.

The idea that false rape reports are commonplace and frequently made by vengeful women has been echoed throughout the Criminal Justice System for decades and incorporated into statutes as though it is fact, despite the lack of supporting research evidence. Indeed, an array of provisions have been implemented in order to protect defendants from false rape reports including a wide ranging cross-examination of the complainant which had historically included the admission of complainant past sexual history evidence (Kelly et al., 2006). Use of the corroboration warning was also underpinned by concerns regarding false allegations. This warning involved jurors in sexual offence cases being cautioned about the problems of relying on the uncorroborated word of the complainant. This rule was modified by section 32(1) of the Criminal Justice and Public Order Act 1994 with judges now only being expected to apply the

warning if there is an evidential basis to suggest the witness is unreliable. As discussed, arguments around the introduction of a rebuttable presumption to cover the instance of being too affected by alcohol to give free agreement were dismissed on the grounds that it may result in 'mischievous accusations' (Office for Criminal Justice Reform, 2007). Additional research is therefore paramount in order to ensure future legislation and policy is not based on incorrect assumption (Rumney, 2006; The Stern Review, 2010) and to enable a more comprehensive picture of the attitudes that surround false rape allegations to be developed.

A second commonly held rape myth that is central to the current discussion is that only certain 'types' of women get raped and that these are typically women with 'bad' reputations, who behave in certain ways and therefore contribute to their victimisation (Burt, 1980; Lonsway & Fitzgerald, 1994). The much publicised research by Amnesty International supported this contention. This study found that from a sample of 1,095 members of the general public aged 18 and over one in three believed that if a woman behaved flirtatiously with a man she was at least partially responsible for being raped. Fourteen percent of respondents also thought a woman was partially responsible for being raped if she had many sexual partners with eight percent thinking she was totally responsible. Twenty-six percent of participants thought a woman was at least partly to blame if she had been drinking alcohol at the time of the assault, with a further four percent thinking she was totally responsible. Men in this study were found to attribute more blame to the victim than female participants (ICM, 2005). These findings have been replicated more recently via the Opinion Matters (2010a) survey where over half (56 percent) of the 1,061 participants felt there were certain circumstances whereby a person should accept responsibility for rape. Of this group, 64 percent of respondents felt a person should accept responsibility if they are drinking to excess, 21 percent if they are acting flirtatiously and 29 percent felt a person should accept responsibility for rape if they go back to the other person's house for a drink (Opinion Matters, 2010a). This study noted that women were more unforgiving in their judgements as well as those that fell into the younger 18-24 year demographic. These findings have concerning implications in light of it being lay members of the public, such as those involved in the completion of the above studies, that come to sit as jurors in real life rape cases, where such extra legal factors may come to impact on attributions of responsibility and guilt. It may be suggested that negative attitudes that hold complainants accountable for their victimisation lay behind the Criminal Injuries Compensation Authority's decisions in 2008 to reduce the awards given to rape victims who had been drinking prior to the offence (Williams, 2008). Whilst this decision has now been rectified, it clearly embodied suggestions of contributory responsibility (The Stern Review, 2010).

Numerous stereotypes surround male rape and sexual assault including 'real men cannot be raped' (Coxell & King, 1996). Until 1994 this myth was echoed in law where rape was defined

as forcible vaginal penetration (only women could be raped). Such perceptions are intrinsically linked to notions of masculinity and assumptions that men should be able to defend themselves and fight off an attack (Davies & Rogers, 2006). Indeed, this may account for the findings of Davies and Rogers (2006) and the increased levels of blame attributed to male rape vignette scenarios. A further male rape myth is that the presence of ejaculation or an erection implies consent. Whilst animal and human studies have found that high levels of psychological arousal and distress can result in genital responding, this myth has still been used as a legal defence to suggest consent was present (Lees, 1997; Coxell & King, 1996). A third myth that is widely subscribed to is that men who rape other men must be gay or that a man who is raped must be gay themselves or have behaved in a manner that suggested they were (Coxell & King, 1996; Lees, 1997). Indeed, this links with the findings of American research by Mitchell, Hirschman and Nagayama-Hall (1999) who found that from a sample of 396 student participants presented with male rape scenarios, gay men were more frequently assumed to be responsible for perpetrating rape. Gay men were also perceived to be less traumatised by rape and find the experience more pleasurable, when compared to heterosexual males. These myths clearly subscribe to ideas that suggest rape is motivated by a desire for sexual gratification rather than domination, humiliation and control being the principal motivators for the crime (Lees, 1997; Petrak, 2002). Review of the many other rape myths that exist within the literature is beyond the remit of the current discussion. However, in light of their pervasive nature it is necessary to consider how rape myths impact on behaviour and the functions they may serve.

#### The function of rape myths and their link to behaviour

Over the last several decades a number of scales have been devised to measure rape myth acceptance (for a review see Lonsway & Fitzgerald, 1994). American social psychological research has used these tools to address attributions of responsibility in rape case scenarios. Findings from these studies have generally found that higher scores on rape myth acceptance scales are associated with greater attributions of victim responsibility for the rape, with perpetrators being attributed less responsibility (see Krahe, 1991 for a review). This has led certain researchers to suggest that rape myth acceptance can be conceptualised as a cognitive schema (a cognitive framework) that influences the interpretation of rape case information (Gerger et al., 2007). Studies that have looked at the prevalence of rape myth acceptance largely come from America and are typically based on student samples. However, Ward (1995) carried out a cross-national study of participants from 15 countries to address subscription to rape myths. This study used the Attitudes towards Rape Victims Scale, which consisted of 25 items that addressed issues around female victim blame, credibility and responsibility for the rape. Acceptance scores ranged from 0 (no rape myth acceptance) through to 100 (complete agreement with all items). Data was extrapolated to produce an overall rape myth acceptance



level for each country, identifying that Malaysia, India and Zimbabwe scored most highly on myth acceptance (scoring 51.6, 40.6 and 39.8 out of 100 respectively). The UK, followed by Germany, New Zealand and America scored lowest on acceptance (18.3, 20.9, 21.8 and 26.2 out of 100 respectively). Despite the UK scoring favourably when compared to the other countries, it should be noted that there was still significant endorsement of rape myths within this sample. Ward (1995) argued that study scores related to each country's economic, social and political status. Higher scores correlated more closely with countries that had fewer women in the work place and which were biased towards the disadvantage of women. This study supports the patriarchy rape theory and suggests that male dominated societies may exacerbate the problems of rape by endorsing more readily attitudes that condone the offence. It may also be suggested that judgments about rape are inextricably linked to an individual's wider cultural background, precluding straightforward generalisations across different societies to be made.

Rape myths have been proposed to serve a number of specific functions including the denial and trivialisation of a crime that affects a large proportion of society. Rape myths shift the blame for rape from the perpetrator onto the victim. This process has been suggested to protect individuals and society from having to face the reality and extent of rape (Burt, 1980). Rape myths have also been referred to as an example of the 'just world' phenomenon (Gilmartin-Zena, 1987) that postulates the world is a just place where positive things happen to good people and negative things only happen to individuals who provoke them. To help maintain this view of the world, individuals will look for evidence that will confirm their hypotheses. Therefore, in the case of rape, rape myths may serve to explain how a victim contributed to their own victimisation (for example, by behaving in a certain way or placing themselves in a risky situation) and to reinforce that individual's sense of immunity to rape through arguments that they would not have placed themselves in the given circumstances (Lonsway & Fitzgerald, 1994). Bohner, Weisbrod, Raymond, Barzvi and Schwartz (1993) suggest rape myths serve gender specific functions. They suggest that for women, rape myths serve as an 'anxiety buffer' which allows them to protect their self-esteem by reducing their feelings of vulnerability to rape. Bohner et al. (1993) supported this hypothesis via several studies that found women who scored low on rape myth acceptance reported higher levels of anxiety and stress and lower self-esteem when exposed to depicted rape situations. Women who scored highly on rape myth acceptance were largely unaffected by the depictions. Burt (1980) also argues that men may use rape myths to justify and rationalise their sexually aggressive behaviour. Whilst this explanation can be used to account for the increased levels of sexually assaultive behaviour perpetrated by men against women and other males, it fails to account for instances of female sexual aggression. It may however be possible to remove gender from the debate and suggest that rape myths may, for both those men and women who endorse them, act to justify sexual aggression and to protect an individual's self-esteem and sense of immunity to the offence.

It has been argued that subscription to rape myths and negative beliefs about rape victims' impact on attributions of blame and responsibility in rape cases and this in turn relates to the process of rape case attrition. To support this argument further it is necessary to address research that has found inaccurate or negative rape supportive attitudes influence the way in which lay participants judge specific rape cases. When a common law approach is adopted, rape verdicts will be decided by members of a jury and both psychological and legal research has addressed the extent to which members of the public are equipped to cope with this demand. Juror decision-making, if influenced by factors external to the case under consideration, such as negative attitudes and perceptions related to appropriate behaviour, can be deemed biased. This would also be the case if legally relevant facts were not given sufficient consideration due to biased perceptions (Finch & Munro, 2007; Temkin & Krahe, 2008). The research surrounding attributions of blame in rape cases is vast. Review of this large body of literature is beyond the remit of the current PhD. The review will therefore focus specifically on alcohol consumption prior to a rape as the primary variable of interest. How alcohol use and drunkenness on the part of the victim and/or perpetrator impacts on attributions of responsibility in rape cases will be considered throughout. Prior to this discussion it is necessary to highlight some of the methodological issues that relate to the work that had been conducted in this area thus far.

#### Alcohol use and victim blame: methodological considerations

Much social psychology research has examined third party assessments of rape scenarios involving intoxicants including alcohol. A large proportion of this research has used a vignette methodology (Norris & Cubbins, 1992). Here participants are presented with written rape descriptions and are asked to make judgements about the event that took place, including the degree of responsibility or blame that each party should hold for the rape that occurred. A second method used is the 'mock jury paradigm'. Here participants are told to adopt the role of juror when making their decisions. In some instances written rape case summaries are given to jurors to read (Schuller & Wall, 1998; Wall & Schuller, 2000) or participants may witness a rape trial reconstruction complete with actors taking on the role of defendant and complainant (Finch & Munro, 2005; 2006; 2007). A process of deliberation has also been incorporated into certain UK based studies where jurors collectively deliberate to form conclusions regarding guilt and responsibility. This latter process therefore more accurately mirrors trial proceedings and may be deemed a more methodologically rigorous approach (Finch & Munro, 2005; 2006; 2007). In light of Section eight of the Contempt of court Act (1981) prohibiting the direct examination of juries, these methods are currently the best approximation available to researchers when trying to assess jury decision-making, irrespective of their somewhat artificial nature (Temkin & Krahe, 2008). Whilst such research enables investigation of the juror role, a

number of methodological issues must be highlighted. For example, mock jurors know that another person's fate does not hinge on their decision; their motivation to engage fully with the task may therefore not parallel a real juror, although research by Finch and Munro (2006) document that there are numerous examples of mock jurors who deeply engage with the research process. Whilst findings from these studies cannot be viewed to inevitably reflect real life juror decision-making and process, it has been argued that this should not inevitably be considered problematic. Indeed, all juries are made up from different groups of individuals who are provided with different cases and facts. It may therefore not be logical to assume that the reasoning processes of one set of jurors can, or indeed should, translate or be generalised to a different group of jurors (Finch & Munro, 2006). Simulation studies do however allow for the illumination of the reasoning process that individuals use when reaching verdicts in rape cases.

Bornstein (1999) has addressed some of the concerns of mock jury research by carrying out an analysis of the paradigm. This research involved review of 113 jury simulation studies over a twenty-year period (1977-1996). It was concluded that the retrospective reports of individuals who had served as real jurors in cases supported a number of the findings of simulation research. This included the finding that both mock and real jurors have difficulties comprehending the jury instruction they receive. In addition, the decision-making processes of students who have frequently been used in simulation studies were found not to differ significantly from the decision-making process of individuals who had been recruited to studies from the general population. The research also documented that regardless of whether the case information was presented via videotape, audiotape, a written description or verbatim transcripts, there was little impact on jurors' conclusions. In light of this analysis, it may be suggested that mock jury research is a useful methodological approach that can help to provide important insights into juror decision-making processes and the role of alcohol in that process.

#### Alcohol use and victim blame

In American, Canadian and English law, drunkenness is not a defence to a sexual offence including a charge of rape (DPP v Majewski, 1977; R V Heard, 2007). However, social psychology studies which have adopted the methods detailed above suggest that juror evaluations of sexual assault and rape cases involving alcohol may contrast with this legal precedent. Rooted into this contrast are the contradictory norms associated with male and female drinking behaviour. Excessive alcohol consumption is still deemed a traditionally sanctioned male activity with drunkenness amongst women being viewed 'worse', more unfavourable or judged more negatively compared to the same behaviour in men (Leigh, 1995). In trying to account for why these norms exist, Leigh (1995) suggested they relate to gendered assumptions about the effects of alcohol on behaviour. Alcohol for example, is often associated

with aggression in men (Taylor & Chermack, 1993) and inducing sexual desire in women (Norris & Cubbins, 1992). Leigh (1995) argues that female sexual agency is considered especially threatening for several reasons; as discussed, societal sexual scripts expect women to be responsible for the setting of sexual limits and providing 'control' over the time and place of sex, irrespective of the changes to sexual landscape which mark women's increased sexual liberation (Johnson et al., 2001; O'Byrne et al., 2008). Therefore, if alcohol disinhibits behaviour a drunken female may come to represent a breakdown in the control of indiscriminate sexual activity. Leigh (1995) suggests that such uncensored female sexual behaviour would threaten the power differential that exists between men and women in many societies. Sandmaier (1980) argues that restricting women's sexual freedom, through the circulation of ideas and discourses that include female drunkenness is 'unladylike' and less acceptable than male drunkenness, is one means by which men have historically, and continue, to exert control over women. The suggestion that fear of a break-down in the control of indiscriminate sexual behaviour impacts on/encourages negative attributions may also be applicable to the blaming of male rape victims. Indeed, increased blame being attributed to men who experience rape may be rooted into concerns about the potential for indiscriminate sexual activity and fears surrounding an inability to 'control' sexuality.

The idea that alcohol consumption enhances a woman's desire for sex has been supported by several studies. American research by George, Cue, Lopez, Crowe, and Norris (1995) used a vignette methodology depicting a heterosexual dating interaction in which the beverage consumption of each party was varied (alcohol vs. no-alcohol). College students were found to evaluate a female who has consumed only a few alcoholic drinks as being more promiscuous and interested in having sex with her date compared to women who had only drunk cola. The study also found that individual's own alcohol expectancies predicted ratings. Male participants with strong expectancies regarding the sexual effects of alcohol were more likely to rate the drinking woman as likely to engage in sexual activity. This effect did not significantly impact on the responses of low expectancy effect men or female participants.

Attributions regarding female alcohol consumption are also linked, in part, to the drinking behaviour of their dating partner. McGregor (2005) argues that legal practice and societal attitudes still have problems recognising a range of interactions as legally acceptable and shared alcohol consumption may be considered one such interaction. For example, Abbey and Harnish (1995) asked 297 female and 125 male undergraduate students to read vignettes in which a male and female were socialising together and drinking either alcoholic or non-alcoholic beverages. Participants most frequently assumed sex would occur when both parties were depicted as drinking together. Having administered the Rape Support Beliefs Scale, findings also indicated that men scoring highly on rape myth acceptance were more likely to perceive the woman in the

vignette as behaving sexually. Such American research has been supported by UK studies that demonstrate women who consume alcohol in the presence of a male are deemed more sexually available and disinhibited (Finch & Munro, 2007). This and similar findings have led to the proposition that shared alcohol consumption may serve as a cue that can be misinterpreted as a sign of sexual intent (Abbey et al., 2004; Norris & Cubbins, 1992).

Research demonstrates that alcohol consumption not only impacts on perceptions of female sexual disinhibition, but on the interpretation of the consensual nature of a sexual encounter. When American college students are asked to read depictions of a man using physical force to obtain sex from an unwilling female, participants are more inclined to view the sex as consensual when both members of the dating couple had been drinking together prior to the offence. Individuals most frequently classified the incident as rape when the woman was depicted as drinking independently (Norris & Cubbins, 1992). American research by Richardson and Campbell (1982) also using vignettes with a student sample has shown that when a defendant is portrayed as drunk (as opposed to sober) and a rape follows, the defendant is often blamed less for the offence and the circumstance of drunkenness is considered to mitigate a proportion of the responsibility for the events that took place. It should be noted however that not all studies have drawn identical conclusions. Mock jurors have also been found to deliver guilty rape verdicts when both defendant and victim are portrayed as drinking together, as well as drunken defendants being held more accountable for a rape that occurs (Schuller & Wall, 1998; Wall & Schuller, 2000). These studies suggested that rather than acting as a potential excuse for the behaviour that took place, alcohol was perceived to decrease the defendant's ability to self-regulate and it was this that impacted on guilty verdicts. An important difference between the Canadian based studies of Schuller and Wall (1998) and Wall and Schuller (2000) and the American research of Richardson and Campbell (1982) and Norris and Cubbins (1992) is that Canadian judicial instruction, unlike United States legal standards, explicitly articulates that self-induced intoxication is not a defence to a mistaken belief that the victim consented to sex (Wall & Schuller, 2000). The fact that this was stated in the Canadian studies may have enhanced participants' awareness of the legally inadmissible role of alcohol, in turn influencing their responses (Wall & Schuller, 2000).

UK based research that has adopted focus group and a trial simulation methodology has extended some of the above findings to address attributions of responsibility in cases where an individual's drink is surreptitiously spiked. These studies have involved the manipulation of the type of intoxicant (alcohol, recreational drugs, drug facilitated sexual assault drug), the means of administration (self-administered, surreptitiously administered to an alcoholic drink by someone else, surreptitious administration into a non-alcoholic drink, self-administration under pressure) and the level of intoxication (varied between both parties). Findings indicated that if the

scenario woman had voluntarily drunk alcohol and is depicted as heavily intoxicated, she is deemed to be at least partially responsible for a rape which then follows (Finch & Munro, 2005; 2007). This in turn leads to a lessening of the defendant's perceived responsibility for the events that took place (Finch & Munro, 2005). Voluntary alcohol consumption on the part of the complainant was often viewed to constitute a sign of sexual encouragement (Finch & Munro, 2007). In cases involving the surreptitious administration of an intoxicant, the victim was again deemed partially responsible for a rape that followed. 'Spiking' a drink with additional alcohol or consuming alcohol under pressure was not considered sufficient in isolation to negate the responsibility that participants attributed to victims (Finch & Munro, 2005; 2007). Here, victims were held responsible for failing to monitor their drinks more closely and for failing to cease drinking. Participants have also been found to agree that if each party is equally as intoxicated, it would be unfair to hold the defendant criminally liable for intercourse (Finch & Munro, 2005). This view was maintained even when the victim's state of drunkenness had rendered her incapable of giving sexual consent. This clearly contrasts with the legal position and the requirement that a complainant must have the capacity to consent, in order for that consent to be valid. Whilst participants attributed responsibility to the defendant for engaging in morally questionable behaviour, perceptions did not necessarily translate into verdicts of rape guilt (Finch & Munro, 2005; 2007). Instead, participants were reported to be looking for a 'mid-point' between consensual sex and rape to describe these situations (Finch & Munro, 2005). In contrast, when a defendant has been depicted as less intoxicated than the victim or sober, participants are more inclined to hold the defendant responsible for rape (Finch & Munro, 2005). This linked into perceptions that the defendant would have been in a position whereby he would have been able to ensure the victim was capable of giving consent. Whilst the depiction of a less drunken defendant does not inevitably rule out responsibility attributions being made towards the drinking complainant (Finch & Munro, 2007), there is typically enhanced recognition that the defendant would not have reasonably believed the complainant was in a suitable position to consent. The research also notes that in establishing whether a victim is able to consent, there is a specific focus on the victim's level of consciousness. A number of participants believed that as long as the victim maintained consciousness they would retain the capacity to reason at least at a basic level with jurors often drawing on their own experiences of drunkenness to help form their conclusions in relation to capacity (Finch & Munro, 2005; 2006). A number of questions were also asked about the complainant's past sexual history to help establish whether she was the type of woman who did 'this sort of thing' (Finch & Munro, 2005, p. 36).

The above research appears to implicate the existence of a drinking double-standard (Finch & Munro, 2005). That is, victims who have voluntarily drunk are considered to be at least partially responsible for a rape that may occur whilst equally intoxicated perpetrators may be viewed as

less likely to have done something wrong. Finch and Munro (2007) argue that participants in their study emphasised the level to which alcohol has become normalised in social and sexual interactions and that this normalisation played a role in their lack of willingness to condone the defendant for his sexual behaviour. Despite the change in law, and the additional requirement that perpetrators must demonstrate that they took reasonable steps to ensure the other party was consenting to sex, it appears that such changes have not filtered through to public awareness, or if they have, make little impact on decision-making processes (Horvath & Brown, 2007).

## Conclusion

Rape myths and negative/inaccurate attitudes surrounding rape play an important role in the rape case attrition process. Constructions of 'real rape' circulate through society and subscription to these discourses inevitably impact on the classification, reporting and progression of a rape case through the Criminal Justice System. Myths specifically relate to the frequency and ease of making a false rape claim and the tenacity of this myth appears to have been accepted as fact, despite its lack of empirical research base. A number of myths and attitudes specifically relate to alcohol and rape. Alcohol consumption by the victim and perpetrator prior to a non-consensual experience has been found to influence attributions of responsibility in hypothetical cases with alcohol consumption often working to disadvantage the complainant specifically. In asking jurors to draw conclusions in relation to consent in these cases, extra-legal factors are often drawn upon in order to aid the decision-making process including myths and stereotypes regarding appropriate female behaviour, the social acceptability of alcohol consumption and personal experiences. Indeed, it is important to begin to address more closely the possible origins and functions served by the endorsement and repetition of perspectives that hold women, including drinking women, accountable for rape. The following chapter aims to address these issues and to provide a more social explanation for the development of, and subscription to, negative rape supportive attitudes through reference to the theory of social representations.

### **Chapter 3: social representations theory**

This chapter provides an introduction and discussion of social representations theory, one of the major social psychological theories to address the relevance of social influences on the formation and maintenance of beliefs, attitudes, value systems and perspectives (Breakwell, 2001). This chapter therefore aims to apply a social representations perspective to help explain more fully the development, endorsement and maintenance of specific attitudes, perspectives and values around the rape offence, rape victims and rape perpetrators. A social representations approach has not previously been applied to the area of rape, however, in doing so it is argued that the theory will be able to offer an account of how, and why, negative rape blaming attitudes come into being, how alternative non-prejudicial understandings of rape can also be cultivated within a given environment and how these different perspectives can co-exist together. The role of the media and the process of discussion, debate and argument with friends and family are viewed as pivotal to the development of representations and these processes will therefore be considered. The theory also suggests that the maintenance of self-esteem and identity impacts significantly on the type of representation adopted. Again, the benefits to identity that negative and inaccurate rape blaming perspectives may serve will be addressed. The review will begin by providing an overview of the theory, the function of a social representation and the processes that lie behind the construction of a representation.

#### Social representations theory: the emergence of a new perspective

The theory of social representations was first developed by Moscovici (1976) and emerged from Durkheim's broader notion of collective representations (Potter, 1996). The theory advocated a more social approach to study of psychology than that which existed at the time, and which focused almost exclusively on the perspective of the individual in isolation (Gaskell, 2001). Social representations theory aimed to complement the individualised perspective with an additional emphasis on an individual's social context, the role of communication and the role of the mass media in the construction of that individual's attitudes and belief systems. The theory aims to acknowledge diversity within groups and cultures and developments within science and technology in helping to explain a person's interpretation of the world (Moscovici, 1976). The theory argued that the social, that is, the group, society or culture in which the individual lives, shapes that individual's thoughts, attitudes and understanding. However, social representations theory emphasises the reciprocal nature of the social and argues that the group, culture or society in which the individual is located is also a product of the communication and interaction that takes place between parties.

Moscovici's first studies into social representations aimed to establish how scientific/expert



knowledge was assimilated into everyday common sense. That is, how notions of psychoanalysis had defused down from the analysts consultation room and had been incorporated into popular French culture and understanding at the time. Moscovici (2001) was interested in the transformation of expert knowledge into common sense understanding as held by lay populations; that is, how lay individuals made sense of scientific concepts. His initial research argued that individuals worked with simplified versions of psychoanalysis using certain concepts, such as repression, whilst disregarding/failing to assimilate others into their understanding. The social representation of psychoanalysis that was used by individuals within the community was a simplified, shared version drawn on and applied to everyday circumstances, events and behaviour (Moscovici, 2001). The beliefs, opinions and attitudes held by the lay population in relation to psychoanalysis had been constructed and re-represented through individuals' communication, enabling those individuals to debate, rationalise and make sense of the psychoanalysis construct.

Despite social representations recognised impact in the world of social psychology, it is somewhat difficult to clearly define the approach. The theory has been described as too elaborate to capture within a definition and not sufficiently developed to allow for it to be meaningfully defined. Other critics argue that a clear definition is unobtainable because the theory remains confused and contradictory (Howarth, 2006). Despite these arguments clear definitions do exist within the literature. Moscovici (1973) for example defined a social representation as:

'A system of values, ideas and practices with a twofold function; first to establish an order which will enable individuals to orient themselves in their material and social world and to master it; and secondly to enable communication to take place among the members of a community by providing them with a code of social exchange and a code for naming and classifying unambiguously the various aspects of their world and their individual and group history' (Moscovici, 1973, p. xiii).

At the heart of the theory is the idea of 'sense-making'. That is, the turning of unfamiliar ideas, events and concepts into something familiar and knowable (re-representing events and concepts to enable them to be understood within existing frameworks of knowledge). Therefore, social representations theory is a constructionist theory; rather than viewing individuals as passive recipients of the world that surrounds them, individuals are seen to construct their world and make sense of it, a social representation is a device which enables this to happen (Potter, 1996). Faced with a new concept for example, a community will engage in discussion until it finds a negotiated solution which can account for, and explain that new concept. The production of knowledge is therefore an active and social process. Breakwell (2001) argues that social

representations can be products and processes. As a product a representation can be viewed as the shared ideas, framework or set of beliefs used by individuals and groups to evaluate and explain events. As a process, a social representation is the system (for example; communication, the mass media, argument, debate and exchange) through which individuals engage and operate in their social world.

As stated, sense-making is at the heart of the theory of social representations and when an individual encounters an unfamiliar concept they hold no representation that enables that concept to be effectively understood. Taking biotechnology as an example (technology used within agriculture, food science and medicine to make or modify products); at one extreme there is the portrait of biotechnology that appears in scientific papers and academic journals. The question of interest is how the lay population comes to make sense of this highly scientific construct. Biotechnology has been described extensively in the media through articles on animal cloning, genetically modified foods and genetic testing, thus projecting this technology into the public domain. In an attempt to respond to the often incomprehensible world of this technology individuals rely on media reports and conversations they have with friends and family to enable them to transform this science into something common sense and familiar. The reality of biotechnology for many individuals is therefore constructed through ideas taken from media reports, beliefs about the impact of science on technological progress, already accumulated images, metaphors and understandings of events such as the 'mad cow' outbreak, all of which serve to structure and explain the new construct (Gaskell, 2001).

When encountering new events, Moscovici (1988) suggests two processes are particularly important; these are the processes of anchoring and objectification. With anchoring, an unfamiliar event is moulded to an existing familiar representation, thus, the new event becomes an expression of existing ideas. For example, genetically modified foods may be anchored with familiar understandings of producing food through genetic manipulations. With the process of objectification, an abstract concept is transformed into something more concrete and knowable. That is, the unfamiliar object, experience or event is linked back to past ideas, episodes or images to transform it into something more tangible. Information is disassociated from its initial context and adjusted to fit with familiar knowledge frameworks. Events can be objectified in images, pictures and photographs that come to constitute metaphors for that event. 'Dolly the sheep', the first mammal to be cloned for example, may come to objectify understandings of cloning. Objectification makes the unfamiliar part of the everyday by embellishing the unfamiliar with aspect of an already established reality. Through the process of communication and discourse this new representation is refined and diffused through the social group (Potter, 1996). This re-representation of biotechnology is socially generated and occurs within a society of different social groupings and world views. Contemporary society consists of different

religions, sciences and media all with alternative agendas. As a result of these differences there is increased debate and argument and less stability in knowledge structures (Howarth, 2006). This leads to increased diversity of view between subgroups who are motivated by different concerns, priorities and agendas. There would, therefore, be a number of realities or different accounts of biotechnology within a given society explaining variation in attitudes towards the technology. For example, certain individuals would be enthusiastic whilst others would be more ambivalent or sceptical in their attitudes towards it (Gaskell, 2001). This diversity is at the heart of social representations theory; indeed, the theory aims to address how different meanings are expressed and the consequences associated with supporting certain meanings over others (Howarth, 2006). Whilst attitudes play an important role within social representations theory, they are but one part of a social representation. The theory is also concerned with the processes which lie behind individuals' attitudes. That is, how individuals come to understand unfamiliar concepts, what these new concepts mean to them and how they relate to moral and identity issues are all important parts of the larger representation.

The process of drawing upon what is familiar in order to make a new event more concrete and understandable is demonstrated by the work of Jodelet (1991). Her research involved rural French families being interviewed about their experiences of hosting mentally ill lodgers within their family homes. In describing their experiences the families drew on familiar metaphors that derived from their everyday work. For example, when describing the process of becoming mentally ill they used terms such as decay, curdling, souring and going off. They chose to represent the unfamiliar concept of mental illness in terms of familiar understandable images. This representation of mental illness was largely shared by members of the rural group, demonstrating the consensual nature of representations which are forged through communication between individuals who are located closely together.

The theory of social representations has been applied to the field of risk/hazard perception in an attempt to enhance risk communication messages. Indeed, the process of making sense of events which are unfamiliar are qualities that underpin the relationship between individuals being confronted with a hazard for the first time. A representations approach would argue that for a specific group, the interacting belief system which underpins their representation of the hazard must be taken into account when devising information around the communication of risk. A representation is argued to comprise both accurate and inaccurate information about a concept. In addition, the endorsement and selection of certain representations are motivated by a desire to achieve and maintain self-esteem and to enhance ones self-identity (Breakwell, 2001). Therefore, when devising risk communication information, any sort of effective approach would need to involve identifying misunderstandings within the representation in order for them to be rectified. More importantly however, it would also need to involve establishing why the specific

representation takes the form it does; that is, the benefits to identity that endorsing that specific representation provides. Risk communication information therefore requires more than simply providing information to fill deficit gaps; it also needs to acknowledge the motivational dynamics that underpin the development of that groups representation initially and to show how changing the representation could still serve the specific self-interests of the target group (Breakwell, 2001).

#### Applying a social representation approach to rape

Whilst an explanation of the processes involved in social representations theory has been provided, it is necessary to consider how the approach can also be applied to the domain of rape specifically. Whilst social representations theory has not previously been applied to rape research, it can legitimately be suggested that the theory is appropriate in helping to better explain an individual's endorsement of negative/inaccurate rape blaming perspectives, their formulation, and the motivational dynamics that underpin and sustain them. Indeed, when individuals are presented with the unfamiliar event of a rape, often through the media, social representation processes are likely to be triggered. The novel experience requires objectification and anchoring responses and in order to make the event more understandable, rape may be anchored into pre-existing negative or inaccurate perceptions. For example, rape may be moulded to an existing understanding that dictates that individuals who experience negative situations typically do something to provoke their victimisation. Existing knowledge may dictate that negative events are associated with risk-taking behaviour, placing oneself in vulnerable positions, being of a certain temperament or personality type and being the victim of rape may come to be anchored with such beliefs. When objectification processes occur, rape may be linked back to images, ideas and news stories of women in short skirts who flirt drunkenly with men. Continued media messages that depict young women slumped drunkenly on city centre benches on weekend evenings may also come to metaphorically objectify drunken risk taking behaviours that exacerbate the potential for rape. In an attempt to make rape a more understandable phenomenon and to fit with the individual's existing knowledge structures it may also be anchored to existing understandings of consensual sex. Rape may therefore come to be regarded as an extension of sexual behaviour and the power, domination and violence associated with the act may be negated. Doherty and Anderson (2004) demonstrate the ways in which individuals represent rape as an extension of consensual intercourse. In their qualitative study thirty male and female dyads were required to discuss an incident of male rape presented to them via a vignette. Analysis of this qualitative data revealed that participants established a 'hierarchy of suffering' whereby rape was constructed to be more devastating for heterosexual men than it was for gay men or women. Rape and consensual sex were negotiated amongst members of the dyad to be similar and therefore more traumatic for a heterosexual male because

the sexual act deviated from their usual sexual practices. Rape was evaluated and made sense of in terms of it being a sexual event and the violence associated with the act was accordingly downgraded. Doherty and Anderson (2004) drew attention to the skilful way in which arguments were constructed by participants so as to avoid accusations of victim blame. Contentious arguments for example were often introduced as being the potential perspective of a third party, for example, 'some might say', thus distancing themselves from the arguments and enabling them to appear neutral, sympathetic observers.

Joffe (2003) argues that when events are objectified, groups favour the images that are compatible with their in-group identity and value system. As suggested, a key factor in the theory is that social representations develop to serve a group's self-interests and to protect their identities and defend against feeling threatened (Breakwell, 2001; Joffe, 2003). Therefore, the construction of a representation of rape will be motivated to achieve particular aims and the choice of anchors and objects with which to associate rape will be selected in order to protect certain self-interests. A social representation does not therefore provide a neutral picture of events but is constructed to serve certain purposes. Similar to the arguments made in relation to the endorsement of rape myths, it may be suggested that victim blaming rape representations develop to protect specific groups from having to face the reality and harm of rape and for the purpose of protecting their world view that they are immune to the offence. Rohleder (2007) argues that it is a natural human process to distinguish between groups of individuals in society in order to establish which identities fall inside or outside of social groups and how our own self is located within this order. Indeed, Hollway and Jefferson (2000) argue that individuals adopt specific social discourses and locate themselves to specific representations in order to protect against the anxiety created by threats to self-identity. An individual would thus draw upon a discourse that affirms their self-identity whilst disregarding discourses that threaten it. Through the use of interviews, Joffe (1996) demonstrates how negative representations of HIV served to protect groups of individuals from threats to their identity, and that fears around the illness intensified the need to distinguish between 'us' and 'them'. These interviews identified that AIDS was constructed as a disease that originated from the 'other', it was viewed as foreign, resulting from perverse practices and affecting out-groups. Joffe (1996) argued that by representing AIDS in this way and as something that affects 'other' individuals, it helped to defend against the anxiety associated with being at risk of the illness, thus maintaining a positive self-identity. Rape may also be viewed by certain individuals as resulting from practices that place women at risk, from being sexually promiscuous and from leading men on. Endorsement of such views can protect and defend those individuals from the anxiety and threat of being at risk of experiencing rape by not associating such behaviours with the type of activity they would engage in. This enables the individual to distance themselves from sexual offences and maintain a positive not-at-risk in-group identity that views rape as something that affects

the reckless 'other'. Such explanations would account for data that consistently indicates women are perceived to hold at least some degree of responsibility for a rape if they flirt with the perpetrator, go back to their house or dress provocatively (ICM, 2005; Opinion Matters, 2010a). Such principles may equally account for mens adherence to certain rape myths. For example, supporting perspectives that include rape is perpetrated by violent strangers may enable the male to distance themselves from such perpetrator characteristics (and by default the possibility of carrying out rape); through reference to their own 'normal', non-threatening personality type.

As explained, anchoring and objectification processes are not individual responses but involve social interaction and the establishment of shared meaning through communication, discourse and the mass media. Anchoring and objectification occur in a diverse environment comprised of different religions, political agendas, past experiences and educational levels. Therefore, within a society, there will be a number of representations of rape that co-exist together, not all of which will be comprised of negative, victim blaming attitudes. Subscriptions to negative rape representations are therefore more likely for those individuals in close proximity to people and media that support a victim blaming perspective. These after all will be the nearest to hand recourses from which to draw upon when talking about, rationalising, coming to understand, make sense of and construct representations of rape. Indeed, Moscovici (1976) argues that social representations provide a way of distinguishing social groups and can provide an important homogenizing force because they allow for communication and for those who share representations to agree in their evaluations and understanding of the world.

The media is argued to be a key influence in the formation and diffusion of representations (Joffe, 2003; Moscovici, 1988). They can be seen to play the primary role in transforming expert knowledge into lay understanding or common sense. An individual's first contact with rape may be through a news article of such an event or an investigating officer/rape counsellor's opinion being offered on the topic. However, the media do not simply present the facts and circumstances associated with a rape but often simplify and sensationalise the content to encourage debates regarding blame and responsibility, for the purposes of selling papers (Joffe, 2003). In addition, news articles are often driven by covering 'events' and this typically leaves little room to investigate theoretical issues surrounding rape, its causes and possible solutions (Kitzinger, 2009). As a consequence, media coverage can de-contextualise sexual offences and exacerbate stereotypes regarding innocent and deserving victims. The Lilith project (2008) for example found that the image of rape portrayed in news articles is typically at odds to the reality of the offence. Both victims and perpetrators of rape were found to be portrayed by the media in relation to an array of stereotypes. Perpetrators were generally represented as demonised, evil monsters; negating the possibility of rape being committed by an 'ordinary' man or someone

known to the victim. Victims were found to be represented in a number of stereotypic ways including the 'ideal victim' representation which focused on the complainant's efforts to resist the attack, impeccable behaviour prior to the offence and the psychological trauma and physical injury they sustained during. These characteristics were all taken as evidence of the complainant's genuine victim status. Such stereotypes reproduce the previously discussed real-rape myth, which can in itself be considered a social representation, as well as creating unrealistic expectations regarding appropriate victim and perpetrator behaviour which are disseminated into the public domain for lay individuals to draw on in their construction of rape. Whilst the Lilith project (2008) emphasised that woman-blaming was no longer as prominent within media texts as has historically been the case, and it is acknowledged that many journalists now recognise rape as a serious social problem with there being some excellent coverage of sexual violence issues (Soothill & Walby, 1991), blaming attributions are still expressed in the media through careful construction. The Lilith project (2008) for example identified a disproportionate focus on the 'cry rape girl' who frequently make false allegations and through the 'fallen woman' representation in which the complainant was constructed as being partially responsible for their victimisation due to their excessive drinking or provocative behaviour prior to the act. Kitzinger (2009) points out that since the late twentieth century there has been a specific media focus on the issue of false rape allegations and argues that this is due to rape prevalence statistics no longer making for stimulating reading. Controversial cases that can dispute women's testimony however make for more noteworthy entertainment. Again, such depictions feed into and shape representations of false rape reporting, for those who access this media. The point to be made is not necessarily that 'true' or expert accounts are transformed into a value-ridden common sense, but rather, that different modes of thinking exist in society which do not simply reflect reality. Different rape representations compete in their stake for reality and acceptance of certain representations inevitably leads to the exclusion of others. This highlights the conflict and tension involved in the representation process (Howarth, 2006). It also highlights that the media set up powerful discourses related to victim culpability in rape cases which are there to be utilised in the formation of representations.

An important question is how the transformed information presented by the media is interpreted by media viewers and whether it is simply absorbed as fact. The European community's reaction to biotechnology can be used as an example to help elaborate on this question. The public's reaction to the technology was studied by the Concerted Action Group (1997) using surveys of representative samples of Europeans. In asking whether the lay populations' attitudes towards the technology were related to direct transmission influences by the media it is necessary to compare the European findings with findings from an American survey that asked U.S citizens about their feelings towards biotechnology. In combination to the survey analysis, media reports of biotechnology from America and Europe were content analysed. Findings

indicated that whilst the European media talked more positively about the technology. European opinion was far more negative than American (Gaskell, Bauer, Durant, & Allum, 1999). This clearly suggests that public attitudes do not always mirror those that appear within the media. Joffe (2003) argues that information is viewed through an existing lens where other factors such as trust in the media authorities, confidence in experts and an array of already accumulated personal experiences, political beliefs and criticisms about the government and media impact on the interpretation of what is read and the representation that is constructed. The study demonstrates that the European and American cultural climate had developed different patterns of lay thinking and rather than being passive recipients of media messages, individuals formed representations which corresponded with their concerns and emotions. Whilst acknowledging the evaluative process that takes place with media messages, it is clear that different media endorse different agendas. The Lilith project (2008) found that tabloid newspapers were more likely to report on rape cases in comparison to broadsheets. Tabloids also used more sensational language, were more gratuitous in the information they provided and gave less in-depth analysis of the rape cases they covered. Individuals who are frequent subscribers to tabloid news may therefore be exposed to especially problematic depictions of rape. In the same way that people opt to associate with people of similar opinions, individuals also choose to access newspapers and other media which support their world view (Joffe, 2003). In which case, the media may impact on the construction of a rape representation initially but also serves to reinforce the representation through people's continued subscription to that specific media form.

As stated, if perceptions/notions/beliefs and ideas about rape are generated through social representations, they are likely to be shared by members of specific groups who are closely located and who engage in frequent communication. This however would not translate into every member of a specific group holding an identical representation of rape, rather, certain core elements of the representation are likely to be shared by the group whilst more peripheral elements may differ. Breakwell (2001) emphasised the importance of being able to personalise representations arguing that whilst individuals seek community membership they simultaneously strive for distinctiveness. Personalising social representations is therefore viewed as part of the process of establishing and defending an identity (Breakwell, 2001). A social representation consists of a network of information about a specific object/event including attitudes, beliefs, opinions and metaphors associated with that object or event. However, Abric (2001) argues that structurally a social representation is a hierarchical system built around a nucleus or central core which is comprised of a number of underlying elements: it is this structure that the following section will consider.



## The structure of a social representation

The central core of a representation is argued to be the consensual, shared part of that representation. It can be an opinion, attitude, image or belief about a specific object/event that is shared by the group, is non-negotiable and therefore the stable part of the representation that ensures its continual expression despite an ever changing social context (Moliner, 1995). The emergence of the core is the initial process in the construction of a representation. As addressed, when presented with a novel event, individuals' previous knowledge, beliefs, understandings and agenda impact on the interpretation of the new object. Groups select certain elements of the novel object/event and organise them around a core of previously established meanings and interpretations. It is through this core that groups interpret and categorize previously un-encountered objects, making them familiar and understandable (Quenza, 2005). In applying this approach to a representation of rape, the core of any such representation could consist of the belief that individuals encourage rape by behaving in specific ways. This may be the shared part of the representation with other elements being structured around this central belief. According to Abric (2001) the central core has two main functions; the first is the generating function. That is, the central core gives the other elements of the representation their meaning. The second function is the organising function, or more specifically, the core determines the structure and links between the other elements of the representation. The core can therefore be seen to be the unifying aspect of a representation.

Quenza (2005) points out the somewhat contradictory nature of social representations. They are defined as rigid yet flexible, shared yet denoted by individual difference. To cope with this contradiction the theory argues that around the central core, peripheral elements of the representation are organised. Peripheral elements are similarly hierarchically structured with more important elements being located closer to the core than others. The peripheral elements constitute the interface between the core and the situation in which the representation will be expressed. They play an important adapting role which enables the core of the representation to cope with different social contexts. For example, contact with a situation or event which questions central elements of the representation can be intercepted by the peripheral elements and the contradiction managed through the triggering of mechanisms which marginalise the presence of that contradiction or which reinterpret it (Abric, 2001). The peripheral system therefore acts as a defence to the representation, enabling the central core to resist change and enabling identity to be maintained. Peripheral elements can be viewed as context sensitive, evolving and flexible and it is here where individuals are likely to differ in their representations. Whilst the core element of a rape representation may therefore be the belief that victims perpetuate rape by behaving in certain way, the specific ways in which a victim does this may differ. For example, certain group members may think it is a consequence of dressing in a

certain way whilst others may reject this argument in favour of the view that it is a consequence of taking risks, such as going back to the other person's house. Others may similarly adhere to this view but feel that such behaviour is not as problematic as someone who drinks excessively in the presence of a potential perpetrator with this latter peripheral being structured closer to the core in recognition that alcohol consumption is deemed more likely to result in non-consensual experiences than other risky behaviours.

Contained within the peripheral system is likely to be several alternative perspectives in relation to an absolute perspective on an issue (Quenza, 2005). Indeed, it is typically the case that individuals hold multiple representations of the same event. In a study on school exclusion, Howarth (2002; 2004) noted that black student's articulated discourses that denoted black pupils as problematic trouble makers. Black participants however did not subscribe to such representations; rather they recognised their existence and argued around the issue of how they were institutionalised within the school and curriculum without actually endorsing the representation. It can also be argued that individuals who do not endorse the belief that rape victims exacerbate rape, would still be able to relay arguments around why certain individuals do blame victims and give specific examples of the ways victims may be perceived to exacerbate the offence, without endorsing those views as legitimate. Equally, those who subscribe to prejudicial perspectives may be able to argue why others would not blame a survivor for their victimisation and be aware that to some degree, their perspective may be perceived contentious. Indeed, it is unlikely that the majority of individuals would overtly confirm that they endorse negative rape blaming views. As the research of Doherty and Anderson (2004) suggested, it is more likely that such attitudes will be expressed subtly and through discourses that are carefully structure. This not only highlights the moving nature of representations which may explain variations or inconsistencies in an individual's account of events across contexts, it also highlights that representations can be both 'used' to defend or sustain a version of reality whilst they can also be 'mentioned' in order to resist an alternative reality (Joffe, 2003).

Flament (1989, as cited in Quenza, 2005) argued that peripheral elements of a representation are like schemas (cognitive patterns or networks used to interpret complex events) and often the representation can function without having to involve the central core directly. In extreme cases however, when situations oppose the representation and peripheral elements cannot manage the contradiction, this contradiction will impact directly on the central core and the representation will experience immediate change (Abric, 2001). In relation to rape, it may be possible for an individual to be of the perspective that drinking excessively with someone only recently met is likely to exacerbate rape, as is acting flirtatiously with that person. If however the subscribers close friend experiences rape by her long term partner and none of the above peripheral

elements were present, the peripheral system may be unable to manage the contradiction. In addition, if the close friend is recognised to be someone who shows caution and conservatism in their everyday lives, this contradiction is again likely to impact on the central core belief that those who experience rape typically behave in ways that provoke it, potentially causing the central core to experience modification. Representations are therefore under pressure to modify, care of the other representations, life experiences and agendas that exist and circulate the individual (Breakwell, 2001). Individuals or institutions with more power and public access are more likely to have their representations heard and are more likely to influence the representations of others (Howarth, 2006). Who gets to tell their story most loudly, whether that be the media, politicians or women's rights organisations becomes the story that is most likely to constitute 'truth' and which determines the definition and parameters of rape. Currently, it may be suggested that it is the media that has the loudest voice and it is through the media that reports from politicians, women's movements and so forth are projected, via an agenda of selling papers. The Lilith Project (2008) point out that in relation to the media reporting of rape, journalists are selective in whose voice they treat as authoritative. Experts with a breadth of knowledge in relation to rape such as rape crisis counsellors and other service providers were infrequently found to appear in news articles. Discourses related to rape victim's own personal experiences were also largely invisible from media texts. Judges, prosecution, defence barristers and police however received increased media access. Kitzinger (2009) argues that when the media reports on a court case or provides the perspectives of those associated with the courts, the patriarchal discourse that is engrained within the law is typically reflected. Whilst not all media reporting of rape is inevitably negative, it is clearly the case that certain perspectives are pushed most frequently into the public domain. This leads to the marginalization of certain voices and disproportionate access to views which are motivated by specific agendas.

The existence of the central core and peripheral elements are difficult to operationalise empirically. However, certain approaches have emerged which lend support to the existence of these constructs. A key feature of the central core is argued to be its salience. That is, a core element is deemed to be identifiable through the frequency with which it is verbalised. Abric (2001) reports on a study that demonstrated core elements of a representation were better recalled by participants than peripheral elements when given recall tasks. In addition, when core elements were not included within a recall list participants would spontaneously try and introduce them, suggesting the importance of these elements in the meaning and organisation of the representation. Identifying the structural elements of a representation is a relatively new research domain and further study is required to corroborate and build upon these initial findings. Whilst the theory of social representations has provided some essential insights into the acquisition of beliefs, attitudes and value systems, and how the endorsement of representations are linked to identity processes, the theory has received noted criticism and these

arguments should be considered.

### Criticisms of social representations theory

Potter (1996) states that whilst social representations may help individuals to understand the world and may influence actions and behaviour accordingly, they are not in themselves part of action. That is, our behaviour is not developed through, or contained within, our social practices. Howarth (2004) however rejects this point arguing that black students in her school exclusion study articulated how teachers' stigmatised representations of black students influenced their interactions with black pupils. Teachers were often perceived to overlook black students when questions were asked in class and they were often perceived to be the indiscriminate targets of punishment when there was classroom disruption. Howarth (2004) argues that the experience of being told off and not chosen to answer questions is the actual social representation of black students and one that is evidenced through the actions of the teacher i.e. the telling off, the not choosing them to answer. This representation does not simply reside in the student's head; rather it is integrated into the wider social climate and practices that inform racist encounters. Similarly, the real rape myth can be argued to be more than a perception that resides in an individual's head. It is integrated into the statutes of the law, the interactions of police officers who deal with rape complainants and internalised within victims' own understandings and classification of their non-consensual experiences.

A further criticism of social representations theory is that insufficient time has been spent trying to account for the existence of different knowledge bases that compete to be accepted as versions of reality (Howarth, 2006). As discussed, different groups and individuals have disproportionate influence and access to the public sphere. Those with enhanced access and power are more likely to have their version of events deemed legitimate and built into versions of reality. The processes and tensions involved in such dynamics however have not yet received meaningful attention. In addition, the process of resisting certain representations is argued to need further exploration (Howarth, 2006) including accounts that can explain why not all individuals exposed to negative rape blaming perspectives go on to endorse these views despite their close proximity to media, family and peer group that conform to this agenda. From a methodological viewpoint, social representations theory has also been criticised for an over reliance on data that can only be consciously accessed (Joffe, 2003). Jodelet's (1991) study of representations of mental illness, for example, demonstrated the importance of behaviours that could not be expressed verbally. During participant observation, families who housed mentally ill lodgers were noted to wash their clothes and eating utensils separately from those of the lodger. Jodelet (1991) suggested that this was the result of subscribing to representations that viewed mental illness as contagious. However, during interviews this issue was not raised. This

study therefore emphasises that where applicable, there is a need for a mixed method approach to social representations research.

## Conclusion

The evidence presented has aimed to apply a social representations approach to the area of rape to help explain the development and endorsement of rape blaming perspectives. This section has aimed to provide a more social explanation of rape victim blaming. Indeed, social representations are influenced by, and developed through, communication with other members of a subgroup. This communication enables the unfamiliar situation of rape to be negotiated, rationalised and understood by members of that group. This process involves drawing on media messages as well as already accumulated knowledge, events and metaphors to enable rape to be effectively understood. It is at this point when rape may be anchored with exiting understandings of consensual sex, a propensity to cry rape when sex is regretted, that victims of rape contribute to their victimisation and an array of other inaccurate or negative perspectives. Subscription to certain rape perspectives has been argued to be related to identity management processes and a desire to maintain a positive, not-at-risk of rape identity. There is much divergence between individuals' representations of rape within a society, due to the different political opinions, religions, personal experiences and media preferences that circulate within a given society. These influences all impact on the selection and structure of representations and help to explain why different rape representations co-exist together in society. Social representation theory offers some insights into the possible ways in which negative victim blaming representations must be challenged. Rather than simply presenting individuals with information to correct their inaccuracies and fill knowledge gaps, the underlying motivational base which accounts for that individual's subscription to the specific representation needs to be acknowledged. It would be necessary to show how changing a negative rape representation could still serve specific groups self-interests. Once this has been done, information could be provided which is of sufficient impact to challenge the core of the representation and which may bring about a change in victim blaming attitude. Considerable future research must address these issues to help in the development of more meaningful, effective campaign literature.

Social representations theory will be specifically applied to the PhD's qualitative studies in recognition that social representations are expressed, and become apparent, through discourse, debate and social interaction. Prior to the application of the theory it is necessary to establish the frequency with which non-consensual sex takes place when consuming alcohol, the alcohol related strategies used for obtaining intercourse, the prevalence of negative rape victim blaming attitudes amongst a specific population and the perceived role of alcohol within the responsibility attribution process. It is these issues that the following chapter addresses.

## Chapter 4: study one introduction

### What we know about alcohol involved non-consensual sex amongst students

The consumption of alcohol is now widely recognised to be associated with sexual offences (Abbey et al., 2004; Finney, 2004; Kelly et al., 2005; Mohler-Kuo et al., 2004). Indeed, the identification of high levels of non-consensual sex amongst American college students has resulted in commentators arguing that heavy episodic drinking, with its multiple consequences and implications, is one of the most important public health issues facing the student population (Mohler-Kuo et al., 2004). To recap on some of the key studies and issues discussed in the literature review chapter, early work by Muehlenhard and Linton (1987) identified that sexually assaultive dates amongst college students were most likely to involve heavy alcohol consumption by both members of a dating dyad. However, more subsequent research has failed to address the amount of alcohol consumed prior to a non-consensual experience, thus impacting on the ability to categorically argue that heavy alcohol use is associated with non-consensual experiences. Mohler-kuo et al. (2004) more recently identified that heavy episodic drinking both presently, and during the high school years, was the strongest predictive factor for experiencing rape amongst their female American student sample, although additional research is needed to help clarify and support this relationship.

Koss's (1988) classic study into sexual violence on the college campus identified that 74 percent of sample perpetrators and 55 percent of female victims of rape had been drinking alcohol prior to the offence with a proportion of women stating that they had been given alcohol or drugs by the perpetrator in order to obtain sex, and a proportion of men also noting that they intentionally gave women intoxicants in order to procure intercourse. Perhaps the most recent large scale study to address the role of alcohol and drug intoxication in sexual offences is that of Kilpatrick et al. (2007) who identified that from a sample of 2,000 female students, 6.4 percent had been the victim of either drug-facilitated rape or incapacitated rape at some point in their life. In 96 percent of cases alcohol was identified to be the substance used to procure intercourse and in the overwhelming majority of instances, that alcohol had been voluntarily consumed. Studies continue to document that those involved in alcohol related non-consensual experiences are often casually associated, as opposed to being in an intimate relationship (Abbey et al., 2004). Considering alcohol is often consumed at parties and bars where individuals who do not know each other well can meet and engage in conversation, this is perhaps somewhat unsurprising. Research also continues to note that alcohol is often used by drinkers, especially young people to increase the likelihood of meeting someone and having sex with them (Bellis et al., 2008; Sumnall et al., 2007). Such findings serve to confuse further the specific role played by alcohol in the non-consensual sexual experience pathway.

Existent American research documents that alcohol is also strategically used by young women for the purposes of procuring intercourse from men. Anderson and Aymami (1993) found that from a sample of 212 college women, half reported having initiated sex with a drunken man whilst 15 percent reported intentionally getting a man drunk for the purpose of obtaining sex. Struckman-Johnson and Struckman-Johnson (1998) found that 40 percent of their 318 male participants had been encouraged to get drunk to enable intercourse to occur. Struckman-Johnson et al. (2003) more recently identified that around half of the men in their sample of 275 male students had experienced unwanted sex care of an alcohol related approach. However, when compared to men, sample women had more frequently been the recipients of an intoxication tactic, reported being taken advantage of when drunk more often and being purposefully intoxicated more frequently.

Whilst American students' experiences of non-consensual intercourse when drinking or drunk are now well documented, little UK research has thus far engaged with English students about their experiences of alcohol involved non-consensual sex, the alcohol related tactics used to procure intercourse and knowledge around sexual consent, the capacity to consent and the legal position on sex when intoxicated. The National Union of Students (2010) survey is one of the only large scale UK studies to address these issues. This survey noted that in 50 percent of cases participants who had experienced rape or attempted rape believed the perpetrator had been drinking alcohol prior with nine percent of respondents stating that they had been given alcohol or drugs prior to the assault. Whilst the survey documented that alcohol and drugs were given to the survey respondent 'against their will', no further analysis of this point took place. It therefore provides no insight into whether alcohol and drugs were surreptitiously administered or whether verbal or physical pressure was placed on the complainant to consume them.

### The need for additional research

In light of the above discussion, additional research is needed to help identify UK students' experiences of non-consensual sex when drinking, especially when English student culture focuses so heavily on the consumption of alcohol. Research continues to document that university students consume more alcohol than their non-student peers (Dawson et al., 2004; Kypri, Cronin, & Wright, 2005). A review of 18 studies measuring UK undergraduate student drinking behaviour over the last 25 years identified that 43 percent of females and 52 percent of male students drank above their recommended unit limits i.e. 21 units per week for men and 14 units for women (Gill, 2002). It is recognised that recent amendments to drinking guidelines now focus on the number of units that are consumed per day with men advised to consume no more than 3-4 units and women 2-3). More recent English survey research based on a sample of 1,549

individuals suggests that whilst the 55 year age bracket and above drink comparable amounts to young people over the duration of a week, they consume less on a night out and engage in fewer adverse behaviours when drinking. Indeed, 63 percent of 18-34 year olds said they consumed between 4-40 units on a weekend night compared to 22 percent of 55 year olds. In addition, only 32 percent of those aged 55 years and above admitted to having been sick due to the impacts of alcohol compared to 75 percent of 18-34 years old (YouGov, 2010). Research also testifies to the increased potential for engaging in risky behaviours when drinking heavily including unplanned, unprotected and regretted sex (Cashell-Smith, Connor, & Kypri, 2007; North West Public Health Observatory (NWPHO), 2007; Thompson, Ku, Rogers, Lindberg, Pleck, & Sonenstein, 2005; YouGov, 2010), further enhancing a drinking individual's vulnerability to non-consensual sexual outcomes. Recent media publicity has specifically highlighted the association between high levels of alcohol consumption and young women's experiences of rape in Ireland, arguing that additional exploration must focus on alcohol, youth and sexual violence in order to understand and reduce these types of experience (Hough, 2010).

The North West region of England has specifically been identified as experiencing disproportionately high levels of alcohol related harm. Liverpool has one of the highest estimates of binge drinking behaviour across the country as well as one of the highest levels of hospital admissions due to alcohol related incidents and illness (Morleo, Lushey, & Hughes, 2007). It may be legitimate to suggest that these problems are to some extent reflected within a North West of England student population, making Liverpool a good city to locate research aimed at identifying student's experiences of alcohol involved non-consensual intercourse.

Despite the relationship that has been discussed between drinking alcohol and experiencing non-consensual sex, there is still a paucity of knowledge around the facilitative role of alcohol within a sexual offence (Zawacki et al., 2005), the pathways that link them and the different strategies that may be used to obtain intercourse. Lovett and Horvath (2009) argue that the alcohol and drug related techniques used to facilitate rape have changed in recent years, thus justifying the need for additional investigation to help document the characteristics of such strategies. Indeed, through additional investigation conducted within a UK context, it will be possible to highlight the frequency with which alcohol is used to procure sex, the characteristics of the strategies used, to promote awareness around their existence, propose methods for addressing them and provide guidance related to 'staying safe' when drinking alcohol in social settings. In addition, much of the American research that has been discussed focuses on women's experiences of alcohol involved non-consensual sex, as perpetrated by men. As noted, this agenda keeps hidden male victimisation and the perpetration of non-consensual same sex acts. Research which takes a gender neutral approach is therefore paramount to enable men's



non-consensual experiences to be explored and to help highlight potential difference in experience between the genders.

### Aims and objectives for study one

In light of the above debates and the research discussed throughout the literature review chapter, study one of the PhD set out the following aims and objectives.

**Aims:** To evaluate a UK student samples knowledge, attitudes and experiences of non-consensual sex when drinking or drunk. In doing so, the study aimed to explore and identify:

- 1) Attitudes held by students in relation to sexual consent.
- 2) Students' knowledge of the legal definition of sexual consent.
- 3) Attitudes held by students in relation to alcohol use and non-consensual sex.
- 4) The proportion of students who have experienced non-consensual sex when drinking alcohol.
- 5) The proportion of students who have used an alcohol related tactic to procure non-consensual sex.
- 6) Differences in knowledge, attitude and experience of non-consensual sex between male and female students.
- 7) Differences in knowledge, attitude and experience of non-consensual sex between high and low drinkers.

**Objectives:** To conduct an online survey of male and female university students aged 18 to 24 during 2008, to ascertain experiences of, attitudes towards and understandings around, alcohol involved non-consensual sexual experiences and to compare these by gender and drinking status.

## **Methodology: study one**

**Research design:** The study utilised a cross sectional design. A self-report survey was developed to capture participants' experiences, attitudes and understanding of alcohol consumption and non-consensual sex at one specific time-point. The survey also aimed to assess understandings and perceptions around the law of sexual consent.

**Materials:** Study data was obtained via a self-report survey that consisted of 45 questions divided into six sections (see Appendix A for a copy of the survey instrument). Sections addressed: alcohol consumption; consent and the capacity to consent to sex; attitudes towards alcohol use and sex; experiences of non-consensual alcohol related acts; the perpetration of non-consensual alcohol related acts; and participant's demographics.

The survey was compiled following a review of the related research literature. This review revealed that the Sexual Experience Survey, (SES; Koss & Gidycz, 1985; Koss et al., 1987; Koss & Oros, 1982) has been used extensively over the past two decades to assess experiences and perpetration of non-consensual sexual acts including rape. The SES was developed in the USA in the late 1970s and identifies unwanted sexual experiences that occurred since age 14 and during the previous twelve months (Testa, Vanzile-Tamsen, Livingston, & Koss, 2004). The SES includes features that are now widely recognised as standardised approaches to the assessment of sexual victimisation and perpetration. Namely, the avoidance of the terms rape and sexual assault which participants frequently fail to respond to as a consequence of not labelling their experiences or behaviours as such (irrespective of whether they meet legal definitions of the offences). The tool utilises behaviourally specific descriptions of acts (non-consensual sexual experiences) and tactics (behaviours used by perpetrators to procure sex without consent) that mirror legal definitions of specified sexual offences. SES questions represent a continuum of unwanted sexual experiences with the most extreme point reflecting non-consensual vaginal/anal/oral penetration. The tool includes sexual acts that are classified as crimes (for example, rape) as well as acts that are not (for example, verbal coercion that stops short of threatening physical harm). Once administered, the SES can be seen to identify unwanted sexual experience and to categorise those experiences as rape, attempted rape, sexual coercion or sexual contact (Koss et al., 2007).

Internal consistency reliabilities of .74 (for female victims) and .89 (for male perpetrators) have been reported for the SES. In addition, studies have observed whether women's reports of having experienced sexual aggression are consistent over time. Test-retest agreement rates over an administration period of one week were found to be 93 percent consistent (Koss & Gidycz, 1985). The SES was revised in 1987 (Koss et al., 1987) and more recently in 2006 (Koss et al.,

2007) to rectify changes in law and strategies used by perpetrators to procure sex. Indeed, earlier studies demonstrated that SES items had been found to mirror inaccurately legal definitions of alcohol-related rape and attempted rape specifically (Gyllys & McNamara, 1996). The 2006 review therefore resulted in a number of important and timely modifications including more behavioural specificity; revised wording for assessing consent as well as the inclusion of alcohol and drug related tactic which may be used by perpetrators to procure sex. The alcohol related circumstances incorporated into the 2006 SES included surreptitious administration of alcohol in order to incapacitate victims; applying pressure to consume alcohol with the intention of taking advantage of someone unable to stop what was happening or to exploit the state of lowered inhibitions; voluntary consumption and opportunistic targeting of incapacitated or unconscious individuals.

The 2006 review also saw conversion of scale questions to become gender neutral; previous SES questions were biased towards men being the perpetrators of non-consensual experiences and women the inevitable victims. Whilst it is stated that SES items (or 'questions', the two terms being used interchangeably) measure sexual contact, sexual coercion, attempted rape and rape specifically, under English and Welsh law, the 2006 SES rape identification questions of 'A man put his penis into your anus or someone inserted fingers or objects without your consent by...' and 'a man put his penis into my vagina, or someone inserted fingers or objects without my consent by...' combine the offence of rape with the offence of assault by penetration to enable questions to be asked gender neutrally. It is therefore somewhat misleading to say these questions measure rape alone. The third and final SES item to measure experiences of rape requires participants to respond to the statement 'someone had oral sex with me or made me have oral sex with them without my consent by...' Again, because the question has been phrased to be gender neutral, under English and Welsh law, it cannot be seen to measure rape in isolation. Dependent upon whether the perpetrator is a male or female and the victim a man or woman being made to either perform the oral act or be the recipient of it, this question would incorporate the offences of rape and sexual assault and the offence of causing a person to engage in sexual activity without consent. Consequently, when conclusions are being drawn from such questions they will be made in terms of non-consensual experiences and not experiences of rape specifically, in recognition that they are incorporating other offences which whilst at the extreme end of the non-consensual experience continuum, do not necessarily denote rape alone.

Long and short forms of the SES exist. The long-form includes the additional questions about sex acts that occurred when alcohol and drugs were associated, which are not incorporated into the short form. In recognition of the issues detailed, survey questions 19-21 and 38-40, along with their response options were taken directly from the 2006 long-form SES victimisation and

long-form SES perpetration scales respectively. The use of standardised questions is recognised as the most effective approach when asking about sensitive experiences (Robson, 2002) and the SES is currently considered the best available measure of non-consensual experiences (Testa et al., 2004). Only SES alcohol related 'rape questions' were used in the current survey. Indeed, alcohol related attempted rape and alcohol related sexual contact and coercion questions were excluded. This decision was made in order to keep the questionnaire length manageable. Research based on an undergraduate sample found that shorter questionnaires yielded higher response rates and contained fewer instances of incomplete data (Wood, Nosko, Desmarais, Ross, & Irvine, 2006). The decision to only use the 'rape questions' did however fit with the rationale of the research and its specific focus on the perpetration of the most extreme forms of non-consensual sex (Testa et al., 2004).

A requirement of using the 2006 SES was that question text could not be modified. However, following discussion with the SES author the term 'butt' was substituted for 'anus' in questions 21 and 40 in order to be culturally sensitive. Koss et al. (2007) acknowledge that follow-up questions may wish to be asked after sexual victimisation has been identified but argue that follow-up questions after every sexually aggressive experience will create a large respondent burden. Therefore, they recommend additional questions be asked in relation to the 'most recent' or 'most severe' experience. The 'most severe' follow-up approach was adopted in the current survey in order to gain further information about an identified experience. Follow-up questions (questions 22-37) were all questions that had previously been addressed in the American student sexual coercion literature (for example, Fisher et al., 2000; Kilpatrick et al., 2007; Koss et al., 1987; Muehlenhard & Linton, 1987) and English adult rape literature (for example, Feist et al., 2007; Kelly et al., 2005; Temkin & Krahe, 2008) but infrequently with an English student sample. A free text box was provided with question 28 to enable those participants who did not label their experience as rape to explain why. These responses were read by the principal investigator and coded into relevant categories with all responses related to the same theme being given the same code.

The survey questions that addressed quantity and frequency of alcohol consumption (questions 1-5) were measured using the five-item Alcohol Use Disorders Identification Test (AUDIT). The ten-item AUDIT was developed by the World Health Organization (WHO) as a method for screening excessive drinking and to assist in intervention (Saunders, Aasland, Babor, de la Fuente, & Grant, 1993). It had been evaluated over a period of two decades and has been found to be sensitive and specific in discriminating alcoholics from non-alcoholics and superior to other tools in identifying hazardous drinking (Bohn, Barbor, & Kranzler, 1995). The AUDIT is equally affective for use with males and females and has been used to identify alcohol dependence in university students (Fleming, Barry, & MacDonald, 1991). Several studies have

reported on the reliability of the instrument with results indicating high internal consistency reliability of .84, suggesting the AUDIT is measuring a single construct (Hays, Merz, & Nicholas, 1995). Test-retest reliability studies have indicated high reliability over a re-administration period of one month (Selin, 2003). The shortened five-item AUDIT has been described as the most appropriate instrument for use with a student population due to its simplicity and ability to detect hazardous and harmful drinking as well as dependence (Miles, Winstock, & Strang, 2001).

Survey questions that addressed participants' understandings of the law of sexual consent and attitudes surrounding alcohol and sex (questions 6-18) were devised following review of the related literature (for example, Beres, 2007; Humphreys, 2007; Lim & Roloff, 1999; Opinion Matters 2010b). A number of the findings of Finch and Munro (2005; 2006; 2007) provided a basis for the construction of the questions as did the previous research of Abbey et al. (2000), Sims et al. (2007) and Norris and Cubbins (1992). No legal information regarding the definition of rape was provided in this section as the research was interested in a participant's intuitive perceptions of the law of sexual consent as well as their understanding of perpetrator culpability. When the term 'drunk' was used within the survey, drunkenness was defined as a state of high intoxication whereby an individual would remain conscious and able to communicate but would show some confusion, difficulty walking and slurring of their words. This definition was modelled on the definition provided by Finch and Munro (2006) in their depiction of drunken rape complainants. A rigorous process of re-reading, re-writing and re-phrasing questions took place following dissemination of the survey amongst members of the supervisory team. It was recognised that rigorous survey questions would increase participant response rate as well as ensuring items were specifically addressing the studies objectives (Robson, 2002).

**Piloting the survey:** A pilot study was conducted to enhance question comprehension and structure. A convenience sample (n = 12) of students attending the University of Leicester were recruited in an attempt to avoid contamination between pilot students and eventual target respondents. All students were aged 18-24 years and fit the target demographic for the research.

The survey web link was administered electronically to pilot participants with each student being asked to read through questions and respond accordingly. Participants were asked to note any difficulties they had experienced with question and instruction comprehension, the sensitivity of items or problems with interpretation. Findings identified that certain questions lacked sufficient description to enable participants to respond meaningfully. As a result of this feedback, these questions were revisited and further context provided. In the case of question nine, an assessment of intoxication was taken and adapted from the ICD-10 (International

Classification of Diseases Version 10) Y91 codes (the codes indicating clinical signs of different levels of alcohol intoxication including mild, moderate, severe and very severe intoxication) and incorporated into the question (World Health Organization, 2007). It was rationalised that this guide, with its associated symptoms, would help to provide a continuum of drunkenness which participants could evaluate their responses against. The phrasing of several other questions (eight, 16 and 18) was noted to be unclear and lengthy. These were reworded and shortened to aid clarity.

**Survey distribution:** The survey was distributed by means of a computerised questionnaire presented over the Internet. Sexual assault is an especially sensitive area and disclosure of non-consensual experiences is inhibited by stigma, victim blaming norms and because it requires the identification of illegal acts (Koss & Figueredo, 2004). Attention to privacy during survey administration and confidentiality of responses is therefore paramount. Koss et al. (2007) note that in an attempt to enhance confidentiality, victimisation surveys are increasingly moving towards web-based and computer assisted technology. This however raises important questions regarding the impact of these new approaches on disclosure, reliability and validity of responses. It is important to address arguments surrounding the possible skewed sample frame resulting from an on-line survey. Many studies in the general survey literature have compared the different modes of data collection including telephone, paper-and-pencil and web based survey administration. Miller, Neal, Roberts, Baer, Cressler, Metrik and Marlatt (2002) for example compared 255 web-based and paper-and-pencil responses to alcohol use measures including the AUDIT. Re-administration of these measures one week later revealed high test-retest reliabilities and no significant differences between the two techniques suggesting the format of the survey did not impact on the accuracy of the response. Miller et al. (2002) suggested that web-based methods were therefore a suitable alternative to more traditional approaches with the possible benefit of increasing survey accessibility. Turner, Ku, Rogers, Lindberg, Pleck and Sonenstein (1998) compared Computer Assisted Survey Interviewing (CASI) (the participant views or listens to audio recorded survey questions and enters their responses into a computer typically away from the presence of the investigator and other respondents) with a paper-and-pencil equivalent. The study utilised 1,690 male students to identify that estimates of injecting drug use, and male to male sexual activity were higher when the CASI was used. Turner et al. (1998) concluded that the more private mode of responding encouraged more complete reporting of stigmatised, illicit and sensitive behaviours and not that participants were more inclined to fabricate when using web surveys. Miller and Sonderlund (2010) advise using an embedded question or scale to test for truthful responding when administering online surveys and this approach was adopted within the current PhD ( see question 37). When asked whether survey respondents were taking substances other than alcohol at the time of their non-consensual experience, a fictitious drug 'semoron' was

incorporated into the response options (no participant checked having taken this substance and this may to some extent provide an indicator of mischievous responding). McCabe, Boyd, Couper, Crawford, and D'Arcy (2002) used a randomly selected sample of 7,000 undergraduate students who were randomly assigned to either a web-based or mail-based pencil-and-paper survey condition regarding their experiences of alcohol and drug use. McCabe et al. (2002) found that the web survey produced a significantly higher response rate than that produced by the mail-based survey.

In the case of addressing sexual victimisation specifically, Testa, Livingston and VanZile-Tamsen (2005) found comparable rates of non-consensual sexual experiences, irrespective of whether the SES was completed via a pencil-and-pen version, as part of a postal survey or via computer assisted survey interviewing, at a specific research site. Again, findings suggest that accuracy was not compromised by the different survey administration methods. One study has looked at administering SES questions by web-based methods, Fields and Chassin (2006, as cited in Koss et al., 2007) distributed a web-based crime survey that incorporated two SES victimisation questions. The survey participation rate was 78 percent; however 72 percent of individuals discontinued or terminated the survey at some point. Reasons for this degree of discontinuation were speculated to have been technical issues, fatigue and participants failing to return to partially saved surveys. In an attempt to reduce the impact of these variables in the current study the primary researcher's contact details were provided, stating specifically that they should be contacted if technical problems arose. In addition, the option to save and return to the survey at a later point was not included to guard against the possibility of participants not returning to half completed questionnaires. The study by Fields and Chassin (2006, as cited in Koss et al., 2007) whilst making some important observations, did not compare the use of web-based approaches with other survey administration methods and therefore provide no insight into the benefits of administering SES items via the web compared to other approaches. Indeed, Koss et al. (2007) argue that studies which focus on the use of comparative survey methods to screen for sexually assaultive experiences are urgently required in order to inform best practice.

In light of the issues raised above and the reliability and validity of distributing the SES via the web having not yet been fully established, this method was chosen in light of web survey distribution being a procedure that has been shown to increase disclosure of sensitive information relating to sexual experiences (Turner et al., 1998). Indeed, certain researchers have suggested that web-based surveys are deemed more private and enjoyable and that with further research, Internet surveys may be deemed a useful methodological advance for identifying behaviours deemed as stigmatising (McCabe et al., 2002).

**Target population:** The target population consisted of North-West based students aged 18-24 years (see table 2 of the results section for study sample characteristics). This age group captures individuals of late adolescence early adulthood age (between 16-24 years) who have been identified as at highest risk of experiencing non-consensual sex (Abbey et al., 2004; Koss, Dinero, Seibel, & Cox, 1988; Myhill & Allen, 2002). The upper age limit of 18 years (as opposed to 16) was selected because this represents the minimum legal age requirement for purchasing alcohol in the UK. In addition, the major application of the SES has been with college student populations that fall within this age demographic (Koss et al., 1988; Koss & Oros, 1982).

**Dissemination:** Dissemination of the survey began by establishing the feasibility of emailing the survey web link to students based at Liverpool John Moores University via an appropriate email list. Data protection regulations and specific university policy which inhibits the mass emailing of students prevented the survey web link from being distributed via a generic email, across the entire John Moores student body. Regulations did however permit such mass emailing at a Faculty level if the Dean of that faculty agreed to the distribution. Following ethical approval of the research project, the process of emailing students, including all of those within the Faculty of Health and Applied Social Sciences, was agreed too. A total of 1,835 students were signed up to the Faculty email list and included undergraduate and postgraduate students across a range of courses. All Faculty students were emailed on the 14<sup>th</sup> October 2008 informing them of the research and inviting them to complete the survey by clicking on to the attached web link. Faculty students were emailed again on the 4<sup>th</sup> November 2008 reminding them of the questionnaire and inviting them for a second time to complete the survey. In addition to the recruitment of Faculty of Health and Applied Social Sciences students, approximately 180 second year and 70 third year Liverpool John Moores University law students were also emailed on the 14<sup>th</sup> October and 4<sup>th</sup> November 2008 inviting them to complete the survey.

On the 18<sup>th</sup> November 2008 a meeting was scheduled with project supervisors in order to discuss the further dissemination of the survey in order to increase the sample size. At this time the survey sample stood at 145 responses. Following this meeting it was decided that other Faculties should be approached to establish whether they would be willing for the survey to be distributed amongst their students. Consequently, the Deans of the Faculties of Science; Media Arts and Social Science; and Education, Community and Leisure were approached. Permission was granted to distribute the survey via the relevant Faculty email lists. Media, Art and Social Science students and Education, community and Leisure students were therefore emailed the survey on 3<sup>rd</sup> December 2008. Science students were sent the email with attached survey link on the 8<sup>th</sup> December 2008. The remaining two university Faculties – the Faculty of Business and



Law and the Faculty of Technology and Environment did not distribute the survey. The decision was made not to approach the faculty of Business and Law because this would have resulted in the unavoidable distribution of the survey to a large body of law students who had received lectures on rape and sexual offences. As the survey was aiming to address individuals understanding of sexual consent this would have biased study findings. Following discussion with a research colleague it was established that the Faculty of Technology and Environment did not welcome the mass emailing of their students and this Faculty was therefore not approached.

It was also decided during the meeting held on the 18<sup>th</sup> November that posters documenting the study and advertising the web link would be devised and displayed in the student accessible areas of those faculties that had been emailed the web link. The survey was also advertised on the 21<sup>st</sup> November 2008 amongst 136 level 1 (first year) and 250 level 2 (second year) BSc psychology students at John Moores University (who fell within the Faculty of Science). The psychology department run a student participation scheme whereby students accrue course credit for undertaking departmental studies. This process therefore provides an additional incentive to participate in studies. All Faculty students were emailed again for a final time on the 7th January 2009 reminding them of the survey and advising it would close on the 15th of the month.

**Ethical considerations:** The British Psychological Society code of ethical principles and guidelines (2009) were adhered to throughout. Completion of the survey was voluntary with all participants being informed of this in both the generic email sent to students inviting them to complete the survey, and on the opening participant information page of the survey. Both the generic email and instruction page explicitly stated that the investigation was asking about unwanted sexual experiences that occurred when drunk. It was stated that some people may be distressed as a consequence of disclosing this information and they were specifically advised not to complete the questionnaire if this may be the case.

The participant consent and data protection page of the survey (second page) stated the aims of the study and emphasized a participant's freedom to withdraw from the research at any point should they become distressed as a consequence of survey question content. Contact information for the principal researcher was provided to enable concerns and enquiries to be pursued both before, as well as after, completing the survey. Participants were informed that they should press the survey 'continue' button which would take them to the main survey questions, if they were happy to continue at this point.

To address potential negative effects that may arise as a consequence of disclosing negative experiences, a list of specialist services were compiled and presented at the end of the questionnaire. The Liverpool John Moores counselling service were contacted about the research and they agreed to have their contact details listed. Contact information for the principal researchers was provided again at the end of the survey so any participant wishing to complete their understanding of the nature of the research could do so.

Participant data remained confidential throughout and was only available to the research team. Participants were reassured that any data presented in final reports would be done so through aggregate scores and not individual responses. Participants were only ever identifiable through the use of an anonymised code and the study did not collect information that could be used to identify the participant. Questionnaire responses were sent from the computer from which the survey was completed to the survey database in an encrypted format making it difficult for third persons to intercept this information while it was being sent. This encryption also makes it difficult for anyone monitoring the Web to distinguish people who are filling out the survey from others who are browsing. It was emphasized to students that programmes do exist which can record what is on their screen before it is encrypted and sent. They were reminded however that these programs are most often used by computer owners (such as businesses) to make sure their machines are not being used in an unorthodox way. It was emphasized that cookies and personal data stored by the computers Web browser were not used in the survey. Participants were told on the opening survey information sheets that they should consider whether they were comfortable completing the survey from the current computer they were using and whether it was possible that they might be interrupted by someone they would prefer not to see their responses. If participants were concerned by the lack of confidentiality associated with completing the survey on a computer screen, they were also provided with the option of printing the survey to hand complete and send back via post. Details of where to send the survey were provided at both the beginning and end of the questionnaire. No participant however chose this option. The research received institutional ethical approval from the Liverpool John Moores University Research Ethics Committee.

**Data cleaning process:** The survey data was initially investigated for erroneous and missing values. This process revealed that a total of 1,110 participants completed the initial survey. Of this total, 31 participants had not stated either their age or institution of study. As the survey was specifically addressing students (aged 18-24 years) experiences of non-consensual sex when drinking, these 31 cases were removed as it could not be conclusively assumed that they fit the survey demographic requirements.

Additional decisions had to be made in relation to the data. For example, when participants were asked to provide a single response to a survey question (questions 19-21 and 38-40), yet checked more than one response option, these cases were removed from the analysis of that specific variable. There were only a limited number of instances when this occurred due to the survey having been designed, in most instances, to only allow for the inputting of a single response. Due to the limitations of the survey software used, it was not possible to automatically block certain survey questions based on participants having not identified specific experiences. For example, if participants had not identified having experienced a non-consensual act via survey questions 19, 20 and 21; they were not expected to complete the follow-up questions which asked for further information about their non-consensual experience (and were told to skip these questions accordingly). However, a few participants who did not identify victimisation still completed the follow-up questions. Again, these few cases were removed from the analysis of those specific variables. Finally, an overall measure which would identify whether a participant had experienced a non-consensual act was created. That is, a variable that expressed for each participant whether they had experienced any act of non-consensual oral, vaginal or anal sex in either the previous 12 months or since the age of 14. This involved adding together each participant's scores on each of the four alcohol related strategies, for the three offence types, across the last 12 months and since age 14. This process therefore involved summing together a total of 24 pieces of information for each participant. Due to missing data further decisions had to be made in relation to the categorisation of experiences. The decision was thus taken that if participants had not responded to at least half of the 24 victimisation items, and had not identified a non-consensual experience, then that individuals overall victimisation was classified as representing 'missing data'. Similarly, if less than half of the 24 responses comprised missing data, and no victimisation was identified, then these cases were categorised as 'having not identified victimisation'. These cases were very few in number, however, it should be borne in mind that participants may have left certain responses blank because they did not wish to identify a non-consensual act. The results may therefore be an underestimate of the levels of non-consensual intercourse experienced by the sample. These same principals were applied to questions 38, 39 and 40 and an overall sexual perpetration variable was computed.

**Selection of statistical tests:** Chi-square tests and odds ratios were carried out to enable the study hypotheses to be investigated. Chi-square measures an association between the studies independent variables (the survey questions) and dependent variables (participant gender and drinking status). Gender was categorized in accordance to male and female and drinking status was categorised in accordance to participant's five-item AUDIT score. Scores of five and above are generally taken as an indicator of hazardous drinking behaviour (Miles et al., 2001).

Individuals with a score of five and over were therefore classified as 'hazardous' alcohol users whilst those scoring below five were classified as 'non-hazardous'.

Chi-square tests were selected due to the survey responses constituting categorical data and therefore violating the assumptions of using a parametric test (Dancey & Reidy, 2004). The survey data met the assumptions of chi-square, that is, participants contributed data to only one cell/category of the test and the expected cell frequencies were greater than five and with a total over 20, in all but two cases (Field, 2005). For these two cases the Fisher's exact statistic is reported as recommended by Dancey and Reidy (2004). Odds ratios were also computed as this is the most useful measure of effect size for categorical data and cross sectional studies (Field, 2005) and can be used as a measure of effect for ordinal scales (Arora et al., 2006; Beynon, McMinn, & Marr, 2008; Luo, Qu, Rockett & Zhang, 2010). An effect size describes the strength of the association between two variables. An odds ratio assesses the odds of an event happening in one group against the odds of it happening in another. An odds ratio of one indicates that the odds of a particular outcome are equal in both groups. An odds ratio greater than one suggests the event is more likely in the first group whilst an odds ratio less than one suggests the event is less likely in the first group (Field, 2005). Chi-square for linear trend was also computed when it was logical to do so. This calculation assesses whether there is a linear or straight line relationship between two variables with ordered categories, such as a likert scale (Campbell, 2005). Following bivariate analysis, separate binary logistic regression analyses were computed to ascertain which variables would best predict if the survey respondent was a male or female and a hazardous or non-hazardous drinker, when the effects of the other variables in the model were controlled. Logistic regression is an approach to categorical category prediction which assumes all cell frequencies will be greater or equivalent to one, with no more than 20 percent of cells being less than five (Brace, Kemp, & Snelgar, 2000). Thus, the current data fitted the requirements of the test, supporting its selection for use.

## Results: gender analysis study one

### Study participants

The final study sample consisted of 1,079 participants; Table 2 details their characteristics

**Table 2:** Final study sample characteristics

Characteristic	Frequencies
<b>Gender<sup>1</sup></b>	
Female	817 (75.8%)
Male	259 (24%)
Transgender	2 (0.2%)
<b>Age</b>	
18-19	393 (36.4%)
20-21	451 (41.8%)
22-23	167 (15.5%)
24	68 (6.3%)
<b>Ethnicity<sup>1</sup></b>	
White British	902 (83.8%)
White Irish	96 (8.9%)
White European	14 (1.3%)
White Asian	8 (0.7%)
Indian	8 (0.7%)
Chinese	8 (0.7%)
Other	41 (3.9%)
<b>Sexuality<sup>1</sup></b>	
Has sex with same sex individuals	58 (5.4%)
Has sex with opposite sex individuals	951 (88.9%)
Has sex with both	61 (5.7%)
<b>Institution of study</b>	
Liverpool John Moores	1057 (98%)
Liverpool University	9 (0.8%)
Edge Hill University	4 (0.4%)
Other North West Universities	9 (0.8%)
<b>AUDIT score (5-item)<sup>2</sup></b>	
Hazardous drinker	755 (71.2%)
Non-hazardous drinkers	306 (28.8%)

<sup>1</sup>One, two and nine participants respectively did not disclose their gender, ethnicity or sexuality. These cases are not included within the frequency counts.

<sup>2</sup>18 participants did not complete all five questions of the AUDIT measure and could not have a valid AUDIT score computed. These cases are therefore not included within the frequency count.

### Sample characteristics

Table 3 details the characteristics of the study sample in accordance to gender i.e. male and female. Bivariate analysis revealed a significant association between gender and two of the study variables. That is, the odds of men saying they had sex with same sex individuals were significantly greater than the odds of women saying that this was the case, when compared to the 'has sex with both men and women' response category. Statistical analysis also revealed that the odds of women being categorised as non-hazardous drinkers, were significantly greater than the odds of men being categorised as such. It should be noted however that for both males and females there were high levels of hazardous drinking behaviour (69.4 percent of sample women vs. 76.8 percent of sample men were classified as hazardous drinkers). There was no significant

difference between the dependent variable and age, ethnicity and institution of study. However, descriptive analysis reveals that study participants were most frequently European, studying at Liverpool John Moores University and fell within the age bracket of 20-21 years.

**Table 3:** Characteristics of the study sample in accordance to gender

Variable	Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> (df) <sup>a</sup>	P
<b>Age</b>	N=817	N=259				
24	53 (6.5%)	14 (5.4%)	67	Reference	6.51 (3)	.089
22-23	115 (14.1%)	52 (20.1%)	167	1.71 (0.87-3.36)		
20-21	340 (41.6%)	109 (42.1%)	449	1.21 (0.65-2.27)		
18-19	309 (37.8%)	84 (32.4%)	393	1.03 (0.55-1.95)		
<b>Ethnicity</b>	N=815	N=259				
Non-European	44 (5.4%)	21 (8.1%)	65	Reference	2.54 (1)	.111
European	771 (94.6%)	238 (91.9%)	1009	0.65 (0.38-1.11)		
<b>Sexuality</b>	N=810	N=257				
Has sex with both men and women	49 (6%)	10 (3.9%)	59	Reference	7.81 (2)	.020
Has sex with opposite sex individuals	725 (89.5%)	225 (87.5%)	950	1.52 (0.76-3.05)		
Has sex with same sex individuals	36 (4.4%)	22 (8.6%)	58	2.99 (1.26-7.09)		
<b>Institution</b>	N=817	N=259				
Other Institutions	17 (2.1%)	5 (1.9%)	22	Reference	0.02 (1)	.882
Liverpool John Moores University	800 (97.9%)	254 (98.1%)	1054	1.08 (0.39-2.96)		
<b>AUDIT score</b>	N=804	N=254				
Hazardous drinker	558 (69.4%)	195 (76.8%)	753	Reference	5.11 (1)	.024
Non-hazardous drinker	246 (30.6%)	59 (23.2%)	305	0.69 (0.50-0.95)		

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.  
\*df = degrees of freedom

### Sexual consent attitudes and understanding

Table 4 details participants' responses to survey questions 6a-6i and provides a comparison between the actions/circumstances deemed to be of relevance to male and female students in helping them to determine whether someone they have met on a night out will agree to have sex with them. Bivariate analysis revealed a significant association between gender and seven of the variables; while there was not always a significant difference between individual strata and the reference category, there was a significant general trend for a greater proportion of men than women to say that someone flirting with them, kissing them, removing items of their clothing, removing the participant's clothing, verbally agreeing to sex, and agreeing to go back to the participant's house were very relevant to their decision making, when compared to the very irrelevant response category. Whilst the odds of men stating that 'having a reputation for sleeping around', was relevant to the decision making process, there was no significant linear trend between the categories on this variable. There was no significant difference between men and women on the perceived relevance of the other party having accepted a drink, even though there was a significant result from the trend analysis. Overall, participants felt that drink acceptance was an irrelevant factor in helping determine whether someone would have sex with them (8.9 percent of participants arguing drink acceptance was relevant vs. 81 percent stating it was irrelevant). There was also no significant gender relationship with the variable 'if you have had sex with the person previously', with the frequency data indicating that participants overall

were inclined to view this variable as relevant to their decision making process (51.2 percent of participants felt it was relevant or very relevant vs. 33.8 percent who felt it was irrelevant or very irrelevant).

**Table 4:** Comparisons between male and female students on the actions/circumstances deemed relevant in helping them to decide whether someone will agree to have sex with them

Variable		Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> (df)*	P	X <sup>2</sup> Trend	P	
6a. If the other person has been flirting with you	Very irrelevant	N=817 85 (10.4%)	N=259 9 (3.5%)	94	Reference	28.76 (4)	<.001	25.86	<.001	
	Irrelevant	241 (29.5%)	49 (18.9%)							290
	Undecided	123 (15.1%)	48 (18.5%)							171
	Relevant	312 (38.2%)	127 (49%)							439
	Very relevant	56 (6.9%)	26 (10%)							82
6b. If the other person has been kissing you	Very irrelevant	N=815 35 (4.3%)	N=258 4 (1.6%)	39	Reference	35.62 (4)	<.001	33.43	<.001	
	Irrelevant	157 (19.3%)	16 (6.2%)							173
	Undecided	90 (11%)	26 (10.1%)							116
	Relevant	390 (47.9%)	143 (55.4%)							533
	Very relevant	143 (17.5%)	69 (26.7%)							212
6c. If the other person has removed some of their clothing	Very irrelevant	N=810 27 (3.3%)	N=259 4 (1.5%)	31	Reference	55.10 (4)	<.001	48.77	<.001	
	Irrelevant	91 (11.2%)	6 (2.3%)							97
	Undecided	105 (13%)	15 (5.8%)							120
	Relevant	336 (41.5%)	97 (37.5%)							433
	Very relevant	251 (31%)	137 (52.9%)							388
6d. If the other person has removed some of your clothing	Very irrelevant	N=809 35 (4.3%)	N=257 2 (0.8%)	37	Reference	55.66 (4)	<.001	50.74	<.001	
	Irrelevant	83 (10.3%)	6 (2.3%)							89
	Undecided	91 (11.2%)	17 (6.6%)							108
	Relevant	324 (40%)	84 (32.7%)							408
	Very relevant	276 (43.1%)	148 (57.6%)							424
6e. If the other person accepted a drink <sup>1</sup>	Irrelevant	N=810 667 (82.3%)	N=258 198 (76.7%)	865	Reference	4.91 (2)	.086	4.87	.027	
	Undecided	79 (9.8%)	29 (11.2%)							108
	Relevant	64 (7.9%)	31 (12%)							95
6f. If the other person verbally agrees to have sex with you	Very irrelevant	N=813 14 (1.7%)	N=257 2 (0.8%)	16	Reference	17.50 (4)	.002	15.16	.001	
	Irrelevant	35 (4.3%)	4 (1.6%)							39
	Undecided	42 (5.2%)	9 (3.5%)							51
	Relevant	263 (32.3%)	61 (23.7%)							324
	Very relevant	459 (56.5%)	181 (70.4%)							640
6g. If you have had sex with the other person previously	Very irrelevant	N=814 71 (8.7%)	N=258 20 (7.8%)	91	Reference	3.30 (4)	.510	2.67	.103	
	Irrelevant	212 (26%)	59 (22.9%)							271
	Undecided	124 (15.2%)	37 (14.3%)							161
	Relevant	267 (32.8%)	86 (33.3%)							353
	Very relevant	140 (17.2%)	56 (21.7%)							196
6h. If the other person has a reputation for sleeping around	Very irrelevant	N=814 253 (31.1%)	N=258 58 (22.5%)	311	Reference	12.16 (4)	.016	1.47	.226	
	Irrelevant	237 (29.1%)	89 (34.5%)							326
	Undecided	109 (13.4%)	36 (14%)							145
	Relevant	125 (15.4%)	54 (20.9%)							179
	Very relevant	90 (11.1%)	21 (8.1%)							111
6i. If the other person has agreed to go back to your house	Very irrelevant	N=816 67 (8.2%)	N=258 9 (3.5%)	76	Reference	15.32 (4)	.004	12.06	.001	
	Irrelevant	222 (27.2%)	58 (22.5)							280
	Undecided	184 (22.5%)	51 (19.8%)							235
	Relevant	245 (30%)	103 (39.9%)							348
	Very relevant	98 (12%)	37 (14.3%)							135

NB: Variable totals do not always add up to total number of participants included in the study due to missing data

\*df= degrees of freedom

<sup>1</sup> The very irrelevant and irrelevant strata were amalgamated, as were the very relevant and relevant strata. This was due to one of the expected cell frequencies of the five strata variable being less than five resulting in an invalid test.

Table 5 details participants' responses to survey questions 7a-7e and provides a comparison between male and female students' understanding of the legal definition of sexual consent. Analysis revealed a significant association between gender and three of the variables. The odds of women saying that the consent definition included, or they were unsure whether it included, the element of agreeing to sex through choice, was significantly greater than the odds of men saying this element was included, or they were unsure, whether it was included in the definition. It should be noted that overall, the majority of students (90 percent) stated that the element of choice was pivotal to the consent definition. Whilst there was a significant difference between the categories on this variable, there was no significant linear trend between them. In relation to students' understanding of whether the consent definition included the element of having the freedom to choose to have sex, individual strata level analyses did not show a significant gender difference when comparing the proportion of male and female students who said they were 'unsure' or 'yes' this element was included in the definition, compared to the proportion who said 'no' it was not. However, the chi-squared analysis showed that overall there was a significant difference between the responses given by men and women. The significant trend analysis suggests that there was a tendency for women to be more likely to say 'yes' to this question whilst men were more likely to say 'no' (73.6 percent of women saying 'yes' vs. 65.2 percent of men). The odds of women saying that consent needed to be verbally agreed or that they were unsure whether it needed to be verbalised was again significantly greater than the odds of men saying this was the case. Again, it should be noted that around half (50.8 percent) of the sample were of the opinion that consent must be verbally articulated. There was no significant difference between male and female students' knowledge of valid consent being related to having the capacity to choose to have sex with 29.3 percent of participants either not knowing, or being unsure, whether this element was included in the definition. There was no significant difference between gender and the opinion that a lack of consent must be demonstrated by evidence of a struggle having taken place. Overall, 13.2 percent of participants thought there must be evidence of a struggle while a further 24.1 percent were unsure.



**Table 5:** Comparisons between male and female students' knowledge of the legal definition of consent

Variable		Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> df=2	P	X <sup>2</sup> Trend	P	
7a. Consent is about agreeing to sex through choice	No	N=811 17 (2.1%)	N=257 14 (5.4%)	31	Reference 0.30 (0.12-0.74)	8.39	.015	2.88	.090	
	Unsure	61 (7.5%)	15 (5.8%)							76
	Yes	733 (90.4%)	228 (88.7%)							961
7b. Consent is about having the capacity to choose to have sex	No	N=809 93 (11.5%)	N=257 34 (13.2%)	127	Reference 0.98 (0.59-1.63)	1.41	.493	1.27	.260	
	Unsure	137 (16.9%)	49 (19.1%)							186
	Yes	579 (71.6%)	174 (67.7%)							753
7c. Consent is about having the freedom to choose to have sex	No	N=808 90 (11.1%)	N=256 35 (13.7%)	125	Reference 1.13 (0.68-1.87)	7.01	.030	4.89	.027	
	Unsure	123 (15.2%)	54 (21.1%)							177
	Yes	595 (73.6%)	167 (65.2%)							762
7d. Consent needs to be verbally agreed	No	N=810 201 (24.5%)	N=257 96 (37.4%)	297	Reference 0.62 (0.42-0.92)	15.91	<.001	14.78	<.001	
	Unsure	176 (21.7%)	52 (20.2%)							228
	Yes	433 (53.5%)	109 (42.4%)							542
7e. To prove consent was not present there must be evidence of a struggle (e.g. bruises) having taken place	No	N=811 514 (63.4%)	N=257 156 (60.7%)	670	Reference 1.19 (0.85-1.65)	1.06	.588	0.18	.668	
	Unsure	189 (23.3%)	68 (26.5%)							257
	Yes	108 (13.3%)	33 (12.8%)							141

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data  
\*df= degrees of freedom

Table 6 details participants' responses to survey questions 8a-8d and provides a comparison between male and female students' attitudes towards an individual's capacity to consent to sex when alcohol has been consumed. Bivariate analysis revealed that there was a significant association between gender and all four variables; that is, the odds of women saying that they strongly agreed with the statements that being drunk affects the capacity to make reasonable decisions (57.3 percent of females vs. 39.4 percent of males stating this was the case), affects a person's capacity to consent to sex (39.8 percent of women vs. 22.4 percent of men) and that a drunk person is unable to consent to sex (7 percent of women vs. 3.5 percent of men), were significantly greater than the odds of men saying this was the case, when compared to the strongly disagree response option. However, the odds of men strongly agreeing with the statement that as long as a person remains physically conscious, they are capable of choosing whether or not to have intercourse were greater than the odds of women saying this was the case (4.7 percent of men vs. three percent of women saying this was the case).

**Table 6: Comparisons between male and female students' attitudes towards an individual's capacity to consent to sex when alcohol has been consumed**

Variable		Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> df=4	P	X <sup>2</sup> Trend	P
8a. Being drunk affects the capacity to make reasonable decisions	Strongly disagree	N=813 4 (0.5%)	N=259 5 (1.9%)	9	Reference	29.07	<.001	24.37	<.001
	Disagree	22 (2.7%)	11 (4.2%)	33	0.40 (0.09-1.79)				
	Undecided	4 (0.5%)	3 (1.2%)	7	0.60 (0.08-4.40)				
	Agree	317 (39%)	138 (53.3%)	455	0.35 (0.09-1.32)				
	Strongly agree	466 (57.3%)	102 (39.4%)	568	0.18 (0.05-0.66)				
8b. Being drunk affects a person's capacity to consent to sex	Strongly disagree	N=812 12 (1.5%)	N=259 12 (4.6%)	24	Reference	35.38	<.001	28.87	<.001
	Disagree	93 (11.5%)	48 (18.5%)	141	0.52 (0.22-1.24)				
	Undecided	34 (4.2%)	10 (3.9%)	44	0.29 (0.10-0.85)				
	Agree	350 (43.1%)	131 (50.6%)	481	0.37 (0.16-0.85)				
	Strongly agree	323 (39.8%)	58 (22.4%)	381	0.18 (0.08-0.42)				
8c. A drunk person is unable to consent to sex	Strongly disagree	N=813 86 (10.6%)	N=257 69 (26.8%)	155	Reference	46.42	<.001	22.87	<.001
	Disagree	466 (57.3%)	134 (52.1%)	600	0.36 (0.25-0.52)				
	Undecided	110 (13.5%)	20 (7.8%)	130	0.23 (0.13-0.40)				
	Agree	94 (11.6%)	25 (9.7%)	119	0.33 (0.19-0.57)				
	Strongly agree	57 (7%)	9 (3.5%)	66	0.20 (0.09-0.43)				
8d. If a person's drunk, as long as they remain physically conscious, they will be capable of choosing to have sex	Strongly disagree	N=812 208 (25.6%)	N=258 48 (18.6%)	256	Reference	17.44	.002	15.36	<.001
	Disagree	357 (44%)	103 (39.9%)	460	1.25 (0.85-1.83)				
	Undecided	104 (12.8%)	32 (12.4%)	136	1.33 (0.80-2.21)				
	Agree	119 (14.7%)	63 (24.4%)	182	2.29 (1.48-3.56)				
	Strongly agree	24 (3%)	12 (4.7%)	36	2.17 (1.01-4.64)				

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data  
\*df= degrees of freedom

Table 7 details participants' responses to survey questions 9a-11 and provides a comparison between male and female students' attitudes toward the capacity to consent to sex when hypothetical scenarios of intoxicated individuals are presented. The analysis revealed a significant association between gender and four of the variables. Namely, the odds of women saying that they agreed that person A should be held responsible for rape in questions 9a and 9b were greater than the odds of men saying this was the case, when compared to the strongly disagree option. Although there was not always a significant difference between individual strata and the reference category on variable 9c, the significant trend analysis indicates that there was a tendency for women to strongly agreed with the scenario individual being held responsible for rape (1.5 percent of women and 0.8 percent of men strongly agreeing compared to 26.5 percent of women and 46.7 percent of men strongly disagreeing). When students were asked to define the sex to have occurred in scenario 9c the odds of men calling it consensual sex, as opposed to a mid-point between rape and consensual intercourse, were significantly greater than the odds of women describing it as such. There was no significant difference between gender and perceptions that the type of sex depicted in question 9c should be classified a criminal offence. Overall, participants stated that the sex should not be considered criminal (with 67.1 percent of participants arguing such).

**Table 7: Comparisons between male and female students' attitudes towards the capacity to consent to sex when individuals are depicted as drinking together prior to a rape**

Variable		Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> (df)*	P	X <sup>2</sup> Trend	P
9a. A is mildly drunk, B severely. B is too drunk to give consent. Both have sex. Next day B states rape occurred. Should A be held responsible for rape?	Strongly disagree	N=816 20 (2.5%)	N=259 20 (7.7%)	40	Reference	22.38 (4)	<.001	11.12	.001
	Disagree	178 (21.8%)	73 (28.2%)	251	0.41 (0.21-0.81)				
	Undecided	164 (20.1%)	43 (16.6%)	207	0.26 (0.13-0.53)				
	Agree	376 (46.1%)	98 (37.8%)	474	0.26 (0.14-0.50)				
	Strongly agree	78 (9.6%)	25 (9.7%)	103	0.32 (0.15-0.69)				
9b. A is moderately drunk, B severely. B is too drunk to give consent. Both have sex. Next day B states rape occurred. Should A be held responsible for rape?	Strongly disagree	N=816 36 (4.4%)	N=259 33 (12.7%)	69	Reference	33.30 (4)	<.001	14.54	<.001
	Disagree	317 (38.8%)	117 (45.2)	434	0.40 (0.24-0.68)				
	Undecided	199 (24.4%)	39 (15.1%)	238	0.21 (0.12-0.38)				
	Agree	232 (28.4%)	59 (22.8%)	291	0.28 (0.16-0.48)				
	Strongly agree	32 (3.9%)	11 (4.2%)	43	0.38 (0.16-0.86)				
9c. A and B are severely drunk. A too drunk to establish if consents present. B is too drunk to consent. Both have sex. Next day B states rape occurred. Should A be held responsible for rape?	Strongly disagree	N=816 216 (26.5%)	N=259 121 (46.7%)	337	Reference	44.18 (4)	<.001	18.30	<.001
	Disagree	421 (51.6%)	99 (38.2%)	520	0.42 (0.30-0.57)				
	Undecided	132 (16.2%)	21 (8.1%)	153	0.28 (0.17-0.47)				
	Agree	35 (4.3%)	16 (6.2%)	51	0.82 (0.43-1.54)				
	Strongly agree	12 (1.5%)	2 (0.8%)	14	0.30 (0.07-1.35)				
10. What would you describe the scenario in question 9c as	Consensual sex	N=813 102 (12.5%)	N=256 47 (18.4%)	149	Reference	7.97 (3)	.047	Na**	Na
	A midpoint	560 (68.9%)	160 (62.5%)	720	0.62 (0.42-0.91)				
	Rape	21 (2.6%)	11 (4.3%)	32	1.14 (0.51-2.55)				
	Undecided	130 (16%)	38 (14.8%)	168	0.63 (0.39-1.05)				
11. If you think 9c is a mid-point, do you think it should be a criminal offence	No	N=556 363 (65.3%)	N=159 117 (73.6%)	480	Reference	3.93 (2)	.140	2.97	.085
	Undecided	160 (28.8%)	34 (21.4%)	194	0.66 (0.43-1.01)				
	Yes	33 (5.9%)	8 (5%)	41	0.75 (0.34-1.67)				

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data

\*df= degrees of freedom

\*\*Na= Not applicable as categories do not follow a natural order

### Attitudes to alcohol use and sex

Table 8 details participants' responses to questions 12-18 and provides a comparison between male and female students' attitudes towards alcohol use and sex. The analysis revealed a significant association between gender and four of the study variables; while there was not always a significant differences between individual strata and the reference category, there was a significant general trend for a greater proportion of men than women to say that they strongly agreed that a significant number of rapes reported to the police were false allegations, that having sex when drunk increases the likelihood of a false rape allegation and that women who regret having sex when drunk are more likely to report a false allegation of rape. Whilst there was a significant association between gender and the variable 'if on an evening out a women has drunk no alcohol, she should hold some responsibility for a rape or sexual assault that may happen to her, there was no significant linear trend between the categories. However, the odds

of men disagreeing with this statement were greater than the odds of women doing so, when compared to the strongly disagree response option (where women were more inclined to strongly disagree). There was no significant difference between gender and the attitude that women are more interested in sex when drunk compared to sober; overall, participants were most likely to agree with this statement (with 38.9 percent of students doing so). There was also no significant difference between gender and the attitude that a woman who has voluntarily drunk alcohol to the point of drunkenness should hold some level of responsibility for a sexual offence that may occur or that a woman who has had her drink surreptitiously spiked with alcohol should hold some degree of responsibility for a sexual offence. Overall, participants were more likely to strongly disagree with these two statements (33.1 percent and 78.2 percent of participants respectively strongly disagreeing with these statements).

**Table 8:** Comparisons between male and female students' attitudes to alcohol and sex

Variable		Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> df*=4	P	X <sup>2</sup> Trend	P
12. A significant number of rapes reported to the police are false allegations	Strongly disagree	N=815 66 (8.1%)	N=256 8 (3.1%)	74	Reference	24.59	<.001	22.16	<.001
	Disagree	290 (35.6%)	72 (28.1%)	362	2.05 (0.94-4.46)				
	Undecided	185 (22.7%)	54 (21.1%)	239	2.41 (1.09-5.33)				
	Agree	257 (31.5%)	108 (42.2%)	365	3.47 (1.61-7.47)				
	Strongly agree	17 (2.1%)	14 (5.5%)	31	6.79 (2.45-18.83)				
13. Being drunk when having sex increases the likelihood of a false rape allegation	Strongly disagree	N=815 18 (2.2%)	N=257 3 (1.2%)	21	Reference	15.06	.005	11.37	.001
	Disagree	91 (11.2%)	18 (7%)	109	1.19 (0.32-4.46)				
	Undecided	65 (8%)	8 (3.1%)	73	0.74 (0.18-3.07)				
	Agree	523 (64.2%)	178 (69.3%)	701	2.04 (0.59-7.02)				
	Strongly agree	118 (14.5%)	50 (19.5%)	168	2.54 (0.72-9.02)				
14. Women who regret sex when drunk are more likely to report a false rape allegation	Strongly disagree	N=815 53 (6.5%)	N=258 4 (1.6%)	57	Reference	30.91	<.001	14.04	<.001
	Disagree	191 (23.4%)	56 (21.7%)	247	3.88 (1.35-11.20)				
	Undecided	101 (12.4%)	29 (11.2%)	130	3.80 (1.27-11.40)				
	Agree	421 (51.7%)	129 (50%)	550	4.06 (1.44-11.43)				
	Strongly agree	49 (6%)	40 (15.5%)	89	10.82 (3.61-32.45)				
15. Women are more interested in sex when drunk compared to when sober	Strongly disagree	N=813 95 (11.7%)	N=258 23 (8.9%)	118	Reference	7.43	.115	0.56	.453
	Disagree	231 (28.4%)	66 (25.6%)	297	1.18 (0.69-2.01)				
	Undecided	98 (12.1%)	45 (17.4%)	143	1.90 (1.07-3.38)				
	Agree	312 (38.4%)	105 (40.7%)	417	1.39 (0.84-2.31)				
	Strongly agree	77 (9.5%)	19 (7.4%)	96	1.02 (0.52-2.01)				
16. A woman who has drunk alcohol and is drunk, should hold some responsibility for a rape/assault that may then happen	Strongly disagree	N=809 275 (34%)	N=258 78 (30.2%)	353	Reference	2.45	.654	2.26	.132
	Disagree	225 (27.8%)	68 (26.4%)	293	1.07 (0.74-1.54)				
	Undecided	60 (7.4%)	22 (8.5%)	82	1.29 (0.75-2.24)				
	Agree	195 (24.1%)	69 (26.7%)	264	1.25 (0.86-1.81)				
	Strongly agree	54 (6.7%)	21 (8.1%)	75	1.37 (0.78-2.41)				
17. A woman who hasn't drunk alcohol, should hold some responsibility for a rape/assault that may then happen	Strongly disagree	N=814 572 (70.3%)	N=258 157 (60.9%)	729	Reference	12.21	.016	1.33	.250
	Disagree	147 (18.1%)	72 (27.9%)	219	1.78 (1.28-2.49)				
	Undecided	28 (3.4%)	8 (3.1%)	36	1.04 (0.47-2.33)				
	Agree	37 (4.5%)	13 (5%)	50	1.28 (0.66-2.47)				
	Strongly agree	30 (3.7%)	8 (3.1%)	38	0.97 (0.44-2.16)				
18. A woman who has her drink spiked with additional alcohol, should hold some responsibility for a rape/assault that may then happen	Strongly disagree	N=813 638 (78.5%)	N=258 199 (77.1%)	837	Reference	2.88	.577	0.56	.455
	Disagree	116 (14.3%)	39 (15.1%)	155	1.08 (0.73-1.60)				
	Undecided	18 (2.2%)	4 (1.6%)	22	0.71 (0.24-2.13)				
	Agree	28 (3.4%)	8 (3.1%)	36	0.92 (0.41-2.04)				
	Strongly agree	13 (1.6%)	8 (3.1%)	21	1.97 (0.81-4.83)				

### Students' experiences of non-consensual sex when drinking alcohol

Table 9 details participants' responses to survey questions 19a-19d and provides a comparison between male and female students on the frequency with which an alcohol related strategy has been used against them to procure oral sex, or to make the student perform an oral act, in the previous 12 months and since the age of 14. Odds ratios and confidence intervals were not computed for these variables due to the small cell sizes. Bivariate analysis revealed that only one variable had a significant association with gender. That is, over the previous 12 months, men were more frequently found to have been the recipient of the tactic that involved being encouraged/pressured to drink alcohol until they were too intoxicated to consent or stop what was happening (6.4 percent of men vs. 5.2 percent of women) with 2.4 percent of men being found to have experienced this tactic three or more times vs. 0.3 percent of females. Descriptive analysis of the data indicated that the alcohol related tactic most frequently used against men and women to procure non-consensual oral sex, in the previous 12 months and since age 14, was to use the student sexually after they had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening, with 6.8 percent of men and 9.4 percent of women having been the victim of this tactic in the last 12 months. Since the age of 14, 12 percent of men and 13.8 percent of women had experienced this strategy. The least frequently utilised tactic was to use the student sexually when they were asleep or unconscious from alcohol and when they came to, could not give consent or stop what was happening.

Table 10 details participants' responses to survey questions 20a-20d and provides the frequencies with which an alcohol related strategy was used against a female student to procure non-consensual vaginal penetration by the penis, fingers or other objects in the previous 12 months and since the age of 14. Due to this question looking at vaginal penetration only, no comparative chi-square test by gender could be computed. Descriptive analysis revealed that the tactic more frequently used against female students, in the previous 12 months and since the age of 14, was to use them sexually after they had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening. This had happened to 11.5 percent of women in the previous 12 months and 19.9 percent since the age of 14. The least frequently utilised tactic was to serve the participant high alcohol content drinks when they appeared regular strength, until they were too intoxicated to consent or stop what was happening.

**Table 9:** Comparisons between male and female students on the frequency with which alcohol related strategies were used to enable someone to have oral sex with respondents or to make respondents perform oral acts over the previous 12 months and since age 14

Variable		Female	Male	Total	X <sup>2</sup> df=3	P
19a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=794 3 (0.4%)	N=253 2 (0.8%)	5 13 29 1000	0.69	.874
	2 times	10 (1.3%)	3 (1.2%)			
	1 time	22 (2.8%)	7 (2.8%)			
	0 times	759 (95.6%)	241 (95.3%)			
19a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=764 18 (2.4%)	N=244 4 (1.6%)	22 19 59 908	1.51	.680
	2 times	13 (1.7%)	6 (2.5%)			
	1 time	47 (6.2%)	12 (4.9%)			
	0 times	686 (89.8%)	222 (91%)			
19b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Past 12 months	3+ times	N=797 1 (0.1%)	N=253 1 (0.4%)	2 7 27 1014	3.35	.340
	2 times	4 (0.5%)	3 (1.2%)			
	1 time	23 (2.9%)	4 (1.6%)			
	0 times	769 (96.5%)	245 (96.8%)			
19b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Since age 14	3+ times	N=764 3 (0.4%)	N=244 1 (0.4%)	4 16 43 945	0.59	.900
	2 times	13 (1.7%)	3 (1.2%)			
	1 time	31 (4.1%)	12 (4.9%)			
	0 times	717 (93.8%)	228 (93.4%)			
19c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=789 2 (0.3%)	N=251 6 (2.4%)	8 16 33 983	11.74	.008
	2 times	13 (1.6%)	3 (1.2%)			
	1 time	26 (3.3%)	7 (2.8%)			
	0 times	748 (94.8%)	235 (93.6%)			
19c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=757 8 (1.1%)	N=241 5 (2.1%)	13 30 61 894	2.43	.489
	2 times	25 (3.3%)	5 (2.1%)			
	1 time	47 (6.2%)	14 (5.8%)			
	0 times	677 (89.4%)	217 (90%)			
19d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=797 6 (0.8%)	N=250 3 (1.2%)	9 23 60 953	2.86	.414
	2 times	19 (2.4%)	4 (1.6%)			
	1 time	50 (6.3%)	10 (4%)			
	0 times	720 (90.6%)	233 (93.2%)			
19d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=767 26 (3.4%)	N=241 5 (2.1%)	31 37 67 873	1.19	.756
	2 times	28 (3.7%)	9 (3.7%)			
	1 time	52 (6.8%)	15 (6.2%)			
	0 times	661 (86.2%)	212 (88%)			

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.  
\*df= degrees of freedom

**Table 10:** Frequencies with which alcohol related strategies were used against female students to procure non-consensual vaginal penetration by the penis, fingers or other objects over the previous 12 months and since age 14

Variable		Female
20a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=785 3 (0.4%)
	2 times	8 (1%)
	1 time	25 (3.2%)
	0 times	749 (95.4%)
20a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=753 16 (2.1%)
	2 times	11 (1.5%)
	1 time	43 (5.7%)
	0 times	683 (90.7%)
20b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Past 12 months	3+ times	N=789 1 (0.1%)
	2 times	8 (1%)
	1 time	36 (4.6%)
	0 times	744 (94.3%)
20b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Since age 14	3+ times	N=754 8 (1.1%)
	2 times	17 (2.3%)
	1 time	55 (7.3%)
	0 times	674 (89.4%)
20c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=792 6 (0.8%)
	2 times	10 (1.3%)
	1 time	37 (4.7%)
	0 times	739 (93.3%)
20c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=751 11 (1.5%)
	2 times	20 (2.7%)
	1 time	64 (8.5%)
	0 times	656 (87.4%)
20d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=790 10 (1.3%)
	2 times	19 (2.4%)
	1 time	62 (7.8%)
	0 times	699 (88.5%)
20d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=757 27 (3.6%)
	2 times	34 (4.5%)
	1 time	90 (11.9%)
	0 times	606 (80.1%)

NB: Variable totals do not always add up to the total number of participants included in study due to missing data.

Table 11 details participants' responses to survey questions 21a-21d and provides a comparison between male and female students on the frequency with which an alcohol related tactic has been used against them to procure non-consensual anal penetration by the penis, fingers or other objects in the previous 12 months and since age 14. Odds ratios, confidence intervals, chi-square statistics and degrees of freedom were not computed for these variables due to the very small cell sizes. Descriptive analysis of the data indicated that the alcohol related tactic most frequently used against men and women to procure non-consensual anal penetration, in the previous 12 months and since age 14, was to use the student sexually after they had been drinking alcohol and were conscious but too intoxicated to consent or stop what was happening, with 2.9 percent of men and 2.8 percent of women having been the victim of this strategy in the

last 12 months. Since the age of 14, three percent of men and 4.6 percent of women had experienced this strategy. The least frequently utilised tactic in the previous 12 months was to serve the student high alcohol content drinks when they appeared regular strength. This along with the tactic of using the individual sexually when they were asleep or unconscious from alcohol were the least frequently utilised tactics since the age of 14.

**Table 11:** Comparisons between male and female students on the frequency with which alcohol related strategies were used to procure non-consensual anal penetration by the penis, fingers or other objects over the previous 12 months and since age 14

Variable		Female	Male	Total
21a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening – Past 12 months	1 time	N=776 5 (0.6%)	N=243 0 (0%)	5 1014
	0 times	771 (99.4%)	243 (100%)	
21a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening – Since age 14	2 times	N=745 2 (0.3%)	N=231 0 (0%)	2 10 964
	1 time	8 (1.1%)	2 (0.9%)	
	0 times	735 (98.7%)	229 (99.1%)	
21b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Past 12 months	2 times	N=776 0 (0%)	N=244 1 (0.4%)	1 9 1010
	1 time	7 (0.9%)	2 (0.8%)	
	0 times	769 (99.1%)	241 (98.8%)	
21b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Since age 14	1 time	N=747 8 (1.1%)	N=231 4 (1.7%)	12 966
	0 times	739 (98.9%)	227 (98.3%)	
21c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=771 0 (0%)	N=242 2 (0.8%)	2 2 10 999
	2 times	1 (0.1%)	1 (0.4%)	
	1 time	9 (1.2%)	1 (0.4%)	
	0 times	761 (98.7%)	238 (98.3%)	
21c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=746 0 (0%)	N=230 1 (0.4%)	1 1 14 960
	2 times	1 (0.1%)	0 (0%)	
	1 time	11 (1.5%)	3 (1.4%)	
	0 times	734 (98.4%)	226 (98.3%)	
21d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=775 1 (0.1%)	N=242 1 (0.4%)	2 3 24 988
	2 times	1 (0.1%)	2 (0.8%)	
	1 times	20 (2.6%)	4 (1.7%)	
	0 times	753 (97.2%)	235 (97.1%)	
21d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Since age 14	3 times	N=746 3 (0.4%)	N=230 0 (0%)	3 4 34 935
	2 times	3 (0.4%)	1 (0.4%)	
	1 time	28 (3.8%)	6 (2.6%)	
	0 times	712 (95.4%)	223 (97%)	

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

### The characteristics of non-consensual experiences

Table 12 details participants' responses to survey questions 19-27 and provides a comparison between the characteristics of male and female students' non-consensual experiences. Bivariate analysis revealed a significant association between gender and three of the variables. That is, the odds of women saying that they had experienced non-consensual oral, vaginal or anal sex in the



previous 12 months or since age 14, was significantly greater than the odds of men saying they had experienced such acts (33.6 percent of women vs. 21.3 percent of men disclosing victimisation). In relation to the gender of the individual who perpetrated the non-consensual act, the odds of men saying the perpetrator was a female, as opposed to a male, were significantly greater than the odds of women saying this was the case. Therefore, whilst men overall perpetrated the majority of assaults, 33 males (67.3 percent) had been the victim of an assault by a woman. Whilst there was a significant association here, it is not possible to be precise about the strata's confidence interval due to the small numbers within the categories. Bivariate analysis also revealed that the odds of women having been drinking at the lower end of the alcohol continuum prior to the non-consensual experience were greater than the odds of men having been drinking at this level. That is, women had more frequently drunk 1-4 and 5-6 drinks, compared to 10+ alcoholic beverages. There was no significant difference between gender and the participant's relationship with the perpetrator, the number of hours drinks were consumed over, participants' perceptions of their drunkenness and whether the perpetrator was also drinking alcohol prior to the act. However, looking at the frequency count data it is apparent that the non-consensual experiences perpetrated against males and females were most frequently committed by someone the student knew. That is, 80 students (27 percent) reported the offence to have been perpetrated by an acquaintance, or more specifically, someone they had seen and spoken to previously but never dated or been involved with sexually, compared to 38 students (12.8 percent) reporting the perpetrator to be a stranger. Men and women also consumed their drinks over shorter time periods (26 participants consuming their drinks over 7+ hours compared to 161 having consumed them over 1 to 4 hours). Perceptions of drunkenness were most frequently in the 'very drunk' range and the other member of the dyad was also typically drinking alcohol (in 73.2 percent of cases).

**Table 12: Comparisons between male and female students regarding the characteristics of non-consensual acts**

Variable		Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> (df)*	P
19, 20, 21 combined. Have you experienced non-consensual oral, vaginal or anal sex in the previous 12 months or since 14?	No	N=812	N=258	742	Reference	13.94 (1)	<.001
	Yes	539 (66.4%) 273 (33.6%)	203 (78.7%) 55 (21.3%)				
22. What was the gender of the perpetrator? <sup>1</sup>	Man	N=258	N=49	251	Reference	162.44 (2)	<.001
	Woman	236 (91.5%)	15 (30.6%)				
	Multiple persons	5 (1.9%) 17 (6.6%)	33 (67.3%) 1 (2%)				
23. What was your relationship with that person at the time? <sup>2</sup>	Current/ex-partner	N=248	N=48	65	Reference	4.52 (4)	.341
	Friend	56 (22.6%)	9 (18.8%)				
	Acquaintance	48 (19.4%)	15 (31.3%)				
	Recent acquaintance	71 (28.6%)	9 (18.8%)				
	Stranger	41 (16.5%) 32 (12.9%)	9 (18.8%) 6 (12.5%)				
24. How many drinks had you consumed before the experience occurred?	10+	N=260	N=50	104	Reference	14.56 (4)	.006
	7-9	77 (29.6%)	27 (54%)				
	5-6	65 (25%)	12 (24%)				
	1-4	28 (10.8%)	1 (2%)				
	Unsure	24 (9.2%) 66 (25.4%)	1 (2%) 9 (18%)				
25. Over how many hours did you consume the drinks?	7+	N=263	N=50	26	Reference	0.45 (3)	.931
	5-6	21 (8%)	5 (10%)				
	1-4	94 (35.7%)	17 (34%)				
	Unsure	136 (51.7%) 12 (4.6%)	25 (50%) 3 (6%)				
26. Regardless of how much you had consumed, did you feel drunk?	Very drunk	N=263	N=50	201	Reference	0.80 (3)	.849
	Moderately drunk	169 (64.3%)	32 (64%)				
	A little drunk	42 (16%)	9 (18%)				
	Unsure	27 (10.3%) 25 (9.5%)	6 (12%) 3 (6%)				
27. Was the other person drinking alcohol?	Unsure	N=263	N=50	54	Reference	1.54 (2)	.462
	No	47 (17.9%)	7 (14%)				
	Yes	27 (10.3%) 189 (71.9%)	3 (6%) 40 (80%)				

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df= degrees of freedom.

<sup>1</sup>Two participants did not know the gender of their perpetrator; these cases are not included in the frequency count.

<sup>2</sup>Two participants could not remember what their relationship with the perpetrator was whilst 14 classified their relationship as 'other'. These individuals are not included in the frequency count.

Table 13 details participants' responses to survey questions 28-28b and provides a comparison between male and female respondents' classifications of the non-consensual act. No significant difference between gender and the classification of the experience as rape was found, despite this variable nearing statistical significance ( $X^2 = 5.47$ ,  $df=2$ ,  $P=0.07$ ). The frequency data indicates that participants typically failed to classify their non-consensual experiences as rape (52.9 percent of participants stating 'no', they would not classify the experience as rape). In addition, no significant difference was found between gender and explanations as to why participants did not label the experience rape although again, this variable nears significance ( $X^2=11.16$ ,  $df =6$ ,  $P=0.08$ . Due to small cell sizes, odds ratios and confidence intervals were not computed for this latter variable). Looking at the frequency data it is apparent that males and females most frequently fail to apply the rape term due to explanations that emphasise their own responsibility for the events that took place. These explanations include having drunk too much

prior to the experience, having behaved in a flirtatious manner and having gone back to the perpetrator's house (with 22.5 percent of participants providing these explanations). The second most frequently cited reason for not classifying was due to the event not fitting the stereotype of rape. That is, explanations focused on it involving someone they knew, violence not being used and the student experiencing a physiological sexual response, with 20.5 percent (N=31) of participants providing such explanations.

**Table 13:** Comparisons between male and female students' classification of the non consensual act

					Odds ratio (95% confidence interval)
Variable		Female N=262	Male N=50	Total	
28. Would you classify the experience as rape?	Undecided	72 (27.5%)	9 (18%)	81	Reference 2.08 (0.94-4.57) 0.95 (0.33-2.70)
	No	131 (50%)	34 (68%)	165	
	Yes	59 (22.5%)	7 (14%)	66	
28b. If not, or you're undecided, briefly explain why	It was a mistake/unwanted sex - not rape	N=120 12 (10%)	N=31 2 (6.5%)	14	Na*
	Event wasn't negative/I wasn't affected by it	4 (3.3%)	6 (19.4%)	10	Na
	I knew what I was doing – I wanted to do it	15 (12.5%)	4 (12.9%)	19	Na
	Event didn't fit the stereotype of rape e.g. it happened with a known person, didn't involve force, I experienced an erection	24 (20%)	7 (22.6%)	31	Na
	It wasn't an act that constituted a legal rape definition	20 (16.7%)	4 (12.9%)	24	Na
	I didn't say no or stop what was happening	16 (13.3%)	3 (9.7%)	19	Na
	I was as responsible due to the amount I'd drunk, for going back to their place, for flirting with them <sup>1</sup>	29 (24.2%)	5 (16.1%)	34	Na

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*Na= not applicable

<sup>1</sup>10 participants could not remember the necessary information and are not included in the frequency count.

Table 14 details participants' responses to survey questions 29-30i and provides a comparison between male and female respondents' disclosures of the non-consensual act. Bivariate analysis revealed no significant difference between gender and telling somebody else about the experience ( $X^2=1.42$ ,  $df=1$ ,  $P=0.23$ ,  $OR=0.67$ ,  $CI=0.34-1.30$ ). However, it is apparent from the frequency data that for both men and women, a large proportion told at least someone about their non-consensual experience, with 63.2 percent of women and 72 percent of men disclosing. Odds ratios, confidence intervals, degrees of freedom and chi-square statistics were not computed for questions 30a-30i due to small cell sizes. However, descriptive analysis of data indicates that if the act was disclosed, this was most frequently to friends (N=184, 91.5%). Reporting to other individuals or organisations was very small by comparison to this group. For example, only nine participants (4.5 percent) disclosed to the police, five participants (2.5

percent) reported to a rape crisis counsellor and only two participants (one percent) disclosed their experience to a victim support worker.

**Table 14:** Comparisons between male and female student' disclosure of the non-consensual act

Variable		Female N=261	Male N=50	Total
29. Did you tell anyone about the experience?	No	96 (36.8%)	14 (28%)	110
	Yes	165 (63.2%)	36 (72%)	201
30. If so, who? <sup>1</sup>		N=165	N=36	
30a. Family member	Yes	25 (15.2%)	6 (16.7%)	31
	No	140 (84.8%)	30 (83.3%)	170
30b. Friend	Yes	148 (89.7%)	36 (100%)	184
	No	17 (10.3%)	0 (0%)	17
30c. The police	Yes	9 (5.5%)	0 (0%)	9
	No	156 (94.5%)	36 (100%)	192
30d. Doctor at an A&E Department	Yes	4 (2.4%)	0 (0%)	4
	No	161 (97.6%)	36 (100%)	197
30e. G.P	Yes	8 (4.8%)	2 (5.6%)	10
	No	157 (95.2%)	34 (94.4%)	191
30f. Rape crisis counsellor	Yes	5 (3%)	0 (0%)	5
	No	160 (97%)	36 (100%)	196
30g. Victim support counsellor	Yes	2 (1.2%)	0 (0%)	2
	No	163 (98.8%)	36 (100%)	199
30h. Another specialist counsellor/ support service	Yes	11 (6.7%)	1 (2.8%)	12
	No	154 (93.3%)	35 (97.2%)	189
30i. A partner	Yes	5 (3%)	0 (0%)	5
	No	160 (97%)	36 (100%)	196

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.  
<sup>1</sup>Three participants reported their experience to 'other' agencies or individuals and are not included in the frequency count

Table 15 details participants' responses to survey questions 31-34m and provides a comparison between male and female respondents reporting of the non-consensual act to the police. Only nine females and no males reported their experiences to police authorities and therefore due to small cell sizes chi-square tests, odds ratios and confidence intervals were not computed for these variables. Descriptive analysis of the data revealed that four participants reported the incident to the police within four hours of its occurrence. However, the majority of respondents took longer to disclose their experience with the longest taking around a week. Eight participants had their rape case discontinued, either by themselves or the police; seven participants' cases were discontinued or withdrawn during the investigative stage and one during trial proceedings. Respondents' perceptions of the police's handling of their case were mixed; five out of the nine respondents were not satisfied with the police response. Participants were also asked why they did not report a non-consensual experience to police authorities. Analysis of these data revealed a significant association between gender and two of the study

variables. That is, the odds of women saying that a lack of proof and being unsure whether a crime had taken place were factors relevant to their decision not to report to the police, were significantly greater than the odds of men saying these factors were relevant. There was no significant difference between gender and fear of police disbelief, disbelief by others, fear of police blame or blame by others, alcohol having affected the individuals memory of events, feeling responsible for what happened, perceptions that a crime did not take place, not wanting family members or other people to know, not thinking the event was serious enough to report and fear of reprisals. However, looking at the frequency data it is apparent that for men and women the explanation that they felt responsible for the events that took place (N=161, 54.4 percent), that they did not think the event was serious enough to report (N=106, 35.8 percent) and that alcohol had affected their memory of what took place (N=100, 33.8 percent) were the most frequently cited reasons for not disclosing to police.

Table 16 details participants' responses to survey questions 35-36g and provides a comparison between the location of the non-consensual act and the injuries sustained by male and female students during the incident. Bivariate analysis revealed no significant associations between gender and any of the study variables. That is, there was no difference between men and women with regard to where the non-consensual experience occurred and whether participants suffered bruising; black eyes/broken bones/chipped teeth; cuts and scratches; vaginal/penile pain/bleeding or none of the described injuries. However, the variables frequency counts indicate that for men and women, the experience most typically occurred at the other individual's property (N=132, 43 percent). In addition, students most frequently stated that they had experienced none of the specified physical injuries (N=210, 72.2 percent).

**Table 15: Comparisons between male and female students' reporting to the police**

					Odds ratio (95% confidence interval)	X <sup>2</sup> df*=1	P
Variable		Female	Male	Total			
31. Did you report the incident to the police? How long after did you report?	Within a week	N=261 1 (0.4%)	N=50 0 (0%)	1	Na**	Na	Na
	Within 4 days	1 (0.4%)	0 (0%)	1			
	Within 24 hours	2 (0.8%)	0 (0%)	2			
	Within 12 hours	1 (0.4%)	0 (0%)	1			
	Within 4 hours	4 (1.5%)	0 (0%)	4			
	Didn't report to police	252 (96.6%)	50 (100%)	302			
32. If you reported to the police, was your complaint:	Followed through to trial	N=9 2 (22.2%)	N=0 0 (0%)	2	Na	Na	Na
	Discontinued by police	3 (33.3%)	0 (0%)	3			
	Withdrawn by myself	4 (44.4%)	0 (0%)	4			
32a. If withdrawn by you or the police, when?	During the trial	N=8 1 (12.5%)	N=0 0 (0%)	1	Na	Na	Na
	During police investigation	7 (87.5%)	0 (0%)	7			
33. How satisfied were you with the police response	Very dissatisfied	N=9 2 (22.2%)	N=0 0 (0%)	2	Na	Na	Na
	Dissatisfied	3 (33.3%)	0 (0%)	3			
	Neither sat/dissatisfied	3 (33.3%)	0 (0%)	3			
	Satisfied	1 (11.1%)	0 (0%)	1			
34 Why didnt you report?		N=247	N=49				
34a. Lack of proof	No	180 (72.9%)	43 (87.8%)	223	Reference 0.38 (0.15-0.92)	4.87	.027
	Yes	67 (27.1%)	6 (12.2%)	73			
34b. Fear of police disbelief	No	190 (76.9%)	41 (83.7%)	231	Reference 0.65 (0.29-1.47)	1.09	.297
	Yes	57 (23.1%)	8 (16.3%)	65			
34c. Fear of disbelief by others	No	200 (81%)	45 (91.8%)	245	Reference 0.38 (0.13-1.10)	3.38	.066
	Yes	47 (19%)	4 (8.2%)	51			
34d. Fear of police blame/ judgement	No	212 (85.8%)	45 (91.8%)	257	Reference 0.54 (0.18-1.59)	1.29	.256
	Yes	35 (14.2%)	4 (8.2%)	39			
34e. Fear of others blame/ judgement	No	188 (76.1%)	41 (83.7%)	229	References 0.62 (0.28-1.40)	1.33	.248
	Yes	59 (23.9%)	8 (16.3%)	67			
34f. Alcohol affected my memory of events	No	158 (64%)	38 (77.6%)	196	Reference 0.51 (0.25-1.06)	3.37	.066
	Yes	89 (36.0%)	11 (22.4%)	100			
34g. Because I felt responsible	No	107 (43.3%)	28 (57.1%)	135	Reference 0.57 (0.31-1.07)	3.15	.076
	Yes	140 (56.7%)	21 (42.9%)	161			
34h. Unsure whether a crime occurred	No	155 (62.8%)	42 (85.7%)	197	Reference 0.28 (0.12-0.65)	9.68	.002
	Yes	92 (37.2%)	7 (14.3%)	99			
34i. A crime didn't occur	No	172 (69.6%)	30 (61.2%)	202	Reference 1.45 (0.77-2.74)	1.33	.248
	Yes	75 (30.4%)	19 (38.8%)	94			
34j. I didn't want my family to know	No	175 (70.9%)	40 (81.6%)	215	Reference 0.55 (0.25-1.19)	2.39	.122
	Yes	72 (29.1%)	9 (18.4%)	81			
34k. I didn't want other people to know	No	194 (78.5%)	40 (81.6%)	234	Reference 0.82 (0.38-1.80)	0.24	.627
	Yes	53 (21.5%)	9 (18.4%)	62			
34l. Didn't think event was serious enough to report	No	154 (62.3%)	36 (73.5%)	190	Reference 0.60 (0.30-1.19)	2.20	.138
	Yes	93 (37.7%)	13 (26.5%)	106			
34m. Fear of reprisals	No	219 (88.7%)	46 (93.9%)	265	Reference 0.51 (0.15-1.75)	1.19	.276
	Yes	28 (11.3%)	3 (6.1%)	31			

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df= degrees of freedom

\*\*Na= not applicable

**Table 16:** Comparisons between male and female students with regard to the location of the non-consensual act and the injuries sustained

Variable		Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> (df) <sup>**</sup>	P
35. Where did the event take place?	At a friend's house	N=244 32 (13.1%)	N=50 5 (10%)	37	Reference	2.01 (4)	.735
	A public place e.g. park	34 (13.9%)	6 (12%)	40	1.13 (0.31-4.07)		
	Pub/club/bar	15 (6.1%)	2 (4%)	17	0.85 (0.15-4.91)		
	The other person's house	110 (45.1%)	22 (44%)	132	1.28 (0.45-3.65)		
	My house <sup>1</sup>	53 (21.7%)	15 (30%)	68	1.81 (0.60-5.46)		
36Did you suffer injury?		N=243	N=48				
36a. Bruises	Yes	52 (21.4%)	8 (16.7%)	60	Reference	0.55 (1)	.459
	No	191 (78.6%)	40 (83.3%)	231	1.36 (0.60-3.09)		
36b. Black eye/ broken bones/ chipped teeth	Yes	3 (1.2%)	1 (2.1%)	4	Reference	0.21 (1)	.516 <sup>2</sup>
	No	240 (98.8%)	47 (97.9%)	287	0.59 (0.60-5.77)		
36d. Cuts/ scratches	Yes	33 (13.6%)	4 (8.3%)	37	Reference	0.99 (1)	.319
	No	210 (86.4%)	44 (91.7%)	254	1.73 (0.58-5.13)		
36f. Vaginal/ penis pain, bleeding	Yes	9 (3.7%)	2 (4.2%)	11	Reference	0.02 (1)	1.00 <sup>2</sup>
	No	234 (96.3%)	46 (95.8%)	280	0.88 (0.19-4.23)		
36g. None of the above	Yes	173 (71.2%)	37 (77.1%)	210	Reference	0.69 (1)	.405
	No	70 (28.8)	11 (22.9)	81	0.73 (0.36-1.52)		

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df=degrees of freedom

<sup>1</sup>13 participants non-consensual experiences occurred at an 'other' location and are not included in the frequency count.

<sup>2</sup>Fisher exact result reported

Table 17 details participants' responses to survey questions 37-37f and provides a comparison between male and female students use of substances other than alcohol at the time of the non-consensual act. Statistical analysis revealed a significant association between gender and this variable. That is, the odds of men saying 'yes' they were taking substances other than alcohol were significantly greater than the odds of women saying 'yes' to this question ( $X^2=4.30$ ,  $df=1$ ,  $P=0.04$ ,  $OR=2.24$ ,  $CI=1.03-4.86$ ). Participants were also asked to list the substances they had consumed. Due to small cell sizes chi-square tests, degrees of freedom, odds ratios and confidence intervals were not computed for these responses. However, descriptive analysis of the data reveals that the substance most frequently used at the time of the non-consensual act was cannabis (N=21, 58.3 percent) followed by cocaine (N=17, 49.2 percent).

**Table 17:** Comparisons between male and female respondents with regard to whether they were taking substances other than alcohol at the time of the non-consensual act

Variable		Female	Male	Total
		N=250	N=50	
37. Were you taking substances other than alcohol at the time? <sup>1</sup>	No	222 (88.8%)	39 (78%)	261
	Yes	28 (11.2%)	11 (22%)	39
37. If so, what?		N=26	N=10	
37a. Amphetamines	Yes	2 (7.7%)	0 (0%)	2
	No	24 (92.3%)	10 (100%)	24
37b. Cannabis	Yes	14 (53.8%)	7 (70%)	21
	No	12 (46.2%)	3 (30%)	15
37c. Cocaine	Yes	13 (50%)	4 (40%)	17
	No	13 (50%)	6 (60%)	19
37d. Ecstasy	Yes	4 (15.4%)	3 (30%)	7
	No	22 (84.6%)	7 (70%)	29
37e. Amyl nitrite (poppers)	Yes	2 (7.7%)	1 (10%)	3
	No	24 (92.3%)	9 (90%)	33
37f. Glues, solvents, gas or aerosols <sup>2</sup>	Yes	0 (0%)	1 (10%)	1
	No	26 (100%)	9 (90%)	35

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

<sup>1</sup>Eight participants were unsure whether they were taking other substances and were removed from the frequency counts of question 37-37f.

<sup>2</sup>Four participants reported using an 'other' substance. These participants were removed from the frequency count.

No participant reported having taken, crack, heroin, LSD/ACID, magic mushrooms, methadone, Semoron (a fictitious substance included to test for fake responding), tranquillizers, Ritalin, Viagra, GHB (Gamma Hydroxy Butyrate), anabolic steroids or ketamine which were all included within the response options.

### Students' use of alcohol related tactics to procure non-consensual sex

Table 18 details participants' responses to survey questions 38a-38d and provides a comparison between male and female respondents on the frequency with which they have used an alcohol related strategy to enable them to have oral sex with someone, or to make someone else perform an oral act on them in the previous 12 months and since the age of 14. Due to small cell sizes chi-square tests, degrees of freedom, odds ratios and confidence intervals were not computed. Descriptive analysis of data however revealed that the alcohol related tactic most frequently used by men and women to procure non-consensual oral sex in the previous 12 months was to encourage/pressure someone to drink alcohol until they were too intoxicated to give consent or stop what was happening (N=16, 1.6 percent). The tactic most frequently used since the age of 14 was to find someone who had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening (N=17, 1.7 percent). The least frequently utilised tactic by males and females in the previous 12 months and since the age of 14 years was to find someone who was asleep or unconscious from alcohol and when they came to could not stop what was happening.



**Table 18:** Comparisons between male and female students on the frequency with which they have used an alcohol related strategy to enable them to have oral sex with someone or to make someone else perform an oral act on them in the previous 12 months and since age 14

Variable		Female	Male	Total
38a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Past 12 months?		N=792	N=251	
	3+ times	0 (0%)	1 (0.4%)	1
	2 times	0 (0%)	1 (0.4%)	1
	1 time	4 (0.5%)	1 (0.4%)	5
	0 times	788 (99.5%)	248 (98.8%)	1036
38a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Since age 14?		N=755	N=237	
	3+ times	3 (0.4%)	2 (0.8%)	5
	2 times	1 (0.1%)	1 (0.4%)	2
	1 time	2 (0.3%)	0 (0%)	2
	0 times	749 (99.2%)	234 (98.7%)	983
38b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Past 12 months?		N=788	N=252	
	3+ times	0 (0%)	1 (0.4%)	1
	2 times	0 (0%)	1 (0.4%)	1
	1 time	2 (0.3%)	0 (0%)	2
	0 times	786 (99.7%)	250 (99.2%)	1036
38b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Since age 14?		N=753	N=235	
	3+ times	0 (0%)	1 (0.4%)	1
	2 times	1 (0.1%)	0 (0%)	1
	1 time	2 (0.3%)	0 (0%)	2
	0 times	750 (99.6%)	234 (99.6%)	984
38c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Past 12 months?		N=790	N=253	
	3+ times	0 (0%)	1 (0.4%)	1
	2 times	0 (0%)	3 (1.2%)	3
	1 time	8 (1%)	4 (1.6%)	12
	0 times	782 (99%)	245 (96.8%)	1027
38c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Since age 14?		N=752	N=234	
	3+ times	0 (0%)	2 (0.9%)	2
	2 times	0 (0%)	1 (0.4%)	1
	1 time	6 (0.8%)	4 (1.7%)	10
	0 times	746 (99.2%)	227 (97%)	973
38d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Past 12 months?		N=789	N=254	
	3+ times	0 (0%)	1 (0.4%)	1
	2 times	2 (0.3%)	3 (1.2%)	5
	1 time	5 (0.6%)	4 (1.6%)	9
	0 times	782 (99.1%)	246 (96.9%)	1028
38d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Since age 14?		N=750	N=238	
	3+ times	1 (0.1%)	2 (0.8%)	3
	2 times	3 (0.4%)	0 (0%)	3
	1 time	6 (0.8%)	5 (2.1%)	11
	0 times	740 (98.7%)	231 (97.1%)	971

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

Table 19 details participants' responses to survey questions 39a-39d and provides a comparison between male and female respondents on the frequency with which they have used an alcohol related strategy to enable them to engage in non-consensual vaginal sex; that is, to put their penis, fingers or objects into a woman's vagina without her consent in the previous 12 months and since the age of 14. Due to small cell sizes and 0 values chi-square tests, degrees of freedom, odds ratios and confidence intervals were not computed. Descriptive analysis of data however revealed that the alcohol related tactic most frequently used by males and female in the previous 12 months and since the age of 14 was to find someone who had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening (N=11, 1.5 percent for the past 12 months vs. N=12, 1.7 percent since the age of 14). The least frequently used tactic in the previous 12 months was to find someone who was asleep or unconscious from

alcohol and were therefore incapable of giving consent; this along with the tactic of serving someone high alcohol content drinks when they appeared to be regular strength drink until an individual was too intoxicated to give consent, were the least utilised tactics since the age of 14.

**Table 19:** Comparisons between male and female students on the frequency with which they have used an alcohol related strategy to enable them to put their penis, fingers or objects into a woman's vagina without her consent in the previous 12 months and since age 14

Variable		Female	Male	Total
39a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	N=508 0 (0%)	N=247 2 (0.8%)	2 1 752
	1 time	0 (0%)	1 (0.4%)	
	0 times	508 (100%)	244 (98.8%)	
39a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Since age 14?	3+ times	N=437 1 (0.2%)	N=232 2 (0.9%)	3 1 665
	2 times	0 (0%)	1 (0.4%)	
	0 times	436 (99.8%)	229 (98.7%)	
39b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Past 12 months?	3+ times	N=455 0 (0%)	N=245 1 (0.4%)	1 1 698
	1 time	0 (0%)	1 (0.4%)	
	0 times	455 (100%)	243 (99.2%)	
39b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Since age 14?	3+ times	N=436 0 (0%)	N=232 1 (0.4%)	1 1 2 664
	2 times	1 (0.2%)	0 (0%)	
	1 time	0 (0%)	2 (0.9%)	
	0 times	435 (99.8%)	229 (98.7%)	
39c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	N=453 0 (0%)	N=244 2 (0.8%)	2 1 6 688
	2 times	0 (0%)	1 (0.4%)	
	1 time	2 (0.4%)	4 (1.6%)	
	0 times	451 (99.6%)	237 (97.1%)	
39c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Since age 14?	3+ times	N=435 0 (0%)	N=231 2 (0.9%)	2 1 8 655
	2 times	0 (0%)	1 (0.4%)	
	1 time	3 (0.7%)	5 (2.2%)	
	0 times	432 (99.3%)	223 (96.5%)	
39d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	N=452 0 (0%)	N=246 2 (0.8%)	2 1 8 687
	2 times	1 (0.2%)	0 (0%)	
	1 time	3 (0.7%)	5 (2%)	
	0 times	448 (99.1%)	239 (97.2%)	
39d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Since age 14?	3+ times	N=437 1 (0.2%)	N=233 2 (0.9%)	3 3 6 658
	2 times	2 (0.5%)	1 (0.4%)	
	1 time	2 (0.5%)	4 (1.7%)	
	0 times	432 (98.9%)	226 (97%)	

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

Table 20 details participants' responses to survey questions 40a-40d and provides a comparison between male and female respondents on the frequency with which they have used an alcohol related strategy to enable them to engage in non-consensual anal sex; that is, to put their penis, fingers or objects into someone's anus without their consent in the previous 12 months and since the age of 14. Due to small cell sizes chi-square tests, degrees of freedom, odds ratios and confidence intervals were not computed. Descriptive analysis of data however revealed that in the previous 12 months, all four alcohol related tactics were used equally often (N=3 for all

tactics). The tactic most frequently used since the age of 14 was to find someone who was asleep or unconscious from alcohol and when they came to were unable to stop what was happening (N=5, 0.7 percent). The alcohol related tactic least frequently used since the age of 14 was to serve someone high alcohol content drinks when they appeared regular strength.

**Table 20:** Comparisons between male and female students on the frequency with which they have used an alcohol related strategy to enable them to put their penis, fingers or objects into someone's anus without their consent in the previous 12 months and since age 14

Variable		Female	Male	Total
		N=451	N=251	
40a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	0 (0%)	1 (0.4%)	1
	2 times	0 (0%)	1 (0.4%)	1
	1 time	1 (0.2%)	0 (0%)	1
	0 times	450 (99.8%)	249 (99.2%)	699
40a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Since age 14?		N=435	N=237	
	3+ times	0 (0%)	2 (0.8%)	2
	0 times	435 (100%)	235 (99.2%)	670
40b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Past 12 months?		N=448	N=251	
	3+ times	0 (0%)	1 (0.4%)	1
	1 times	1 (0.2%)	1 (0.4%)	2
	0 times	447 (99.8%)	249 (99.2%)	696
40b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Since age 14?		N=435	N=236	
	3+ times	0 (0%)	1 (0.4%)	1
	1 time	1 (0.2%)	3 (1.3%)	4
	0 times	434 (99.8%)	233 (98.3%)	667
40c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Past 12 months?		N=451	N=251	
	3+ times	0 (0%)	1 (0.4%)	1
	2 times	1 (0.2%)	1 (0.4%)	2
	0 times	450 (99.8%)	249 (99.2%)	699
40c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Since age 14?		N=435	N=237	
	3 times	0 (0%)	2 (0.8%)	2
	1 time	0 (0%)	1 (0.4%)	1
	0 times	435 (100%)	234 (98.7%)	669
40d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Past 12 months?		N=451	N=252	
	3+ times	0 (0%)	2 (0.8%)	2
	1 time	0 (0%)	1 (0.4%)	1
	0 times	451 (100%)	249 (98.8%)	700
40d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Since age 14?		N=435	N=236	
	3+ times	0 (0%)	2 (0.8%)	2
	1 time	1 (0.2%)	1 (0.4%)	2
	0 times	434 (99.8%)	233 (98.7%)	667

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

Table 21 provides a comparison between male and female respondents on the frequency with which they have used an alcohol related strategy to procure non-consensual sex. A participant's responses across questions 38, 39 and 40 were summed to identify whether participants had perpetrated a non-consensual sexual act in the previous 12 months or since the age of 14. Bivariate analysis revealed a significant association between gender and perpetrating non-consensual behaviours. That is, the odds of men saying 'yes' they had perpetrated a non-consensual act in either the previous 12 months or since the age of 14, was significantly greater than women saying they had perpetrated such acts with 8.6 percent of men and 2.8 percent of women disclosing such perpetration.

**Table 21:** Comparisons between male and female students on the frequency with which they have perpetrated a non-consensual act in the previous 12 months and since age 14

Variable		Female	Male	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> df=1	P
		N=796	N=256				
38, 39, 40 combined. Have you perpetrated a non-consensual oral, vaginal or anal act in previous 12 months or since age 14?	No	774 (97.2%)	234 (91.4%)	1008	Reference	16.43	<.001
	Yes	22 (2.8%)	22 (8.6%)	44	3.31 (1.80-6.08)		

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

### Logistic regression analysis

Following bivariate analysis logistic regression analyses were carried out to establish which variables would best predict if the survey respondent was a male or female participant, when the effects of other variables in the model were controlled. Two logistic regressions were computed for each dependent variable; the first model included the significant attitudinal, experiential, background and knowledge variables from the preliminary chi-square analysis (which all participants had completed), whilst the second regression model included those significant experiential variables that related to the subset of individuals who had experienced non-consensual sex. Bivariate analysis revealed that there was a significant difference between gender and 26 of the attitudinal, experiential, background and knowledge variables. Because logistic regression requires all participants to have responded to all variables within the model, those respondents with missing data were removed from the analysis resulting in the removal of 110 cases from the first logistic regression model. This removal of cases resulted in the emergence of a zero value within a reference category cell of variable 9c (this variable depicted the scenario of person A and B having sex when person A was too intoxicated to identify whether consent was present and person B too intoxicated to consent). Therefore, when this variable was initially included in the logistic regression it resulted in extremely high standard errors. Field (2005) argues that this may be a consequence of all possible combinations of that variable having not been available in the computation of the model, resulting in the problematic coefficient. As a consequence, this variable was removed from the first logistic regression analysis and rerun with the 25 significant variables from the bivariate analysis stage (see table 22 for those variable entered) using the backwards conditional method of variable elimination. Table 23 details those attitudinal, experiential, background and knowledge variables that reliably a predicted participant's gender category status following the logistic regression analysis.

**Table 22:** Those attitudinal, experiential, background and knowledge variables included in the first gender logistic regression analysis

Variable
6a. If the other person has been flirting with you
6b. If the other person has been kissing you
6c. If the other person has removed some of their clothing
6d. If the other person has removed some of your clothing
6f. If the other person verbally agrees to have sex with you
6h. If the other person has a reputation for sleeping around
6i. If the other person has agreed to go back to your house
7a. Consent is agreeing to sex through choice
7c. Consent is about having the freedom to choose to have sex
7d. Consent needs to be verbally agreed
8a. Being drunk affects the capacity to make reasonable decisions
8b. Being drunk affects a person's capacity to consent to sex
8c. A drunk person is unable to consent to sex
8d. If a person is drunk, as long as they remain physically conscious, they are capable of choosing to have sex
9a. Person A is mildly drunk, person B severely drunk. Person B can no longer give consent. Both have sex. Next morning person B states rape has occurred. Do you agree/disagree with person A being held responsible for rape?
9b. Person A is moderately drunk, person B severely drunk. Person B can no longer give consent. Both have sex. Next morning person B states rape has occurred. Do you agree/disagree with person A being held responsible for rape?
10. What would you describe the scenario in 9c as?
12. A significant number of rapes reported to the police are false allegations
13. Being drunk when having sex increases the likelihood of a false allegation of rape
14. women who regret having sex when drunk are more likely to report a false allegation of rape
17. If on an evening out a woman hasn't drunk alcohol, she should hold some responsibility a for rape/sexual assault that may happen
19, 20, 21 combined. Have you experienced non-consensual oral, vaginal or anal sex in previous 12 months or since your 14 <sup>th</sup> birthday and up until 12 months ago?
38, 39, 40 combined. Have you perpetrated a non-consensual oral, vaginal or anal act in previous 12 months or since your 14 <sup>th</sup> birthday and up until 12 months age?
34. Participant sexuality
Participants Audit score

**Table 23: Attitudinal, experiential, background and knowledge factors predicting participants' gender group**

Predictor variable		Female	Male	Total	B (SE)	Adjusted odds ratio (95% confidence interval)	P
		N= 692	N= 221				
6b. If the other person has been kissing you	Very relevant	132 (17.9%)	63 (27%)	195	Reference		
	Relevant	349 (47.4%)	133 (57.1%)	482	-0.01 (0.22)	0.99 (0.64-1.53)	Ns <sup>1</sup>
	Undecided	83 (11.3%)	20 (8.6%)	103	-0.19 (0.35)	0.83 (0.41-1.65)	Ns
	Irrelevant	141 (19.2%)	14 (6%)	155	-1.03 (0.39)	0.36 (0.17-0.76)	.008
	Very irrelevant	31 (4.2%)	3 (1.3%)	34	-0.58 (0.83)	0.56 (0.11-2.87)	Ns
6c. If the other person has removed some of their clothing	Very relevant	224 (30.4%)	125 (53.6%)	349	Reference		
	Relevant	307 (41.7%)	87 (37.3%)	394	-0.09 (0.28)	0.91 (0.53-1.57)	Ns
	Undecided	99 (13.5%)	13 (5.6%)	112	-0.90 (0.46)	0.41 (0.16-1.01)	Ns
	Irrelevant	83 (11.3%)	5 (2.1%)	88	-1.06 (0.61)	0.35 (0.10-1.16)	Ns
	Very irrelevant	23 (3.1%)	3 (1.3%)	26	2.11 (1.22)	8.21 (0.75-89.70)	Ns
6d. If the other person has removed some of your clothing	Very relevant	250 (34%)	137 (58.8%)	387	Reference		
	Relevant	294 (39.9%)	75 (32.2%)	369	-0.46 (0.28)	0.63 (0.37-1.08)	Ns
	Undecided	87 (11.8%)	14 (6%)	101	-0.09 (0.45)	0.91 (0.38-2.22)	Ns
	Irrelevant	72 (9.8%)	5 (2.1%)	77	-1.08 (0.61)	0.34 (0.10-1.12)	Ns
	Very irrelevant	33 (4.5%)	2 (0.9%)	35	-4.38 (1.51)	0.01 (0.00-0.24)	.004
6h. If the other person has a reputation for sleeping around	Very relevant	80 (10.9%)	17 (7.3%)	97	Reference		
	Relevant	114 (15.5%)	50 (21.5%)	164	0.68 (0.36)	1.97 (1.00-4.03)	Ns
	Undecided	97 (13.2%)	32 (13.7%)	129	0.62 (0.39)	1.86 (0.87-3.99)	Ns
	Irrelevant	216 (29.3%)	81 (34.8%)	297	1.22 (0.35)	3.38 (1.70-6.74)	.001
	Very irrelevant	229 (31.1%)	53 (22.7%)	282	0.88 (0.37)	2.41 (1.17-5.00)	.017
7d. Consent needs to be verbally agreed	Yes	394 (53.5%)	99 (42.5%)	493	Reference		
	Unsure	165 (22.4%)	47 (20.2%)	212	-0.19 (0.23)	0.83 (0.53-1.30)	Ns
	No	177 (24%)	87 (37.3%)	264	0.40 (0.20)	1.48 (1.00-2.20)	Ns
8a. Being drunk affects the capacity to make reasonable decisions	Strongly agree	425 (57.7%)	91 (39.1%)	516	Reference		
	Agree	284 (38.6%)	127 (54.5%)	411	0.75 (0.18)	2.12 (1.47-3.04)	<.001
	Undecided	3 (0.4%)	2 (0.9%)	5	1.23 (0.97)	3.41 (0.51-22.69)	Ns
	Disagree	20 (2.7%)	10 (4.3%)	30	0.91 (0.48)	2.49 (0.96-6.42)	Ns
	Strongly disagree	4 (0.5%)	3 (1.3%)	7	1.81 (1.13)	6.11 (0.66-56.28)	Ns
8c. A drunk person is unable to consent to sex	Strongly agree	48 (6.5%)	7 (3%)	55	Reference		
	Agree	86 (11.7%)	22 (9.4%)	108	0.10 (0.52)	1.12 (0.40-3.05)	Ns
	Undecided	100 (13.6%)	16 (6.9%)	116	-0.64 (0.54)	0.53 (0.18-1.53)	Ns
	Disagree	422 (57.3%)	123 (52.8%)	545	-0.12 (0.47)	0.88 (0.35-2.20)	Ns
	Strongly disagree	80 (10.9%)	65 (27.9%)	145	0.59 (0.49)	1.80 (0.68-4.74)	Ns
9b. A is moderately drunk, B severely. B cannot give consent. Both have sex. Next day B states rape occurred. Do you agree with A being held responsible for rape?	Strongly agree	28 (3.8%)	7 (3%)	35	Reference		
	Agree	212 (28.8%)	53 (22.7%)	265	-0.64 (0.53)	0.53 (0.19-1.49)	Ns
	Undecided	178 (24.2%)	34 (14.6%)	212	-0.86 (0.54)	0.43 (0.15-1.23)	Ns
	Disagree	286 (38.9%)	112 (48.1%)	398	-0.39 (0.52)	0.68 (0.25-1.88)	Ns
	Strongly disagree	32 (4.3%)	27 (11.6%)	59	0.50 (0.60)	1.65 (0.51-5.33)	Ns
14. Women who regret having sex when drunk are more likely to report a false rape allegation	Strongly agree	43 (5.8%)	37 (15.9%)	80	Reference		
	Agree	372 (50.5%)	117 (50.2%)	489	-0.77 (0.30)	0.46 (0.26-0.82)	.009
	Undecided	97 (13.2%)	23 (9.9%)	120	-0.74 (0.38)	0.48 (0.23-1.00)	.050
	Disagree	171 (23.2%)	53 (22.7%)	224	-0.56 (0.33)	0.57 (0.30-1.09)	Ns
	Strongly disagree	53 (7.2%)	3 (1.3%)	50	-2.38 (0.71)	0.09 (0.02-0.37)	.001
Experienced a non-consensual act	Yes	246 (33.4%)	50 (21.5%)	296	Reference		
	No	490 (66.6%)	183 (78.5%)	673	0.60 (0.20)	1.83 (1.23-2.73)	.003
Perpetrated a non-consensual act	Yes	20 (2.7%)	19 (8.2%)	39	Reference		
	No	716 (97.3%)	214 (91.8%)	930	-0.99 (0.39)	0.37 (0.17-0.79)	.010
Sexuality: Has sex with:	Same sex persons	33 (4.5%)	20 (8.6%)	53	Reference		
	With opposite sex	656 (89.1%)	204 (87.6%)	860	-0.80 (0.35)	0.45 (0.23-0.90)	.024
	With both	47 (6.4%)	9 (3.9%)	56	-1.25 (0.55)	0.29 (0.10-0.83)	.022

<sup>1</sup>Ns= not significant  
Hosmer and Lemeshow Goodness-of-Fit Test:  $X^2= 10.62, P= 0.224.$

Binary logistic regression analysis identified that the full model was significantly reliable ( $X^2=10.62$ ,  $df=8$ ,  $P=0.224$ ). That is, the non-significant result from the Hosmer and Lemeshow goodness-of-fit test indicated that the predicted model values did not significantly differ from the observed values, suggesting the model's estimates fit the data at an acceptable level. The analysis revealed that 12 variables reliably predicted gender status. Table 23 indicates that male and female respondents had different perspectives on how relevant someone kissing them was in helping them to establish whether that person wanted to have sex with them. A total of six percent of men said that this action was irrelevant compared to 19.2 percent of females. This compares to 17.9 percent of females and 27 percent of males stating that the other person kissing them was a very relevant factor in their decision making processes (adjusted odds ratio 0.36, 95% CI 0.17-0.76). Gender differences were also found in the perceived relevance of the other person removing some of their clothing and the possible impact of this action on perceptions around the potential for sex. Although there was no individual strata significance across the response categories on this variable, the frequency data indicates that a greater proportion of males perceived this action to be very relevant, with over half stating this was the case (53.6 percent of men vs. 30.4 percent of females) whilst females most frequently suggested it was an irrelevant factor (11.3 percent of women vs. 2.1 percent of men arguing this to be true). Men and women were also found to differ when asked about the relevance of the other person removing some of the participant's clothing, and the implications of this action. The multivariate analysis identified that 33 females (4.5 percent) and two males (0.9 percent) believed this action was very irrelevant in establishing whether that person wanted sex, compared to 58.8 percent of men and 34 percent of women stating it was very relevant (adjusted odds ratio 0.01, 95% CI 0.00-0.24). Differences were also identified on variable 6h which asked about the relevance of the other person's sexual reputation on the potential for sex. The analysis revealed that 34.8 percent of men and 29.3 percent of women said that the other person having a reputation for 'sleeping around' was irrelevant to whether that person would then have sex with them (adjusted odds ratio 3.38, 95% CI 1.70-6.74). However, 31.1 percent of women argued that sexual reputation was very irrelevant to the decision making process whilst 22.7 percent of men said this was the case (adjusted odds ratio 2.41, 95% CI 1.17-5.00). It should be noted that the association for this latter strata is opposite to that suggested by the frequency data. This is likely to be the consequence of variable 6h being closely related to another explanatory variable in the logistic regression model which is completely reversing its impact. Indeed, Field (2005) argued that multicollinearity exists when there is a strong correlation between two or more predictor variables in the regression model. Perfect collinearity is present when one predictor is a perfect linear combination of another. As collinearity increases so does the standard error of the B coefficient thus increasing the potential for a variable that is a good predictor of the outcome to be found non-significant. Field (2005) suggests that there are two ways to identify multicollinearity through SPSS diagnostics including the variance inflation factor (VIF) and the

tolerance statistic. The VIF identifies whether a predictor variable has a strong linear relationship with the other variables in the model with a value of 10 generally being taken as an indicator of problematic coefficients. Similarly, a tolerance value below .1 is also argued to be suggestive of problems. These diagnostics were run on all predictor variables within the current model and no problematic coefficients were identified. This therefore suggests that perfect collinearity was not present although a lower level of collinearity may exist, but which typically poses little threat to the model (Field, 2005).

Differences were identified in men and women's knowledge as to whether consent needed to be verbally agreed. Whilst there was no strata level significance for this variable the frequency data highlights that men more often stated that consent did not need to be verbalised (37.3 percent saying this was the case compared to 24 percent of females) whilst females were more frequently unsure (22.4% vs. 20.2 percent of men) or inaccurately stated that consent did need to be verbally expressed. Indeed, over half of the women surveyed (53.5 percent) stated that this was the case. Attitudinal differences were also identified between the sexes: again, over half of the males sampled (54.5 percent) agreed that being drunk affects the capacity to make reasonable decisions with 38.6 percent of women also agreeing with this statement. This compares to almost 60 percent of women (57.7 percent) and just under 40 percent of men (39.1 percent) saying that they strongly agreed with this view point (adjusted odds ratio 2.12, 95% CI 1.47-3.04). Although no individual level strata significance was identified, gender divergence was found on variables 8c and 9b. The frequency data highlights that males more often strongly disagreed with the statement that a drunken person is unable to consent to sex (27.9 percent of men stating this was the case vs. 10.9 percent of women) whilst women more frequently strongly agreed with the statement (with 6.5 percent of women strongly agreeing vs. three percent of men). A similar pattern of responding was noted for variable 9b. That is, men more often strongly disagreed with person A being held responsible for rape (11.6 percent of men vs. 4.3 percent of women doing so) whilst females more frequently strongly agreed (3.8 percent of women vs. three percent of men). Differences were further identified on the attitudinal statement that women who regret having sex when drunk are more likely to report a false allegation of rape with 7.2 percent of females and 1.3 percent of males strongly disagreeing with this perspective (adjusted odds ratio 0.09, 95% CI 0.02-0.37).

Gender differences were further identified in terms of having experienced or perpetrated a non-consensual sexual act. Just under 70 percent of women sampled (66.6 percent) and 78.5 percent of survey males said 'no' they had not experienced non-consensual sex. This however compared to 33.4 percent of women and 21.5 percent of men who had experienced non-consensual sex (adjusted odds ratio 1.83, 95% CI 1.23-2.73). The perpetration variable contextualises this picture further with 97.3 percent of females and 91.8 percent of males stating that they had not



perpetrated a non-consensual sexual act. However, 2.7 percent of women and 8.2 percent of men identified that they had committed such offences (adjusted odds ratio 0.37, 95% CI 0.17-0.79). Finally, the logistic regression analysis identified gender divergence in terms of participant sexuality with 6.4 percent of females and 3.9 percent of men sampled stating that they had sex with both men and women (adjusted odds ratio 0.29, 95% CI 0.10-0.83), whilst almost 90 percent of females (89.1 percent) and 87.6 percent of men argued that they only had sex with members of the opposite gender (adjusted odds ratio 0.45, 95% CI 0.23-0.90). This compares to 4.5 percent of women and 8.6 percent of men stating that they only have sex with same-sex individuals.

The second gender logistic regression was computed on the subset of individuals (n=329) who had experienced non-consensual sex in either the previous 12 months or since the age of 14 and up until 12 months prior. Table 24 shows those significant variables from the bivariate analysis stage which were entered into the regression model. Of the 329 individuals who had experienced non-consensual sex, 51 cases were removed due to missing data as were the six remaining female participants who had reported their non-consensual experience to the police, the one remaining transgender participant and the six females who were unsure whether they had taken substances other than alcohol at the time of the offence. These latter 13 cases were excluded to enable the removal of zero reference category cells. Table 25 highlights those variables that predicted gender status following the multivariate analysis.

**Table 24:** Those experiential variables included in the second gender logistic regression analysis

Variable
19c12M. How many times has someone had oral sex with you or made you perform oral acts by encouraging/pressuring you to drink alcohol until you were too intoxicated to give consent or stop what was happening – in the last 12 months?
22. What was the gender of the perpetrator?
24. How many drinks had you consumed before the experience occurred?
34a. Why didn't you tell the police? Lack of proof?
34h. Why didn't you tell the police? Unsure whether a crime had occurred?
37. Were you taking substances other than alcohol at the time of the non-consensual act?

**Table 25:** Experiential factors predicting participants gender status

Predictor variable		Female	Male	Total	B (SE)	Adjusted odds ratio (95% confidence interval)	P
		N= 219	N= 46				
19c12M. How many times has someone had oral sex with you or made you perform oral acts by encouraging/pressuring you to drink alcohol until you were too intoxicated to give consent – in the past 12 months?	0 times	183 (83.6%)	32 (69.6%)	215	Reference		
	1 time	23 (10.5%)	6 (13%)	29	-0.31 (0.86)	0.73 (0.14-3.98)	Ns <sup>1</sup>
	2 times	12 (5.5%)	2 (4.3%)	14	-0.57 (1.29)	0.57 (0.05-7.10)	Ns
	3+ times	1 (0.5%)	6 (13%)	7	4.33 (1.17)	76.23 (7.75-749.36)	<.001
22. What was the gender of the perpetrator?	Multiple people	14 (6.4%)	1 (2.2%)	15	Reference		
	Female	4 (1.8%)	31 (67.4%)	35	4.67 (1.18)	107.15 (10.70-1072.67)	<.001
	Male	201 (91.8%)	14 (30.4%)	215	-0.35 (1.09)	0.70 (0.08-5.90)	Ns

<sup>1</sup>Ns= Not significant

Hosmer and Lemeshow Goodness-of-fit Test:  $X^2=2.23$ ,  $P=0.527$

The binary logistic regression analysis again identified that the full model was significantly reliable ( $X^2=2.23$ ,  $df=3$ ,  $P=0.527$ ) with the non-significant statistic from the Hosmer and Lemeshow goodness-of-fit test indicating that the predicted model values did not significantly differ from the observed values. The analysis revealed that two variables reliably predicted gender status. Table 25 indicates that male and female respondents had different experiences with regard to the number of times someone has had oral sex with them or made them perform oral acts by encouraging or pressuring them to drink alcohol until they were too intoxicated to give consent during the previous twelve months. A total of 13 percent of men had experienced this behaviour 3+ times compared to 0.5 percent of women. This compares to 83.6 percent of females and 69.6 percent of men stating that they had never experienced such non-consensual sexual activity (adjusted odds 76.23, 95% CI 7.75-749.36). Whilst there was a significant association on this stratum and we can be 95% confident that the true adjusted odds ratio falls between 7.75 and 749.36, we cannot be any more precise about this estimate; the large confidence interval being a consequence of the small numbers within this stratum's cells. The gender of the individual who perpetrated the non-consensual act was also found to significantly differentiate the sexes. A total of 67.4 percent of men had been the recipients of female non-consensual behaviour compared to a significantly smaller proportion of women (1.8 percent) who had been assaulted by other females. This compares with 6.4 percent of women and 2.2 percent of men who had been assaulted by multiple persons (adjusted odds ratio 107.15, 95% CI 10.70-1072.67). Again, whilst there was a significant association on this latter variable, it is not possible to be any more precise about the true adjusted odds ratio estimate. due to the small cell sizes.

## Results: drinking status analysis study one

### Sample characteristics

Table 26 details the characteristics of the study sample in accordance to drinking status i.e. hazardous and non-hazardous drinkers. As stated, 18 participants did not complete all five questions of the AUDIT measure and could therefore not have a valid AUDIT score computed; these individuals are consequently not included within the analysis. Bivariate analysis revealed a significant association between drinking status and three of the study variables. That is, the odds of hazardous drinkers being female, were significantly less than the odds of non-hazardous drinkers being female (74.1 percent of hazardous drinkers stating they were female vs. 80.7 percent of non-hazardous stating they were female). Analysis also revealed that the odds of hazardous drinkers falling within the age brackets of 18-19, 20-21 and 22-23 years were significantly greater than the odds of non-hazardous drinkers falling within these age brackets, when compared to the 24 year age demographic. Statistical analysis identified a significant association between drinking status and participant ethnicity with the odds of hazardous drinkers stating they were European, being significantly greater than the odds on non-hazardous drinkers stating this was the case. There was no significant association between the dependent variable and participant's sexuality or institution of study.

**Table 26:** Characteristics of hazardous/non-hazardous drinking sample

Variable	Non-hazardous	Hazardous		Odds ratio (95% confidence interval)	X <sup>2</sup> (df)*	P
<b>Sex</b>	N=305	N=753	Total			
Male	59 (19.3%)	195 (25.9%)	254	Reference	5.11	.024
Female	246 (80.7%)	558 (74.1%)	804	0.69 (0.50-0.95)	(1)	
<b>Age</b>	N=306	N=755				
24	32 (10.5%)	36 (4.8%)	68	Reference	12.06	.007
22-23	48 (15.7%)	116 (15.4%)	164	2.15 (1.20-3.85)	(3)	
20-21	120 (39.2%)	325 (43%)	445	2.41 (1.43-4.05)		
18-19	106 (34.6%)	278 (36.8%)	384	2.33 (1.38-3.95)		
<b>Ethnicity</b>	N=304	N=755				
Non-European	38 (12.5%)	27 (3.6%)	65	Reference	29.96	<.000
European	266 (87.5%)	728 (96.4%)	994	3.85 (2.31-6.43)	(1)	
<b>Sexuality</b>	N=302	N=750				
Has sex with both men and women	17 (5.6%)	44 (5.9%)	61	Reference	0.06	.969
Has sex with opposite sex individuals	269 (89.1%)	664 (88.5%)	933	0.95 (0.54-1.70)	(2)	
Has sex with same sex individuals	16 (5.3%)	42(5.6%)	58	1.01 (0.45-2.26)		
<b>Institution</b>	N=306	N=755				
Other institutions	7 (2.3%)	15 (2%)	22	Reference	0.01	.755
Liverpool John Moores University	299 (97.7%)	740 (98%)	1039	1.16 (0.47-2.86)	(1)	

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df = degrees of freedom

## Sexual consent attitudes and understanding

Table 27 details participants' responses to survey questions 6a-6i and provides a comparison between the actions/circumstances deemed to be of relevance to hazardous and non-hazardous drinkers in helping them to decide whether someone they have met on a night out will agree to have sex with them. Bivariate analysis revealed a significant association between drinking status and six of the variables; while there was not always a significant difference between individual strata and the reference category, there was a significant general trend for a greater proportion of hazardous drinkers than non-hazardous to say that someone flirting with them, kissing them, removing items of their clothing, removing the participant's clothing, verbally agreeing to sex, and agreeing to go back to the participant's house were very relevant to their decision making, when compared to the very irrelevant response category. There was no significant difference between hazardous and non-hazardous drinkers on the perceived relevance of the other party having accepted a drink from them, with participants typically viewing this action as irrelevant to the decision making process. There was no significant difference either between the drinking groups and circumstance of having had sex with the other person previously and if the other person has a reputation for sleeping around.

Table 28 details participants' responses to survey questions 7a-7e and provides a comparison between hazardous and non-hazardous drinkers' understanding of the legal definition of sexual consent. Analysis revealed a significant association between drinking status and two of the study variables. That is, the odds of non-hazardous drinkers saying that consent needed to be verbalised, or that they were unsure whether it needed to be verbally agreed, were significantly greater than the odds of hazardous drinkers saying consent needed to be verbalised or that they were unsure whether this was the case (54 percent of non-hazardous vs. 49.3 percent of hazardous drinkers saying 'yes' consent must be verbally agreed). In addition, the odds of non-hazardous drinkers saying 'yes', an absence of consent must be demonstrated through evidence of a physical struggle having taken place between the parties, were significantly greater than the odds of hazardous drinkers stating this was the case, when compared to the 'no' response option (with 17.5 percent of non-hazardous vs. 11.3 percent of hazardous drinkers stating 'yes' this was the case). There was no significant difference between hazardous and non-hazardous drinker's knowledge of valid consent being related to having the choice, freedom or capacity to choose to have sex.

**Table 27: Comparisons between hazardous and non-hazardous drinkers on the circumstances/ actions deemed relevant in helping them decide whether someone will agree to have sex with them**

Variable		Non-hazardous	Hazardous	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> df*=4	P	X <sup>2</sup> Trend	P
		N=306	N=755						
6a. If the other person has been flirting with you	Very irrelevant	41 (13.4%)	53 (7%)	94	Reference	20.53	<.001	19.55	<.001
	Irrelevant	96 (31.4%)	190 (25.2%)	286	1.53 (0.95-2.46)				
	Undecided	47 (15.4%)	120 (15.9%)	167	1.98 (1.16-3.35)				
	Relevant	106 (34.6%)	326 (43.2%)	432	2.38 (1.50-3.78)				
	Very relevant	16 (5.2%)	66 (8.7%)	82	3.19 (1.61-6.31)				
6b. If the other person has been kissing you	Very irrelevant	24 (7.9%)	16 (2.1%)	40	Reference	32.84	<.001	25.28	<.001
	Irrelevant	63 (20.7%)	107 (14.2%)	170	2.55 (1.26-5.16)				
	Undecided	29 (9.5%)	83 (11%)	112	4.29 (2.01-9.19)				
	Relevant	147 (48.2%)	381 (50.6%)	528	3.89 (2.01-7.53)				
	Very relevant	42 (13.8%)	166 (22%)	208	5.93 (2.89-12.15)				
6c. If the other person has removed some of their clothing	Very irrelevant	19 (6.3%)	13 (1.7%)	32	Reference	39.16	<.001	36.00	<.001
	Irrelevant	40 (13.2%)	57 (7.6%)	97	2.08 (0.92-4.70)				
	Undecided	48 (15.8%)	72 (9.6%)	120	2.19 (0.99-4.85)				
	Relevant	113 (37.3%)	313 (41.7%)	426	4.05 (1.94-8.46)				
	Very relevant	83 (27.4%)	296 (39.4%)	379	5.21 (2.47-10.99)				
6d. If the other person has removed some of your clothing	Very irrelevant	22 (7.2%)	16 (2.1%)	38	Reference	41.89	<.001	41.29	<.001
	Irrelevant	39 (12.8%)	50 (6.7%)	89	1.76 (0.82-3.80)				
	Undecided	39 (12.8%)	69 (9.2%)	108	2.43 (1.14-5.17)				
	Relevant	119 (39.1%)	284 (38%)	403	3.28 (1.67-6.47)				
	Very relevant	85 (28%)	328 (43.9%)	413	5.31 (2.67-10.54)				
6e. If the other person has accepted a drink from you	Very irrelevant	117 (38.4%)	247 (33%)	364	Reference	3.70	.448	2.02	.155
	Irrelevant	133 (43.6%)	356 (47.6%)	489	1.27 (0.94-1.71)				
	Undecided	31 (10.2%)	75 (10%)	106	1.15 (0.71-1.84)				
	Relevant	21 (6.9%)	56 (7.5%)	77	1.26 (0.73-2.18)				
	Very relevant	3 (1%)	14 (1.9%)	17	2.21 (0.62-7.84)				
6f. If the other person verbally agrees to have sex with you	Very irrelevant	11 (3.6%)	6 (0.8%)	17	Reference	21.66	<.001	10.64	.001
	Irrelevant	9 (3%)	31 (4.1%)	40	6.31 (1.83-21.85)				
	Undecided	20 (6.6%)	31 (4.1%)	51	2.84 (0.91-8.91)				
	Relevant	107 (35.1%)	212 (28.3%)	319	3.63 (1.31-10.09)				
	Very relevant	158 (51.8%)	470 (62.7%)	628	5.45 (1.98-14.99)				
6g. If you have had sex with the other person previously	Very irrelevant	36 (11.8%)	55 (7.3%)	91	Reference	6.64	.156	3.77	.052
	Irrelevant	81 (26.5%)	187 (24.9%)	268	1.51 (0.92-2.48)				
	Undecided	43 (14.1%)	111 (14.8%)	154	1.69 (0.98-2.92)				
	Relevant	92 (30.1%)	259 (34.5%)	351	1.84 (1.14-2.99)				
	Very relevant	54 (17.6%)	139 (18.5%)	193	1.68 (1.00-2.85)				
6h. If the other person has a reputation for sleeping around	Very irrelevant	103 (33.9%)	206 (27.4%)	309	Reference	8.99	.061	0.70	.404
	Irrelevant	83 (27.3%)	238 (31.6%)	321	1.43 (1.02-2.02)				
	Undecided	40 (13.2%)	103 (13.7%)	143	1.29 (0.83-1.99)				
	Relevant	41 (13.5%)	136 (18.1%)	177	1.66 (1.09-2.53)				
	Very relevant	37 (12.2%)	70 (9.3%)	107	0.95 (0.60-1.50)				
6i. If the other person has agreed to go back to your house	Very irrelevant	37 (12.1%)	38 (5%)	75	Reference	25.05	<.001	21.12	<.001
	Irrelevant	92 (30.1%)	185 (24.6%)	277	1.96 (1.17-3.28)				
	Undecided	66 (21.6%)	168 (22.3%)	234	2.48 (1.45-4.23)				
	Relevant	83 (27.1%)	258 (34.3%)	341	3.03 (1.81-5.07)				
	Very relevant	28 (9.2%)	104 (13.8%)	132	3.62 (1.95-6.69)				

NB: Frequency counts do not always add up to the total number of participants due to missing data  
\*df= degree of freedom

**Table 28:** Comparisons between hazardous and non-hazardous drinkers' knowledge of the legal definition of consent

Variable		Non-hazardous	Hazardous	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> df=2	P	X <sup>2</sup> Trend	P
		N=304	N=750						
7a. Consent is about agreeing to sex through choice	No	6 (2%)	26 (3.5%)	32	Reference	2.66	.265	0.15	.700
	Unsure	26 (8.6%)	50 (6.7%)	76	0.44 (0.16-1.21)				
	Yes	272 (89.5%)	674 (89.9%)	946	0.57 (0.23-1.41)				
7b. Consent is about having the capacity to choose to have sex	No	N=302 40 (13.2%)	N=750 84 (11.2%)	124	Reference	1.71	.425	1.64	.201
	Unsure	57 (18.9%)	127 (16.9%)	184	1.06 (0.65-1.73)				
	Yes	205 (67.9%)	539 (71.9%)	744	1.25 (0.83-1.89)				
7c. Consent is about having the freedom to choose to have sex	No	N=301 39 (13%)	N=749 86 (11.5%)	125	Reference	1.03	.598	0.03	.875
	Unsure	46 (15.3%)	131 (17.5%)	177	1.29 (0.78-2.14)				
	Yes	216 (71.8%)	532 (71.0%)	748	1.12 (0.74-1.68)				
7d. Consent needs to be verbally agreed	No	N=302 66 (21.9%)	N=751 228 (30.4%)	294	Reference	7.97	.019	5.12	.024
	Unsure	73 (24.2%)	153 (20.4%)	226	0.61 (0.41-0.90)				
	Yes	163 (54%)	370 (49.3%)	533	0.66 (0.47-0.91)				
7e. To prove consent was not present there must be evidence of a struggle (e.g. bruises) having taken place	No	N=303 175 (57.8%)	N=751 490 (65.2%)	665	Reference	8.36	.015	7.87	.005
	Unsure	75 (24.8%)	176 (23.4%)	251	0.84 (0.61-1.16)				
	Yes	53 (17.5%)	85 (11.3%)	138	0.57 (0.39-0.84)				

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.  
\*df= degrees of freedom

Table 29 details participants' responses to survey questions 8a-8d and provide a comparison between hazardous and non-hazardous drinkers' attitudes towards an individual's capacity to consent to sex when alcohol has been consumed. Bivariate analysis revealed there was a significant association between drinking status and three of the study variables; whilst there was not always a significant difference between individual strata and the reference category, there was a significant general trend for a greater proportion of non-hazardous than hazardous drinkers to say they strongly agreed with the statements that being drunk affects a person's capacity to consent to sex (44.9 percent of non-hazardous vs. 32.1 percent of hazardous doing so) and that a drunk person is unable to consent to sex (11.5 percent of non-hazardous vs. four percent of hazardous), when compared to the strongly disagree response option. Analysis revealed there was no significant trend between drinking status and the statement that as long as a drunken person remains physically conscious, they are capable of choosing whether or not to have sex. However, the chi-square result indicated that there was a significant difference between the drinking categories with a greater proportion of hazardous drinkers agreeing, being undecided and disagreeing with this statement. There was no significant difference between drinking status and the attitude that being drunk affects the capacity to make reasonable decisions.

**Table 29:** Comparisons between hazardous and non-hazardous drinkers' attitudes towards an individual's capacity to consent to sex when alcohol has been consumed

Variable		Non-hazardous	Hazardous	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> df*=4	P	X <sup>2</sup> Trend	P
		N=305	N=752						
8a. Being drunk affects the capacity to make reasonable decisions	Strongly disagree	2 (0.7%)	6 (0.8%)	8	Reference	3.97	.411	1.18	.276
	Disagree	11 (3.6%)	23 (3.1%)	34	0.70 (0.12-4.03)				
	Undecided	2 (0.7%)	5 (0.7%)	7	0.83 (0.08-8.24)				
	Agree	114 (37.4%)	330 (43.9%)	444	0.96 (0.19-4.85)				
	Strongly agree	176 (57.7%)	388 (51.6%)	564	0.73 (0.15-3.68)				
8b. Being drunk affects a person's capacity to consent to sex	Strongly disagree	5 (1.6%)	18 (2.4%)	23	Reference	16.46	.002	8.03	.005
	Disagree	37 (12.1%)	104 (13.8%)	141	0.78 (0.27-2.25)				
	Undecided	8 (2.6%)	34 (4.5%)	42	1.18 (0.34-4.14)				
	Agree	118 (38.7%)	354 (47.1%)	472	0.83 (0.30-2.29)				
	Strongly agree	137 (44.9%)	241 (32.1%)	378	0.49 (0.18-1.35)				
8c. A drunk person is unable to consent to sex	Strongly disagree	35 (11.5%)	121 (16.2%)	156	Reference	41.36	<.001	37.88	<.001
	Disagree	141 (46.2%)	448 (59.7%)	589	0.92 (0.60-1.40)				
	Undecided	46 (15.1%)	82 (10.9%)	128	0.52 (0.31-0.87)				
	Agree	48 (15.7%)	69 (9.2%)	117	0.42 (0.25-0.70)				
	Strongly agree	35 (11.5%)	30 (4%)	65	0.25 (0.13-0.46)				
8d. If a person is drunk, as long as they remain physically conscious, they will be capable of choosing to have sex	Strongly disagree	95 (31.1%)	156 (20.8%)	251	Reference	14.25	.007	2.58	.108
	Disagree	110 (36.1%)	340 (45.3%)	450	1.88 (1.35-2.63)				
	Undecided	38 (12.5%)	98 (13.1%)	136	1.57 (1.00-2.47)				
	Agree	52 (17%)	129 (17.2%)	181	1.51 (1.00-2.28)				
	Strongly agree	10 (3.3%)	27 (3.6%)	37	1.64 (0.76-3.55)				

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.  
\*df- degrees of freedom

Table 30 details participants' responses to survey questions 9a-11 and provides a comparison between hazardous and non-hazardous drinkers' attitudes toward the capacity to consent to sex when hypothetical scenarios of intoxicated individuals are presented. The analysis revealed a significant difference between the drinking status categories and the perception that person A should be held responsible for rape in questions 9a, 9b and 9c. That is, the odds of non-hazardous drinkers saying that they strongly agreed with person A being held responsible for rape in scenarios 9b and 9c, were greater than the odds of hazardous drinkers saying they strongly agreed with person A being held responsible for rape, when compared to the strongly disagree response option. Whilst there was an overall significant difference between hazardous and non-hazardous drinkers on question 9a there was no individual strata level significance or linear trend between the categories. However, while only eight percent of hazardous drinkers strongly agreed that person A should be held responsible for rape, 13.4 percent of non-hazardous drinkers said likewise. When students were asked to define the type of sex to have occurred in scenario 9c the odds of hazardous drinkers calling it consensual sex, as opposed to rape or being undecided, were significantly greater than the odds of non-hazardous drinkers defining it as such (5.6 percent of non-hazardous and 1.7 percent of hazardous drinkers defining the sex as rape compared the 10.8 percent of non-hazardous and 15.1 percent of hazardous drinkers labelling it consensual intercourse). There was no significant difference between

drinking status and perceptions that the type of sex depicted in question 9c should be classified a criminal offence.

**Table 30:** Comparisons between hazardous and non-hazardous drinkers' attitudes towards the capacity to consent to sex when individuals are depicted as drinking together prior to a rape

Variable		Non-hazardous	Hazardous	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> (df)*	P	X <sup>2</sup> Trend	P
		N=306	N=754						
9a. A is mildly drunk, B severely. B is too drunk to give consent. Both have sex. Next day B states rape occurred. Should A be held responsible for rape?	Strongly disagree	12 (3.9%)	26 (3.4%)	38	Reference	10.56 (4)	.032	3.22	.073
	Disagree	60 (19.6%)	189 (25.1%)	249	1.45 (0.69-3.06)				
	Undecided	64 (20.9%)	141 (18.7%)	205	1.02 (0.48-2.14)				
	Agree	129 (42.2%)	338 (44.8%)	467	1.21 (0.59-2.47)				
	Strongly agree	41 (13.4%)	60 (8%)	101	0.68 (0.31-1.49)				
9b. A is moderately drunk, B severely. B is too drunk to give consent. Both have sex. Next day B states rape occurred. Should A be held responsible for rape?		N=306	N=754						
	Strongly disagree	16 (5.2%)	53 (7%)	69	Reference	11.36 (4)	.023	8.41	.004
	Disagree	108 (35.3%)	318 (42.2%)	426	0.89 (0.49-1.62)				
	Undecided	73 (23.9%)	162 (21.5%)	235	0.67 (0.36-1.25)				
	Agree	89 (29.1%)	198 (26.3%)	287	0.67 (0.36-1.24)				
Strongly agree	20 (6.5%)	23 (3.1%)	43	0.35 (0.15-0.79)					
9c. A and B are severely drunk. A is too drunk to establish if consent is present. B is too drunk to consent. Both have sex. Next day B states rape occurred. Should A be held responsible for rape?		N=306	N=745						
	Strongly disagree	77 (25.2%)	255 (33.8%)	332	Reference	19.62 (4)	<.001	18.88	<.001
	Disagree	146 (47.7%)	369 (48.9%)	515	0.76 (0.56-1.05)				
	Undecided	52 (17%)	96 (12.7%)	148	0.56 (0.37-0.85)				
	Agree	24 (7.8%)	28 (3.7%)	52	0.35 (0.19-0.64)				
Strongly agree	7 (2.3%)	6 (0.8%)	13	0.26 (0.08-0.79)					
10. What would you describe the scenario in question 9c as		N=305	N=749						
	Consensual sex	33 (10.8%)	113 (15.1%)	146	Reference	28.22 (3)	.001	Na**	Na
	A midpoint	187 (61.3%)	525 (70.1%)	712	0.82 (0.54-1.25)				
	Rape	17 (5.6%)	13 (1.7%)	30	0.22 (0.10-0.51)				
Undecided	68 (22.3%)	98 (13.1%)	166	0.42 (0.26-0.69)					
11. If you think 9c is a mid-point, do you think it should be a criminal offence?		N=185	N=523						
	No	118 (63.8%)	355 (67.9%)	473	Reference	2.41 (2)	.300	1.90	.169
	Undecided	52 (28.1%)	141 (27%)	193	0.90 (0.62-1.32)				
Yes	15 (8.1%)	27 (5.2%)	42	0.60 (0.31-1.16)					

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df= degrees of freedom

\*\*Na= not applicable as categories are nominal in status.

### Attitudes to alcohol use and sex

Table 31 details participants' responses to survey questions 12-18 and provides a comparison between hazardous and non-hazardous drinkers' attitudes towards alcohol use and sex. The analysis revealed a significant association between drinking status and four of the study variables; while there was not always a significant differences between individual strata and the reference category, there was a significant general trend for a greater proportion of non-hazardous than hazardous drinkers to say that they strongly agreed with the statements that if on an evening out a woman has voluntarily drunk alcohol and is clearly drunk, she should hold



some degree of responsibility for a rape or sexual assault that may then happen to her (10.2 percent of non-hazardous vs. 6.1 percent of hazardous drinkers arguing this to be the case), and that if on an evening out a woman has had her alcoholic drink spiked, she should hold some degree of responsibility for a rape or sexual assault that may then happen (three percent of non-hazardous vs. 1.6 percent of hazardous drinkers strongly agreeing with this statement). However, the odds of hazardous drinkers saying that they strongly agreed that women are more interested in sex when drunk compared to when sober, and that being drunk when having sex increases the likelihood of a false allegation of rape, were significantly greater than the odds of non-hazardous drinkers saying this was the case, when compared to the strongly disagree response option. Whilst there was a significant difference between the groups on this latter variable there was no significant trend between the categories. There was no significant difference between drinking status and the attitude that a significant number of rapes reported to the police are false allegations and that women who regret having sex when drunk are more likely to report a false allegation of rape. Overall, there were high rates of agreement with these statements. There was no significant difference between drinking group and the attitude that if on an evening out, a woman who has not drunk any alcohol should hold some level of responsibility for a rape or sexual assault that may follow. Whilst there was no significant difference between hazardous and non-hazardous drinkers on this variable, there was a significant result for the trend analysis.

**Table 31: Comparisons between hazardous and non-hazardous drinkers' attitudes to alcohol and sex**

Variable		Non-hazardous	Hazardous	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> df*=4	P	X <sup>2</sup> Trend	P
		N=304	N=752						
12. A significant number of rapes reported to the police are false allegations	Strongly disagree	28 (9.2%)	44 (5.9%)	72	Reference	7.04	.134	0.28	.599
	Disagree	91 (29.9%)	262 (34.8%)	353	1.83 (1.07-3.11)				
	Undecided	77 (25.3%)	162 (21.5%)	239	1.34 (0.78-2.31)				
	Agree	98 (32.2%)	262 (34.8%)	360	1.70 (1.00-2.88)				
	Strongly agree	10 (3.3%)	22 (2.9%)	32	1.40 (0.58-3.39)				
13. Being drunk when having sex increases the likelihood of a false rape allegation	Strongly disagree	N=305 10 (3.3%)	N=752 11 (1.5%)	21	Reference	10.48	.033	2.68	.101
	Disagree	29 (9.5%)	79 (10.5%)	108	2.48 (0.95-6.44)				
	Undecided	30 (9.8%)	42 (5.6%)	72	1.27 (0.48-3.38)				
	Agree	193 (63.3%)	498 (66.2%)	691	2.35 (0.98-5.61)				
	Strongly agree	43 (14.1%)	122 (16.2%)	165	2.58 (1.02-6.50)				
14. Women who regret having sex when drunk are more likely to report a false rape allegation	Strongly disagree	N=305 17 (5.6%)	N=753 39 (5.2%)	56	Reference	6.66	.155	1.20	.273
	Disagree	72 (23.6%)	173 (23%)	245	1.05 (0.56-1.97)				
	Undecided	49 (16.1%)	81 (10.8%)	130	0.72 (0.37-1.41)				
	Agree	142 (46.6%)	396 (52.6%)	538	1.22 (0.67-2.22)				
	Strongly agree	25 (8.2%)	64 (8.5%)	89	1.12 (0.54-2.32)				
15. Women are more interested in sex when drunk compared to when sober	Strongly disagree	N=305 43 (14.1%)	N=751 75 (10%)	118	Reference	20.60	<.001	10.74	.001
	Disagree	87 (28.5%)	206 (27.4%)	293	1.36 (0.87-2.13)				
	Undecided	53 (17.4%)	87 (11.6%)	140	0.94 (0.57-1.56)				
	Agree	109 (35.7%)	301 (40.2%)	410	1.58 (1.03-2.44)				
	Strongly agree	13 (4.3%)	82 (10.9%)	95	3.62 (1.81-7.25)				
16. A woman who has drunk alcohol and is drunk, should hold some responsibility for a rape/assault that may then happen	Strongly disagree	N=303 81 (26.7%)	N=749 268 (35.8%)	349	Reference	16.32	.003	13.77	<.001
	Disagree	76 (25.1%)	212 (28.3%)	288	0.84 (0.59-1.21)				
	Undecided	31 (10.2%)	51 (6.8%)	82	0.50 (0.30-0.83)				
	Agree	84 (27.7%)	172 (23%)	256	0.62 (0.43-0.89)				
	Strongly agree	31 (10.2%)	46 (6.1%)	77	0.45 (0.27-0.75)				
17. A woman who hasn't drunk alcohol, should hold some responsibility for a rape/assault that may then happen	Strongly disagree	N=305 193 (63.3%)	N=752 523 (69.5%)	716	Reference	8.02	.091	6.40	.011
	Disagree	64 (21%)	155 (20.6%)	219	0.89 (0.64-1.25)				
	Undecided	15 (4.9%)	21 (2.8%)	36	0.52 (0.26-1.02)				
	Agree	19 (6.2%)	29 (3.9%)	48	0.56 (0.31-1.03)				
	Strongly agree	14 (4.6%)	24 (3.2%)	38	0.63 (0.32-1.25)				
18. A woman who has her drink spiked with additional alcohol, should hold some responsibility for a rape/assault that may then happen	Strongly disagree	N=304 218 (71.7%)	N=752 605 (80.5%)	823	Reference	15.90	.003	11.52	.001
	Disagree	50 (16.4%)	104 (13.8%)	154	0.75 (0.52-1.09)				
	Undecided	12 (3.9%)	9 (1.2%)	21	0.27 (0.11-0.65)				
	Agree	15 (4.9%)	22 (2.9%)	37	0.53 (0.27-1.04)				
	Strongly agree	9 (3%)	12 (1.6%)	21	0.48 (0.20-1.16)				

NB: Variable totals do not always add up to total number of participants in the study due to missing data

\*df=degrees of freedom

Students' experiences of non-consensual sex when drinking alcohol

Table 32 details participants' responses to survey questions 19a-19d and provides a comparison between hazardous and non-hazardous drinkers on the frequency with which an alcohol related strategy has been used against them to procure oral sex, or to make the student perform an oral act, in the previous 12 months and since the age of 14. Odds ratios and confidence intervals were not computed for these variables due to the small cell sizes. Bivariate analysis revealed that four variables had a significant association with drinking status. That is, since the age of 14,

hazardous drinkers were more frequently found to have been the recipients of the tactics ‘using me sexually when I was asleep/unconscious from alcohol and when I came to could not give consent’ (N=50, 7.1 percent for hazardous drinkers vs. N=13, 4.4 percent for non-hazardous), ‘encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent’ (N=88, 12.5 percent vs. N=16, 5.8 percent) and ‘using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent’ (N=114, 16.2 percent vs. N=20, 6.9 percent). Hazardous drinkers had also been the more frequently recipients of this tactic during the previous 12 months (N=77, 10.4 percent vs. N=13, 4.4 percent).

**Table 32:** Comparisons between hazardous and non-hazardous drinkers on the frequency with which alcohol related strategies were used to enable someone to have oral sex with respondents or to make respondents perform oral acts over the previous 12 months and since age 14

Variable		Non-hazardous	Hazardous	Total	X <sup>2</sup> df*=3	P
		N=297	N=738			
19a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	0 (0%)	6 (0.8%)	6	4.98	.173
	2 times	1 (0.3%)	11 (1.5%)	12		
	1 time	9 (3%)	20 (2.7%)	29		
	0 times	287 (96.6%)	701 (95.5%)	988		
19a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=288 3 (1%)	N=705 19 (2.7%)	22	4.53	.209
	2 times	5 (1.7%)	14 (2%)	19		
	1 time	13 (4.5%)	47 (6.7%)	60		
	0 times	267 (92.7%)	625 (88.7%)	892		
19b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Past 12 months	3+ times	N=300 0 (0%)	N=737 2 (0.3%)	2	2.08	.557
	2 times	3 (1%)	4 (0.5%)	7		
	1 time	6 (2%)	21 (2.8%)	27		
	0 times	291 (97%)	710 (96.3%)	1001		
19b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Since age 14	3+ times	N=288 1 (0.3%)	N=706 3 (0.4%)	4	8.16	.043
	2 times	7 (2.4%)	9 (1.3%)	16		
	1 time	5 (1.7%)	38 (5.4%)	43		
	0 times	275 (95.5%)	656 (92.9%)	931		
19c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=295 1 (0.3%)	N=732 7 (1%)	8	6.16	.104
	2 times	1 (0.3%)	15 (2%)	16		
	1 time	7 (2.4%)	26 (3.6%)	33		
	0 times	286 (96.9%)	684 (93.4%)	970		
19c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=282 3 (1.1%)	N=703 11 (1.6%)	14	12.99	.005
	2 times	1 (0.4%)	29 (4.1%)	30		
	1 time	12 (4.3%)	48 (6.8%)	60		
	0 times	266 (94.3%)	615 (87.5%)	881		
19d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=297 0 (0%)	N=734 9 (1.2%)	9	11.65	.009
	2 times	2 (0.7%)	20 (2.7%)	22		
	1 time	11 (3.7%)	48 (6.5%)	59		
	0 times	284 (95.6%)	657 (89.5%)	941		
19d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=288 3 (1%)	N=707 28 (4%)	31	15.67	.001
	2 times	5 (1.7%)	33 (4.7%)	38		
	1 time	12 (4.2%)	53 (7.5%)	65		
	0 times	268 (93.1%)	593 (83.9%)	861		

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df= degrees of freedom

Table 33 details participants' responses to survey questions 20a-20d and provides a comparison between female hazardous and non-hazardous drinkers on the frequency with which an alcohol related strategy has been used against them to procure non-consensual vaginal penetration by the penis, fingers or other objects in the previous 12 months and since the age of 14. Again, odds ratios and confidence intervals were not computed for these variables due to the small cell sizes. Bivariate analysis revealed that five variables had a significant association with drinking status. Since the age of 14, hazardous drinkers were more frequently found to have been the recipients of the tactics 'serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent' (N=60, 11.7 percent for hazardous drinkers vs. N=10, 4.3 percent for non-hazardous) 'using me sexually when I was asleep/unconscious from alcohol and when I came to could not give consent' (N=66, 12.9 percent vs. N=14, 6.1 percent), 'encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent' (N=79, 15.5 percent vs. N=15, 6.4 percent) and 'using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent' (N=127, 24.7 percent vs. N=24, 10.4 percent). Hazardous drinkers had also been the more frequently recipients of this tactic during the previous 12 months (N=81, 15 percent vs. N=10, 4.2 percent).

Table 34 details participants' responses to survey questions 21a-21d and provides a comparison between hazardous and non-hazardous drinkers on the frequency with which an alcohol related tactic has been used against them to procure non-consensual anal penetration by the penis, fingers or other objects in the previous 12 months and since age 14. Odds ratios, confidence intervals, chi-square statistics and degrees of freedom were not computed for these variables due to the very small cell sizes. Descriptive analysis of the data however indicates that the alcohol related tactic most frequently used against hazardous and non-hazardous drinkers to procure non-consensual anal penetration, in the previous 12 months and since age 14, was to use the student sexually after they had been drinking alcohol and were conscious but too intoxicated to consent or stop what was happening.

**Table 33:** Comparisons between hazardous and non-hazardous female drinkers on the frequency with which an alcohol related strategy has been used to procure non-consensual vaginal penetration by the penis, fingers or other objects over the previous 12 months and since age 14

Variable		Non-hazardous	Hazardous	Total	X <sup>2</sup> df*=3	P
		N=240	N=535			
20a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening –Past 12 months	3+ times	0 (0%)	4 (0.7%)	4	5.61	.132
	2 times	0 (0%)	8 (1.5%)	8		
	1 time	7 (2.9%)	18 (3.4%)	25		
	0 times	233 (97.1%)	505 (94.4%)	738		
20a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening –Since age 14	3+ times	1 (0.4%)	15 (2.9%)	16	11.23	.011
	2 times	1 (0.4%)	10 (2%)	11		
	1 time	8 (3.5%)	35 (6.8%)	43		
	0 times	221 (95.7%)	451 (88.3%)	672		
20b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Past 12 months	3+ times	0 (0%)	1 (0.2%)	1	2.85	.416
	2 times	2 (0.8%)	6 (1.1%)	8		
	1 time	7 (2.9%)	29 (5.4%)	36		
	0 times	230 (96.2%)	504 (93.3%)	734		
20b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Since age 14	3+ times	2 (0.9%)	6 (1.2%)	8	11.44	.010
	2 times	6 (2.6%)	11 (2.1%)	17		
	1 time	6 (2.6%)	49 (9.6%)	55		
	0 times	216 (93.9%)	447 (87.1%)	663		
20c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	0 (0%)	6 (1.1%)	6	7.38	.061
	2 times	1 (0.4%)	10 (1.8%)	11		
	1 time	7 (2.9%)	28 (5.2%)	35		
	0 times	232 (96.7%)	497 (91.9%)	729		
20c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	1 (0.4%)	10 (2%)	11	12.11	.007
	2 times	3 (1.3%)	17 (3.3%)	20		
	1 time	11 (4.7%)	52 (10.2%)	63		
	0 times	217 (93.5%)	430 (84.5%)	647		
20d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	0 (0%)	10 (1.9%)	10	20.06	<.001
	2 times	1 (0.4%)	17 (3.1%)	18		
	1 time	9 (3.8%)	54 (10%)	63		
	0 times	230 (95.8%)	459 (85%)	689		
20d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Since age 14	3+ times	3 (1.3%)	24 (4.7%)	27	20.79	<.001
	2 times	6 (2.6%)	28 (5.4%)	34		
	1 time	15 (6.5%)	75 (14.6%)	90		
	0 times	208 (89.7%)	387 (75.3%)	595		

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df= degrees of freedom

**Table 34:** Comparisons between hazardous and non-hazardous drinkers on the frequency with which alcohol related strategies were used to procure non-consensual anal penetration by the penis, fingers or other objects over the previous 12 months and since age 14

Variable		Non-hazardous	Hazardous	Total
		N=290	N=415	
21a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening –Past 12 months	1 time	2 (0.7%)	4 (0.6%)	6
	0 times	288 (99.3%)	711 (99.4%)	999
21a. Serving me high alcohol content drinks when they appeared regular strength until I was too intoxicated to give consent or stop what was happening –Since age 14	2 times	N=279 0 (0%)	N=683 2 (0.3%)	2
	1 time	4 (1.4%)	6 (0.9%)	10
	0 times	275 (98.6%)	675 (98.8%)	950
21b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Past 12 months	2 times	N=290 0 (0%)	N=716 1 (0.1%)	1
	1 time	5 (1.7%)	4 (0.6%)	9
	0 times	285 (98.3%)	711 (99.3%)	996
21b. Using me sexually when I was asleep/unconscious from alcohol and when I came to I could not give consent or stop what was happening – Since age 14	1 time	N=281 4 (1.4%)	N=683 8 (1.2%)	12
	0 times	277 (98.6%)	675 (98.8%)	952
21c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=288 1 (0.3%)	N=712 1 (0.1%)	2
	2 times	0 (0%)	2 (0.3%)	2
	1 time	3 (1%)	8 (1.1%)	11
	0 times	284 (98.6%)	701 (98.5%)	985
21c. Encouraging/pressuring me to drink alcohol until I was too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=280 1 (0.4%)	N=682 0 (0%)	1
	2 times	0 (0%)	1 (0.1%)	1
	1 time	2 (0.7%)	11 (1.6%)	13
	0 times	277 (98.9%)	670 (98.2%)	947
21d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=290 0 (0%)	N=714 2 (0.3%)	2
	2 times	1 (0.3%)	3 (0.4%)	4
	1 times	3 (1%)	21 (2.9%)	24
	0 times	286 (98.6%)	688 (96.4%)	974
21d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening – Since age 14	3 times	N=277 0 (0%)	N=685 3 (0.4%)	3
	2 times	2 (0.7%)	2 (0.3%)	4
	1 time	6 (2.2%)	28 (4.1%)	34
	0 times	269 (97.1%)	652 (95.2%)	921

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

### The characteristics of non-consensual experiences

Table 35 details participants' responses to survey questions 19-27 and provides a comparison between the characteristics of hazardous and non-hazardous drinkers' non-consensual experiences. Bivariate analysis revealed a significant association between drinking status and five of the variables. That is, the odds of hazardous drinkers saying that they had experienced non-consensual oral, vaginal or anal sex in the previous 12 months or since age 14, were significantly greater than the odds of non-hazardous drinkers saying they had experienced such acts (35.6 percent of hazardous drinkers vs. 19.1 percent of non-hazardous reported victimisation). Bivariate analysis also revealed that the odds of non-hazardous consumers

having been drinking 1-4, 5-6 and 7-9 drinks prior to the non-consensual experience were significantly greater than the odds of hazardous consumers having been drinking at these levels, when compared to having drunk 10+ alcoholic beverages (15.7 percent of non-hazardous drinkers had consumed 1-4 drinks compared to only 6.6 percent of hazardous. However, 37.1 percent of hazardous drinkers had consumed 10+ drinks vs. 13.7 percent of non-hazardous). The analysis also revealed a significant difference between drinking status and the number of hours alcoholic drinks were consumed over. Although there was no strata level significance on this variable the frequency data indicated that non-hazardous drinkers consumed their beverages over shorter time periods (72.5 percent of non-hazardous drinkers consumed their drinks within 1-4 hours vs. 47.5 percent of hazardous drinkers). Perceptions of drunkenness prior to the act also significantly differed between the two groups with the odds of hazardous drinkers saying they felt 'very drunk', as opposed to 'a little drunk' being significantly greater than the odds of non-hazardous drinkers saying this was the case. Bivariate analysis also indicated that there was a significant association between drinking status and whether the other member of the dyad had been drinking alcohol. The odds of non-hazardous drinkers saying 'no' the other party had not been drinking were significantly greater than the odds of hazardous drinkers saying this was the case (N=11, 21.6 percent of non-hazardous drinkers saying 'no' vs. N=19, 7.3 percent of hazardous), when compared to saying 'yes'. There was no significant difference between drinking status and the perpetrator's gender or the participant's relationship with the perpetrator prior to the experience.

**Table 35: Comparisons between hazardous and non-hazardous drinkers regarding the characteristics of the non-consensual act**

Variable		Non-hazardous	Hazardous	Total	Odds ratio (95% confidence interval)	X <sup>2</sup> (df)*	P
		N= 304	N=751				
19, 20, 21 combined. Have you experienced non-consensual vaginal, oral, anal sex in previous 12 months or since 14?	No Yes	246 (80.9%) 58 (19.1%)	484 (64.4%) 267 (35.6%)	730 325	Reference 2.34 (1.69-3.23)	27.55 (1)	<.001
22. What was the gender of the perpetrator? <sup>1</sup>	Multiple individuals woman Man	N=49 3 (6.1%) 7 (14.3%) 39 (79.6%)	N=255 16 (6.3%) 30 (11.8%) 209 (82%)	19 37 248	Reference 0.80 (0.33-1.95) 1.00 (0.28-3.58)	0.24 (2)	.885
23. What was your relationship with that person at the time? <sup>2</sup>	Current/ex-partner Friend Acquaintance Recent acquaintance Stranger	N=47 12 (25.5%) 11 (23.4%) 13 (27.7%) 7 (14.9%) 4 (8.5%)	N=247 51 (20.6%) 52 (21.1%) 66 (26.7%) 43 (17.4%) 35 (14.2%)	63 63 79 50 39	Reference 1.11 (0.45-2.75) 1.19 (0.50-2.84) 1.45 (0.52-4.00) 2.06 (0.61-6.91)	1.65 (4)	.799
24. How many drinks had you consumed before the experience occurred?	10+ 7-9 5-6 1-4 Unsure	N=51 7 (13.7%) 16 (31.4%) 9 (17.6%) 8 (15.7%) 11 (21.6%)	N=256 95 (37.1%) 59 (23%) 20 (7.8%) 17 (6.6%) 65 (25.4%)	102 75 29 25 76	Reference 0.27 (0.11-0.70) 0.16 (0.06-0.49) 0.16 (0.05-0.49) 0.44 (0.16-1.18)	17.08 (4)	.002
25. Over how many hours did you consume the drinks?	7+ 5-6 1-4 Unsure	N=51 1 (2%) 10 (19.6%) 37 (72.5%) 3 (5.9%)	N=259 25 (9.7%) 99 (38.2%) 123 (47.5%) 12 (4.6%)	26 109 160 15	Reference 0.40 (0.05-3.24) 0.13 (0.02-1.02) 0.16 (0.02-1.70)	12.53 (3)	.006
26. Regardless of how much you had consumed, did you feel drunk?	Very drunk Moderately drunk A little drunk Unsure	N=51 28 (54.9%) 11 (21.6%) 11 (21.6%) 1 (2%)	N=259 171 (66%) 38 (14.7%) 23 (8.9%) 27 (10.7%)	199 49 43 28	Reference 0.57 (0.26-1.24) 0.34 (0.15-0.78) 4.42 (0.58-33.85)	11.74 (3)	.008
27. Was the other person drinking alcohol?	Yes No Unsure	N=51 34 (66.7%) 11 (21.6%) 6 (11.8%)	N=259 192 (74.1%) 19 (7.3%) 48 (18.5%)	226 30 54	Reference 0.31 (0.13-0.70) 1.42 (0.56-3.57)	10.37 (2)	.006

NB: Variable totals do not always add up to total number of participants included in the study due to missing data.

\*df= degrees of freedom

<sup>1</sup>Two participants did not know the gender of their perpetrator; this information is not included in the frequency count.

<sup>2</sup>Two participants did not know the necessary information whilst 14 participants classified their relationship as 'other'. These cases have not been included in the frequency count.

Table 36 details participants' response to survey questions 28-28b and provides a comparison between hazardous and non-hazardous drinkers' classifications of the non-consensual act. No significant difference between drinking status and their classification of the experience as rape was found ( $X^2 = 1.74$ ,  $df = 2$ ,  $P = 0.42$ ). No significant difference was either identified between drinking status and explanations as to why participants did not label the experience rape ( $X^2 = 8.14$ ,  $df = 6$ ,  $P = 0.23$ ). Due to small cell sizes, odds ratios and confidence intervals were not computed for this latter variable.



**Table 36:** Comparisons between hazardous and non-hazardous drinkers classification of the non-consensual act

					Odds ratio (95% confidence interval)
Variable		Non-hazardous N=50	Hazardous N=259	Total	
28. Would you classify the experience as rape?	Undecided	15 (30%)	66 (25.5%)	81	Reference
	No	22 (44%)	140 (54.1%)	162	1.45 (0.71-2.97)
	Yes	13 (26%)	53 (20.5%)	66	0.93 (0.41-2.12)
28b. If not, or you're undecided, briefly explain why		N=21	N=127		
	It was a mistake/unwanted sex - not rape	5 (23.8%)	9 (7.1%)	14	Na <sup>*</sup>
	Event wasn't negative/I wasn't affected by it	1 (4.8%)	9 (7.1%)	10	Na
	I knew what I was doing - I wanted to do it	2 (9.5%)	17 (13.4%)	19	Na
	Event didn't fit the stereotype of rape e.g. it happened with a known person, didn't involve force, I experienced an erection	5 (23.8%)	24 (18.9%)	29	Na
	It wasn't an act that constituted a legal rape definition	1 (4.8%)	23 (18.1%)	24	Na
	I didn't say no/stop what was happening	3 (14.3%)	15 (11.8%)	18	Na
	I was as responsible due to the amount I'd drunk, for going back to their place, for flirting with them <sup>1</sup>	4 (19%)	30 (23.5%)	34	Na

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*Na=not applicable

<sup>1</sup>Ten participants could not remember the necessary information and are not included in the frequency count.

Table 37 details participants' response to survey questions 29-30i and provides a comparison between hazardous and non-hazardous drinkers' disclosures of the non-consensual act. Bivariate analysis revealed a significant difference between drinking status and telling somebody else about the act. That is, the odds of hazardous drinkers telling somebody else about their non-consensual experience were significantly greater than the odds of non-hazardous drinkers disclosing ( $X^2=8.24$ ,  $df=1$ ,  $P=.004$ ,  $OR=2.40$ ,  $CI=1.31-4.42$ ). Odds ratios, confidence intervals, degrees of freedom and chi-square statistics were not computed for questions 30a-30i due to small cell sizes. However, descriptive analysis of data indicates that if the act was disclosed, this was most frequently to friends.

**Table 37:** Comparisons between hazardous and non-hazardous drinkers disclosure of the non-consensual act

Variable		Non-hazardous	Hazardous	Total
		N=51	N=257	
29. Did you tell anyone about the experience?	No	27 (52.9%)	82 (31.9%)	109
	Yes	24 (47.1%)	175 (68.1%)	199
30. If so, who? <sup>1</sup>		N=24	N=175	
30a. Family member	Yes	3 (12.5%)	28 (16%)	31
	No	21 (87.5%)	147 (84%)	168
30b. Friend	Yes	20 (83.3%)	162 (92.6%)	182
	No	4 (16.7%)	13 (7.4%)	17
30c. The police	Yes	3 (12.5%)	6 (3.4%)	9
	No	21 (87.5%)	169 (96.6%)	190
30d. Doctor at an A&E department	Yes	0 (0%)	4 (2.3%)	4
	No	24 (100%)	171 (97.7%)	195
30e. G.P	Yes	0 (0%)	10 (5.7%)	10
	No	24 (100%)	165 (94.3%)	189
30f. Rape crisis counsellor	Yes	0 (0%)	5 (2.9%)	5
	No	24 (100%)	170 (97.1%)	194
30g. Victim support counsellor	Yes	0 (0%)	2 (1.1%)	2
	No	24 (100%)	173 (98.9%)	197
30h. Another specialist counsellor/ support service	Yes	4 (16.7%)	8 (4.6%)	12
	No	20 (83.3%)	167 (95.4%)	187
30i. A partner	Yes	1 (4.2%)	3 (1.7%)	4
	No	23 (95.8%)	172 (98.3%)	195

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.  
<sup>1</sup>Four participants reported their experience to 'other' agencies or individuals and are not included in the frequency count

Table 38 details participants' responses to survey questions 31-34m and provides a comparison between hazardous and non-hazardous drinkers' reporting of the non-consensual act to the police. Only nine participants (three non-hazardous and six hazardous drinkers) reported their experiences to police authorities and therefore due to small cell sizes chi-square tests, odds ratios and confidence intervals were not computed for these variables. Descriptive analysis of the data revealed that the three non-hazardous drinkers reported the incident to the police within four hours of its occurrence whilst non-hazardous drinking participants took longer to disclose, with one individual taking up to a week. Participants were also asked why they did not report their non-consensual experience to the police. Analysis of this data revealed a significant association between drinking status and just one of the study variables. That is, the odds of hazardous drinkers saying 'yes' alcohol having affected their memory of the events that took place was a relevant factor in not reporting, were significantly greater than the odds of non-hazardous drinkers saying this factor was relevant (N=9, 19.1 percent of non-hazardous drinkers providing this response vs. N=90, 36.6 percent of hazardous).

**Table 38: Comparisons between hazardous and non-hazardous drinkers reporting of the experience**

					Odds ratio (95% confidence interval)	X <sup>2</sup> df*=1	P
Variable		Non-hazardous	Hazardous	Total			
		N=51	N=257				
31. Did you report the incident to the police? How long after did you report?	Within a week	0 (0%)	1 (0.4%)	1	Na**	Na	Na
	Within 4 days	0 (0%)	1 (0.4%)	1			
	Within 24 hours	0 (0%)	2 (0.8%)	2			
	Within 12 hours	0 (0%)	1 (0.4%)	1			
	Within 4 hours	3 (5.9%)	1 (0.4%)	4			
	Didn't report to police	48 (94.1%)	251 (97.7%)	299			
32. If you reported to the police, was your complaint:	Followed through to trial	N=3	N=6	2	Na	Na	Na
	Discontinued by police	1 (33.3%)	1 (16.7%)	3			
	Withdrawn by myself	0 (0%)	3 (50%)	4			
32a. If withdrawn by you/police, when	During the trial	N=3	N=5	1	Na	Na	Na
	During investigation	1 (33.3%)	0 (0%)	7			
33. How satisfied were you with the police response	Very dissatisfied	N=3	N=6	2	Na	Na	Na
	Dissatisfied	1 (33.3%)	1 (16.7%)	3			
	Neither sat/dissatisfied	1 (33.3%)	2 (33.3%)	3			
	Satisfied	0 (0%)	3 (50%)	3			
34. Why didnt you report?		N=47	N=246				
34a. Lack of proof	No	33 (70.2%)	187 (76%)	220	Reference 0.74 (0.37-1.48)	0.71	.399
	Yes	14 (29.8%)	59 (24%)	73			
34b. Fear of police disbelief	No	36 (76.6%)	192 (78%)	228	Reference 0.92 (0.44-1.93)	0.05	.826
	Yes	11 (23.4%)	54 (22%)	65			
34c. Fear of disbelief by others	No	41 (87.2%)	202 (82.1%)	243	Reference 1.49 (0.60-3.72)	0.73	.393
	Yes	6 (12.8%)	44 (17.9%)	50			
34d. Fear of police blame/ judgement	No	41 (87.2%)	213 (86.6%)	254	Reference 1.06 (0.42-2.69)	0.01	.905
	Yes	6 (12.8%)	33 (13.4%)	39			
34e. Fear of others blame/ judgement	No	34 (72.3%)	193 (78.5%)	227	Reference 0.72 (0.35-1.46)	0.85	.358
	Yes	13 (27.7%)	53 (21.5%)	66			
34f. Alcohol had affected memory of events	No	38 (80.9%)	156 (63.4%)	194	Reference 2.44 (1.13-5.27)	5.36	.021
	Yes	9 (19.1%)	90 (36.6%)	99			
34g. Because I felt responsible	No	23 (48.9%)	110 (44.7%)	133	Reference 1.19 (0.63-2.21)	0.28	.594
	Yes	24 (51.1%)	136 (55.3%)	160			
34h. Unsure whether a crime had occurred	No	33 (70.2%)	162 (65.9%)	195	Reference 1.22 (0.62-2.41)	0.34	.562
	Yes	14 (29.8%)	84 (34.1%)	195			
34i. A crime didn't occur	No	32 (68.1%)	170 (69.1%)	202	Reference 0.95 (0.49-1.86)	0.02	.890
	Yes	15 (31.9%)	76 (30.9%)	91			
34j. I didn't want my family to know	No	33 (70.2%)	179 (72.8%)	212	Reference 0.88 (0.45-1.75)	0.13	.720
	Yes	14 (29.8%)	67 (27.2%)	81			
34k. I didn't want other people to know	No	34 (72.3%)	197 (80.1%)	231	Reference 0.65 (0.32-1.33)	1.42	.234
	Yes	13 (27.7%)	49 (19.9%)	62			
34l. Didn't think it was serious enough	No	30 (63.8%)	159 (64.6%)	189	Reference 0.97 (0.50-1.85)	0.01	.916
	Yes	17 (36.2%)	87(35.4%)	104			
34m. Fear of reprisals	No	40 (85.1%)	222 (90.2%)	262	Reference 0.62 (0.25-1.53)	1.10	.294
	Yes	7 (14.9%)	24 (9.8%)	31			

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df=degrees of freedom

\*\*Na= not applicable

Table 39 details participants' responses to survey questions 35-36g and provides a comparison between the location of the non-consensual act and the injuries sustained by hazardous and non-hazardous drinkers during the incident. Bivariate analysis revealed no significant associations between drinking status and any of the study variables. That is, there was no difference between hazardous and non-hazardous drinkers with regard to where the non-consensual experience occurred and whether participants suffered bruising; black eyes/broken bones/chipped teeth; cuts and scratches; vaginal/penile pain/bleeding or none of the described injuries.

**Table 39:** Comparisons between hazardous and non-hazardous drinkers with regard to the location of the non-consensual act and the injuries sustained

					Odds ratio (95% confidence interval)	X <sup>2</sup> (df)*	P
Variable		Non-hazardous	Hazardous	Total			
		N=46	N=245				
35. Where did the event take place?	At a friend's house	5 (10.9%)	32 (13.1%)	37	Reference	2.05 (4)	.726
	A public place e.g. park	6 (13%)	35 (14.3%)	41	0.91 (0.25-3.28)		
	Pub/club/bar	2 (4.3%)	15 (6.1%)	17	1.17 (0.20-6.75)		
	The other persons house	25 (54.3%)	106 (43.3%)	131	0.66 (0.24-1.87)		
	My house <sup>1</sup>	8 (17.4%)	57 (23.3%)	65	1.11 (0.34-3.69)		
36 Did you suffer injury?		N=50	N=238				
36a. Bruises	Yes	8 (16%)	53 (22.3%)	61	Reference	0.97 (1)	.324
	No	42 (84%)	185 (77.7%)	227	0.66 (0.29-1.50)		
36b. Black eye/ broken bones/ chipped teeth	Yes	2 (4%)	2 (0.8%)	4	Reference	3.01 (1)	.141 <sup>2</sup>
	No	48 (96%)	236 (99.2%)	284	4.92 (0.68-35.77)		
36d. Cuts/ scratches	Yes	6 (12%)	32 (13.4%)	38	Reference	0.08 (1)	.784
	No	44 (88%)	206 (86.6%)	250	0.88 (0.35-2.23)		
36f. Vaginal/ penis pain. bleeding	Yes	2 (0.4%)	9 (3.8%)	11	Reference	0.01 (1)	1.00 <sup>2</sup>
	No	48 (96%)	229 (96.2%)	277	1.06 (0.22-5.06)		
36g. None of the above	Yes	39 (78%)	167 (70.2%)	206	Reference	1.24 (1)	.265
	No	11 (22%)	71 (29.8%)	82	1.51 (0.73-3.11)		

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

\*df= degrees of freedom

<sup>1</sup> 13 participants non-consensual act occurred at an 'other' location and are not included in the frequency count.

<sup>2</sup> Fisher exact result reported

Table 40 details participants' responses to survey questions 37-37f and provides a comparison between hazardous and non-hazardous drinkers use of substances other than alcohol at the time of the non-consensual act. Statistical analysis revealed no significant association between drinking status and this variable (X<sup>2</sup> =0.28, df =1, P= 0.60, OR= 0.76, CI =0.28-2.07). Participants were also asked to list the substances they had consumed prior to the non-consensual act. Due to small cell sizes chi-square tests, degrees of freedom, odds ratios and confidence intervals were not computed for these responses. Descriptive analysis however indicated that cannabis was the most frequently used substance.

**Table 40:** Comparisons between hazardous and non-hazardous drinkers with regard to whether they were taking substances other than alcohol at the time of the non-consensual act

Variable		Non-hazardous	Hazardous	Total
		N=49	N=247	
37. Were you taking substances other than alcohol at the time? <sup>1</sup>	No	44 (89.8%)	215 (87%)	259
	Yes	5 (10.2%)	32 (13%)	37
37. If so, what?		N=5	N=29	
37a. Amphetamines	Yes	0 (0%)	2 (6.9%)	2
	No	5 (100%)	27 (93.1%)	32
37b. Cannabis	Yes	4 (80%)	15 (51.7%)	19
	No	1 (20%)	14 (48.3%)	15
37c. Cocaine	Yes	2 (40%)	15 (51.7%)	17
	No	3 (60%)	14 (48.3%)	17
37d. Ecstasy	Yes	1 (20%)	6 (20.7%)	7
	No	4 (80%)	23 (79.3%)	27
37e. Amyl nitrite (poppers)	Yes	0 (0%)	3 (10.3%)	3
	No	5 (100%)	26 (89.7%)	31
37f. Glues, solvents, gas or aerosols <sup>2</sup>	Yes	0 (0%)	1 (3.4%)	1
	No	5 (100%)	28 (96.6%)	33

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

<sup>1</sup>Nine participants were unsure whether they were taking other substances and were removed from the frequency counts of question 37-37f.

<sup>2</sup>Four participants reported using an 'other' substance. These participants were removed from the frequency count.

No participant reported having taken, crack, heroin, LSD/ACID, magic mushrooms, methadone, Semoron (a fictitious substance included to test for fake responding), tranquillizers, Ritalin, Viagra, GHB (Gamma Hydroxy Butyrate), anabolic steroids or ketamine which were all included within the response options.

#### Students' use of alcohol related tactics to procure non-consensual sex

Table 41 details participants' responses to survey questions 38a-38d and provides a comparison between hazardous and non-hazardous drinkers on the frequency with which they have used an alcohol related strategy to enable them to have oral sex with someone, or to make someone else perform an oral act on them in the previous 12 months and since the age of 14. Due to small cell sizes chi-square tests, degrees of freedom, odds ratios and confidence intervals were not computed. Descriptive analysis of data however revealed that the tactic most frequently used by to procure non-consensual oral sex in the previous 12 months was to encourage/pressure someone to drink alcohol until they were too intoxicated to give consent. The tactic most frequently used since the age of 14 was to find someone who had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening.

**Table 41:** Comparisons between hazardous and non-hazardous drinkers on the frequency with which they have used an alcohol related strategy to enable them to have oral sex with someone or to make someone else perform an oral act on them in the previous 12 months and since age 14

Variable		Non-hazardous	Hazardous	Total
		N=299	N=731	
38a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	0 (0%)	1 (0.1%)	1
	2 times	0 (0%)	1 (0.1%)	1
	1 time	2 (0.7%)	3 (0.4%)	5
	0 times	297 (99.3%)	726 (99.3%)	1023
38a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Since age 14?	3+ times	N=281 0 (0%)	N=697 5 (0.7%)	5
	2 times	0 (0%)	2 (0.3%)	2
	1 time	0 (0%)	2 (0.3%)	2
	0 times	281 (100%)	688 (98.7%)	969
38b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Past 12 months?	3+ times	N=298 0 (0%)	N=729 1 (0.1%)	1
	2 times	0 (0%)	1 (0.1%)	1
	1 time	1 (0.3%)	1 (0.1%)	2
	0 times	297 (99.7%)	726 (99.6%)	1023
38b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Since age 14?	3+ times	N=283 0 (0%)	N=691 1 (0.1%)	1
	2 times	0 (0%)	1 (0.1%)	1
	1 time	1 (0.4%)	1 (0.1%)	2
	0 times	282 (99.6%)	688 (99.6%)	970
38c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	N=299 0 (0%)	N=731 1 (0.1%)	1
	2 times	0 (0%)	3 (0.4%)	3
	1 time	1 (0.3%)	11 (1.5%)	12
	0 times	298 (99.7%)	716 (97.9%)	1014
38c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Since age 14?	3+ times	N=281 0 (0%)	N=691 2 (0.3%)	2
	2 times	0 (0%)	1 (0.1%)	1
	1 time	0 (0%)	10 (1.4%)	10
	0 times	281 (100%)	678 (98.1%)	959
38d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=298 0 (0%)	N=732 1 (0.1%)	1
	2 times	0 (0%)	5 (0.7%)	5
	1 time	1 (0.3%)	8 (1.1%)	9
	0 times	297 (99.7%)	718 (98.1%)	1015
38d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=281 0 (0%)	N=693 3 (0.4%)	3
	2 times	1 (0.4%)	2 (0.3%)	3
	1 time	0 (0%)	10 (1.4%)	10
	0 times	280 (99.6%)	678 (97.8%)	958

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

Table 42 details participants' responses to survey questions 39a-39d and provides a comparison between hazardous and non-hazardous drinkers on the frequency with which they have used an alcohol related strategy to enable them to engage in non-consensual vaginal sex; that is, to put their penis, fingers or objects into a woman's vagina without her consent in the previous 12 months and since the age of 14. Due to small cell sizes and 0 values, chi-square tests, degrees of freedom, odds ratios and confidence intervals were not computed. Descriptive analysis of data revealed that the tactic most frequently used in the previous 12 months and since the age of 14 was to find someone who had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening.

**Table 42:** Comparisons between hazardous and non-hazardous drinkers on the frequency with which they have used an alcohol related strategy to enable them to put their penis, fingers or objects into a woman’s vagina without her consent in the previous 12 months and since age 14

Variable		Non-hazardous	Hazardous	Total
		N=209	N=537	
39a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	0 (0%)	2 (0.4%)	2
	1 time	0 (0%)	1 (0.2%)	1
	0 times	209 (100%)	534 (99.4%)	743
39a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Since age 14?	3+ times	N=184 0 (0%)	N=476 3 (0.6%)	3
	2 times	0 (0%)	1 (0.2%)	1
	0 times	184 (100%)	472 (99.2%)	656
39b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Past 12 months?	3+ times	N=192 0 (0%)	N=499 1 (0.2%)	1
	1 time	0 (0%)	1 (0.2%)	1
	0 times	192 (100%)	497 (99.6%)	689
39b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Since age 14?	3+ times	N=183 0 (0%)	N=476 1 (0.2%)	1
	2 times	0 (0%)	1 (0.2%)	1
	1 time	0 (0%)	2 (0.4%)	2
	0 times	183 (100%)	472 (99.2%)	655
39c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	N=189 0 (0%)	N=500 2 (0.4%)	2
	2 times	0 (0%)	1 (0.2%)	1
	1 time	1 (0.5%)	5 (1.0%)	6
	0 times	188 (99.5%)	492 (98.4%)	680
39c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Since age 14?	3+ times	N=183 0 (0%)	N=474 2 (0.4%)	2
	2 times	0 (0%)	1 (0.2%)	1
	1 time	0 (0%)	8 (1.7%)	8
	0 times	183 (100%)	463 (97.7%)	646
39d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Past 12 months	3+ times	N=193 0 (0%)	N=497 2 (0.4%)	2
	2 times	0 (0%)	1 (0.2%)	1
	1 time	1 (0.5%)	7 (1.4%)	8
	0 times	192 (99.5%)	487 (98%)	679
39d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Since age 14	3+ times	N=183 0 (0%)	N=478 3 (0.6%)	3
	2 times	0 (0%)	3 (0.6%)	3
	1 time	0 (0%)	6 (1.3%)	6
	0 times	183 (100%)	466 (97.5%)	649

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

Table 43 details participants’ responses to survey questions 40a-40d and provides a comparison between hazardous and non-hazardous drinkers on the frequency with which they have used an alcohol related strategy to enable them to engage in non-consensual anal sex; that is, to put their penis, fingers or objects into someone’s anus without their consent in the previous 12 months and since the age of 14. Due to small cell sizes chi-square tests, degrees of freedom, odds ratios and confidence intervals were not computed. Descriptive analysis revealed that in the previous 12 months, all four alcohol related tactics were used equally often. The tactic most frequently used since the age of 14 was to find someone who was asleep or unconscious from alcohol and when they came to were unable to stop what was happening.

**Table 43:** Comparisons between hazardous and non-hazardous drinkers on the frequency with which they have used an alcohol related strategy to enable them to put their penis, fingers or objects into someone's anus without their consent in the previous 12 months and since age 14

Variable		Non-hazardous	Hazardous	Total
		N=194	N=500	
40a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Past 12 months?	3+ times	0 (0%)	1 (0.2%)	1
	2 times	0 (0%)	1 (0.2%)	1
	1 time	0 (0%)	1 (0.2%)	1
	0 times	194 (100%)	497 (99.4%)	691
40a. Serving someone high alcohol content drinks when they appeared to be regular strength until they were too intoxicated to give consent or stop what was happening – Since age 14?		N=186	N=477	
	3+ times	0 (0%)	2 (0.4%)	2
	1 time	0 (0%)	1 (0.2%)	1
	0 times	186 (100%)	474 (99.4%)	660
40b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Past 12 months?		N=194	N=497	
	3+ times	0 (0%)	1 (0.2%)	1
	1 times	0 (0%)	2 (0.4%)	2
	0 times	194 (100%)	494 (99.4%)	688
40b. Finding someone who was asleep or unconscious from alcohol, and when they came to they could not stop what was happening – Since age 14?		N=186	N=477	
	3+ times	0 (0%)	1 (0.2%)	1
	1 time	1 (0.5%)	3 (0.6%)	4
	0 times	185 (99.5%)	473 (99.2%)	658
40c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Past 12 months?		N=193	N=500	
	3+ times	0 (0%)	1 (0.2%)	1
	2 times	0 (0%)	2 (0.4%)	2
	0 times	193 (100%)	497 (99.4%)	690
40c. Encouraging/pressuring someone to drink alcohol until they were too intoxicated to give consent or stop what was happening – Since age 14?		N=186	N=477	
	3 times	0 (0%)	2 (0.4%)	2
	1 time	0 (0%)	1 (0.2%)	1
	0 times	186 (100%)	474 (99.4%)	660
40d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Past 12 months		N=195	N=500	
	3+ times	0 (0%)	2 (0.4%)	2
	1 time	0 (0%)	1 (0.2%)	1
	0 times	195 (100%)	497 (99.4%)	692
40d. Finding someone who had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – Since age 14		N=184	N=478	
	3+ times	0 (0%)	2 (0.4%)	2
	1 time	1 (0.5%)	1 (0.2%)	2
	0 times	183 (99.5%)	475 (99.4%)	658

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

Table 44 provides a comparison between hazardous and non-hazardous drinkers on the frequency with which they have used an alcohol related strategy to procure non-consensual sex. Participant's responses across questions 38, 39 and 40 were summed to identify whether participants had perpetrated a non-consensual sexual act in the previous 12 months or since the age of 14. Bivariate analysis revealed a significant association between drinking status and perpetrating non-consensual behaviours. That is, the odds of hazardous drinkers saying they had perpetrated a non-consensual act in either the previous 12 months or since the age of 14 were significantly greater than the odds of non-hazardous drinkers saying they had perpetrated such acts with 5.2 percent of hazardous and two percent of non-hazardous drinkers disclosing such perpetration.



**Table 44:** Comparisons between hazardous and non-hazardous drinkers on the frequency with which they have perpetrated non-consensual acts in the previous 12 months and since age 14

					Odds ratio (95% confidence interval)	$\chi^2$ df=1	P
Variable		Non-hazardous N=300	Hazardous N=737	Total			
38, 39, 40 combined. Have you perpetrated a non-consensual oral, vaginal or anal act in the previous 12 months or since age 14?	No	294 (98%)	699 (94.8%)	993	Reference 2.66 (1.11-6.37)	5.23	.022
	Yes	6 (2%)	38 (5.2%)	44			

NB: Variable totals do not always add up to the total number of participants included in the study due to missing data.

### Logistic regression analysis

Following bivariate analysis, binary logistic regression analyses were carried out on the drinking status data to establish which variables would reliably predict if the survey respondent was a hazardous or non-hazardous consumer of alcohol, when controlling for the effects of the other variables entered into the model. Again, two logistic regressions were computed: the first model included the significant attitudinal, experiential, background and knowledge variables from the preliminary chi-square analysis (which all participants had completed), whilst the second model included the significant experiential variables that related to the subset of individuals who had experienced non-consensual sex. Bivariate analysis revealed that there was a significant difference between drinking status and 24 of the attitudinal, experiential, background and knowledge variables. Removal of those participants whose records incorporated missing data across these variables resulted in the elimination of 102 cases. After these cases had been removed the 24 predictor variables were entered into the logistic regression model and the analysis run. The output from this initial regression identified that variable 7d (which asked participants to indicate whether consent needed to be verbally agreed) remained within the final step of the model despite it having no overall or individual strata level significance. As a consequence, the decision was made to remove variable 7d and the analysis was rerun with the remaining 23 predictors (see table 45 for those variable entered into the model) using the backwards conditional method of variable elimination. Table 46 details those attitudinal, experiential, background and knowledge variables that reliably predicted participants' drinking status following the logistic regression analysis.

**Table 45:** Those attitudinal, experiential, background and knowledge variables included in the first drinking status regression analysis

Variable
6a. If the other person has been flirting with you
6b. If the other person has been kissing you
6c. If the other person has removed some of their clothing
6d. If the other person has removed some of your clothing
6f. If the other person verbally agrees to have sex with you
6i. If the other person has agreed to go back to your house
7e. To prove consent was not present there must be evidence of a struggle (e.g. bruising) having taken place between the parties
8b. Being drunk affects a person's capacity to consent to sex
8c. A drunk person is unable to consent to sex
8d. If a person is drunk, as long as they remain physically conscious, they are capable of choosing to have sex
9a. Person A is mildly drunk, person B severely drunk. Person B can no longer give consent. Both have sex. Next morning person B states rape has occurred. Do you agree/disagree with person A being held responsible for rape?
9b. Person A is moderately drunk, person B severely drunk. Person B can no longer give consent. Both have sex. Next morning person B states rape has occurred. Do you agree/disagree with person A being held responsible for rape?
9c. Person A and B are severely drunk, Person A is too drunk to establish if consent is present whilst person B is too drunk to consent to sex. Both have sex. Next morning person B states rape has occurred. Do you agree/disagree with person A being held responsible for rape?
10. What would you describe the scenario in 9c as?
13. Being drunk when having sex increases the likelihood of a false allegation of rape
15. Women are more interested in sex when drunk compared to when sober
16. If on an evening out, a woman has voluntarily drunk alcohol and is clearly drunk, she should hold some responsibility for a rape/sexual assault that may then happen.
18. If on an evening out, a woman has her alcoholic drink spiked with additional alcohol, she should hold some responsibility for a rape/sexual assault that may then happen.
19, 20, 21 combined. Have you experienced non-consensual oral, vaginal or anal sex in previous 12 months or since your 14 <sup>th</sup> birthday and up until 12 months ago?
38, 39, 40 combined. Have you perpetrated a non-consensual oral, vaginal or anal act in previous 12 months or since your 14 <sup>th</sup> birthday and up until 12 months ago?
41. Participant ethnicity
42. Participant gender
44. Participant age

**Table 46: Attitudinal, experiential, background and knowledge factors predicting participants' drinking status**

Predictor variable		Non-hazardous	Hazardous	Total	B (SE)	Adjusted odds ratio (95% confidence interval)	P
		N= 282	N=695				
6b. If the other person has been kissing you	Very relevant	39 (13.8%)	156 (22.4%)	195	Reference		
	Relevant	135 (47.9%)	350 (50.4%)	485	-0.43 (0.24)	0.65 (0.41-1.04)	Ns <sup>1</sup>
	Undecided	28 (9.9%)	79 (11.4%)	107	-0.21 (0.33)	0.81 (0.43-1.56)	Ns
	Irrelevant	58 (20.6%)	97 (14%)	155	-0.63 (0.31)	0.53 (0.29-0.97)	.040
	Very irrelevant	22 (7.8%)	13 (1.9%)	35	-1.56 (0.50)	0.21 (0.08-0.56)	.002
6d. If the other person has removed some of your clothing	Very relevant	80 (28.4%)	307 (44.2%)	387	Reference		
	Relevant	109 (38.7%)	268 (38.6%)	377	-0.24 (0.20)	0.79 (0.53-1.17)	Ns
	Undecided	38 (13.5%)	64 (9.2%)	102	-0.64 (0.29)	0.53 (0.30-0.92)	.025
	Irrelevant	35 (12.4%)	41 (5.9%)	76	-0.77 (0.31)	0.46 (0.25-0.86)	.014
	Very irrelevant	20 (7.1%)	15 (2.2%)	35	-0.99 (0.48)	0.37 (0.14-0.96)	.041
7e. To prove consent was not present there must be evidence of a struggle (e.g. bruising) having taken place	Yes	52 (18.4%)	80 (11.5%)	132	Reference		
	Unsure	67 (23.8%)	163 (23.5%)	230	0.56 (0.26)	1.75 (1.05-2.94)	.033
	No	163 (57.8%)	452 (65%)	615	0.59 (0.23)	1.80 (1.15-2.84)	.011
8b. Being drunk affects a person's capacity to consent to sex	Strongly agree	127 (45%)	223 (32.1%)	350	Reference		
	Agree	110 (39%)	326 (46.9%)	436	0.59 (0.18)	1.81 (1.28-2.56)	.001
	Undecided	7 (2.5%)	30 (4.3%)	37	0.94 (0.48)	2.57 (1.01-6.51)	.047
	Disagree	33 (11.7%)	99 (14.2%)	132	0.63 (0.26)	1.87 (1.13-3.11)	.015
	Strongly disagree	5 (1.8%)	17 (2.4%)	22	0.95 (0.63)	2.57 (0.75-8.79)	Ns
10. What would you describe the scenario in 9c as?	Undecided	63 (22.3%)	85 (12.2%)	148	Reference		
	Rape	16 (5.7%)	11 (1.6%)	27	-0.92 (0.48)	0.40 (0.16-1.03)	Ns
	A midpoint	171 (60.6%)	492 (70.8%)	663	0.71 (0.21)	2.03 (1.34-3.08)	.001
	Consensual sex	32 (11.3%)	107 (15.4%)	139	1.09 (0.30)	2.97 (1.64-5.35)	<.001
15. Women are more interested in sex when drunk compared to when sober	Strongly agree	11 (3.9%)	74 (10.6%)	85	Reference		
	Agree	100 (35.5%)	276 (39.7%)	376	-1.22 (0.40)	0.30 (0.14-0.64)	.002
	Undecided	50 (17.7%)	82 (11.8%)	132	-1.55 (0.43)	0.21 (0.09-0.50)	<.001
	Disagree	82 (29.1%)	196 (18.2%)	278	-1.35 (0.41)	0.26 (0.12-0.58)	.001
	Strongly disagree	39 (13.8%)	67 (9.6%)	106	-1.63 (0.44)	0.20 (0.08-0.47)	<.001
16. If on a night out, a woman has voluntarily drunk alcohol and is drunk, she should hold some responsibility for a rape/assault that may then happen	Strongly agree	28 (9.9%)	44 (6.3%)	72	Reference		
	Agree	72 (25.5%)	156 (22.4%)	228	0.42 (0.33)	1.52 (0.80-2.91)	Ns
	Undecided	29 (10.3%)	51 (7.3%)	80	0.40 (0.39)	1.48 (0.69-3.18)	Ns
	Disagree	74 (26.2%)	202 (29.1%)	276	0.64 (0.33)	1.90 (1.00-3.63)	Ns
	Strongly disagree	79 (28%)	242 (34.8%)	321	0.93 (0.33)	2.53 (1.32-4.85)	.005
Experienced a non-consensual act	Yes	52 (18.4%)	246 (35.4%)	298	Reference		
	No	230 (81.6%)	449 (64.6%)	679	-1.06 (0.34)	0.35 (0.18-0.67)	.001
Participant age	18-19 years	95 (33.7%)	255 (36.7%)	350	Reference		
	20-21 years	114 (40.4%)	299 (43%)	413	-0.07 (0.18)	0.94 (0.66-1.34)	Ns
	22-23 years	44 (15.6%)	110 (15.8%)	154	-0.25 (0.24)	0.77 (0.48-1.22)	Ns
	24 years	29 (10.3%)	31 (4.5%)	60	-1.06 (0.34)	0.35 (0.18-0.67)	.001
Participant nationality	European	248 (87.9%)	671 (96.5%)	919	Reference		
	Non-European	34 (12.1%)	24 (3.5%)	58	-1.31 (0.33)	0.27 (0.14-0.51)	.001

Hosmer and Lemeshow Goodness-of-Fit Test:  $X^2= 5.97$ ,  $P= 0.650$ .

<sup>1</sup>Ns= Not significant

Binary logistic regression analysis identified that the full model was significantly reliable ( $X^2=5.97$ ,  $df=8$ ,  $P=0.650$ ). That is, the non-significant result from the Hosmer and Lemeshow goodness-of-fit test indicated that the predicted model values did not significantly differ from the observed values, suggesting the model's estimates fit the data at an acceptable level. The analysis revealed that 10 variables reliably predicted drinking status. Table 46 indicates that hazardous and non-hazardous drinkers had different perspectives on how relevant someone kissing them was in helping them to establish whether that person wanted to have sex with

them. A total of 7.8 percent of non-hazardous and 1.9 percent of hazardous drinkers said that this action was very irrelevant (adjusted odds 0.21, 95% CI 0.08-0.56). In addition, 20.6 percent of non-hazardous and 14 percent of hazardous drinkers stated that this action was irrelevant (adjusted odds 0.53, 95% CI 0.29-0.97). This compares to 13.8 percent of non-hazardous and 22.4 percent of hazardous drinkers stating that the other person kissing them was a very relevant factor in their decision making processes. Drinking status differences were also found in relation to the perceived relevance of the other person removing some of their clothing and the possible impact of this action on perceptions around the potential for sex. A greater proportion of non-hazardous drinkers stated that this action was very irrelevant (7.1 percent vs. 2.2 percent of hazardous drinkers, adjusted odds 0.37, 95% CI 0.14-0.96), irrelevant (12.4 percent vs. 5.9 percent of hazardous drinkers, adjusted odds 0.46, 95% CI 0.25-0.86) or were undecided about the relevance of this behaviour (13.5 percent vs. 9.2 percent of hazardous drinkers, adjusted odds 0.53, 95% CI 0.30-0.92). This compares to 28.4 percent of non-hazardous and just under half of hazardous drinkers (44.2 percent) stating it was a very relevant factor.

Differences were also identified in terms of hazardous and non-hazardous drinker's knowledge regarding whether it was necessary for physical evidence (e.g. bruising) to be present in order to prove that consent was absent. Indeed, 57.8 percent of non-hazardous and 65 percent of hazardous drinkers accurately stated that it did not (adjusted odds 1.80, 95% CI 1.15-2.84) whilst 23.8 percent of non-hazardous and 23.5 percent of hazardous consumers were unsure (adjusted odds 1.75, 95% CI 1.05-2.94). This compares to 18.4 percent of non-hazardous and 11.5 percent of hazardous drinkers inaccurately stating that 'yes' physical evidence such as bruising did need to be evident.

Attitudinal differences were also identified between the drinking groups: just over 14 percent of the hazardous drinkers sampled (14.2 percent) disagreed with the statement that being drunk affects a person's capacity to consent to sex with 11.7 percent of non-hazardous drinkers also adopting this view (adjusted odds 1.87, 95% CI 1.13-3.11). This compares to almost 50 percent of non-hazardous (45 percent) and 32.1 percent of hazardous drinkers saying that they strongly agreed with this perspective. Drinking status divergence was also found on variable 10 and participant's classification of the sex depicted in question 9c (see table 45 above for elaboration on the wording of this variable). A greater proportion of hazardous drinkers stated that the sex depicted was consensual (15.4 percent vs. 11.3 percent of non-hazardous; adjusted odds 2.97, 95% CI 1.64-5.35) or a midpoint between rape and consensual sex (70.8 percent vs. 60.6 percent of non-hazardous; adjusted odds 2.03, 95% CI 1.34-3.08) whilst a greater proportion of non-hazardous drinkers were undecided in terms of how the sex should be categorised (22.3 percent vs. 12.2 percent of hazardous drinkers). Differences were further identified on the attitudinal statement that women are more interested in sex when drunk compared to when

sober with non-hazardous drinkers being more inclined to strongly disagree (13.8 percent vs. 9.6 percent of hazardous drinkers; adjusted odds 0.20, 95% CI 0.08-0.47) and disagree with this statement (29.1 percent vs. 18.2 percent of hazardous, adjusted odds 0.26, 95% CI 0.12-0.58). This compares to 10.6 percent of hazardous and 3.9 percent of non-hazardous drinkers strongly agreeing with the statement. The final attitudinal question to differential drinkers was variable 16; here 34.8 percent of hazardous drinkers and 28 percent of non-hazardous strongly disagreed that a woman who had voluntarily drunk alcohol on an evening out and is clearly intoxicated, should hold some responsibility for a rape or sexual assault that she may then experience (adjusted odds 2.53, 95% CI 1.32-4.85). This compares to almost 10 percent (9.9 percent) of non-hazardous and 6.3 percent of hazardous drinkers arguing that they strongly agreed with an intoxicated woman bearing some of the responsibility for non-consensual sexual behaviours that may follow a period of intoxication.

Differences between the drinking groups were further identified in terms of their experiences of non-consensual sexual activity since the age of 14. Just over 80 percent of non-hazardous drinkers sampled (81.6 percent) and 64.6 percent of hazardous said 'no' they had not experienced alcohol related non-consensual sex. This however compared to 18.4 percent of non-hazardous and 35.4 percent of hazardous drinkers who had experienced such activity (adjusted odds 0.35, 95% CI 0.18-0.67). The logistic regression analysis also identified drinking status divergence in terms of participant age and nationality. Just over 10 percent (10.3 percent) of non-hazardous drinkers and 4.5 percent of hazardous fell into the 24 year age bracket (adjusted odds 0.35, 95% CI 0.18-0.67). This compares to 33.7 percent of non-hazardous and 36.7 percent of hazardous drinkers falling into the 18-19 year age strata. Finally, drinking status differences were identified in relation to participant nationality; 12.1 percent of non-hazardous and 3.5 percent of hazardous drinkers were non-Europeans. This compares to 87.9 percent of non-hazardous and 96.5 percent of hazardous drinking respondents being categorised as European (adjusted odds 0.27, 95% CI 0.14-0.51).

The second drinking status logistic regression was computed on the subset of individuals (n=329) who had experienced non-consensual sex. Table 47 shows those significant variables from the bivariate analysis stage which could have been included into the regression model. However, variables 20a14Y, 20b14Y, 20c14Y, 20d12M and 20d14Y specifically asked female participants about their experiences of non-consensual vaginal sex, with men being asked to skip this question accordingly. Due to the need to remove participants with missing data from a logistic regression analysis, including these five variables into the logistic regression would have resulted in the elimination of a further 55 individuals. Due to the already small sample and large number of response categories across the table 47 variables, removal of these additional cases would have resulted in a significant number of 0 cells including reference group

categories. As such, the decision was taken to remove these five variables from the logistic regression analysis and run the model with the remaining 10 predictors. Thus, of the 329 individuals who had experienced non-consensual sex, 75 cases were removed due to missing data across these 10 predictors. In addition, the six remaining female participants who had reported their non-consensual experience to the police were excluded to again enable the removal of zero reference category cells. Table 48 highlights those variables that predicted drinking status following the multivariate analysis.

**Table 47:** Those significant experiential variables from the bivariate drinking status analysis

Variable
19b14Y. How many times has someone had oral sex with you or made you perform oral acts when you were asleep/unconscious from alcohol and when you came to you to could not give consent or stop what was happening – since age 14?
19c14Y. How many times has someone had oral sex with you or made you perform oral acts by encouraging/pressuring you to drink alcohol until you were too intoxicated to give consent or stop what was happening – since age 14?
19d12M. How many times has someone had oral sex with you or made you perform oral acts when you have been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – past 12 months?
19d14Y. How many times has someone had oral sex with you or made you perform oral acts when you have been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – since age 14?
20a14Y. How many times has someone procured vaginal penetration by the penis, fingers or other objects by serving you high alcohol content drinks when they appear regular strength until you were too intoxicated to consent or stop what was happening – since age 14?
20b14Y. How many times has someone procured vaginal penetration by the penis, fingers or other objects when you were asleep/unconscious from alcohol and when you can to could not give consent or stop what was happening – since age 14?
20c14Y. How many times has someone procured vaginal penetration by the penis, fingers or other objects by encouraging/pressuring you to drink alcohol until you were too intoxicated to consent or stop what was happening – since age 14?
20d12M. How many times has someone procured vaginal penetration by the penis, fingers or other objects when you have been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – past 12 months?
20d14Y. How many times has someone procured vaginal penetration by the penis, fingers or other objects when you have been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening – since age 14?
24. How many drinks had you consumed before the experience occurred?
25. Over how many hours did you consume the drinks?
26. Regardless of how much you has consumed, did you feel drunk?
27. Was the other person drinking alcohol?
29. Did you tell anybody about the experience?
24f. Why didn't you tell the police? Alcohol had affected my memory of the events that occurred?

**Table 48:** Experiential factors predicting participant’s drinking status

Predictor variable		Non-hazardous	hazardous	Total	B (SE)	Adjusted odds ratio (95% confidence interval)	P
		N= 40	N= 208				
25. Over how many hours did you consume the drinks?	1-4	29 (72.5%)	98 (47.1%)	127	Reference		
	5-6	8 (20%)	81 (38.9%)	89	1.16 (0.45)	3.20 (1.33-7.68)	.009
	7+	1 (2.5%)	20 (9.6%)	21	1.91 (1.07)	6.73 (0.82-55.15)	Ns <sup>1</sup>
	Unsure	2 (5%)	9 (4.3%)	11	0.21 (0.91)	1.23 (0.21-7.27)	Ns
27. Was the other person drinking alcohol?	Unsure	3 (7.5%)	35 (16.8%)	38	Reference		
	No	10 (25%)	14 (6.7%)	24	-2.24 (0.77)	0.11 (0.02-0.48)	.004
	Yes	27 (67.5%)	159 (76.4%)	186	-0.98 (0.67)	0.38 (0.10-1.39)	Ns
29. Did you tell anyone about the experience?	Yes	16 (40%)	139 (66.8%)	155	Reference		
	No	24 (60%)	69 (33.2%)	93	-1.13 (0.38)	0.32 (0.15-0.68)	.003

Hosmer and Lemeshow Goodness-of-fit Text:  $X^2 = 7.78$ ,  $P = 0.352$

<sup>1</sup>Ns= not significant

The binary logistic regression analysis again identified that the full model was significantly reliable ( $X^2 = 7.78$ ,  $df = 7$ ,  $P = 0.352$ ) with the non-significant statistic from the Hosmer and Lemeshow goodness-of-fit test indicating that the predicted model values did not significantly differ from the observed values. The analysis revealed that three variables reliably predicted drinking status. Table 48 indicates that prior to the non-consensual experience hazardous and non-hazardous drinkers consumed their drinks over different time periods. Almost 40 percent (38.9 percent) of hazardous drinkers and just 20 percent of non-hazardous consumed their beverages over 5-6 hours (adjusted odds 3.20, 95% CI 1.33-7.68). This compares to 72.5 percent of non-hazardous and 47.1 percent of hazardous drinkers consuming their alcoholic beverages over the shorter time span of 1-4 hours. Whether the other party had been drinking alcohol was also found to significantly differentiate the drinking groups. A total of 25 percent of non-hazardous drinkers said ‘no’ the other party had not been drinking whilst just 6.7 percent of hazardous drinkers stated this was the case (adjusted odds 0.11, 95% CI 0.02-0.48). This compares with 7.5 percent of non-hazardous and 16.8 percent of hazardous consumers of alcohol being unsure whether the other party was drinking. Finally, participant’s disclosure of their non-consensual experience was also found to differentiate the groups. Sixty percent of non-hazardous and 33.2 percent of hazardous drinkers told no one at all about their experience (adjusted odds 0.32, 95% CI 0.15-0.68) compared to 40 percent of non-hazardous and a more substantial 66.8 percent of hazardous drinkers who stated that they had disclosed.

## **Discussion: study one**

The current study aimed to evaluate a UK student samples knowledge, attitudes and experiences of non-consensual sex when drinking or drunk. In doing so, the study aimed to explore and identify:

- 1) Attitudes held by students in relation to sexual consent.
- 2) Students' knowledge of the English and Welsh law's definition of sexual consent.
- 3) Attitudes held by students in relation to alcohol use and non-consensual sex.
- 4) The proportion of students who have experienced non-consensual sex when drinking alcohol.
- 5) The proportion of students who have used an alcohol related tactic to procure non-consensual sex.
- 6) Differences in knowledge, attitude and experience of non-consensual sex between male and female students.
- 7) Differences in knowledge, attitude and experience of non-consensual sex between hazardous and non-hazardous drinkers.

### Students' attitudes and knowledge of sexual consent

Consent is an integral part of how individuals negotiate healthy sexual interactions and is therefore an important area for prevention work that focuses on reducing the potential for sexual offences including rape. Research that examines sexual consent, that is, how sexual consent is perceived, understood and communicated has wide reaching implications and further investigation is paramount, especially in light of little research having addressed the intricacies of sexual consent amongst student populations (Borges, Banyard, & Moynihan, 2008).

When asked about the actions and behaviours study participants deemed relevant in helping them to decide whether someone they had recently met would have sex with them, it was evident that more overt behaviours were taken as indicators of possible consent. For example, 89.9 percent of participants stated that if someone verbally agreed to have sex, this would be a very relevant or relevant action in their decision-making process. In contrast, less overt behaviours, such as the other party accepting a drink, were considered less important in the process of evaluating the potential for sex (with only 8.9 percent of participants stating this action was relevant or very relevant). This finding lends weight to research that suggests more explicit actions, such as verbalising a 'yes' response prior to intercourse, are deemed the most indicative and clear expressions of consent being present (Gross et al. 2001; Lim & Roloff, 1999; Sawyer, Pinciaro, & Jessell, 1998). Behaviours which involved the removal of clothing or kissing were generally viewed as relevant actions in the decision-making process (76.8 percent



of participant said that the other person removing some of their clothing was either very relevant or relevant whilst 69.4 percent stated that the other person kissing them was relevant or very relevant in deciding whether that person was likely to have sex with them). It may be suggested that for a number of survey respondents there is a point within a sexual interaction when the possibility of sex is likely to be assumed; namely, following consensual kissing and the removal of clothing. Indeed, this would support research that suggests sexual interactions follow culturally prescribed scripts where sex is largely accepted to progress through the stages of kissing to heavier foreplay and culminating in penetrative intercourse (Frith, 2009; Opinion Matters, 2010b). Such assumptions however may have important implications for those individuals who do not wish to progress to the point of penetrative sex. If it is generally assumed that individuals who engage in kissing and the removal of clothing want sex, or that these behaviours are deemed indicative of consent being present, then this may pose problems when such rape cases come to court. It is realistic to assume that lay individuals who come to sit as jurors in real life rape cases may fail to accept that individuals who engage in these behaviours – behaviours which are deemed synonymous with wanting intercourse – do not actually desire full penetrative sex. Whilst the law specifically acknowledges that consent is a continuing process and can legitimately be retracted at any point, the current study suggests that societal assumptions about sex and expectations around when it is most likely to occur may contrast with this legal position. Indeed, previous UK survey research has found that third parties often believe that having allowed a sexual interaction to progress to a certain stage results in the woman then forfeiting her right to say no at this late point (Opinion Matters, 2010a; 2010b). Due to perceptions around alcohol consumption enhancing a woman's desire for intercourse (Norris & Cubbins, 1992), it is realistic to assume that lay jurors may be additionally reluctant to accept that a complainant did not desire penetrative intercourse, under the given circumstances.

The survey identified confusion around students' understandings of the definition of sexual consent. The analysis revealed that the majority of participants stated that the elements of agreeing to sex through choice, having the capacity to choose and having the freedom to decide to engage in intercourse were central to the definition of consent (89.9 percent, 70.6 percent and 71.5 percent of participants respectively stating this to be the case). Whilst this may appear a positive demonstration of students' appreciations of the law, it is worth noting that a proportion of participants were still either unsure or unaware whether these elements were included in the definition. For example, 17.5 percent (N=187) of participants were unsure whether consent was related to having the capacity to choose to have sex, whilst 11.9 percent (N=127) did not think the issue of capacity was central to the definition. This lack of legal awareness contrasts with participants' general awareness around the impacts of alcohol on cognitive functioning and decision-making. For example, the majority of respondents agreed or strongly agreed that being

drunk affects a person's capacity to consent to intercourse (80.6 percent arguing this to be the case). However, there appeared to be less appreciation around the nuanced nature of capacity with 220 participants (20.5 percent) agreeing or strongly agreeing that as long as the drinking party remained physically conscious, they would be capable of choosing whether to have sex. This stance clearly contradicts the legal position which states that the 'capacity to consent may evaporate well before a complainant becomes unconscious' (Bree, 2007, p. 167). This latter finding supports the conclusions of Finch and Munro (2007; 2005) and their participants' assertions that if a drunken individual maintains consciousness, they will still retain the capacity to reason at least at a basic level. Again, it is legitimate to suggest that such assumptions may cause problems in the legal arena when jurors are asked to make evaluations about a rape complainant's level of capacity. A lack of capacity is integral in establishing when consensual sex crosses over into rape and for a subset of jurors', evaluations may be based on faulty assumptions which equate consciousness with being suitably capable. Indeed, commentators have aired concerns around the difficulties facing jurors when asked to make judgements about an individual's level of capacity, and the potential for bias when further elaboration on the term is not provided (Cowan, 2008; Elvin, 2008; Rumney & Fenton, 2008). The current study suggests that such concern is well founded for a proportion of individuals.

Half of the participants sampled inaccurately thought that consent must be verbally articulated in order for it to be valid (50.7 percent saying this was the case). In addition, over one third of respondents (37.2 percent) were either unsure or inaccurately stated that there must be physical evidence (for example bruising) of a struggle having taking place between parties in order to prove consent was not present. Although little research has looked at how well individuals' personal perceptions of rape correspond with an actual legal definition, Withey (2008) did identify that UK secondary school teenagers' beliefs around what acts constituted rape often fell short of the legal definition. Forced oral sex for example was not typically known to be included within the rape definition. American research by Sawyer et al. (1998) also identified that students' understandings of rape did not typically correspond with a legal definition of the crime. Here, rape attributions were predominantly made by study participants when a 'no' response to sex was verbalised by the scenario individual. The Opinion Matters survey (2010a) also demonstrates that from a sample of 1,061 Londoners aged 18-50 years, 18 percent did not know whether it was rape if a man makes his long-term partner have sex which they do not consent to. The study also identified that the younger age brackets were less likely to agree that this situation would constitute rape with these findings being similarly expressed in a more recent survey (Opinion Matters, 2010b). The idea that a lack of consent must be articulated though a definitive 'no' response or action to be considered valid is supported by a large body of research (for example, Kahn et al., 2003; O'Byrne et al., 2008) as is the belief that physical injuries must be present for the intercourse to legitimately constitute rape (for example, Kelly,

2001; Ryan, 1988; Temkin & Krahe, 2008). It may be suggested that the pervasive 'real rape' discourses which promote and reinforce ideas around rape involving strangers, the use of violence and that clear verbal statements will inevitably prevent sexual violence, have influenced participants' perceptions and understandings of consent and the parameters around its validity. Whilst many individuals will be aware if they experience sexual victimisation, even if they do not have a working knowledge of rape law - and the majority of individuals without such knowledge can still negotiate healthy sexual relationships - if students cannot identify what constitutes legally defined rape, a proportion of individuals will fail to report an offence or seek help and support to deal with it. In addition, if students do not fully appreciate that certain actions they perpetrate constitute abuse, there is no legitimate basis upon which positive behavioural change or intervention work can begin. Clearly, there is the need for the promotion of messages around the actions and behaviours that legally constitute rape, in order to address the gaps in knowledge that have been identified.

When survey respondents were given hypothetical scenarios depicting a drinking couple experiencing varying levels of intoxication, it was evident that when there was greater equivalency in the dyad members' levels of drunkenness, there was a reduced willingness to label the sex depicted as non-consensual. When person A was portrayed as mildly drunk and person B severely drunk and unable to give consent, survey participants were more inclined to agree or strongly agree with person A being held accountable for rape (53.6 percent of participants stating this was the case). In contrast, when person A was portrayed as moderately drunk and person B severely drunk and again incapable of consent, 31.1 percent of participants agreed or strongly agreed with person A being held accountable for rape. When person A and B were both described as severely drunk, person B too drunk to consent and person A too drunk to establish whether consent was present, only 6.1 percent of respondents agreed or strongly agreed with such sex being categorised as rape. These findings appear to suggest that alcohol, in certain situations, may be viewed as a defence to a sexual offence despite this contrasting sharply with the legal position and requirement that a complainant consents to sex and be in a position whereby they have the capacity to do so (Bree, 2007).

The above findings support the conclusions of Norris and Cubbins (1992) study conducted almost twenty years previous as well as the work of Finch and Munro (2007; 2005). These studies demonstrated that participants were more inclined to view sex as consensual when both members of a dating couple were portrayed as drinking together prior to the offence (Norris & Cubbins, 1992) or felt it would be unfair to hold the defendant criminally liable if each party was equally intoxicated (Finch & Munro, 2005). Similarly, participants were more inclined to label the sex as rape when the complainant was depicted as drinking independently (Norris & Cubbins, 1992) or the defendant was less intoxicated or sober (Finch & Munro, 2005).

Richardson and Campbell (1982) argued that when a defendant is portrayed as drunk and a rape follows, the circumstance of drunkenness is seen to mitigate a proportion of the responsibility for the events that occurred. Finch and Munro (2005) also state that when a defendant is portrayed as less drunk or sober, third parties perceive that defendant to be in a position whereby they are capable of ensuring consent is present, and should do so. Failure to establish consent in such circumstances results in defendants being perceived to have taken advantage of a vulnerable individual. It is possible to take this analysis one stage further and suggest that participants may perceive defendants who are equivalently intoxicated to not be in the advantageous position whereby they can gauge the complainant's level of intoxication. Consequently, their drunkenness may be seen to reasonably mitigate their responsibility for ensuring consent is present. Participants may feel it is unfair that the sole responsibility for establishing consent lies with the defendant, whose ability to think clearly had equally been eradicated by the influence of alcohol. Further research is needed to help explore and corroborate these hypotheses.

Through focus group discussion, Finch and Munro (2005) identified that when parties are equally intoxicated, participants look for a mid-point between rape and consensual sex to try and describe the intercourse that took place. This perspective is supported by the current research which used a survey methodology to identify that 67.4 percent of participants described the sex that took place between person A and B, when both were severely drunk, as a mid-point between rape and consensual intercourse. This can be viewed as a somewhat robust finding in light of alternative methodology being able to reproduce comparable conclusions. The current study aimed to extend this latter finding by asking whether those participants who viewed the sex as a mid-point, classified that mid-point behaviour as a criminal offence. Findings indicated that the majority of respondents (67.1 percent) did not feel that the sex depicted should be labelled criminal. This suggests that a significant proportion of participants do not view non-consensual sex as rape, or indeed a criminal act, when certain drinking circumstances exist. Again, this may raise specific concerns when such rape cases appear in court. Further research is needed to help establish the barriers that exist around labelling sex between equally intoxicated individuals as criminal in order to help develop a more complete understanding of lay participants' perceptions.

#### Gender differences in students' attitudes and knowledge of sexual consent

Following chi-square and logistic regression analysis gender differences were identified across several of the above study variables. Many of the significant chi-square findings failed to maintain statistical significance when placed into the logistic regression model. The current discussion consequently focuses on those variables that remained statistically significant

following multivariate analysis. The logistic regression model identified that male and female respondents had different perspectives on how relevant someone kissing them, removing some of their own clothing, removing some of the participants clothing and having a reputation for sleeping around were in helping them to establish whether the other person wanted to have sex with them (see table 23). Generally, a greater proportion of women than men stated that these factors were very irrelevant or irrelevant when compared to the very relevant response option. For example, six percent of males said that the other person kissing them was irrelevant to their decision-making whilst 19.2 percent of females said this was the case. This compares to 27 percent of men and 17.9 percent of women arguing that this factor was very relevant (adjusted odds ratio 0.36, 95% CI 0.17-0.76). In addition, 4.5 percent of women argued that the other person removing some of their clothing was very irrelevant to the decision-making process whilst 0.9 percent of men argued this perspective. This compared with 34 percent of women and 58.8 percent of men who stated that this action was very relevant (adjusted odds ratio 0.01, 95% CI 0.00-0.24).

Such gender differences are perhaps not surprising in light of the body of empirical study that has found divergence in the way men and women understand and communicate consent. Men have been found to more frequently use non-verbal actions such as kissing, sexual touching and the removal of clothing as methods for seeking their partners consent. Women in contrast have been found to more frequently allow a partner to remove their clothing, kiss their partner back and not express a 'no' response to the sexual activity, as ways of communicating their consent and desire to continue (Beres, 2007; Hickman & Muehlenhard, 1999). Gender differences in the way consent is communicated have been argued to relate to the social sexual scripts which resonate in society and which are learnt through the socialisation process. For men, the traditional sexual script involves the initiation of sexual encounters and the active seeking of sexual partners. Women's scripts in contrast involve the setting of sexual limits and boundaries (Frith, 2009; Lees, 1993). Despite changes in sexual climate which see women having sex at an earlier age and having more sexual partners than has historically been the case (Johnson et al., 2001), the above scripts are argued to remain (O'Byrne et al., 2008). Indeed, they are often used as a basis to explain why men are more proactive in their approach to gaining consent. It may therefore be suggested that because men more frequently use the overt actions of kissing and removing clothing to seek their partner's consent, such overt behaviours will come to be regarded as more relevant factors to men, in the process of establishing whether a partner is likely to consent to sex.

Certain studies suggest that female students, more than male, believe explicit sexual consent, including the verbalising of a 'yes' and 'no', is necessary during sexual encounters (Humphreys, 2007). Indeed, this latter explanation may account for the differences that were identified in the

survey around men and women's knowledge as to whether consent needed to be verbally agreed (see table 23). Although there was no strata level significance on this variable, a greater proportion of females inaccurately stated that consent did need to be verbalised (53.5 percent of women vs. 42.5 percent of men saying this was the case). A belief that consent should be explicit may have translated into females believing that the law was structured so as to accommodate a need for verbal agreement. Indeed, if participants were unaware of the legal position it is reasonable to assume that on these questions participants still 'guessed' but in accordance to their own personal perceptions and interpretations of what consent is and how it is communicated. This explanation would align with the research of Humphreys (2007) that suggests women, more than men, prefer overt consent expressions and this would also fit with explanations that suggest women are the gatekeepers to sex, as well as the gender most likely to experience rape, and who consequently may be more attuned to ensuring consent is present, ideally through overt actions. Irrespective of the interpretation adopted, the current study indicates that there is clear confusion around the legal position on rape and that confusion appears to be more pertinent to women. Additional research is needed to establish whether women have a less well formed understanding of legal sexual consent and if so, to ensure these gaps in knowledge are addressed.

Finally, gender differences were identified in relation to capacity based survey questions (see table 23). A total of 54.5 percent of men and 38.6 percent of women agreed that being drunk affects the capacity to make reasonable decisions. This compared to 57.7 percent of women and 39.1 of men strongly agreeing with the statement (adjusted odds ratio 2.12, 95% CI 1.47-3.04). Again, although no strata level significance was identified, a greater proportion of women also agreed or strongly agreed with the statement that a drunken person is unable to consent to sex and agreed and strongly agreed with person A being held responsible for rape when person A was portrayed as moderately drunk, person B severely drunk and unable to give consent, despite sex taking place. These findings may suggest that females were more attuned to the impacts of alcohol on behaviour and its possible implications for consent. Indeed, much public, media and political focus resides on women's drinking behaviour, combined with discourses that resonate in the press and society at large that vilify drinking women and hold them responsible for a rape that follows a period of intoxication (ICM 2005; Opinion Matters, 2010a). Campaign materials often warn women specifically about the dangers of drinking, its association with sexual assault and suggest women take responsibility for themselves, their friends and the amount they consume (Neame, 2003). Such publicity may serve to heighten women's awareness around alcohol and its possible impacts on behaviour resulting in their enhanced likelihood of responding positively to these survey items.

## Drinking status differences in students' attitudes and knowledge of sexual consent

Following the drinking status logistic regression analysis, differences were identified amongst hazardous and non-hazardous drinkers on several of the sexual consent, attitudinal and knowledge survey variables (see table 46). A greater proportion of non-hazardous drinkers stated that if someone has been kissing them this would be an irrelevant factor in helping them to establish the potential for sex with 20.6 percent of non-hazardous and 14 percent of hazardous drinkers stating this was the case. This compared to 13.8 percent of non-hazardous and 22.4 percent of hazardous drinkers arguing that kissing was very relevant to the decision-making process (adjusted odds ratio 0.53, 95% CI 0.29-0.97). Similarly, 7.1 percent of non-hazardous drinkers stated that the other person removing some of the participant's clothing would be very irrelevant to the decision-making process whilst 2.2 percent of hazardous drinkers stated this was the case. This compared to 44.2 percent of hazardous and 28.4 percent of non-hazardous drinkers arguing that this factor was very relevant (adjusted odds ratio 0.37, 95% CI 0.14-0.96). These findings appear to echo research that has emphasised the disinhibiting effects of alcohol on sexual behaviour and expectation (Abbey, 2002; Abbey, et al., 2004; Bellis et al., 2008). As previously noted, there are widely held societal beliefs around the impact of alcohol on sexual activity. George and Stoner (2000) emphasise that both men and women to some degree believe alcohol consumption increases the likelihood of obtaining sex. Abbey (2002) also argues that peer groups, especially the peer groups of young university or college students support and reinforce these ideas through their acting out of heavy drinking and casual sexual encounters. It may therefore be possible to suggest that heavier drinkers overestimate, or estimate more strongly than non-hazardous drinkers, the potential for sex from more ambiguous situations. This would perhaps complement the suggestions of Abbey et al. (2000) who found that individuals, irrespective of gender, who had consumed quantities of alcohol, were more likely to interpret a partner as behaving sexually towards them, compared to when alcohol had not been consumed. Similarly, Gross et al. (2001) found that study participants who had consumed alcohol, or who expected to consume alcohol, took significantly longer to identify the point of sexual inappropriateness when listening to an audio recording of a fictitious rape. Whilst the participants completing the current survey were not required to consume alcohol prior, and their responses were therefore not influenced by the impacts of alcohol myopia, it is still perhaps legitimate to suggest that heavier drinkers may be more likely to assume sex will occur in certain situation or that general heavier drinking may be associated with an enhanced propensity to interpret situations as having sexual potential. Indeed, individuals who drink more heavily have been found to have more sexual partners and to engage in unplanned sex more often than individuals who drink less (Thompson et al., 2005). If the heavy drinkers within the current sample conform to these norms then engaging in sex more frequently may sensitise the individual into believing sex is more likely to occur in future situations, especially if such norms

are shared by, and reinforced via, members of the individual's peer group. These conclusions must remain speculative in light of the lack of empirical research that has specifically looked at heavy drinkers' consent based decision-making. Indeed, further research would help to corroborate or refute these suggestions.

Differences were identified in hazardous and non-hazardous drinker's knowledge regarding whether the law required physical evidence to be present, in order to prove consent was absent (see table 46). A greater proportion of hazardous drinkers (65 percent) correctly identified that the law did not require physical evidence (with 57.8 percent of non-hazardous stating this to be the case). This compares to 18.4 percent of non-hazardous and 11.5 percent of hazardous drinkers inaccurately arguing that 'yes' physical evidence must be evident (adjusted odds ratio 1.80, 95% CI 1.15-2.84). As noted, heavier drinkers have been found to have more sexual partners and engage in unplanned sex more often. If this is the case for the hazardous drinkers in the current sample, then such exposure may familiarise or increase their knowledge around sexual consent and the legal position. However, this argument seems to sit at odds with the finding that heavier drinkers also tend to experience greater levels of sexual victimisation, perpetrate more risky sexual behaviour and have sex that they later regret more frequently than non-heavy drinkers (Cashell-Smith et al., 2007; Mohler-Kuo et al., 2004). Indeed, it could be that exposure to such negative outcomes attenuates a heavier drinker to the issue of sexual consent and the legal stance. As will be discussed, a greater proportion of hazardous drinkers within the survey had experienced non-consensual sex and it may be through the subsequent disclosure of such experiences and rationalising what took place with friends and family that hazardous-drinkers come to appreciate that sex can be non-consensual, irrespective of whether there is bruising or resultant physical evidence.

Attitudinal differences on capacity related questions were also identified between the drinking groups (see table 46); 14.2 percent of hazardous and 11.7 percent of non-hazardous drinkers disagreed with the statement that being drunk affects a person's capacity to consent to sex. This compared to 45 percent of non-hazardous and 32.1 percent of hazardous drinkers strongly agreeing with the perspective (adjusted odds ratio 1.87, 95% CI 1.13-3.11). This finding could be taken as an example of heavier drinkers attempting to minimise the impacts of their drinking behaviour. The law specifically acknowledges that alcohol can impinge on an individual's capacity to meaningfully choose whether or not to have sex. It is therefore possible to suggest that heavier drinkers may play down the impact of excessive drinking and do this to protect them from having to acknowledge that their drinking behaviour could have problematic consequences for either themselves or others. Indeed, it is a natural human process to try and protect self-esteem through such minimising techniques (Breakwell, 2001; Joffe, 2003). Such techniques serve to maintain the individual's belief that their behaviour is acceptable, and in



turn enables them to legitimately continue with that behaviour. Due to non-hazardous drinkers' lack of vested interest in protecting self-esteem, they may be able to look more objectively at the reality of heavy drinking and conclude that alcohol consumption is likely to impact on a person's capacity to consent to intercourse.

Finally, drinking status divergence was found in relation to the classification of the sex depicted in question 9c (see table 46); that is, when person A and B are depicted as severely drunk, person B too drunk to consent and person A too drunk to establish if consent is present. On this variable a greater proportion of hazardous drinkers stated that the sex depicted in the scenario was consensual (adjusted odds ratio 2.97, 95% CI 1.64-5.35) or a midpoint between rape and consensual sex, when compared to being undecided on how to categorise the intercourse (adjusted odds ratio 2.03, 95% CI 1.34-3.08). This finding was not a function of gender, due to the gender variable not maintaining significance within the regression model. Again, this finding may reflect the suggestion that heavier drinkers are more likely to assume sex will occur in certain drinking situations. As discussed, third parties are often more likely to view sex as consensual when both members of a dyad have been drinking alcohol together (Finch & Munro, 2005; 2007; Norris & Cubbins, 1992; Richardson & Campbell, 1982). The current study may extend the finding by suggesting that perspectives on whether such sex is consensual may relate to the respondent's own drinking pattern and history. The current finding again seems to echo Gross et al's. (2001) study that identified participants who had consumed alcohol took longer to identify the point of sexual inappropriateness when listening to an audio recording of a fictitious rape. It may be legitimate to suggest that post period of intoxication, heavier drinkers experience difficulties identifying points of sexual inappropriateness. As stated, the research literature has found an association between heavy drinking and having an increased number of sexual partners, engaging in unplanned sex, experiencing sexual victimisation and perpetrating risky sexual behaviour (Cashell-Smith et al., 2007; Mohler-Kuo et al., 2004; Thompson et al., 2005). It is possible that for those who engage in these behaviours, such factors and experiences combine and act to blur the boundaries between what is deemed consensual and non-consensual. Alternatively, those who drink more heavily may have more direct experience of having sex with someone when both parties are exceptionally intoxicated. These experiences may not have been viewed or indeed experienced as non-consensual when they took place (and may neither have been non-consensual from a legal perspective dependent upon the issue of consent) and such experiences may again serve to influence the view that the sex depicted in the vignette is 'normal' sexual activity. Research demonstrates that certain individuals consume alcohol in order to facilitate sexual encounters (Bellis et al., 2008; Sumnall et al., 2007). If heavier drinkers similarly consume alcohol to achieve sexual outcomes they may again be additionally sensitized to assume that drunken sex is a harmless, regular behaviour. Lastly, if hazardous drinkers do engage in sex when parties are exceptionally drunk and unable to consent

then participants' answers may again be the consequence of defensive responding which attempts to disassociate behaviours they engage in from the possibility of rape and criminal acts.

#### Attitudes held by students in relation to alcohol use and non-consensual sex

Participants' responses to survey questions that aimed to gauge attitudes around specific aspects of non-consensual sex, and the contribution of alcohol, indicated that survey respondents frequently agreed with the perspective that women are more interested in sex when drunk compared to when sober (39 percent of participant agreeing with this statement compared to 27.7 percent disagreeing). This finding lends support to the body of research that has found female alcohol consumption impacts on third parties perceptions of that female's sexual availability (Abbey & Harnish 1995; Finch & Munro, 2007; George et al., 1995). The idea that alcohol enhances a female's desire for sex, possibly due to the disinhibiting impact of alcohol on behaviour, may link closely to ideas around false rape allegations and the possibility that women retract consent upon sober reflection of events that occurred. Indeed, the current survey identified that whilst participants typically disagreed or strongly disagreed with the statement that a significant number of rapes reported to the police are false allegations, a substantial proportion of participants still endorsed this perspective (40.6 percent of participants disagreeing or strongly disagreeing with this view vs. 37.2 percent who agreed or strongly agreed). It was evident that alcohol was perceived to play an integral role within the false allegation process. Indeed, the majority of participants (81 percent) either agreed or strongly agreed that being drunk when having sex increases the likelihood of a false allegation of rape. The majority of participants (59.6 percent) also agreed or strongly agreed with the perspective that women who regret having sex when drunk are more likely to make a false rape report.

Ideas around false rape allegations being commonplace have long been endorsed by the Criminal Justice System as well as the lay public (Burton, Kelly, Kitzinger, & Regan, 1998; Rumney, 2006). The Opinion Matters (2010a) survey identified that 18 percent of respondents agreed with the statement that most claims of rape are probably not true (the higher levels of agreement in the current study are likely to be the consequence of the different response scales adopted, the current scale being a five point scale as opposed to a three point used in the Opinion Matters research, as well as the difference in age range sampled). An explanation for the scepticism around rape allegations is likely to link to the ways in which rape is reported by the media (Lonsway et al., 2009). It has long been argued that the print media fails to focus on the theoretical explanations for rape, resulting in the de-contextualisation of sexual offences and the exacerbation of stereotypes regarding innocent and deserved victims (Kitzinger, 2009). The Lilith project (2008) identified that modern print media still focuses disproportionately on the 'cry rape girl' who makes false rape allegations for the purposes of revenge. Further research is

needed to explore specifically the intricacies of labelling sex non-consensual when alcohol has been consumed and how this relates to the issue of false allegations. It can be surmised that alcohol is viewed by third parties as a substance that disinhibits behaviour, potentially resulting in individuals behaving in ways they would not have were they sober. Regretting drunken behaviour may be perceived to increase the likelihood of a false rape report. Again, further research is necessary to help clarify these issues and to build a more complete understanding of this area.

In a related vein, the current survey identified that participants felt women who had been drinking alcohol on a night out should be held more responsible for a rape or sexual assault compared to women who had not been drinking (32 percent of participants either agreeing or strongly agreeing with the statement that a woman who has voluntarily drunk alcohol on a night out should hold some degree of responsibility for a rape or sexual assault that may follow compared to 8.4 percent of participants who agreed or strongly agreed with a woman being held responsible for a rape/sexual assault if she had drunk no alcohol). When this finding is considered in the context of the above discussions and participant's general reluctance to label an event as rape when parties are equivalently intoxicated, it could be taken to support notions of a drinking double standard. That is, women are blamed more for a sexual offence when they have been drinking whilst men are viewed as less likely to have done something wrong, if they are as equally intoxicated as the complainant (Finch & Munro, 2005; Richardson & Campbell, 1982). This suggestion must be made cautiously in recognition of the fact that the couple depicted in scenario 9c were not attributed a gender. Instead, scenario individuals were simply portrayed as person A and person B who had both been drinking together and were severely intoxicated. Whilst it is likely that participants responded to these questions from the gendered perspective of person A being male and person B female, this cannot be conclusively assumed. The suggestion of a gendered drinking double standard however is not a new finding and neither is the notion of women being held more responsible for their victimisation following the consumption of alcohol. Rather, the current study corroborates a large body of previous research that suggests individuals are more likely to hold a female at least partially accountable for rape if she has been drinking prior to the offence (Abbey et al., 2004; Finch & Munro, 2005; 2007; ICM, 2005; Opinion Matters, 2010a; Sims et al., 2007). Explanations for such blame attributions may relate to the contradictory societal norms associated with male and female drinking behaviour where excessive alcohol consumption is still deemed more acceptable amongst men. Leigh (1995) suggests that this is due to the gendered assumptions about the effects of alcohol, many of which link to stereotypes regarding behaviour. Alcohol is typically associated with aggression in men (Taylor & Chermack, 1993) and inducing enhanced sexual desire in women (Abbey et al., 2004). Leigh (1995) argues that female sexual desire and agency is considered especially threatening for several reasons: as noted, societal scripts expect women

to be responsible for setting sexual limits and providing 'control' over the time and place of sex. If alcohol disinhibits behaviour then a drunken female may come to represent a breakdown in the control of indiscriminate sexual activity. Leigh (1995) suggests that such uncensored female sexual behaviour would threaten the power differential that exists between men and women in many societies. Sandmaier (1980) also argues that restricting women's sexual freedom, through the circulation of ideas such as female drunkenness being 'unladylike' and less acceptable than male drunkenness, is one means by which men have historically, and continue, to exert control over women and that blame attributions are part of the process of attempting to minimise such behaviour, and maintain sexual order.

#### Gender difference in attitudes held by students in relation to alcohol use and non-consensual sex

Chi-square analysis identified that there was a significant general trend for a greater proportion of men to say that they strongly agreed that a significant number of rapes reported to the police were false allegations, that having sex when drunk increases the likelihood of a false allegation of rape and that women who regret having sex when drunk are more likely to report a false allegation of rape. Logistic regression analysis however only significantly differentiated between the genders on one of the attitudinal statements (see table 23), that is, that 'women who regret having sex when drunk are more likely to report a false allegation of rape' with 7.2 percent of women and 1.3 percent of men strongly disagreeing with this perspective. This compared to 5.8 percent of females and 15.9 percent of males strongly agreeing with the statement (adjusted odds ratio 0.09, 95% CI 0.02-0.37). This finding again appears to mirror the Opinion Matters (2010a) survey where enhanced levels of cynicism were found amongst male respondents in relation to false rape allegations. That is, men were almost twice as likely as women to be of the view that most claims of rape are probably not true. The current finding also supports research that has found men generally are more accepting of rape myths than women (Blumberg & Lester, 1991; Costin & Kaptanoglu, 1993; ICM, 2005). Such findings, if in any way generalisable, may have concerning implications in light of police forces across the world still being comprised of majority male officers (Rabe-Hemp, 2009). Senior roles within the Criminal Justice System, such as holding the position of judge, are also still comprised primarily of men (Greene, Heilbrun, Fortune, & Nietzel, 2006). Whilst gender cannot be considered a definitive determinant of rape blame attributions, with multiple factors mediating this relationship, and women also being found to blame rape victims in certain situations (Opinion Matters, 2010a), a body of work has shown that compared to women, men adopt less positive attitudes towards rape complainant (irrespective of whether alcohol has been consumed by the complainant), are more reluctant/cautious to label an event as rape and are more likely to attribute blame and responsibility to the victim (Brown & Testa, 2008; Krulewitz, 1981; Schneider, Mori, Lambert, & Wong, 2009). The current survey findings may be viewed as an

extension of this research; that is, that men are more sceptical in their evaluation of rape complaints. As previously noted women are the gender most likely to experience sexual violence and may therefore have a heightened identification with a drinking female by virtue of their gender. Indeed, Krulewitz (1981) suggested that women may experience an enhanced affinity to rape complainants due to their shared vulnerability and this may result in more empathic judgements than those made by men. By virtue of a similar line of reasoning, men are the gender most likely to have a false rape allegation made against them and in light of the research which indicates lay individuals overestimate the frequency with which false rape allegations are made; men may be especially attuned to the issue of false reports. Fears around false allegations may result in men overestimating the frequency of such reports along with an overestimation of the factors that may relate to their occurrence.

#### Drinking status difference in attitudes held by students in relation to alcohol use and non-consensual sex

The logistic regression analysis identified differences between the drinking groups on two of the attitudinal variables (see table 46). A greater proportion of non-hazardous drinkers strongly disagreed with the statement that women are more interested in sex when drunk compared to when sober (13.8 percent vs. 9.6 percent of hazardous drinkers stating this was the case). This compared to 10.6 percent of hazardous and 3.9 percent of non-hazardous drinkers who strongly agreed with the statement (adjusted odds ratio 0.20, 95% CI 0.08-0.47). This finding may be seen to lend further support to the previously articulated suggestion that heavier drinkers may be more likely to assume that sex will occur in certain situations or that general heavier drinking is associated with an enhanced propensity to interpret situations as having sexual potential. If the heavier drinkers in the current sample have more sexual partners and unplanned sex, as has been found to be associated with heavy drinking, then these experiences may have been initiated during nights out when both parties were intoxicated, thus reinforcing hazardous drinkers' beliefs that women are more interested in sex when drunk. In light of the positive associations that have been discussed between alcohol consumption and sexual outcome (Bellis et al., 2008; Sumnall et al., 2007) it is perhaps unsurprising that individuals assume that the state of drunkenness will impact on a female's desire for intercourse. It is perhaps logical to suggest that such expectations may be enhanced amongst heavier drinkers, especially if they have had this perspective reinforced through direct experience. Cooper (2002) argues that those individuals who endorse strong beliefs about the effects of alcohol on sexual behaviour (for example, women will be more interested in sex when drunk) are more likely to engage in the said behaviour (having sex with drunken women) than those who do not endorse such views.

The drinking groups were also significantly differentiated on attitudes around whether a woman who has voluntarily drunk alcohol on a night out and are clearly drunk, should hold some responsibility for a rape/sexual assault that may then happen to her. Indeed, 34.8 percent of hazardous drinkers and 28 percent of non-hazardous strongly disagreed with the woman being held responsible compared to 9.9 percent of non-hazardous and 6.3 percent of hazardous drinkers arguing that they strongly agreed with an intoxicated woman bearing some of the responsibility (adjusted odds ratio 2.53, 95% CI 1.32-4.85). The greater proportion of non-hazardous drinkers who allotted responsibility may relate to beliefs around safety and personal care. Individuals who show increased restraint in their drinking pattern may feel that others should show similar caution in given situations. Drinking to the point of intoxication may be perceived by non-hazardous drinkers as a behaviour which fails to adequately exercise personal responsibility, thus resulting in the female placing herself in a position whereby she is deemed at least partly responsible for the consequences of her actions. Such lines of reasoning resonate closely with ideas that are central to the 'just world' phenomenon (Gilmartin-Zena, 1987) which postulates that positive things happen to good people and negative things only happen to individuals who deserve them. Such perspectives are argued to reinforce the subscriber's false sense of immunity to negative events such as rape through arguments that they would not have placed themselves in the given situation, and are therefore protected from experiencing the crime. Non-hazardous drinkers may be endorsing such 'just world' perspectives in their responding to this survey question and in order to maintain the view that they are immune to experiencing rape, non-hazardous drinkers may use the explanation of the woman's intoxicated state, and actively placing herself in this vulnerable position, to account for her victimisation.

#### The proportion of students who have experienced non-consensual sex when drinking

The fourth aim of the study was to identify the proportion of survey respondents who had experienced non-consensual sex when drinking and to establish what type of alcohol related tactics were being used against respondents to procure the sex that took place. Descriptive analysis of the data indicated that the alcohol related strategy most frequently used to procure non-consensual oral sex in the previous twelve months and since the age of 14 and up until twelve months prior, was to use the student sexually after they had been drinking alcohol and were conscious but too intoxicated to give consent or stop what was happening. Indeed, 8.8 percent (N=92) of participants reported having experienced this tactic in the previous twelve months with 13.5 percent (N=136) having experienced it since the age of 14. This tactic was also found to be the most frequently utilised against female respondents to procure non-consensual vaginal penetration by the penis, fingers or other objects. During the previous twelve months 11.7 percent of females (N=92) had been the victim of this strategy with 20.1 percent (N=152) having experienced it since the age of 14 years. Again, this tactic of using the student

sexually after they had been drinking alcohol was the strategy most frequently used in the previous twelve months (N=30; three percent) and since the age of 14 (N=42; 4.3 percent) to procure non-consensual anal penetration by the penis, fingers or other objects. The alcohol related tactics that were least frequently used to procure either non-consensual oral, vaginal or anal sex were to use the student sexually when they were asleep or unconscious from alcohol and to serve the student high alcohol content drinks when they appeared regular strength. It is however recognised that a recipient may not necessarily be aware if this latter tactic has been used against them, possibly resulting in the under-reporting of this approach. These findings complement the work of Lovett and Horvath (2009) who documented that from a sample of rape cases reported to police and Sexual Assault Referral Centres, when alcohol was involved in a rape, the complainant's degree of intoxication was infrequently so pronounced that it resulted in unconsciousness or blackout (in less than a quarter of cases analysed).

The above findings support the well documented association between consuming alcohol and experiencing a sexual offence (Abbey et al., 2004; Finney, 2004; Kelly et al., 2005; Muhler-Kuo et al., 2004; National Union of Students, 2010). They also lend additional weight to arguments that suggest voluntary alcohol consumption specifically is a major area for preventative work to focus and that this should be given equivalent legitimacy to the research that focuses on the non-consensual consumption of alcohol or drugs prior to a sexual offence (Lovett & Horvath, 2009; Scott-Ham & Burton, 2005; Slaughter, 2000). Indeed, there is increasing recognition that alcohol may be consumed voluntarily prior to a non-consensual experience, surreptitiously administered with the intention of incapacitating the consumer, pressure may be applied to encourage an individual to drink for the purpose of lowering inhibitions as well as opportunistic preying on an unconscious or incapable person in order to procure sex (Koss et al., 2007). The current survey suggests that this latter tactic of taking advantage of an individual who has voluntarily drunk and although conscious is too intoxicated to capably consent, is an approach that is all too frequently being used. It therefore seems appropriate to suggest that awareness raising campaigns should additionally focus on these tactics to better reflect the ways in which intoxicants are used to obtain intercourse. Again, the targeting or taking advantage of an intoxicated individual who is still conscious, for the purpose of having sex, is not necessarily a new finding (Kilpatrick et al., 2007; Koss, 1988; Testa & Livingston, 2009). The current survey lends additional weight to this research and provides important, previously unaddressed insights into the frequency with which such tactics are used to procure sex from a UK student sample.

When participants' experiences of non-consensual sex were summed to compute an overall victimisation score, the data indicated that 30.7 percent (N=329) of participants had experienced at least one act of either non-consensual oral, anal, or vaginal penetration by the penis, fingers or other objects since the age of 14, due to one of the relevant alcohol related tactics being

employed. Comparing this victimisation data with other sexual offence statistics is exceptionally difficult in light of no other research having used the Sexual Experiences Survey to ask male and female UK students' about their experiences of alcohol related non-consensual sex; therefore preventing direct comparisons across studies to be made. Instead, the current findings can be viewed alongside existing statistics, although such comparisons should still be made tentatively. For example, the 2001 British Crime Survey which is still recognised to provide one of the most comprehensive pictures of rape and sexual assault identified that 24 percent of women and five percent of men had been subject to some form of sexual offence at least once in their lifetime. Seven percent of sample women had been subject to a serious sexual assault, five percent had been raped and a further three percent had experienced another type of assault that involved non-consensual penetration. Lifetime experiences for men indicated that 1.5 percent of males had experienced a serious sexual assault with 0.9 percent reporting rape (Walby & Allen, 2004). As stated, directly comparing the Walby and Allen (2004) data with the current findings is highly problematic. For example, the Walby and Allen (2004) research addressed a random sample of 16-59 year olds non-consensual sexual experiences that occurred when individuals were either drinking or sober. The study not only used a different participant demographic to the current investigation, it neither provides a pure measure of alcohol involved non-consensual sex. That is, the Walby and Allen (2004) research measured all sexual offences that occurred within participants' lives, including those that occurred when no alcohol had been consumed. The current survey used validated questions from the Sexual Experiences Survey which use behaviourally specific language to elicit information about non-consensual experiences (Koss et al., 2007). Whilst this approach is recognised to be the most effective way of getting accurate information about non-consensual sex, such behaviourally specific questioning is still not consistently used in crime and victimisation research which again causes problems when trying to compare victimisation data drawn from different sources. The Stern Review (2010) specifically points out the difficulties inherent in comparing rape statistics due to changes in rape legislation that occur over time and changes in the ways crime is recorded. Young, Grey, Abbey, Boyd and McCabe (2008) also note the difficulties of comparing statistics drawn from different studies due to variability in the time period for which victimisation is measured (for example, during the previous twelve months, lifetime or during the college years), differences in the age of the population sampled (as previously noted, the 16-24 year demographic is at increased risk of experiencing sexual violence, inevitably resulting in higher victimisation estimates), country from which participants are taken and the type of non-consensual sexual behaviour being assessed (whether just rape or also attempts at rape and sexual assault). Such disparities make summaries of the literature tenuous (Young et al., 2008) and make it almost impossible to assess change in rates of non-consensual sex experienced over time. Future research should aim to use a standardised approach to the measurement of non-consensual experiences to enable comparable data to be recorded.



The National Union of Students (2010) online survey of 2,058 UK college and university females aged 16-60 identified that five percent of respondents had been raped during their time as a university/college student, two percent had faced an attempted rape and just under one percent had experienced assault by penetration. Comparing these findings with the proportions of non-consensual sex identified in the current survey is again difficult in light of the NUS (2010) research only asking women about their non-consensual experiences, only assessing victimisation that occurred since being a college/university student and estimates of serious sexual assault including attempts at rape, which were not included in the current study. However, comparisons can be made more readily on a number of the offence relevant characteristics identified by the research.

#### Characteristics of alcohol involved non-consensual sex

In line with the NUS (2010) study and a large body of existing literature, the PhD survey identified that men were the gender to most frequently perpetrate non-consensual oral, anal and vaginal acts (Brownmiller, 1975; Burt, 1980; Temkin & Krahe, 2008). Indeed, 81.5 percent of survey participants stated that the individual who perpetrated the non-consensual offence was a male, 12.3 percent stated they were a female whilst 6.2 percent stated that multiple individuals had carried out the act. This finding can be argued to support feminist perspectives which state that rape and sexual assault are practices used most frequently by men - often for the purpose of controlling more vulnerable individuals (Brownmiller, 1975). However, the identification of a sub-section of women who perpetrated such behaviours indicates that alcohol related non-consensual acts are not only perpetrated by males (this issue will be discussed in further depth later in this chapter).

Similar to the NUS (2010) study and a significant body of past UK and American work, the individual carrying out the non-consensual activity was typically known to the complainant (Coleman et al., 2007; Feist et al., 2007; Kelly et al., 2005; Walby & Allen, 2004). The current survey identified that 13.1 percent of perpetrators were strangers (someone the victim had no prior contact with before the event), 18.8 percent were recent acquaintances (someone known by the victim for less than 24 hours), 26.9 percent were acquaintances (someone the victim had seen/spoken to before but never dated or had sex with), 21.2 percent were friends and 21.9 percent were reported to be either a current or ex-partner. These findings resonate closely with those of Feist et al. (2007) who identified that from a sample of 593 police reported rapes, 14 percent were perpetrated by strangers, 22 percent by current or ex-partners and 25 percent by acquaintances. The current findings contrast slightly with those recorded by Lovett and Horvath (2009) who found that the perpetrators of alcohol-involved rapes in their police samples were

most frequently recent acquaintances. Differences here may be a consequence of the Lovett and Horvath (2009) research not focussing exclusively on the 18-24 year age demographic and this being a sample of cases which were specifically reported to police. That is, a recent acquaintance or someone known for only a few hours prior to the offence is more closely aligned to being a stranger and individuals may feel more confident reporting such cases to the police where there is no long standing association (although the Feist et al. (2007) research also reports on rape cases that were specifically recorded by the police this study did not differentiate in its categorisation of acquaintance and recent acquaintance and therefore cannot provide further insight on this point). What is however apparent across the current sample and that of Lovett and Horvath (2009), is that alcohol related non-consensual experiences typically occurred when parties were associated, but not necessarily in an established relationship. These findings support the American literature that suggest college students who are victims of alcohol related sexual offences are more frequently casually associated with the perpetrator, as opposed to being in an intimate relationship with them (Abbey et al., 2004; Ullman, 2003). The current findings may be seen to lend support to the idea that alcohol related and non-alcohol related non-consensual sexual experiences may be differentiated via certain factors - that is, on the level of intimacy the complainant has with the accused (Young et al., 2008).

Past American research that has addressed students' experiences of non-consensual sex when drinking has been criticised for failing to provide information on the amount of alcohol that had been consumed prior to the experience, and the complainant's perception of their degree of intoxication at the time (Abbey et al., 2004). The current study aimed to remedy these concerns by asking participants to estimate how much alcohol they had consumed before the offence took place. Descriptive analysis identified that respondents had typically been drinking at the extreme end of the alcohol consumption continuum. Just eight percent (N= 25) of participants had consumed 1-4 drinks whilst 33.3 percent (N=104) had drunk 10+. This finding aligns with research that suggests a high level of complainant alcohol consumption is a predictive factor for experiencing rape (Mohler-Kuo et al., 2004). It also supports the conclusions of Muehlenhard and Linton (1987) who documented that sexually assaultive dates amongst college students were more likely to involve heavy alcohol consumption by both the complainant and perpetrator. The current survey identified that participants' drinks were consumed over shorter time periods (51.6 percent consuming their drinks over 1-4 hours whilst 8.3 percent consumed them over 7+ hours) and participants typically rated themselves as feeling very intoxicated prior to the offence. In 72.9 percent of cases the other member of the dyad was reported to also be drinking alcohol, thus supporting the findings of Abbey et al. (1998) who concluded that if one member of the student couple is drinking, typically both will be. It is perhaps worth noting that men and women differ in their biological response to alcohol with the physiological effects of alcohol consumption often impacting more strongly on women. Mumenthaler, Taylor, O'Hara

and Yesavage (1999) identified that following the administration of similar doses of alcohol, women experienced higher blood alcohol concentrations and reported feeling more intoxicated than men. Therefore, if a man and woman drink together it is likely that women will experience a greater level of intoxication, even if they have consumed the same amount of alcohol, potentially attributing enhanced vulnerability to females from the onset of a drinking interaction. It is recognised that the current estimates around the amount of alcohol consumed are personal recollections which lack objectivity and this issue will be discussed further in the study limitations section of the chapter.

As noted in the literature review chapter, research highlights that there are several pathways which may explain why alcohol-related non-consensual experiences are more likely to occur in contexts where parties are casually associated and have been drinking together heavily. Drinking often takes place at bars and parties where people who do not know each other well meet. In such contexts, misperception around women's sexual interests and intentions can occur. In certain drinking instances, there is the possibility that sex may take place between individuals who have just met. Thus, in ambiguous situations in which sexual outcomes are possible, the likelihood of alcohol-induced misperception is heightened, potentially resulting in assault. Indeed, the alcohol myopia model helps to explain how the cognitive deficits associated with alcohol ingestion may be linked to sexual assault. The cognitive disruption caused by alcohol consumption, especially high doses, is proposed to focus an intoxicated man's attention onto the more salient cues in their environment whilst impacting on their ability to process distal factors. After alcohol ingestion, these prominent cues may be ones of sexual arousal. Abbey et al. (2001) hypothesise that this will indeed be the case, arguing that a man's immediate focus will be on arousal and feelings of entitlement as opposed to less salient cues which, under non-drinking circumstances, may inhibit a socially unacceptable response. In such situations, alcohol induced feelings of disinhibition coupled with a reduction in self-appraisal, a focus on arousal and a partner's supposedly encouraging behaviour, are argued to increase the potential for pressure or force to be used by men to obtain sex (Ito et al., 1996; Peranen, 1996). It is also realistic to assume that if parties do not know each other well, supposedly encouraging cues will be deemed even more relevant in negotiating the potential for sex. It is recognised that this gendered explanation does not account for the actions of those few women who also perpetrated non-consensual acts. However, it is possible to hypothesise that for certain females similar disinhibition processes applied, resulting in the use of pressure or force to procure sex. Additional research that takes a gender neutral approach to the application of the alcohol myopia model is needed to help corroborate or refute these latter suggestions.

The Sexual Experiences Survey was used to identify non-consensual anal, oral and vaginal penetration by the penis, fingers or other objects. Based on the research literature, it was

anticipated that in the majority of cases this would involve vaginal, anal or oral penetration by the penis, and would therefore constitute the offence of rape. Therefore, participants were asked whether they defined their experience as rape and if not, why. This question was asked in light of previous research which suggests individuals who have experienced an offence that meets a legal rape definition do not always label the experience as such (Bondurant, 2001; Fisher et al., 2000; Kahn et al., 2003; Kelly et al., 2005; Myhill & Allen, 2002). The survey data identified that of those participants who had experienced a non-consensual act, 52.7 percent (N=165) did not label their experience as rape, 21.1 percent (N=66) did whilst 26.2 percent (N=82) were unsure how to classify the experience. Analysis of the qualitative free-text information explaining why participants did not categorise their experience as rape identified that 15.9 percent of respondents stated that the act they had experienced did not meet a legal definition of rape, hence not applying the rape term (these cases may have included those acts that involved penetration by the fingers and objects other than the penis, acts which involved women forcing oral sex onto males and although very serious sexual crimes, ones which do not fall under the laws definition of rape). In light of the previously discussed findings that indicated participants had a poor understanding of the rape offence, it is reasonable to assume that certain individuals stated that the act they experienced did not meet a legal rape definition, when in reality it did. Indeed, Fisher et al. (2000) argue that a poor understanding of the legal position on rape will impact on the decision to apply the rape term to ones experience. The percentages recorded in this category cannot therefore be taken as a definitive indicator of the proportion of participants who experienced a serious non-consensual offence (such as assault by penetration), but one which fell short of legally defined rape. However, it is interesting to note that the proportions of survey participants who failed to classify their experience as rape (52.7 percent) corresponds closely with the findings of Fisher et al. (2000) who found 48.8 percent of college women in their sample did not classify their experience as rape, despite it legally paralleling the crime.

The primary free text reasons given by PhD survey respondents for not classifying experiences as rape linked to beliefs around the participant having exacerbated the offence by acting in specific ways. Indeed, 22.5 percent of respondents said the offence was not rape because they had either drunk a significant amount prior, had agreed to go back to the perpetrator's house or because they had flirted with the individual and therefore played a contributory role in the non-consensual sex that occurred. Just over 20 percent of sample participants also stated that the perpetrator was a known individual or that physical force had not been used during the event and that the sex was therefore not constitutive of rape. These findings align with research that suggests those who experience rape which deviates from the real rape stereotype are less likely to classify themselves as rape victims and more likely to suggest they were in some way responsible (Bondurant, 2001; Kelly et al., 2005; Myhill & Allen, 2002). A further 12.6 percent of participants argued that they did not apply the rape label because they did not verbalise a 'no'

response to the sex or overtly try and stop what happened. This again resonates with the Kahn et al. (2003) study which found that women who had experienced rape when intoxicated often did not label the event as such, due to their lack of overt action in trying to stop what was happening. It should be borne in mind that the law recognises that 'submitting to an act of sexual intercourse, because through drink she was unable to physically resist though she wished to, is not consent' (Bree, 2007, p. 607). Again, a lack of awareness around such legal positioning is likely to have influenced certain participant's labelling of their experience.

The survey identified that 35.4 percent (N=110) of participants told no one about the non-consensual experience. This proportion is slightly lower than the 43 percent of women who told no one about their serious sexual assault in the National Union of Student (2010) research and the 42 percent of women who told no one in the Koss et al. (1987) study. This may therefore be viewed as a somewhat encouraging finding in that individuals within the current sample appeared to have been more inclined to divulge what took place. Explanations for the disparity in disclosure rates across the studies are difficult to surmise in light of the relatively similar participant demographic that was used across them. However, addressing the reasons given by participants for not labelling their experience as rape again helps to contextualise the disclosure process. Indeed, 6.6 percent of participants stated that they did not label because they were not adversely affected by the experience in any way whilst 12.6 percent stated that they did not regret what occurred. Although further qualitative research would be necessary to help extend and contextualise these comments, it appears that for a proportion of survey respondents events were not necessarily experienced or indeed subsequently framed as negative. In such circumstances a lack of disclosure appears more understandable. These findings appear to suggest that although certain participants responded positively to having experienced non-consensual oral, vaginal or anal sex, a proportion of individuals did not always go on to categorise the experience as negative or traumatising. Kahn et al. (2003) similarly noted that the women in their sample who did not label their experience as rape did not include within their descriptions the same levels of trauma and negativity found in the reports of labelling women. Kahn et al. (2003) argue that this may either be the consequence of non-labellers having been less traumatised by the experience and therefore not feeling what they had undergone was representative of rape, hence not applying the label. Alternatively, labelling an experience as rape may bring with it negative emotional consequences due to the stigma associated with the term. This latter finding feeds into the larger debate around the benefits and disadvantages of attributing the rape term to a non-consensual experience (Gidycz & Koss, 1991; McMullin & White, 2006) but without additional research, it is impossible to fully address the pros and cons of the labelling process. It may also be possible to surmise that if those survey participants who did not regret the sex that occurred, drink and experience non-consensual intercourse on a frequent basis, such experiences may become normalised, viewed as acceptable and ultimately

have minimal negative impact. However, it is still possible that such sex may have important public health implications if sexually transmitted infections or unwanted pregnancy results from it.

Similar to the NUS (2010) study, if survey participants disclosed information about their non-consensual experience (N=202) they most frequently told friends (with 91.1 percent of participants doing so) or family members (15.3 percent doing so). Just 2.5 percent of participants reported their experience to a rape crisis counsellor, one percent to a counsellor at victim support and 5.9 percent to other specialist counselling or support service. In light of the significant number of participants who did not label their experience as rape it may be unsurprising that individuals failed to seek specialist support through such organisations. These findings reflect the low levels of disclosure to specialist agencies that have been identified across other studies (Koss et al., 1987; Myhill & Allen, 2002; Walby & Allen, 2004). Just 4.5 percent of the current PhD sample reported their experience to the police, again reflecting the low levels of official rape reporting found in the existing literature. Koss et al. (1987) and Fisher et al. (2000) both found that around five percent of the rapes in their samples were reported to the police whilst the National Union of Students (2010) study identified higher disclosure rates of 10 percent. Differences here may again relate to the NUS (2010) study not looking specifically at non-consensual sex that occurred when drinking or drunk. As implicated above, PhD survey participants may have deemed their drinking to have been a factor that contributed to their offence or which would increase the likelihood of them not being considered credible, thus deciding not to officially report. Indeed, the most frequent reasons given by respondents for not disclosing to the police was because they felt responsible for what had happened (54.5 percent, N=162 of participants giving this as a reason), they did not think the event was serious enough to report (35.7 percent, N=106 stating this was the case) and because alcohol had impacted on their memory of the events that occurred (33.7, N=100 percent). because they were unsure whether a crime had actually taken place (33.3 percent, N=99). Again, the significance of this latter factor suggests that being unsure of the legal position on rape directly impacts on the decision to report. These reasons echo closely those provided by the participants in the National Union of Students (2010) study for not reporting to the police. Kilpatrick et al. (2007) similarly noted that the student's degree of recollection for the offence was highly correlated to their likelihood of reporting, with those who had a more complete memory of events more frequently disclosing to police.

Non-consensual experiences were most frequently found to occur at the perpetrators house (44.7 percent of offences taking place in this location) followed by the complainants own house (in 23.1 percent of cases) and then in a public place such as a park or vehicle (in 13.9 percent of cases). This again resonates with the National Union of Students (2010) study where 76 percent

of serious sexual assaults were found to take place in someone's home. Indeed, 81.7 percent of non-consensual experiences within the current sample occurred in either the perpetrators, complainants, friends or some other individual's home or property. This is consistent with the wider body of literature that demonstrates rape victims are most frequently assaulted in private and often fail to sustain physical injury during the offence (Feist et al., 2007; Payne, 2009). This latter point is again reflected in the current survey findings where 20.9 percent of respondents stated that they had been bruised during the non-consensual experience, 1.4 percent had received broken bones, black eyes or chipped teeth whilst 13 percent were left with cuts or scratches. However, the majority of respondents (71.9 percent) stated that they had received none of the above physical injuries. Finally, 13 percent of participants reported taking substances other than alcohol at the time of the non-consensual offence. If other substances had been consumed, this would most typically be cannabis followed by cocaine. This again appears to reflect the findings of Scot-Ham and Burton (2005) who identified that from 1,014 cases of suspected drug-facilitated sexual assault, after alcohol, cannabis and cocaine were the most commonly detected substances in samples.

#### Gender difference in students' experiences of non-consensual sex when drinking

The logistic regression analysis identified gender differences in terms of whether participants had experienced an alcohol related non-consensual sexual act (see table 23). Just under 70 percent of women sampled (66.6 percent) and 78.5 percent of men said 'no' they had not experienced non-consensual oral, anal or vaginal sex, due to the employment of an alcohol related strategy during the previous twelve months or since the age of 14 years. This compared to 33.4 percent of women and 21.5 percent of men who said 'yes' they had experienced such non-consensual behaviours (adjusted odds ratio 1.83, 95% CI 1.23-2.73). The greater proportion of females who had experienced non-consensual sex reflects the vast body of research that concludes women are at increased risk of experiencing sexual offences and that sex crime disproportionately affects women (Brownmiller, 1975; Burt, 1980; Coleman et al., 2007; Kershaw et al., 2008; Walby & Allen, 2004). These findings can again be seen to lend weight to well established feminist perspectives that argue rape and sexual assault are the consequence of societal gender inequality and that rape can serve to control women (Brownmiller, 1975; Martin, Vieraitis, & Britto, 2006). The current findings can further be seen to support the previously discussed gendered arguments that have used the alcohol myopia model to explain the perpetration of sexual offences by men when intoxicated. As stated, alcohol induced feelings of disinhibition, when aligned with a reduction in self-appraisal and a focus on arousal and sexual outcome, may increase the likelihood of pressure being used by men to procure sex (Ito et al., 1996; Pernanen, 1996). However, to rigorously argue this perspective may be to negate the experiences of the 21.5 percent of men who were found to have incurred some form of non-

consensual oral or anal experience. The current findings can be contextualised against the small body of work that has asked men about their experiences of coerced sex. Struckman-Johnson (1988) found that 16 percent of American college males had been coerced into sexual intercourse by a female they were dating. This compared to 22 percent of women who reported having been coerced into penetrative sex at least once when on a date with a man. O'Sullivan, Byers and Finkelmann (1998) identified that in the previous twelve months, 24 percent of men and 42 percent of women in their sample had been pressured or forced into some form of unwanted sexual contact within the context of a heterosexual date (sexual contact here ranged from unwanted touching or kissing through to full oral, anal or vaginal sex). Although women experienced greater levels of coercion across these studies, men still experienced notable degrees of forced or pressured sexual behaviour. Again, it should be reiterated that the reporting of non-consensual sexual experiences by men is typically inhibited by stigma and stereotypes, often resulting in an underestimate of the extent of men's non-consensual encounters (Davies & Rogers, 2006).

The Struckman-Johnson (1988) study noted identifiable differences between men and women's coerced experience with the majority of sample females having been physically forced into sex, whilst men were most frequently coerced by psychological tactics such as blackmail, verbal demands or pressure being applied (it should be reiterated that it is possible to acquiesce into having sex due to a partner's persistent verbal pressure or demands but it is highly unlikely that the law would recognise such coercion as rape, sexual assault or indeed a crime. In contrast, women's physically forced penetrative experiences are more likely to meet a legal definition of rape or assault by penetration and therefore in the eyes of the law at least, are deemed more serious). In both studies women most frequently reacted negatively to their experiences whilst men remained more neutral and experienced fewer long-term psychological effects. Although the current PhD survey cannot comment substantially on the long-term or immediate impact of men's non-consensual experiences it is possible that there were gender differences in the perceived seriousness and long term impact of the activity. Although not statistically significant during the chi-square analysis stage, a greater proportion of men stated that they did not label their experience as rape because they were not negatively affected by it (3.3 percent of women vs. 19.4 percent of men stating this to be the case). This is therefore an interesting area for future research to address, to help establish possible differences in how men and women experience non-consensual behaviours perpetrated by individuals of the opposite sex. Currently, a very limited number of past studies would argue that whilst certain women do perpetrate sexually coercive behaviours against males, men are less likely to be subject to the full range of coercive tactics - ranging from verbal pressure through to forced penetration, will experience these tactics less frequently and severely and experience fewer long-term emotional impacts as a consequence (O'Sullivan et al., 1998; Struckman-Johnson, 1988; Struckman-Johnson et al.,



2003). This is not to negate the potential trauma that men's non-consensual encounters may elicit, it is however to suggest that future research is needed to highlight potential difference in experience.

The gender of the individual who perpetrated the non-consensual act was found to significantly differentiate the sexes in the current study (see table 25). The logistic regression analysis identified that 67.4 percent of men had been the recipients of female non-consensual behaviours whilst 1.8 percent of women had been assaulted by other females. This compared to 6.4 percent of females and 2.2 percent of males having been assaulted by multiple persons (adjusted odds ratio 107.15, 95% CI 10.70-1072.67). To reiterate, the large confidence interval (largely due to small cell sizes, especially within the reference category) suggests that whilst it is possible to be 95 percent confident that the true adjusted odds ratio falls between 10.70 and 1072.67, it is not possible to be any more precise than this about the strata's estimate. Although not statistically significant at the individual strata level, 30.4 percent of men and 91.8 percent of women identified the gender of their perpetrator to have been a male. In light of the majority of UK individuals falling within the 'heterosexual' sexual orientation category, one would expect a greater proportion of survey participants to experience non-consensual acts at the hands of an opposite sex individual. These findings in combination again reflect the previously discussed arguments that state women typically experience male perpetrated sexual offences (Brownmiller, 1975; Burt, 1980; Temkin & Krahe, 2008) whilst males will most often experience coercive sexual acts that are perpetrated by women. Struckman-Johnson and Struckman-Johnson (1994) identified that from a sample of 204 American college men, 34 percent had been pressured or forced into sexual touching or full sexual intercourse. Of this total, 24 percent of offences had been perpetrated by women, four percent by men and six percent by both genders.

Of the subset of participants who had experienced non-consensual sex, male and female students had different experiences in terms of the number of times someone has had oral sex with them or made them perform oral acts, during the previous twelve months, by encouraging or pressuring them to drink alcohol until they were too intoxicated to give consent or stop what was happening (see table 25). Thirteen percent of men and 0.5 percent of women had experienced this behaviour 3+ times. This compared to 83.6 percent of females and 69.6 percent of men who had never experienced such non-consensual oral activity (adjusted odds ratio 76.23, 95% CI 7.75-749.36. Again, the large confidence interval should be noted). This finding appears to echo the conclusions of Struckman-Johnson (1988) above in that psychological tactics such as the application of pressure appear to significantly relate to men's coerced sexual experiences. Due to women most frequently perpetrating non-consensual acts against males, and due to the size and weight differential that exists amongst many men and women, physical force

will potentially be a less useful tactic for procuring sex. In which case other strategies will be required and the use of verbal pressure and persistence may be a suitable alternative. The strategic use of alcohol to facilitate male sexual contact is not a new finding (Anderson & Aymami, 1993; Struckman-Johnson & Struckman-Johnson, 1998). Struckman-Johnson and Struckman-Johnson (1994) found that the most discerning pattern of female led sexually coercive contact was to pursue and persuade a drunken male into having sex with them. Again, using alcohol to procure sex from men appears logical when tactics such as the use of physical force may be less available to women. Struckman-Johnson et al. (2003) more recently surveyed college men and women to identify that whilst alcohol was strategically used by both genders to procure sexual experiences, more women had been the recipients of an intoxication related tactic with more women also reporting having been taken advantage of when drunk (42 percent of females vs. 30 percent of males) and being purposefully intoxicated (25 percent vs. 11 percent).

#### Drinking status difference in students' experiences of non-consensual sex when drinking

The logistic regression analysis identified differences between the drinking groups in terms of their experiences of non-consensual sexual activity (see table 46). A total of 81.6 percent of non-hazardous and 64.6 percent of hazardous drinkers said 'no' they had not experienced non-consensual oral, anal or vaginal sex, due the employment of an alcohol related strategy, during the previous twelve months or since the age of 14 years and up until twelve months prior. This compared to 18.4 percent of non-hazardous and 35.4 percent of hazardous drinkers who had experienced such activity (adjusted odds ratio 0.35, 95% CI 0.18-0.67). Although there is a lack of definitive consensus, past research has similarly documented that those who drink more heavily are at increased risk of experiencing rape and sexual assault (Abbey, 2002; McCauley & Calhoun, 2008). Mohler-Kuo et al. (2004) found that from a large randomly sampled group of American college females, those who were heavy episodic drinkers currently, and who had been heavy episodic drinkers in high school, were more likely to experience rape, compared to their non-heavy episodic drinking peers. As Mohler-Kuo et al. (2003) point out, heavy alcohol use may be either the cause or the consequence of sexual victimisation and due to the cross-sectional design of the study, it is not possible to determine the direction of the relationship. Explanations for the association between heavy alcohol use and non-consensual outcomes may be the consequence of individuals who drink more heavily being exposed to an increased number of situations and environments which may lead to non-consensual experiences (McCauley & Calhoun, 2008). Complainants who have been drinking excessively will also have a reduced ability to effectively fight off a potential perpetrator, due to alcohol's effects on motor and verbal skills (Abbey, 1991; Abbey et al., 2004). There is of course the possibility that heavy

alcohol use and non-consensual sexual experiences relate to a third factor, such as a risk taking personality type, which again increases the potential for non-consensual sex.

The logistic regression analysis identified that prior to the non-consensual experience hazardous and non-hazardous drinkers had consumed their drinks over different time periods (see table 48). A total of 38.9 percent of hazardous drinkers and just 20 percent of non-hazardous consumed their beverages over 5-6 hours. This compared to 72.5 percent of non-hazardous and 47.1 percent of hazardous drinkers consuming their alcoholic beverages over the shorter time span of 1-4 hours (adjusted odds ratio 3.20, 95% CI 1.33-7.68). Although the number of alcoholic beverages hazardous and non-hazardous drinkers consumed prior to their non-consensual experience failed to significantly differentiate the groups when placed in the logistic regression model, bivariate analysis revealed that the odds of non-hazardous drinkers consuming 1-4 drinks prior to the experience were significantly greater than the odds of hazardous consumers drinking at this level (odds ratio 0.16, 95% CI 0.05-0.49. See table 35). It is therefore possible that the shorter time taken for non-hazardous drinkers to consume their beverages simply reflects the fewer drinks they consumed prior to the non-consensual sex. Perhaps more interestingly, whether the other member of the dyad had been drinking also significantly differentiated the groups (see table 48). Twenty-five percent of non-hazardous drinkers said 'no' the other party had not been drinking whilst just 6.7 percent of hazardous drinkers said this was the case. This compared with 7.5 percent of non-hazardous and 16.8 percent of hazardous drinkers being unsure whether the other party had consumed alcohol (adjusted odds ratio 0.11, 95% CI 0.02-0.48). This latter finding may reflect the more profound impact of alcohol on hazardous drinker's ability to recollect whether the other member of the dyad was consuming alcohol: as stated, although not maintaining statistical significance when placed in the logistic regression model, at the bivariate stage of analysis a significantly greater proportion of hazardous drinkers had consumed 10+ beverages. The noted finding links to the literature that has been discussed which emphasises the co-occurrence of shared drinking behaviour by the complainant and accused prior to a sexual offence. Whilst Abbey et al. (1998) argue that if one member of a student couple is drinking then typically both will be, the current finding suggests that this relationship may relate to the complainant's own drinking style and history: further research would be needed to help investigate and corroborate this perspective.

Finally, participant's disclosure of their non-consensual experience was also found to differentiate the groups (see table 48). Sixty percent of non-hazardous and 33.2 percent of hazardous drinkers told no one at all about their experience compared to 40 percent of non-hazardous and 66.8 percent of hazardous drinkers who disclosed to at least someone (adjusted odds ratio 0.32, 95% CI 0.15-0.68). The greater proportion of non-hazardous drinkers who failed to disclose is again somewhat difficult to explain in light of a lack of previous research in

this area. However, it could be surmised that those who drink less frequently feel increased self blame at experiencing non-consensual outcomes following the consumption of alcohol, thus preventing them from disclosing their experience to others. Indeed, this suggestion would align with the previously noted finding that an increased proportion of non-hazardous drinkers strongly agreed with the statement that if on an evening out a woman has voluntarily drunk alcohol and is clearly drunk, she should hold some degree of responsibility for a rape/sexual assault that may then happen.

#### The proportion of students who have used an alcohol related tactic to procure non-consensual sex

The final aim of the study was to identify the proportion of students who had used an alcohol related strategy to procure non-consensual intercourse. Whilst there is increasing recognition that alcohol is used to procure intercourse, very little international research has addressed the strategic ways in which alcohol may be involved in the non-consensual interaction and almost no UK research has done so. Much focus has centred on drink spiking, or more specifically, the surreptitious administration of drugs such as Rohypnol and GHB into an unsuspecting female's drink for the purpose of obtaining sex. This predominant focus has often resulted in more commonplace practices, such as the taking advantage of an individual who has voluntarily drunk alcohol, being neglected by both research and campaign literature. The NUS (2010) study identified that certain respondents believed they had been given alcohol or drugs prior to the assault, despite no further analysis of the ways in which alcohol was 'given' taking place. Indeed, the research that has specifically asked participants about perpetrating non-consensual sexual behaviours is American based and the literature that has used the alcohol relevant questions of the Sexual Experiences Survey to ask UK male and female students about the perpetration of non-consensual sexual acts is non-existent. The current survey therefore provides some preliminary insights into UK students' experiences of perpetrating alcohol related non-consensual sexual behaviours.

Due to the small number of participants responding positively to the perpetration questions, it was not possible to carry out meaningful statistical analysis on this data. However, descriptive analysis identified that in the previous 12 months the alcohol related tactic most frequently used by participants to enable them to have oral sex with someone, or to make someone else perform an oral act on them, was to encourage/pressure them to drink alcohol until they were too intoxicated to give consent or stop what was happening (N=16, 1.5 percent). The tactic most frequently used since the age of 14 was to find someone who had been drinking alcohol and was conscious but too intoxicated to give consent (N=17, 1.7 percent). The strategy most frequently used in the past 12 months and since the age of 14, to enable a participant to engage in non-

consensual vaginal sex; that is, to put their penis, fingers or objects into a woman's vagina without her consent, was to find someone who had been drinking alcohol and was conscious but too intoxicated to give consent or stop what was happening (N=11, 1.5 percent for the past 12 months vs. N=12, 1.7 percent since the age of 14). In the previous 12 months all four alcohol related tactics were used equally often (N=3 for all tactics) by participants to enable the engagement of non-consensual anal sex; or more specifically, to enable a participant to put their penis, fingers or objects into someone's anus without their consent. The tactic most frequently used since the age of 14 was to find someone who was asleep or unconscious from alcohol and when they came to were unable to stop what was happening (N=5, 0.7 percent).

The tactic of finding someone who has been voluntarily drinking and although conscious, too intoxicated to give consent to the sexual activity, was a strategy that still featured prominently in participants non-consensual experiences. This would indeed correspond with participant's disclosure that this tactic was used more frequently than the other strategies to procure oral, vaginal and anal sex. This finding lends yet further support to arguments that suggest research and awareness campaigns should focus on the voluntary consumption of alcohol and that perpetrators specifically report taking advantage of individuals when they are too intoxicated to capably consent. It is recognised that the small numbers recorded in these categories must lead to the cautious interpretation of findings. However, initial investigation appears to support the previously discussed literature which argues that alcohol involved rapes most frequently involve a perpetrator taking advantage of a complainant who has voluntarily consumed large quantities of alcohol, as opposed to alcohol or drugs being administered without consent (Kilpatrick et al., 2007; Tesa & Livingston, 2009).

When participants' experiences of carrying out a non-consensual sexual act were summed to compute an overall perpetration score, the data indicated that 4.3 percent of participants (N=45) had carried out at least one act of non-consensual oral, anal, or vaginal penetration by the penis, fingers or other objects since the age of 14, due to the employment of one of the relevant tactics. Of the body of American research that has asked male students to report on whether they have perpetrated a non-consensual act, up to 15 percent report having carried out rape or having attempted to rape a woman (Abbey et al., 1998; Abbey et al., 2004; Muehlenhard & Linton, 1987). However, this 15 percent figure does not focus exclusively on rapes perpetrated when alcohol has been consumed but also covers those that occurred when no alcohol was involved. The 4.3 percent perpetration figure is significantly lower than the 30.7 percent of participants who identified having experienced non-consensual sex. Such discrepancy between perpetration and victimisation rates is not uncommon in survey research. Koss et al.'s (1987) national study of college students identified that whilst 27.5 percent of women reported experiencing rape or attempted rape since the age of 14 only 7.7 percent of men reporting perpetrating acts that met

the legal definition of these crimes. Koss et al. (1987) argued that it was unlikely that a minority of sexually predatory men could account for the total amount of victimisation. They pointed out that certain non-consensual experiences would have occurred prior to the university years and been carried out by men not surveyed and that more recent non-consensual experiences would have been perpetrated by non-students, hence, not being captured within the survey. However, Koss et al. (1987) also suggested that college men may report perpetrating lower rates of sexual coercion than are actually identified by women in victimisation surveys, partly because a proportion of men view a woman's consent as either insincere or ambiguous and believe their sexual behaviour was legitimate and consensual. In light of the previously discussed attitudes and discourses that link alcohol consumption with obtaining sex and the research that specifically indicates alcohol is used to facilitate sexual outcomes, it is increasingly likely that a number of participants in the current survey, whether male or female, viewed their behaviour to have been legitimate, non-problematic sexual activity.

#### Gender differences in the use of alcohol related tactics to procure non-consensual sex

The logistic regression analysis identified differences between male and female students in terms of having perpetrated a non-consensual sexual act (see table 23). Here, 97.3 percent of females and 91.8 percent of males stated that they had not perpetrated a non-consensual sexual behaviour. This however compared to 2.7 percent of women and 8.2 percent of men identifying that they had committed such acts (adjusted odds ratio 0.37, 95% CI 0.17-0.79). This finding again lends support to arguments that indicate sex crime is most frequently perpetrated by men against women and that such crime is associated with societal gender inequality (Brownmiller, 1975; Burt, 1980; Martin et al., 2006). The current findings also support previously discussed arguments around the theory of alcohol myopia. That is, that the cognitive disruption caused by alcohol consumption is likely to focus an intoxicated man's attention specifically onto the more salient cues in their environment. After alcohol ingestion, salient cues are likely to be ones of sexual arousal and when coupled with feelings of disinhibition and a reduction in self-appraisal, there is increased potential for pressure to be used by men to obtain sex (Abbey et al., 2004; Ito et al., 1996; Pernanen, 1996). The current finding also resonates with the arguments of Koss et al. (1987) above and in light of the gender differences noted between men and women in the current survey, and the greater proportion of males who deemed someone kissing them, removing their clothing and having a reputation for sleeping around to be relevant factors in establishing whether that person wanted to have sex, it is perhaps legitimate to surmise that men may be increasingly predisposed to look for sexual interpretations, to assume sex will occur in certain situations and to deem that sex legitimate (Abbey et al., 2000; Abbey & Harnish, 1995; Edmondson & Conger, 1995; Opinion Matters, 2010b).

## Study limitations

A number of study limitations became evident throughout the research process which require additional consideration. The survey required participants to make retrospective judgements about events that had occurred potentially several years previous. This may have resulted in recall bias, possibly exacerbated by the impacts of the alcohol that had been consumed at the time of the experience. Events may not have been recollected fully or accurately and may also have been framed to minimise the participant's role within the events that occurred. For example, more conservative estimates of the amounts of alcohol they had consumed prior to the offence. Questions specifically asked participants about experiences that occurred when they were too drunk to consent or stop what was happening. Although these Sexual Experience Survey questions were validated items that are regarded to currently be the best available measure of non-consensual sexual experiences (Testa et al., 2004), it is again impossible to corroborate whether participants were actually at such advanced points of drunkenness and whether consent was absent in accordance to a strict legal definition. However, retrospective, self-report measures, although with their limitations, are currently some of the only methods through which insights into personal experiences can be gained (Lovett & Horvath, 2009). Due to the cross sectional nature of the survey it is not possible assign causality. Namely, it is not possible to establish whether heavy alcohol consumption was the cause or the consequence of a non-consensual experience. However, the survey did identify that a large amount of alcohol was consumed prior to participant's non-consensual experiences with respondents also stating that they felt very intoxicated at the time of the act.

The survey sampled a very small geographical area with respondents primarily being based at Liverpool John Moores University. The North West is recognised to have problematic levels of drinking behaviour (Morleo et al., 2007), impacting on the ability with which generalisations can be made from the current sample. In addition, the study may have resulted in response bias, that is, individuals who had experienced non-consensual sex may have been either increasingly or less motivated to complete the survey. Therefore, whilst findings are unlikely to generalise to the general population, they are useful for describing the target population and providing some initial insights into a UK student samples experiences of alcohol related non-consensual sex, a currently unresearched area. Future research would benefit from adopting a random sampling strategy and aiming to incorporate a wider geographical location, in order to reduce bias. It is recognised that a number of the hypothetical scenarios used in the survey were de-contextualised depictions which gave minimal background and context relevant information. Although such scenarios are widely used within the research arena it is acknowledged that attitudes articulated in relation to such scenarios do not inevitably mirror attitudes that will be

articulated in similar real world contexts. Again, the use of such scenarios has provided some initial insights which future, more real life research may build.

During the survey analysis stage it became evident that the latter questions of the survey incorporated large amounts of missing data. This occurred most prominently for those questions that asked participant to identify whether they had perpetrated non-consensual acts. Whilst it is possible that fatigue had set in by this point and impacted on students completion of these questions, this possibility is perhaps unlikely in light of the majority of respondents not terminating the questionnaire at this point but going on to complete the demographics survey section. As such, it may be surmised that after identifying having been the victim of a non-consensual offence, participants were reluctant to answer questions which asked about perpetrating such acts. Alternatively, participants may have been sensitised to their victimisation experiences and consequently overlooked or failed to fully cognitively process the possibility of having perpetrated similar behaviours, thus skipping these questions. Many good practice principles were adhered to in the construction and dissemination of the current survey including the use of validated questions, beginning the survey with less personal questions and building to more sensitive items and structuring the questionnaire so as to include attitudinal questions initially which may stimulate memory around relevant victimisation experiences (Abbey, Parkhill, & Koss, 2005; Koss et al., 2007). In addition, the study combined an online recruitment strategy with a more traditional approach. That is, using posters to disseminate information about the research which is recognised to be the most efficient strategy for acquiring participants (Miller & Sonderlund, 2010). However, it seems sensible to suggest that future research which attempts to address levels of sexual victimisation and perpetration separate out these questions into different surveys which are administered at different points in time.

If the survey were to be re-run, the inclusion of fewer questions and response categories would also be advantageous. Even though the survey recruited over a thousand respondents, when a question had multiple response categories there were occasions when this resulted in small cell sizes. Small cells can increase the standard error around a variables estimates which in turn increases the parameters of the variables confidence intervals, ultimately reducing the precision with which it can be argued that the true odds ratio fall within the specified parameters. The inclusion of fewer items would also have resulted in a shorter survey and less time taken for its completion. Again, this may have prevented certain participants from terminating prior to the completion of the survey and reduced the possibility of fatigue which may have resulted in erroneous responding. Despite the limitations noted, the survey findings supported many of the existent arguments within the research literature. This perhaps goes some way towards



suggesting that the limitations of the research did not sufficiently impact on the overall reliability of the conclusions made.

### Conclusion and implications

The current survey has highlighted a number of pertinent issues surrounding students' experiences of alcohol related non-consensual sex via the use of a large North West of England based student sample (N=1,079). The research has identified that around a third of students asked had experienced at least one act of either non-consensual oral, anal or vaginal sex, which most frequently occurred after the individual has been voluntarily drinking alcohol and was conscious, but too intoxicated to give consent or stop what was happening. These findings lend additional support to the well established association between consuming alcohol and experiencing a sexual offence as well as highlighting further that voluntary alcohol consumption is a major area for preventative work to focus. The survey identified that both men and women are the recipients of alcohol related non-consensual sexual experiences and such acts are not endured by women in isolation. However, whilst men were the victim of such behaviours, a greater proportion of women were found to experience these offences with men most typically being identified as the gender to perpetrate them. This finding supports research that indicates women are most frequently the victims of non-consensual experiences and that sex crime disproportionately affects females. This is not to negate men's experiences and further research is needed to help contextualise their non-consensual encounters. In line with a vast body of UK research on adult rape populations and American research on college student, the survey also identified that UK University students are typically assaulted by a known individual, the offence typically takes place in one of the dyad member's homes and physical injuries are not usually sustained.

The university years are often a period when individuals begin to engage in regular sex, start to drink frequently and become exposed to the influence of peer group norms. The university environment may therefore need to play a central role in attempting to raise awareness around the enhanced potential for experiencing alcohol related non-consensual sex during these years. Indeed, universities should be encouraged, through their welfare section, to play an integral role in the formulation of campaigns around these issues, ensuring they have appropriate counselling and support services available to deal with the emotional and physical consequences of such experiences, ensure clear lines of communication are established for the reporting of such offences and the adoption of a zero tolerance policy around having sex with individuals, both male and female, who are so drunk they are incapable of consenting. Targeting new students during freshers week with campaign information and literature around drinking excessively, its association with experiencing a sexual offence and information on the legal position would

appear both necessary and timely. Indeed, the research identified clear misunderstanding in student knowledge around sexual consent, whether it is necessary for consent to be verbalised in order for it to be legally valid and whether physical injury has to be present. This confusion appeared to be more pronounced amongst female participants, the gender that is at increased risk of experiencing rape. The survey also identified clear knowledge gaps in relation to the role of capacity within a sexual interaction and the law's requirement that an individual be capable of consenting to intercourse in order for that consent to legally stand. As previously stated, if students cannot identify what constitutes legally defined rape and its parameters, a proportion of individuals will fail to accurately categorise their experience, officially report it or seek support to deal with its possible consequences. The university could play an integral role in offering information, workshops, raising awareness and actively campaigning around these issues and highlighting both the ethically questionable and criminal implications of having sex with someone who is exceptionally intoxicated. It is important that these messages are disseminated to both men and women and emphasis placed on both males and females being the recipients of alcohol involved non-consensual experiences. In light of the current findings it seems inappropriate for awareness raising literature to warn women in isolation about the dangers of non-consensual sex when drinking and suggest women specifically monitor themselves and the amount they drink. It is also important to recognise that promoting messages around capacity, consent and the potential for sexual offences when drinking heavily sits at odds with the university drinking culture in England where a significant emphasis is placed on getting drunk, especially during freshers week, as a way of bonding, breaking down boundaries and getting to know other students. The university, welfare section and student union need to recognise the tension between messages that promote heavy drinking and the potential for experiencing sexual offences when doing so.

The survey identified that when members of a drinking dyad are presented as equally intoxicated by alcohol, there is a reduced willingness to label the depiction of non-consensual sex as rape. When non-consensual sex took place between heavily intoxicated scenario individuals, participants - especially heavier drinking participants - were not only reluctant to label the sex as rape but also reluctant to label the sex as a crime. The implications being that a substantial proportion of individuals do not view non-consensual intercourse as an offence when certain drinking circumstances exist. This is clearly concerning, especially if such perceptions are taken into the real world court arena. Survey participants were also found to hold drinking women more responsible for rape or sexual assault, compared to women who had not been drinking alcohol at the time. When these findings are considered together, they could be taken to support notions of a drinking double standard. That is, women are blamed more for a sexual offence when they have been drinking whilst men are viewed as less likely to have done something wrong if they are equally as intoxicated as the complainant. In such circumstances

alcohol appears to work in favour of defendants and against complainants, reinforcing similar arguments made by Finch and Munro (2007; 2005). Additional research into the court environment and rape trial process is needed to help untangle the above issues and establish the barriers that exist around labelling non-consensual sex as rape, or indeed a crime, when parties are equally intoxicated. Only when such issues are fully understood can strategies to rectify potential misperception or prejudice be implemented.

The survey identified that a substantial proportion of participants agreed that women are more interested in sex when drunk compared to when sober. This finding lends support to the large body of work that has found female alcohol consumption has historically, and continues, to impact on third parties perceptions of that female's sexual availability. A substantial proportion of participants also endorsed the perspective that a significant number of rapes reported to the police are false allegations. Alcohol consumption was seen to play an integral role within the false allegation process with participants, especially men, frequently agreeing with the statement that women who regret having sex when drunk are more likely to report a false allegation of rape. Despite the lack of empirical evidence to support such arguments (Kelly et al., 2005; Rumney, 2006) the current study demonstrates that a robust sample of UK students endorse such perspectives. Indeed, this issue will be explored further in study three of the PhD: only with such research can strategies be suggested to counter biased thinking.

## **Chapter 5: study two introduction**

### The law of sexual offences

The legislation that governs sexual offences in England and Wales is the Sexual Offences Act 2003, with rape law being significantly reformed by this statute. As previously discussed, rape can be defined generally as non-consensual penetration by the penis, with the victim's lack of consent being pivotal to the commission of the crime. Section 74 of the Act introduced a statutory definition of consent stating that: A person consents if he agrees by choice, and has the freedom and capacity to make that choice. Prior to the 2003 legislation, consent was governed by the common law where there was increasing concern that this position may prove unsatisfactory. When combined with an ever decreasing rape conviction rate (Home Office, 2002), the previous labour government were keen to define consent, arguing that a definition would provide a clearer, more comprehensive framework for jurors and practitioners to follow (Home Office, 2000). The 2003 Act provided an accompanying list of categories or 'rebuttable' and 'irrebuttable presumptions' under sections 75 and 76 respectively where if evidence of certain circumstances existed prior to the intercourse, it would either be conclusively presumed that the complainant did not consent and that the defendant did not have a reasonable belief in consent or the evidential burden would pass to the defence who would be required to demonstrate that an issue relating to consent remained, despite the existence of the circumstances. Section 75 was designed to cover those instances in which most people would assume that consent was likely to be absent, to strike an appropriate balance between complainant and defendant and to encourage complainants to bring cases to court (Home Office, 2002). In relation to alcohol and intoxicated rapes, the two presumptions that may apply are section 75(2)(d): 'the complainant was asleep or otherwise unconscious at the time of the act'; and section 75(2)(f): 'any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act'. Proving lack of consent is one of the biggest challenges for the prosecution and, with rape convictions at an all-time low, the presumptions were introduced in the hope that they would help remedy this situation (Home Office, 2000).

### Concerns with the Sexual Offences Act 2003 and the need for further research

Despite advocating significant change, the 2003 reforms have received noted criticism. In particular: the consent definition, the range of circumstances covered by the presumptions, the level of evidence needed to rebut a section 75 presumption and the specific usefulness of provisions aimed to aid the prosecution of alcohol involved rape cases (Elvin, 2008; Finch &

Munro, 2004; Tadros, 2006; Temkin & Ashworth, 2003). Specifically, the usefulness and applicability of presumption (f) has been questioned with Finch and Munro (2004) asking whether circumstances of broader scope than the stereotypical unknown defendant surreptitiously administering a substance such as Rohypnol or GHB, into an unsuspecting victim's drink, will come to be included within its remit. Currently, this question remains unaddressed, raising questions over its potential usefulness for those who have experienced alcohol involved rape.

Questions concerning the capacity of the complainant at the time of intercourse also remain and the extent to which their freedom may be impinged in given situations is pivotal to understanding when consensual sex crosses over into rape. However, the 2003 Act has been criticised for failing to provide guidance on how to interpret level of capacity, and subsequent ability to choose freely; leaving much ambiguity as to how the constructs should be quantified (Cowan, 2008; Finch & Munro, 2006; Rumney & Fenton, 2007). Significantly, the 2003 Act does not provide an explanation as to the meaning of capacity within section 74 and neither is such detail provided to the jury by virtue of a Judicial Studies Board direction. The difficulties of quantifying capacity are exacerbated when a complainant is heavily intoxicated. It is largely accepted that alcohol impacts on a person's inhibitions and decision-making processes presenting difficulties establishing the point at which an individual can no longer be deemed capable of giving valid consent (Finch & Munro, 2004; Wallerstein, 2009). Whilst the 2003 Act provides evidential presumption (d) which presumes consent is absent if at the time of the offence the complainant is unconscious, this provides little guidance for those instances of inebriation that fall below this threshold. In recognition of these key concerns the Office for Criminal Justice Reform (2006) consulted on whether the word capacity should be defined in legislation to help explicate its nuances. However, prior to the publication of the government's response the Court of Appeal dealt with the issue of extreme voluntary intoxication and capacity in the case of Bree (2007). Here, the accused was initially convicted for rape after having sex with a complainant who was voluntarily intoxicated. The Court of Appeal however quashed the conviction due to the trial judge's inadequate jury directions on the issue of capacity. The Court of Appeal noted that under section 74 the issue of importance is whether the complainant 'had temporarily lost her capacity to choose whether to have intercourse' and if so, she should not be deemed to be consenting (Bree, 2007, p. 167). The court further commented that 'capacity to consent may evaporate well before a complainant becomes unconscious' but that such an issue is 'fact-specific' and it was therefore unrealistic to create a 'grid system' to indicate at what point an individual becomes incapable (Bree, 2007, p. 167). Drawing upon the judgment in Bree (2007) the labour government decided against a statutory definition of capacity stating that the Court of Appeal provided sufficient guidance on this issue with the statement that if the 'complainant has temporarily lost her capacity to choose whether to have intercourse on the

relevant occasion, she is not consenting' (Office for Criminal Justice Reform, 2007, p. 10) being deemed sufficient. However, it can still be argued that this fails to provide the jury with any further assistance as to the meaning of capacity, a factor pivotal in cases involving voluntary intoxication, especially in the absence of a rebuttable presumption.

During the 2006 consultation, the issue was also raised as to whether presumption (d) should be modified to include within its remit the instance of being 'too affected by alcohol..... to give free agreement'. However, the Home Office eventually decided against this approach due to the fear of 'mischievous accusations' (Office for Criminal Justice Reform, 2006, p. 12). Despite the government's rejection of this modification it is still somewhat unclear whether such an amendment would be a useful advancement to the law which would help in the prosecution of alcohol related rapes. It is also still somewhat unclear whether a statutory definition of capacity would be beneficial to those who work with the law on a daily basis, in their representation of alcohol involved cases. Indeed, little research to date has engaged with barrister populations about the usefulness of rape legislation (Temkin, 2000) despite their central role in the Criminal Justice System and unique insight into the impact of statute. The current study therefore aimed to give precedent to an under-researched target group who have important expertise in the application of the Sexual Offences Act 2003 in order to provide an original and important examination of the law, as contained within the 2003 legislation.

In 2007 regional police statistics reported that the rape conviction rate for the Merseyside area was 6.5 percent (Fawcett Society, 2007) which was significantly lower when compared to a number of its neighbouring counties such as Cheshire (10.4 percent) and Lancashire (10.3 percent). As previously noted, Liverpool has the second highest rate of harmful binge-drinking behaviour in the country (NWPHO, 2007) making alcohol consumption a pertinent behaviour in the Merseyside district. When combined with a lower rape conviction rate than that of its adjoining counties, Liverpool becomes a unique city to locate research aimed at identifying practitioners' perspectives on alcohol involved rape cases, the difficulties associated with prosecuting these cases and the issue of low rape conviction rates. In addition to identifying barristers' perspectives on these key issues, the current study also aimed to consider how certain perspectives were constructed and presented and to address the identity processes and background factors which may relate to the formulation of those perspectives, through the application of social representations theory.

### The application of social representations theory

As discussed in chapter three, the theory of social representations was developed by Moscovici (1976) and seeks to emphasise social context, communication, science and the mass media in

the development and construction of an individual's attitudes, belief systems and understanding of the world. At the heart of social representations theory is the idea of 'sense-making'. That is, the turning of unfamiliar ideas, events and concepts into something familiar and knowable. A key factor in the theory is that social representations develop to serve a group's self-interests, to protect their identity and defend against feeling threatened (Breakwell, 2001; Joffe, 2003). Indeed, the theory attempts to address the benefits to identity that endorsement and repetition of certain attitudinal perspectives may serve, and to account for how these perspectives come into being, drawing upon the importance of shared social interaction and media input. Hollway and Jefferson (2000) argue that individuals adopt specific social discourses and locate themselves to specific representations in order to protect against the anxiety created by threats to self-identity. An individual would thus draw upon a discourse that affirms their self-identity whilst disregarding discourses that threaten it. Whilst social representations theory has not previously been utilized in the area of rape research, it will be considered and applied throughout the barrister analysis to better explain the endorsement and prominence of certain perspectives, how certain views may have developed and the identity factors that may account for, and sustain, their repetition. In applying the theory to barristers discourse it is anticipated that a more contextualised, social account of attitudes, world views and belief systems will be explicated.

#### Aims and objectives for study two:

In light of the above debates and the research discussed throughout the literature review chapter, study two of the PhD set out the following aims and objectives.

**Aims:** To engage with barristers about the Sexual Offences Act 2003 to explore and identify their attitudes and perspectives around:

- 1) The barriers that exist to successfully prosecuting alcohol involved rape cases.
- 2) How certain alcohol relevant provisions introduced by the 2003 Act have been received, work in practice and their overall success in improving the law of alcohol involved rape.
- 3) Whether problems in the law still exist and possible future reforms to remedy these issues.
- 4) To consider the development of certain perspectives and the possible benefits to identity that endorsement of these views may serve.

**Objectives:** To conduct semi-structured interviews with barristers who prosecute and defend in rape cases in the Merseyside district, in order to investigate attitudes and representations around the 2003 reforms and to consider how these perspectives develop and relate to identity processes.

## **Methodology: study two**

**Research design:** Qualitative semi-structured interviews took place to explore barristers' perspectives and experiences of prosecuting and defending alcohol related rape cases. Schedule questions addressed how a number of the provisions available to barristers via the 2003 Act worked in practice, their overall impact in relation to improving the law of alcohol related rape and the need for further reform in this area. The qualitative approach was considered the most appropriate way of gaining rich, detailed information about barristers' specific perceptions and experiences.

**Materials:** Study data was obtained via an interview schedule (see Appendix B for a copy of the schedule) that consisted of seven sections:

- Background to the study - the reasons for the research, its aims and objectives.
- The barrister's background - their experience in prosecuting/defending rape cases, the demands of working on rape cases and their perceptions of the low rape conviction rate.
- Intoxication - the number of alcohol related rape cases barristers work with, the levels of intoxication seen, the impact of intoxication on the conviction rate, the problems facing barristers when prosecuting these cases, the role of juror prejudices in these cases.
- Capacity - the direction provided to jurors in helping them interpret capacity, the need to define capacity in legislation, the benefits/disadvantages of an evidential presumption that covers the circumstance of extreme drunkenness, the need for further legal reform.
- The presumptions - the frequency with which barristers use the presumptions, the level of evidence required to rebut an evidential presumption.
- 75(2)(f) - the frequency with which the presumption is used, the situations it covers, how the terms of the presumption have come to be interpreted in practice.
- Concluding comments – any further issues the barrister wishes to raise.

The schedule was devised following review of the relevant literature. A number of key issues and concerns raised in government consultation papers and ideas expressed in academic commentaries were used to help formulate the schedule (e.g. Finch & Munro, 2004; Office for Criminal Justice Reform, 2006; 2007; Tadros, 2006; Temkin & Ashworth, 2004). The interview schedule was intended to be a guide that structured the format of the interview. It was however considered important for barristers to speak about their experiences in ways that were meaningful to them (Reissman, 1993). Barristers were encouraged to address issues they deemed important with the interviewer responding to those lines of enquiry and questioning collaboratively.



In recognition of the small body of past research that has engaged with barristers (for examples see: Kelly et al., 2006; Temkin, 2000) the final interview schedule questions that addressed barristers' background, experience and opinions of rape trials, were based on the schedule developed by Kelly et al. (2006). This schedule was used in a Home Office study which aimed to observe the impact of the sexual history provisions introduced into sections 41-43 of the Youth Justice and Criminal Evidence Act 1999. It was felt that these questions provided a useful introduction and context to rape that could be applied equally appropriately to the current research. The Kelly et al. (2006) schedule was also used to guide the final number of schedule questions included. The principles of interview question formulation including the use of succinct, open-ended, non-directive questions were adhered to (Robson, 2002). The final schedule was discussed extensively amongst members of the supervisory team and modifications made in accordance to feedback. The final version was sent to a Liverpool based area judge for comment and feedback before the first interview took place. The first barrister interview was designed to act as pilot of the schedule. However, due to smooth running of this interview it was transcribed and analysed along with the other thirteen interviews and included within the results.

**Target population:** The study population consisted of 14 barristers (10 males and four female) who were all based at Liverpool chambers. This male to female split was roughly representative of the gender make-up of criminal barristers working across the major chambers in Liverpool (this observation is based on analysis of the members lists reported on the websites of the chambers from which barristers were recruited). Barristers were recruited from five chambers and the Liverpool Crown Prosecution Service. Twelve advocates (the terms advocate and barrister is used interchangeably throughout the chapter) had experience of defending and prosecuting rape cases enabling elaboration of these two perspectives to be sought whilst two barristers (barrister seven and 14) only had experience of defending cases. Advocates were at different points in their career with the number of years experience ranging from seven to 34 with a mean of 19.4 years. The majority of barristers were highly experienced; five were grade four Crown Prosecution Service prosecutors (this grade is reserved for barristers with exceptional, long-term ability and experience and is not merely reflective of career progression) and two sat as recorders (barristers who have been appointed to act in a judicial capacity on a part-time basis but who may progress to become full time judges). The barrister's number of years in practice was directly related to the number of rape trials they had tried with more experienced barristers having a more extensive history of prosecuting and defending cases. All barristers has been in practice prior to the 2003 Act and therefore had either knowledge or direct experience of trying rape under the pre 2003 law. This placed barristers in a suitable position to draw comparisons, highlight improvements and articulate possible failings with the new

legislation. The study sample cannot be viewed as representative of the entire barrister population involved in rape trials but it does pool together a broad range of experience enabling important issues and insights to be gained.

**Recruitment:** Recruitment of barristers to the study began following liaison with a Liverpool based circuit judge who became involved in the research project at an early stage. The judge was an existing contact of a colleague within the school of law at Liverpool John Moores University and through this colleague a meeting with the PhD student's supervisor was arranged. The judge was specifically licensed to try rape cases and had extensive experience of residing over sexual offence trials. During the initial meeting two primary contacts were provided by the judge to enable the effective recruitment of barristers to the study. These contacts were senior individuals working within the Merseyside Crown Prosecution Service who were suitably placed to provide the names of barristers working across the major Liverpool chambers who had experience of prosecuting and/or defending rape cases. One of these contact individuals was interviewed as part of the research and she provided, along with the other senior contact, the names of 21 suitable barristers to approach. These 21 individuals were all sent letters explaining the nature of the research and invited to participate in the study. Of the 21 barristers invited to participate, 13 agreed to do so (plus the initial Crown Prosecution Service contact). Those who did not respond were sent at least one further letter or email reminding them about the study, explaining that the research would soon be drawing to a close and asking them to contact the researcher should they wish to participate. All interviews took place at the relevant barrister's chambers or Crown Prosecution Service premises and were conducted between 3 June 2009 and 19 January 2010. All barristers gave generously of their time with interviews lasting a minimum of one hour and up to an hour and 45 minutes.

**Justification for sample size:** The recruitment of a set number of participants was not established at the beginning of the study as it was recognised that recruitment would involve the good will of a participant group who had important competing demands and would therefore be difficult to access. However, it was rationalised that the aims of the study would be met by interviewing a minimum of ten barristers with this decision being made in light of past research. Indeed, two of the only other UK research studies which have interviewed a barrister population about sexual offence legislation (Kelly et al., 2006; Temkin, 2000). used a sample of seven and ten highly experienced barristers respectively. As a minimum experience criterion was not set with the current study, it was anticipated that recruitment may need to exceed ten participants dependent upon the emergence of new themes, disparity in opinion and availability of barristers to be interviewed.

**Data analysis and reliability:** Interviews were digitally recorded and transcribed by a professional transcribing company, immediately after they had been conducted. This approach enabled the identification of additional lines of inquiry that the researcher pursued in subsequent interviews (Strauss & Corbin, 1990). Common and contrasting themes, topics and codes were identified through thematic analysis and the use of NVivo, a qualitative data analysis software package. Green and Thorogood (2004) suggest that thematic analysis is the most frequently utilised approach to qualitative research and is especially useful and appropriate for exploring and answering questions about the most salient issues within a group. The barrister transcripts were independently scrutinised by the PhD student and her supervisor to enable broad themes to be identified within the data which were then given codes. All codes were subsequently discussed and agreed by the PhD student and her supervisor, to ensure there was consistency in their allocation. Indeed, all transcripts were jointly re-read by both parties with passages related to the same theme being grouped together and appropriately coded. When disparities arose in relation to the grouping process these issues were rectified through discussion and eventual consensus. Barristers' transcripts were transcribed verbatim and therefore participants were not asked to read through them in order to comment upon the accuracy. If there were gaps in the transcription due to the transcriber being unable to decipher what was said, these gaps were filled in by the PhD student.

**Ethical considerations:** The British Psychological Societies code of ethical principles and guidelines (2009) was adhered to throughout. Participation in the research was entirely voluntary and participants were told about the aims and objectives of the study in the letter inviting them to participate and again prior to the interview commencing. Signed consent was obtained from all barristers (see Appendix C for a copy of the consent form) with these forms being kept separately from transcripts and audio recordings. All participants kept a copy of the consent form and participant information sheet (see Appendix D for a copy of the information sheet) which explained the rationale for the research, participants' ethical rights and freedom to withdraw from the study at any point (including retrospectively) as well as providing the principal researchers contact information to enable enquiries to be pursued. Names did not appear on any of the digital audio-recordings in order to ensure confidentiality and all transcripts were given an anonymised code to enable participants to be identified. The interview was deleted from the digital recorder once it was transcribed and only the research team had access to the information provided by participants. All quotes used in the PhD were anonymised and the appropriateness of using direct quotes was established with participants at the informed consent stage (all but one barrister were happy to have their quotes anonymised and used in the PhD). A list of services were provided at the end of the participant information sheet including the rape crisis federation to enable any specific enquiries or concern in relation to the subject matter to be pursued.

## **Interview analysis and discussion: study two**

A qualitative research design that utilised semi-structure interviews took place to explore barristers' perspectives and experiences of prosecuting and defending alcohol involved rape cases. The study aimed to generate understanding around the barriers that exist to successful prosecution, the impact and usefulness of provisions introduced by the Sexual Offences Act 2003, where problems in the law were still perceived to exist and to consider how subscription to specific perspectives may relate to identity processes through reference to social representations theory.

### Alcohol use in rape

The specific use of alcohol in rape cases was a theme that was developed. Within this theme several categories or sub-themes emerged. These included complainants' and defendants' alcohol consumption and intoxication prior to the non-consensual act, the specific use of alcohol to spike drinks and the 'playing down' of how much alcohol parties had consumed prior to the allegation of rape. The reasons associated with such under reporting and the consequences of doing so are addressed at this point.

***Alcohol consumption by complainants and defendants:*** Barristers highlighted that the issue of whether sex had been consensual was inevitably the main focus of non-stranger rape trials. Barristers also argued that due to the relative infrequency of stranger rape, the issue of whether consent had been present at the time was the focus of the vast majority of adult rape cases and therefore their work load. Barristers also stated that the significant body of their work involved females as rape victims. The current analysis therefore focuses on male-to-female non-stranger consent based rape in recognition that advocates were more knowledgeable and experienced in working with this type of crime. It also reflects the vast majority of non-consensual sexual experiences that were identified in study one, thus, bringing continuity to the PhD.

For those non-stranger rape cases that hinged on the issue of consent, barristers unanimously reported that alcohol was voluntarily consumed by the complainant 'very often' (barrister 10), 'more often than not' (barrister 5) and in the 'majority' (barrister 4) of cases. Estimates of its prevalence ranged from being involved in 40 or 50 to 80 percent of trials. Barrister 13 argued that in his last four years of practice this figure had raised to 'probably approaching 100 percent.' This clearly demonstrates the increasing frequency with which voluntary alcohol consumption is associated with rape, validating the government's concerns surrounding alcohol related sexual offences and their motivations for consulting on the issue of defining capacity and possible introduction of an evidential presumption that covers the instance of being too affected by alcohol and drugs to give free agreement (Home Office, 2004; Office for Criminal

Justice Reform, 2006; 2007). The frequent consumption of alcohol by rape complainants corroborates past research (Abbey et al., 2001; 2004; Finney, 2004) including the UK findings of Kelly et al. (2005) and their police data that identified around half of the reported rapes in their sample involved alcohol consumption by the complainant.

In those consent based cases that reached court, barristers unanimously argued that if complainants had been drinking alcohol and were intoxicated, defendants would also have been drinking. Barristers frequently described a typical alcohol related rape case as involving a complainant who was drinking voluntarily with friends meeting the defendant who had also been drinking, at a party or nightclub, the complainant and defendant approaching each other, talking and kissing and then 'retiring to somewhere more private' (barrister 12); where the allegation of rape followed. Indeed, it was agreed that the majority of alcohol related rape cases occur 'after evenings out' (barrister 2) and where 'both sides have been drunk' (barrister 2):

'...it sounds very typical but it just generally is this. She's drinking with friends, he's drinking with friends, and then the two groups all meet and they will strike up a bond. Um now, either the act will take um place then or it may well be they agree to meet and then on another occasion when they're drinking together from the outset, that will take place....' (barrister 11).

The co-occurrence of shared drinking prior to rape again accords with past research findings (Abbey et al., 1998; Abbey et al., 2004). Whilst the above description was seen to represent the archetypal alcohol related rape that barristers encountered, advocates also talked about a range of other alcohol relevant cases that they had dealt with, albeit far less frequently. For example, men spiking women's drink with alcohol and drugs for the purpose of procuring sex and a drunken complainant waking up to find a man having sex with her. These different ways in which alcohol is used to procure intercourse mirror the suggestions of Koss et al. (2007) and highlight some of the different ways in which alcohol is strategically associated with modern day non-consensual sexual interactions. These comments also correspond with the findings of study one and the less frequent occurrence of the tactic of procuring sex from an intoxicated sleeping female.

**Drink spiking:** Drink spiking (defined by barristers as the surreptitious administration of alcohol or drugs such as Rohypnol and GHB to a complainant) was a category that emerged through analysis. Whilst certain barristers had dealt with these cases the majority had not. Barrister four who was highly experienced reported having not 'done one yet.' It was suggested that the media attention around drink spiking and the government's attempt to respond by including rebuttable presumption (f) was a tactic designed to 'pander' (barrister 11) to the public and which aimed to emphasise that the government were dealing with an issue which the media

had portrayed as highly prevalent. It was unanimously agreed that voluntary alcohol intoxication, and not involuntary consumption of alcohol and drugs via a spiking method, was the more prevalent form of rape and type of case reaching court: ‘...I’ve never come across involuntary intoxication, but lots of voluntary intoxication’ (barrister 8). This finding supports the toxicological conclusions of Slaughter (2000) and Scott-Ham and Burton (2005) and assertions that in cases of alleged drug-facilitated sexual assault, voluntarily consumed alcohol is the substance most frequently found (Beynon, McVeigh, McVeigh, Leavey, & Bellis, 2008; Finch & Munro, 2003; Horvath & Brown, 2007; Neame, 2003). Indeed, the Scott-Ham and Burton (2005) study highlighted that not one sample of suspected drug-facilitated sexual assault from the 1,014 analysed contained Rohypnol. This perhaps demonstrates the influence of the media and their portrayal of ‘drink-spiking’ discourses in terms of informing the lay public’s representations of rape and subsequent understandings of rape experiences (Joffe, 2003; Moscovici, 1988). As Howarth (2006) points out, media depictions of events feed into and shape the representations that individuals hold. Different modes of thinking about a specific event circulate in society and different representations will compete in their fight to be accepted as truth. Inevitably, acceptance of certain representations leads to the rejection of others (Howarth, 2006). It may be argued that the prominent drink spiking media discourse will inevitably lead to the marginalisation of other discourses – such as those that suggest rape more frequently occurs after alcohol has been voluntarily consumed. The more dominant representation becomes accepted as truth, or as Burgess, Donovan and Moore (2009) argue, becomes a ‘culturally embedded crime fear’ (Burgess et al., 2009, p. 849) with individuals and governments responding accordingly, irrespective of whether the chosen representation reflects the more prominent problem (Kitzinger, 2009). Several study barristers stated that being able to identify a genuine case of drink spiking was often difficult due to drugs such as Rohypnol leaving the system quickly and because they ‘are not detectable after a relatively short period of time’ (barrister 6). In the absence of toxicological evidence to demonstrate a drink has been spiked it was argued that there would be no evidential basis on which to proceed with this argument:

‘...There have been cases where we have suspected um drug use, but because the drug.... is it GBH..... Um I mean there are others. They tend to leave the system in 24 hours, which means that if somebody has been stupefied, and they make a complaint to the police the following day, and by the time the complainant has been to the police station, outlined the complaint, gone to the Rape Unit and waited for the doctor, there’s an extremely high chance that any traces of the drug will have vanished’ (barrister 1).

It is interesting to note that research suggests Rohypnol (or more specifically the benzodiazepine flunitrazepam) does not inevitably pass quickly through the system (Negrusz et

al., 2000). This study of ten participants who received a single oral dose of Rohypnol found that flunitrazepam could be detected in urine samples for long periods. Whilst the highest concentrations of flunitrazepam were found in the body six hours after initial administration in nine participants and 24 hours in one, the substance was still detected up to 14 days later in six participants, 21 days later in one participant and 28 days later in the remaining three participants. Barristers acceptance, repetition and circulation of discourses that promoted the idea of Rohypnol having a very short half life perhaps highlights the way in which abstract science is simplified, and often misrepresented, as it is defused down into the public sphere and transformed into common sense knowledge (Moscovici, 2001). Indeed, scientific findings often receive little attention and promotion outside of the world of academia and it is therefore unsurprising that they fail to be integrated into lay representations, especially when competing with frequently promoted media arguments that emphasis the very short half life of these substances (for example, Mail online, 2006). The unanimous acceptance of this idea amongst barristers suggests it has been developed and reinforced through discourse and debate with other advocates, who, come to accept their perspective as being constitutive of reality and who use it to defend specific arguments and world views.

***Playing down the role of alcohol:*** Several advocates stated that it was exceptionally difficult to get an accurate account of how much the complainant and defendant had drunk prior to an allegation of rape. Whilst the cases barristers worked on typically involved extreme forms of drunkenness, individuals were reported to have ‘lied’ (barrister 4) and to ‘play it down’ (barrister 11) when it came to articulating how much alcohol they had consumed. Several barristers reported that witnesses would always describe themselves as ‘merry’ (barrister 11) and never drunk. Advocates suggested that when complainants modified the amount they had consumed, this typically caused evidential problems:

‘...The complainant will say I think I had four bottles. Well, the defence.... all the defence are waiting for is her mate to be saying oh well we had about six or seven... So, if it might.... if they're saying six or seven, then why is she saying four?.... why is she telling you members of the jury.... why is she trying to limit her alcohol intake?....’ (barrister 11).

Such discrepancies were seen as pivotal to the defence’s argument and would be used thereon to discredit the complainant’s reliability or to suggest she was lying. Indeed, defence barristers viewed such inconsistency ‘like a crack in a brick’ where they would ‘drive a hammer right through it, and then say to the jury with all of this.... how can you be sure?’ (Barrister 11). Complainant’s conservative drinking estimates can be seen to accord with the findings of Temkin (2000), Kelly et al. (2005) and Jordan (2001) who identified that rape victims may adjust aspects of their testimony when reporting rape to police officers or at trial. Kelly et al.

(2005) and Jordan (2001) suggested that the anxieties around not having an account believed may motivate complainants to modify their stories in order to align them more closely to the real rape script and to portray themselves as a more credible victim. Paradoxically, adjusting a story to play down the amount drunk enhances the possibility of inconsistency being introduced into accounts and this inconsistency enables advocates to undermine perceptions of credibility (Leippe et al., 1992). Behaviours such as heavy drinking have been found to be under-reported in survey research generally (Bellis, Hughes, Cook, & Morleo, 2009) and are not restricted to sexual offence trials. Such under-reporting may be due to drinkers ignoring or forgetting about heavy drinking sessions or may equally relate to the discourses and representations that circulate in society and which associate heavy drinking with irresponsibility, ill health and antisocial behaviour. To disassociate from such messages and to maintain self-esteem and identity, individuals may adjust the amount they consume when divulging to third parties (Breakwell, 2001). If individuals play down the amount they drink in survey studies when anonymity is typically provided, the impetus to do so would be enhanced in the court setting where a complainant's behaviour is open to public scrutiny. Under such circumstances it may be suggested that under-reporting is an expected and somewhat 'normal' behaviour and not a default indicator of deception and lack of credibility. This perhaps highlights the way in which complex human behaviours and motivations are reduced down to acts of lying, under the clinical lens of the court environment.

Barristers did not feel that there was always intentional fabrication when it came to the issue of how much had been drunk. For certain witnesses it was felt that they simply couldn't remember and that 'when drink is involved, people are not the best judges of their own capacity or their own capability' (barrister 4). It would therefore not appear as simple as to recommend police officers and barristers inform complainants of the importance of answering questions about the amount of alcohol they had consumed at the time truthfully. Indeed, alcohol's impact on memory processes may have prevented this information from being coded and successfully transferred into long term memory storage at the time (Ryback, 1971; White, 2003). In such circumstances, a complainant will only ever be able to estimate the amount of alcohol they consumed prior to an offence. Again, this will inevitably cause problems when the trial process continues to rely so heavily on a complete and coherent account of events. There was consensus amongst advocates that alcohol's impact on memory was a significant barrier to successfully prosecuting rape due to these factors and its almost inevitable ability to leave the complainant appearing to lack credibility:

'The fact that their recollections are certainly gonna be impaired. And if you're defending, you exploit the differences. If she says um we were in bed at two o'clock in the morning and you know there's CCTV showing them on a night floor.... on the dance floor at half past three, you



then say to her well you can't possibly be sure that that's right. And that impacts upon her credibility. If you're prosecuting, so it's the other way around, you've got a problem; your witness has said something that isn't true. She hasn't lied but that's her recollection and she's wrong. So how do you put her forward as a witness who is wrong on this but right on that?' (barrister 1).

It is perhaps useful to reflect on the arguments of Wallerstein (2009) at this point who put forward the suggestion that drunken consent should not be recognised as a legal consent, due to certain normative and public policy factors. Wallerstein's argument draws upon existing legal principles which acknowledge that in certain circumstances the law perceives a person to be incapable of giving valid consent (for example, if under the age of 16. Whilst a person under 16 may consent to intercourse, the law does not recognise this consent as legally acceptable and provides sanctions which prohibit it). Wallerstein argues that similar principles should apply in cases of intoxication and that the law should specify that irrespective of whether a person consents, in circumstances of extreme drunkenness, that consent will not be deemed legally valid. Given the frequency with which complainants, and indeed defendants, were reported to underplay their level of drunkenness, it is possible to suggest that if the law was altered to embody such notions, complainants may feel less reticent to speak about their intoxicated state, and the impact this had upon their behaviour at the time (although it is acknowledged that such a perspective would not be supported by study barristers with this issue being discussed later in the analysis). In addition, if loss of memory is considered indicative evidence of a drunken consent, and therefore not legally valid, this may to some extent remedy fears the Crown Prosecution Service may have about sufficient evidence to proceed in cases where alcohol has been consumed and memory impacted. Whilst the most recent edition of the Crown Court Bench Book (2010), which sets out illustrative judicial directions (instructions to the jury in relation to the specific points of law associated with a case), does not acknowledge the perspective of Wallerstein (2009), it does address the issue of 'mistaken assumptions' and circumstances whereby the jury may approach the complainant's evidence from a biased view point. Included within these circumstances is the situation whereby the trauma associated with rape may have a detrimental impact on the memory of the complainant. The direction in relation to this point argues that inconsistency in a complainant's account should not be deemed inevitably indicative of a false report. Whilst commending the recognition of potential memory trauma care of rape, it is perhaps disappointing that the Bench Book (2010) fails to provide a direction to the effect that an inability to remember whether one consented to, or engaged in a sexual encounter due to one's intoxicated state, could also be seen as evidence that the complainant was duly incapable.

## Impact of alcohol on the rape conviction rate

Alcohol involved rapes were viewed as ‘particularly difficult to get convictions in’ (barrister 12) and central to the problem of conviction was the lack of independent evidence, a problem pertinent to many rape cases. The difficulty of being able to meet the evidential burden of proof required, and say beyond reasonable doubt that rape had occurred, was also deemed instrumental to acquittal along with the enhanced possibility of defence counsel being able to discredit the complainant in alcohol involved cases by arguing that they agreed to sex at the time, due to the disinhibiting impact of alcohol. The impact of disinhibition was seen to enhance the possibility of a false rape allegation, further compounding successful prosecution. These key barriers were thus developed into specific sub-themes.

***Lack of independent evidence:*** Due to the very nature of the rape offence, with the defendant and complainant typically only being the direct witnesses to the events that occurred, it was unanimously agreed that there was a distinct lack of independent evidence available in rape cases generally (including medical evidence and other witness statements) which could either refute or corroborate allegations. If medical evidence was available it was argued that it was typically equivocal, neither advancing nor refuting an allegation with signs of resistance often being regarded as equally consistent with ‘rough sex’ (barrister 8). It was often felt that this was unique to rape and that this lack of independent evidence made the prosecutor’s job of demonstrating a lack of consent especially difficult: ‘Um if there's not much to choose between them and it's in private and, you know, there's no evidence of any violence, you're gonna lose when you're prosecuting’ (barrister 4).

The problems associated with a lack of independent evidence in rape cases parallels the argument of Temkin (2000) who also highlighted that barristers felt a lack of supporting evidence was highly interlinked with acquittals in rape trials. In the absence of supporting evidence the credibility of the complainant was argued to take on enhanced meaning. However, as stated, when large quantities of alcohol had been consumed, credibility was argued to be something that could be more easily undermined, due to its impact on memory and the complainant’s subsequent inability to recall details of the rape. It is interesting to note that at this specific point, the focus was firmly on how alcohol had impacted on the complainant’s memory and credibility, as opposed to that of the defendants. Indeed, several barristers argued: ‘... It’s not so much the use of drink or drugs by the perpetrator, as by the victim. That’s where it really seems to have a tremendous impact on the jury....’ (barrister 3). This focus seems somewhat problematic in light of complainants not being the party that are ‘on trial’ and defendants also now being required to demonstrate that they took reasonable steps to ensure the complainant was consenting at the time. However, discussion around the impact of alcohol on

the defendant's memory, their ability to take reasonable steps and the possible undermining of such actions care of the alcohol they had consumed, was deemed secondary to the focus and impact of alcohol on a complainant's credibility. This again corresponds with the findings of study one and existent research that suggests the spot-light remains firmly on a drinking complainant's behaviour. That is, women are often held more responsible for rape when drinking, whilst intoxicated perpetrators are often viewed as less to blame (Finch & Munro, 2005; Norris & Cubbins, 1992; Richardson & Campbell, 1982). Such contradictions may again be explained via reference to gendered stereotypes where drunkenness amongst men is still deemed more socially acceptable than the same behaviour in women (Leigh, 1995).

**Burden of proof:** The high burden of proof was often seen as pivotal to the issue of acquittal in rape cases. Barristers highlighted that throughout the trial jurors would be reminded that they had to be sure beyond reasonable doubt that rape had occurred in order to convict. Due to the lack of independent evidence available, the prosecution's job of convincing a jury to reach this standard was deemed especially difficult:

'But the fact of the matter is, if it is the evidence of one person against another person, then the difficulty the jury have will be knowing whether or not the defendant.... whether or not they can be sure the defendant is guilty. So that's.... but I think that is the biggest factor actually, that they have to be sure that the defendant's guilty. And err as long as that remains the task, then two people who are giving evidence, one saying one thing and another saying another thing, and there aren't other factors, then.... such as, you know, medical evidence, evidence of injury, then it's hard for the jury to know' (barrister 7).

When alcohol had impacted on the ability to fully recall details of a rape, the events leading up to the rape and the actions of the complainant and defendant during, it was felt that this made it even more problematic for jurors to be sure of guilt. Indeed, it was argued that 'if you have people whose memories are defective, for whatever reason, it's very hard to persuade a jury to be sure' (barrister 1). Several barristers argued that the purpose of the trial was to establish whether there was sufficient evidence to convict an individual of rape. Consequently, the burden of proof was duly acknowledged as one of the fundamental legal principles which was essential to an adversarial system that also protected the rights of defendants, and one which must not be relaxed: '...And when the standard is as it is, that you must be sure. You know, it's a very high test and it should be a high test....' (barrister 2).

It is perhaps unsurprising that advocates adopted this view; indeed, such defendant aware perspectives would be integral to barristers' representations of an adversarial legal system. Such perspectives would have fed into the development of barristers' representations throughout their

time in training and have been reinforced through their day-to-day practice which also includes defending, protecting and advancing the rights of the defendant. As barrister three stated 'everybody's entitled to a fair trial in a democratic country. That's the system of law'. Perhaps more than any other profession, barristers are required to unquestionably adhere to the principles of the institution within which they work. For example, accepting that a defendant has important rights which are to be upheld must be fully supported if an advocate is to effectively represent them and to ensure self-esteem and sense of identity in what one does (Breakwell, 2001; Howarth, 2002; 2004; Joffe, 2003). As Temkin (2000) points out, advocates are placed daily in positions where they are required to defend individuals who at the least are a nuisance to society and possibly, a direct threat. Thus, it may be suggested that legal principles, such as the importance of the very high burden will be fiercely supported and engrained within barristers' representations, in order to help rationalise and justify their work and to ensure beliefs such as the defending of problematic characters, paradoxically upholds the principles of law, are maintained. By considering an advocate's identification with their professional role and how this ties in with self-esteem and identity issues, it is possible to contextualise and explain more comprehensively the development and consensual endorsement of specific perspectives, such as the importance of the evidential burden not being relaxed.

***Alcohol's impact on inhibitions:*** The majority of barristers argued that when alcohol was a feature in rape there is the enhanced possibility that someone may have behaved differently to what they would have if sober, or that their judgement about having sex may have been impaired:

'.....You've got the problems with people hiding behind drink and the absence of recollection. And I think.... again, I think inevitably, juries jump to the conclusion that people who have been drinking do things that they wouldn't ordinarily do when they're sober' (barrister 8).

Again, it is possible to speculate that the media has been instrumental in constructing representations of alcohol impaired disinhibition. The frequently cited media reports which depict young women out on a weekend drinking to excess, being sick and acting antisocially are available to the lay public to draw on in their interpretations of alcohol involved rape (Joffe, 2003). Indeed, routinely used images of intoxicated women have to some extent come to metaphorically represent drunken excess in the UK (Borland, 2010). Advocates stated that in alcohol related rape cases the defence's case will often be based upon the argument that whilst the complainant had been drinking, at the time of intercourse she consented to sex. However, upon sober reflection the complainant regretted her actions and 'cried rape' (barrister 2):

‘Well, you know, it always makes you.... it always makes a defence advocate's job easier if the complainant is intoxicated, because of the disinhibiting factor and, therefore, the more likelihood of there being consent. Um and um, you know, the classic case of well, you know, enjoy now and repent later, err and one way of repenting is to try and punish a defendant for taking advantage of a vulnerable girl, by making the allegation....’ (barrister 14).

Although the idea of trying to ‘punish a defendant’ is a genuine possibility, and is therefore within the defences remit to raise, the research evidence calls into question the legitimacy of arguments that suggest false rape allegations are common place (Kelly et al., 2005; Lonsway et al., 2009; Rumney, 2006). It may be argued that advocates, potentially via the instructions given by defendants, are drawing heavily on a stereotype that has little empirical research base and in doing so, perpetuate and reinforce a rape blaming discourse. The use of such arguments aligns with the research of Finch and Munro (2007) who found that when mock jurors deliberated after watching a rape case reconstruction, participants were more likely to perceive the drinking female complainant as sexually disinhibited, compared to her non-drinking counterpart (Abbey et al., 2004; George et al., 1995; Norris & Cubbins, 1992). It also reflects the concerns expressed by mock jurors in Finch and Munro’s (2005) earlier study who directly articulated the possibility of consent having been revoked by drinking complaints upon sober revocation of the situation in which they found themselves. The first study of the PhD identified that students who have experienced rape often do not report the incident to the police due a fear of not being believed and anxieties over being held accountable. In light of advocates’ arguments at this point, such concerns seem suitably well founded.

It is possible to suggest that the extensive focus on drunken disinhibition is a further means by which the spot-light remains on the complainant’s behaviour at trial. It is possible to suggest that the inclusion of more stringent regulations surrounding the admittance of past sexual history evidence means that the tactic of discrediting a complainant via their sexual past is less openly available. It may be suggested that there has been a shift in approach which now sees a complainant discredited via the amount of alcohol they consumed prior to the rape. Again, it is likely that ideas around false rape allegations being frequently made are largely developed and disseminated through the media. As previously discussed, Kitzinger (2009) argues that over the last ten years there has been a specific media focus on false rape allegations, due to rape prevalence statistics no longer making for stimulating reading. Such depictions shape representations and understandings of false allegations with the media setting up powerful discourses related to victim culpability which are there to be utilised in the formation of juror’s understanding of rape, consent and the parameters around its presence or absence. As Temkin (2000) has previously suggested, a limited number of discourses are routinely told at trial and there may be a need for defence barristers to consider more ethical lines of questioning. Whilst

all defendants are entitled to the best defence available, Temkin (2000) highlights that the Bar's code of conduct makes clear that the barristers overriding duty is to ensure that justice is delivered and achieved and that the barrister's duty to the court transcends that of the individual they represent. If such an ethos were stringently adopted there would perhaps need to be a re-evaluation of the appropriateness of using the 'cried rape' defence.

The above points link into arguments raised by barristers in relation to the differences between prosecuting and defending in rape trials. Advocates often argued that when prosecuting you 'recognise the rules of evidence and, in my view, you don't try and pull fast ones' (barrister 1). Prosecuting was often represented as fair and as about presenting the evidence in a just fashion. In contrast, when defending, barristers' approaches were generally deemed fiercer or 'like having a machine gun. And sometimes, you just sort of like blaze in all directions...' (barrister 3). Such differences in approach raise questions regarding the equivalency of representation offered to the principal witnesses. Inevitably, the difference in approach reflects the different roles and responsibilities of the prosecutor and defending barrister. The prosecutor specifically represents the state, as opposed to the complainant, whilst the defendant will be the individual client of the defending advocate. In light of this structure, the complainant does not have the same access as a defendant to meet with the prosecuting barrister to discuss their evidence because doing so might impact on their objectivity. Whilst the majority of barristers felt this structure was appropriate and fair, certain advocates noted the way in which it may disadvantage complainants. Whilst at no point suggesting complainants should receive independent legal representation, certain barristers did feel that victims should be included more fully within the court process:

'I just think that the prosecution need to have a more relaxed policy on establishing err a relationship with the witness, as a defence advocate would. I wouldn't dream of going over to court and representing somebody in a trial, in a jury trial, with not.... without not having a conference with them..... It's unbalanced. And I really don't see what real justification there can be for that. I know that the.... you know, we have long standing principles that, you know, you prosecute a case fairly and you defend fearlessly. But I don't think that is enough to justify this complete aloofness between the prosecutor and the witness' (barrister 14).

These points tap into the arguments of Hall (2010) who states that the discourse that resonates within the Criminal Justice System that suggests victims are now being placed at 'the heart' of that very system, often negates and contradicts the reality that the prosecutors role is still largely independent of the complainant. This discourse may therefore raise the expectations of rape complainants and when such expectations are not met, feed into a culture of despondency and subsequent lack of confidence in that system. As well as encouraging more ethical defending in

court, it may be suggested that complainants need further familiarity with the court process and for it to be clearly communicated what will happen and be expected of them as a witness. It is also appropriate to question whether an ethos that suggests 'you prosecute a case fairly and you defend fearlessly' (barrister 14) feeds into an unbalanced trial that disadvantages complainants from the offset.

*The multifaceted nature of false allegations:* Barrister 12 and six argued that the issue of false rape reporting was likely to be far more complex than a woman waking up the next morning, regretting sex and making a false allegation. Indeed, it was argued that: '...false allegations, I think, is probably the wrong way of putting it. Um misconceived lack of understandings, um differences of opinion, that I think is a better way of looking at it' (barrister 12).

For these barristers alcohol was seen to impact on both defendant and complainant perception and expectation. It was argued that when individuals who are not well known to each other meet in a pub or other drinking environment, they will be unfamiliar and therefore have certain expectations about how they should behave, how the other party should behave and what actions are appropriate in the circumstances. It was felt that the accumulation of these factors, combined with the impacts of alcohol on cognitive skills may result in individuals not conveying clearly how they feel and what they expect to happen. In such circumstances it was felt that sexual behaviours that may start off consensually may progress to become non-consensual. That is, whilst parties may agree and participate initially to certain sexual acts, things may go 'too far' (barrister 6). Therefore, due to a failure to communicate expectations, a lack of clarity about what the other party is feeling and acting in accordance to how one believes they should, by the end of the interaction sex may feel both unwanted and non-consensual for each party. Barrister 12 and six acknowledge that a complainant who experiences this scenario and who genuinely perceives the sex to have been unwanted may come to frame the experience as non-consensual and report it to the police as such. This again highlights the blurred boundaries between consensual and non-consensual sex and the limitations of the legal system to deal with and unravel certain forms of unwanted sexual experience. Indeed, both barristers highlighted the difficulties of trying to deal with such complex behaviour through the law:

'And because sexuality is so variable, complicated, what starts off as being consent isn't necessarily consent by the end of it. What starts off as being a good idea isn't necessarily a good idea by the end of it, from both points of view. And I think it's extraordinarily.... I think it's one of the big problems with rape, that you're using a very blunt instrument like the law to try and deal with very complicated social interaction' (barrister 12).

The above discourse links closely with the arguments of Abbey (2002) and assertions that when alcohol has been consumed misunderstanding can occur in the interpretation of sexual consent messages and in the earlier stage sexual interest cues, potentially leading to non-consensual experiences. For Abbey et al. (2001) this misunderstanding is linked closely to misguided expectations about the role and influence of alcohol in sexual situations (Bellis et al., 2008; George & Stoner, 2000; Sumnall et al., 2007). The ability of barrister 12 and six to conceptualise and articulate the more nuanced nature of false reports may be a consequence of their highly experienced barrister status which has involved considerable years spent prosecuting and defending rape. From a social representations perspective it may be argued that these barristers' representations of false reporting were more comprehensive than those of other advocates. Whilst it is acknowledged that representations are constructed through communication with individuals who are in close proximity, and advocates frequently acknowledged that they would speak with other barristers to rationalise legal issues, this does not translate into all barristers' sharing identical representations (Breakwell, 2001). Indeed, representations are socially generated and this process occurs within a society of different social groupings and world views where media, political, scientific and personal influences also impact on the construction of a representation. As stated, these barristers were highly experienced in trying rape cases and such experience may have exposed them to the complexities surrounding false reporting. This personal experience will combine with barrister 12 and six's choice of media, their political influences and personal circumstances also impinging on the development of their representations. Indeed, both barristers were women and it may be possible that the competing discourses around femininity and female vulnerability to unwanted sex resonated more sharply with these advocates who built such discourses into their representations. As Howarth (2006) acknowledges, the increased debate and argument that exists in society leads to increased diversity of opinion between subgroups of individuals who are motivated by different concerns, priorities and agendas. The consequences and concerns associated with being aligned to a specific gender subgroup may, for specific individuals, also impact on the representations they adopt with gender based perspectives being meshed, and accommodated, within those wider representations that circulate amongst advocates.

### Jury behaviour

Barristers talked extensively about specific jury behaviours, addressing frequently the way in which jurors apply alcohol relevant legal directions. Barristers also addressed the juries' decision-making capabilities and skill at returning verdicts that advocates deemed appropriate as well as discussing the possible impact of juror stereotypes on the trial process. These topics were therefore framed into sub-themes to again address some of the barriers that exist to the successful prosecution of alcohol involved cases.



**Jury decision-making:** The majority of barristers argued that ‘juries generally get it right’ (barrister 11), had ‘great faith in the jury system’ (barrister 14) and felt that decisions of guilt and innocence must continue to be decided in this democratic way. However, certain barristers had reservations about jurors’ decision-making skills. For example, certain advocates argued that there were rare occasions when the decisions returned by the jury were ‘bordering on perverse’ (barrister 3). Perverse decisions were seen to be linked with the burden of proof and difficulties of deciding upon innocence and guilt in the absence of independent evidence but were also perceived to relate to the consequences associated with applying the rape term. Indeed, it was argued that jurors were often aware of the ramifications of labelling an individual a rapist and when accounts were confused by the impact of alcohol on memory, jurors would find themselves in a position whereby they would give the defendant the ‘benefit of the doubt’:

‘But if you're dealing, where it's one person's word against another and there are discrepancies perhaps or there are some aspects of the case, which leave the jury some concerns, then I think the jury are simply gonna say well we know, even though they can't be told what the sentence is, and never are told what the sentence is, the jury know what the consequences of a rape conviction will be. And in that sort of situation, I think it's.... they will give the benefit of the doubt, if that's the correct expression, to the defendant’ (barrister 10).

It is interesting to note that when juries were discussed there were several instances when they were referred to as though they were independent from the wider legal process. For example, one barrister argued ‘we don’t make the decisions, the jury do’ (barrister 3) whilst another commented: ‘And it is juries who are acquitting people. It's not the system that's bringing about a low conviction rate in these cases. Far.... far from it. Everything in the system is designed to get a conviction’ (barrister 1).

It can legitimately be argued that the jury cannot be divorced from the wider court system, and that such distancing of the legal process from the jury, and distancing of the ‘system’ from problematic verdicts, demonstrates the way in which attitudes and explanations are carefully constructed to achieve specific purposes. Indeed, it may be suggested that such discursive tactics enable the advocate to metaphorically separate the legal system from potential perverse decisions that jurors may make. In doing so, the system does not have to be held accountable for negative jury actions and verdicts. Such a tactic may help to maintain self-esteem by allowing the advocate to align themselves with the well functioning system and by default, enable them to disassociate from a process which may be open to criticism. Under such circumstances, the barrister may continue confidently in their role knowing that they themselves are not part of a process which may be open to question. Representing the jury as an entity that is divorced from

the wider court process supports arguments central to the theory of social representations. That is, that individual's representations are forged for specific purposes and to achieve specific objectives (Moscovici, 1976). As stated, it may be argued that the above representation has developed to enable certain advocates to locate themselves to specific discourses which will protect against threats to self-identity and esteem. That is, which protect barristers from having to classify themselves as being part of a process which involves potentially inaccurate jury verdicts (Breakwell, 2001; Holloway & Jefferson, 2000; Joffe, 1996). The above representation also supports Rohleder's (2007) and Moscovici's (1976) arguments that it is a natural human process to distinguish between groups of individuals in society. Representations are argued to provide a way of distinguishing groups, provide an important homogenizing influence that allow for communication and for those who share representations to agree in their evaluations and understanding of the world. Indeed, it may be argued that for those male and female barristers who endorsed the current jury representation, in coming to explain and rationalise a specific court process they locate themselves and other legal professionals as distinct from jurors, thus perpetuating and circulating an 'us' and 'them' mentality (Joffe, 1996).

***Legal directions and definitions:*** Reflecting the conclusions of Ellison and Munro (2010), study advocates frequently argued that the directions given by judges in relation to consent, capacity and the presumptions were not always applied by jurors in a 'mechanistic' (barrister 11) way to help guide their assessments of guilt and innocence. Instead, it was frequently argued that jurors make an assessment of the witnesses based on the way they present themselves and their evidence in court, on their perceived likability, 'on a gut reaction of the facts' (barrister 9) and also on how the juror themselves believes they would have behaved in the given circumstances. The majority of barristers felt this was representative of jurors' decision-making processes and that their likes and dislikes, 'who they believed' (barrister 8) and their personal convictions about the complainant and defendant were far more relevant influences on their decision-making than legal instructions. This clearly has concerning implications if verdicts are being based on personal judgements and factors external to the evidence presented:

'...it depends on the likeability of the defendant. There are some defendants um who are inherently unlikeable and you know they're gonna have to do a hell of a lot to make a jury accept what they're saying. Um there are some who look angelic, who may be as guilty as can be. But I'm sure jurors are happy to dispense with err presumption....Because trials are ordinary people dealing with ordinary people, and their likes and dislikes um can't be left at the door' (barrister 1).

Whilst talking about jury directions, the point was frequently made that the increasing number of directions and definitions that judges are required to provide in relation to consent, capacity

and the presumptions, care of the 2003 Act, often appear to be designed to 'push' (barrister 8) a jury down the road to conviction. A number of advocates did not think this was helpful and actually felt that it could be detrimental to the trial process in light of an individual's innate resistance towards being told how to behave. Indeed, it was felt that juries often 'recoil' (barrister 1) against direction and that 'if a judge tells a jury, or tries to guide a jury into a conviction, you've got... that's your best chance of being acquitted' (barrister 13). It was clear that barristers were wary of provisions which reduced the role of the jury, with judges being considered similarly reluctant to trespass into what was considered their province. Reflecting again on the suggestions of Wallerstein (2009) who argued that drunken consent should not be recognised as a legally valid consent, it is evident from these debates that barristers would not be accommodating of such suggestions. Indeed, if a jury accepted the complainant was drunk, they would by law have to consider her consent to be invalid. Whilst a finding that a woman was drunk would not automatically lead to a conviction, as a jury would still have to consider whether the defendant had sufficient mens rea, the role of the jury would be considerably diluted and it was clear that advocates had strong reservations about the appropriateness of such dilution.

Jurors' failures to fully utilise legal instruction may relate to advocates' perceptions that directions and definitions were often too complex for jurors to understand and meaningfully apply. By their very nature, legal directions and definitions were viewed as either complex or ambiguous. Taking as example the direction on capacity given in the case of Bree (2007), the court concluded that 'a drunken consent is still consent' (Bree, 2007, p. 166) but that if the complainant had 'temporarily lost her capacity to choose', she could not be deemed to be consenting (Bree, 2007, p. 167). Further, where the complainant had consumed even vast quantities of alcohol but remained capable of choosing whether to have sex and indeed agreed to do so, this would not be constitutive of rape. These judgements can now be given to jurors in intoxication cases to help inform their understanding. As previously discussed however, the debates around this direction suggest it is somewhat rhetorical and fails to provide guidance on the actual meaning of capacity (Cowan, 2008; Elvin, 2008; Rumney & Fenton, 2008). That is, the more nuanced questions of what not having the capacity means, and its impact on consent, remain unaddressed. Barristers reflected this idea of direction being unhelpful and confusing and felt that it was essential to have 'clarity (barrister 10) and to 'keep the law simple and to the point' (barrister 8) if it was to be understood and applied. When barristers described the make-up of juries there were specific occasions when there was an expectation that jurors would not understand the judicial direction given. Barrister three for example argued:

'We over direct jurors, in my view. I'm all for keeping it simple. Simple is beautiful. And you have to understand that they're not academics. These are people who work on building sites.

read the Sun, um some can't read and write. Others might be professors and doctors, highly intelligent people. But you don't know that, so you have to work on the basis that they're not intelligent people...'

Several barristers used parable descriptions to portray the jury as typically comprising below intellectual average working class individuals. Again, depicting the jury as the non-intelligent other can be seen to emphasise and reinforce the divide between the legal profession 'us' and lay jury 'other' and further acts to distance the advocate and 'system' from the juror. It also demonstrates further the way in which representations are used to distinguish between groups of individuals in society (Moscovici, 1976). The suggestion that jurors do not fully understand judicial direction is supported the recent Ministry of Justice funded project that analysed 68,000 verdict, questioned jurors and staged simulation trials. The study identified that over two-thirds of jurors in criminal trials did not wholly understand the directions they were given (Thomas, 2010). If barrister speculations are accurate, failure to either understand or apply legal instruction may go some way toward accounting for the 'perverse' verdicts that jurors were noted to return on certain occasions. These findings also support the arguments raised in the Home Office (2006) stocktake of the effectiveness of the 2003 Sexual Offences Act so far. Here it was suggested that the statutory definition of consent had made little difference to the pursuit of rape cases through the Criminal Justice System due to the definition being poorly understood by both practitioners and the general public. These suggestions also echo the findings from the mock rape trials carried out by Finch and Munro (2006). When mock jurors were asked to address whether the complainant had the freedom and capacity to consent to sex, jurors had difficulty interpreting and applying the definition. This resulted in a flexible legal test where jurors would deviate in their views on the point of incapacity.

***Juror stereotypes:*** When barristers were asked directly whether they felt that the attributions of blame and responsibility allotted to rape victims in the rape literature (Finch & Munro, 2005; 2006; 2007; ICM, 2005; Norris & Cubbins, 1992; Opinion Matter, 2010a) crossed over into the actual court environment, a minority of barristers felt that jurors no longer held stereotypes about appropriate female behaviour which impacted on their decisions to convict or acquit. It was argued that this belief had been reflected over the last several years in juror's increased willingness to convict in rape cases that involved sex workers as the complainant. Certain barristers felt that this move was due to a greater exposure to alternative lifestyles and a general shift in public thinking in relation to sex:

'It's not as bad as it was. The young woman who leaves and goes into a nightclub in a short dress, looking attractive, juries are not now so eminently constructed that they would say well it's her own fault. That was the case 15 odd years ago. That's moved on' (barrister 1).

For barrister one, the pivotal issue was not that jurors would blame a complainant for drinking and then acquit due to the belief that she had contributed to her victimisation, but rather, that through direct experience jurors could, and would, place themselves in the position of a drunken complainant and be aware of the impacts of alcohol on behaviour and the potential for doing things they would not have if sober. It was felt that it was these personal experiences that would be drawn upon by the juror in their assessments of the evidence:

'I don't think blame. I think blame has largely gone. So it's gone with um street workers, it's gone with people dressed scantily. I don't think blame is the right word any more... I think it is um using their own.... putting themselves in that position, if they've had drink, they'll know the effect that it has' (barrister 1).

It may be argued that irrespective of whether jurors draw on stereotypes related to appropriate behaviour or their own personal experiences and expectations, both allow for legally irrelevant factors to be drawn upon in helping jurors form their verdicts of innocence and guilt. This parallels the findings of Finch and Munro (2007) who also demonstrated that mock jurors' verdicts in rape trials were heavily influenced by what participants themselves felt they would have done in the given circumstances. It should be noted that the above attitude was not shared by all advocates; indeed, whilst the majority of barristers agreed that the juror would typically put themselves in the position of the complainant or defendant and analyse how they would have behaved in the given circumstances, a proportion also felt that once the juror had decided that they would not have behaved similarly to the witness, this invited them to blame the complainant for putting themselves in the position that led up to the allegation of rape. Indeed, jurors were perceived to not 'have a great deal of sympathy with self-induced intoxication' (barrister 6) and to hold complainants responsible for putting themselves in vulnerable positions, thus reflecting the findings from the responsibility attribution research literature in this area (Finch & Munro, 2005; 2007; ICM, 2005; Opinion Matters, 2010a). It was also emphasised that jurors were drawn from diverse backgrounds and that inevitably this would include individuals who endorse negative women blaming perspectives, who were more conservative in their opinions and individuals who had little regard for sexual autonomy. It was rationalised that these people would inevitably bring their world view into the jury room. Therefore, for certain barristers, stereotypes relating to appropriate behaviour and attributions of responsibility were still believed to play a pivotal role in the trial process:

'.... When a jury look at a description of events, they're going to be calling on their own experience and they're going to be looking at what would I do in that situation? How have I seen other people react in that situation? What is the expectation I would have as a mother, a

father, a brother, a sister? And I think, that a lot of juries think to themselves well if she's gone out and got drunk, it's her fault. And they have to move away from that scenario....' (barrister 12).

Differences in perspective around the impact of juror stereotypes in rape cases may reflect differences in the type of rape case barristers are receiving, and the eventual outcome. Or, from a social representations perspective, endorsing the idea that jurors do not hold stereotypes may again be a representation that has developed to serve the self-interests of specific advocates (Breakwell, 2001; Joffe, 2003). By representing the jury as an entity whose verdicts are unaffected by value judgments and gender stereotype, barristers again do not have to align their work to a system that can be open to criticism. Indeed, accepting that jurors may base their verdicts on factors external to the evidence and case, calls into question the legitimacy of the trial process, the legal system as a whole and by default, the role of the advocate. It may therefore be within certain barristers' self-interests to construct representations that suggest the jury are non-prejudicial, so as to avoid having to confront these possibilities. As previously discussed, and as Moscovici (1976) highlights, representations are motivated to achieve particular aims, to protect self interests and develop within a diverse social environment in which information is viewed through a lens where an array of accumulated personal experiences and beliefs impact on the representation that is ultimately constructed. Exposure to these different influences may again explain the divergence in perspective, where each advocate's unique life history also impacts on the representation that is formed. Representations will also be linked to how closely barristers feel their work ties in with their sense of self and identity. If there is a strong relationship between the two it naturally follows that the desire to represent the jury, and legal system, in a positive non-prejudicial light is enhanced. It is reasonable to assume that different advocate's sense of self relates to a greater or lesser extent to their practice with those who associate the two more closely potentially being more inclined to endorse the notion that jurors do not hold stereotyped views.

It is perhaps useful to reflect at this point on their having been considerably more agreement in barristers' attitudes and perspectives when asked about the key issues that related to alcohol involved rape trials, than there was divergence. This may be seen to highlight the way in which events, issues and perspectives are negotiated, made sense of and come to be predominantly shared by a group of individuals who are closely located (Moscovici, 1988; Potter, 1996). Where divergence existed it may be argued that these differences are the consequence of unique life experiences and already accumulated perspectives and that such divergence comes to represent the peripheral elements of a representation. As Quenza (2005) emphasises, around the central core of a representation (the consensual part of the representation that is shared by all group members), peripheral elements are organised. Peripheral elements include attitudes,

values and explanations for events and it is here where group individuals may differ in their world view (Arbic, 2001). Therefore, whilst the central core of study barristers' representations of alcohol involved rape trials appeared to be the perspective that alcohol consumption impacts on the possibility of conviction, the different ways in which alcohol did this, whether through its impact on juror judgments, its relationship to false rape reporting and so forth, appeared to constitute certain peripheral elements, thus explaining divergence in perspective on these latter issues. The importance of being able to personalise representations with specific viewpoints that are not consensually shared is part of the process of establishing and defending an identity and such difference is therefore a somewhat expected event (Breakwell, 2001).

As well as addressing barristers' perspectives around alcohol involved rape cases and the barriers that existed in relation to successfully prosecuting these cases, the study also wished to address further how certain provisions introduced by the 2003 Act worked in practice, whether they had helped to improve the prosecution of alcohol involved rapes and whether additional legal modification was necessary. In doing so, the theme capacity to consent emerged.

### Capacity to consent

In light of Finch and Munro's (2006) findings regarding the ambiguity of the capacity construct, barristers were asked directly how jurors were assisted in interpreting 'incapacity' and if they felt that the term should be defined in legislation. In the construction of the capacity theme, the possible advantages and disadvantages of a legal definition were considered along with the frequency with which the incapacity line of argument was used at trial.

***Defining capacity in legislation:*** When the prosecution's case was based on the argument that the complainant was conscious but too drunk to have had the capacity to consent to sex, several barristers stated that in their experience, the judge would provide the jury with 'assistance' (barrister 10) as to help contextualise what capacity meant. It was argued that jurors' attentions would be drawn to factors which related to different individual's tolerance to alcohol, judges may emphasise that even if an individual is drunk, this does not inevitably impact on their ability to choose and would highlight that 'drunken consent is still consent' (barrister 10):

'...As far as drink is concerned, the judge will remind the jury that people are entitled to drink and just because you drink, that does not mean to say that you cannot have err some idea of what you're doing. Err but on the other side of the coin, a drunken consent is still a consent' (barrister 3).

It may be suggested that such directions echo the judgement made in the case of Bree (2007), and that of Dougal (2005), and are being drawn upon by certain judges in an attempt to assist jurors. Other advocates however argued that it was more frequently the case that directions would simply involve outlining what the complainant had drunk and describing the behaviours attributed to her by the other witnesses in the case. Judges were reported to then tell a jury to draw their conclusions based on this accumulation of evidence. It was clear that there was confusion amongst advocates as to whether a specimen direction on the capacity to consent when parties were intoxicated existed: whilst certain advocates suggested it did, other stated that it did not. It is also worth noting at this point that there was additional confusion around the specific circumstances that were covered by the evidential and conclusive presumptions. Whilst this will be discussed further below, this ambiguity may reflect a general confusion around these specific areas of the law. It may also link to a point raised by the Home Office (2006) stocktake that suggested there had been insufficient publicity around the 2003 Act and its provisions and this had resulted in knowledge gaps amongst criminal justice practitioners.

The majority of barristers did not feel that capacity should be defined in legislation arguing that the law had probably already gone as far as it could in relation to this area: 'I just don't see how one could. I just don't see how you could because how would you say this is capacity?' (barrister 11). Indeed, advocates asked how the term could be defined, emphasising the unique nature of an individual's tolerance and resistance to alcohol:

'Um I think it's probably a difficult area for a judge to get involved in, because we all have probably different levels of intoxication. And some people can be very drunk but give the impression of.... of still being able to make decisions' (barrister 2).

The difficulty of being able to define capacity reflects the discourse that appeared in response to the Office of Criminal Justice Reform's (2007) consultation on whether capacity should be defined in legislation. Also, echoing the debates in Bree (2007), it was stated that different individuals have a greater or lesser ability to cope with alcohol and that the law cannot legislate on a specific point when all persons may be deemed incapable of choosing. Due to the unique and variable nature of an individual's tolerance to alcohol it was argued that jurors should apply their 'common sense' (barrister 3) to each individual case, as opposed to codifying the term in legislation. It is possible to surmise that such difficulties in the framing and defining of the capacity term underpin why the most recent edition of the Crown Court Bench Book does not provide further clarification on the construct. Barristers also argued that there had been too much legislation in recent years and that defining legal concepts could be both 'patronising' (barrister 1) and again, push the juror towards a specific viewpoint which was not necessarily their own. Barristers stated that a further definition would not be useful because jurors would



continue to make 'human judgements' (barrister 4) based on the acceptability of complainants and defendants drunken behaviour. In light of barristers' previously articulated views that jurors do not apply judicial direction in a mechanistic way and often appear confused by its rhetoric nature, it is perhaps unsurprising that the majority of advocates did not wish to see additional definitions being introduced into the court arena. Despite these arguments, the lack of 'objective standard that you can put the person against and say at that point, they're so drunk that they cannot consent' (barrister 12) was still seen to be a key problem when prosecuting alcohol related rapes. This again reflects the concerns voiced in the academic literature which argue that the 2003 Act provides little guidance on how to interpret levels of capacity and an individual's ability to choose freely (Elvin, 2008; Tadros, 2006; Temkin & Ashworth, 2004). Whilst recognising the difficulty of defining the capacity term, barrister 14 felt it should be defined in legislation through a simple definition which drew out the key concepts and actions associated with the construct, to help alleviate the current confusion. The divergence in opinion here may relate to barrister 14's more recent exposure to rape cases. Whilst having an extensive history of trying sex offences, they had only recently started to defend in rape cases. They may consequently have been less exposed to the significant legislative changes that have taken place in relation to rape over the last several years. They may therefore not be as 'cynical' (barrister 8) about the impacts of recent legislation as more experienced advocates reported themselves to be. Equally however, being newly associated with rape trials may place the advocate in a suitable position to identify from a non-biased viewpoint what the main problems associated with alcohol involved rapes are, building these views into their representations accordingly.

***Use of the capacity argument:*** Despite certain barristers' noted concerns surrounding the point of incapacity, the majority of advocates argued that they did not frequently see rape cases where the prosecution's case would be based on the complainant having not had the capacity to consent to sex. Instead, cases were typically reported to proceed to trial on the basis that sex was non-consensual: '...If I was prosecuting a case and I felt that my complainant was so drunk so as to not be able to give informed consent, I certainly would be using that. But I've personally not witnessed and not heard of a case' (barrister 14).

Infrequent use of this argument may be due to cases that are marked by a lack of capacity less frequently meeting the evidential Crown Prosecution Service tests necessary to proceed to trial. Indeed, several barristers argued that such cases are likely to involve extreme memory impairment which will impact on the ability to build a case that is likely to get a conviction in court. As such, these cases less frequently enter the court system. As previously discussed, complainants were often noted to play down the amount of alcohol they had consumed prior to rape and this may also go some way towards explaining why the incapacity line of questioning was infrequently adopted. It may also reflect the somewhat confused nature of capacity and the

inability to define clearly the point of incapacity. Advocates may therefore opt to avoid this problematic area of the law and proceed to trial on the basis that sex was non-consensual. One barrister also suggested that it may reflect the way in which complainant's are 'left out of the loop' (barrister 14) in trials and not given the same access as defendants to discuss the way in which their evidence will proceed.

### Alcohol relevant presumptions

Specific questions were asked in relation to section 75(2)(f) to address the ways in which this provision was being interpreted and applied by advocates in practice. In order to contextualise these questions additional information was sought about the frequency with which the conclusive and evidential presumptions were being used at trial. The possible benefits of including an additional evidential presumption that covered the instance of being too affected by alcohol to give free agreement were also raised. These issues were addressed to gain a more complete picture of how the 2003 Act had impacted on the prosecution of alcohol involved rape and to address possible future reforms which advocates deemed beneficial.

***Presumption frequency and rebuttal evidence:*** When advocates were asked about the application of the evidential and conclusive presumptions within trials there was unanimous agreement that they were 'rarely' (barrister 9) used and that they may intentionally be 'side tracked' (barrister 10) and 'circumvented' (barrister 14) in cases. Indeed, one barrister talked specifically about violence having been a feature of a rape they defended but that the judge had intentionally avoided using the violence presumption (section 75(2)(a) and (b)). There was a general consensus that those involved in rape cases – the prosecutor, barrister and judge alike – would try to avoid using the presumptions as much as possible with barrister one stating: 'Judges try very hard now to keep their presumptions to a minimum.... and tend to have broadly similar views which is don't overload the jury with either too many counts of too much law.'

It was argued that judges did not like the presumptions due to the perception that they amounted to the judge 'trespassing into the jury's.... domain' (barrister 2). It was also argued that the directions associated with the presumptions complicated the trial process and overloaded the jury with additional, and complicated, legal concepts. In light of jurors' previously discussed difficulties with applying and following legal directions and definitions, this is perhaps unsurprising: '...I think judges shy away from them.... I think they're reaching for clarity and making things straightforward for the jury' (barrister 10). These findings again reflect the conclusions of the Home Office (2006) stocktake that suggested initial insights indicated that the conclusive and evidential presumptions had infrequently been utilised thus far, and have consequently had little impact on the prosecution of rape cases. Certain barristers argued that

the presumptions were patronising and did not need to have been specifically written into the law. Indeed, barrister three argued, 'I think all the presumptions do is state the.... obvious.' Whilst several advocates disagreed with this perspective and felt that it was useful to have a set list of circumstances in which consent was likely to have been absent, these barristers still suggested that jurors would be intelligent enough to realise that if someone was detained, asleep or threatened with violence, they would be unlikely to have consented to the intercourse. Certain advocates felt the presumptions swung the balance too far in favour of the prosecution and were specifically included into the 2003 Act to 'try and make the conviction rate increase' (barrister 10). There was clear confusion amongst advocates surrounding the actual circumstances that the evidential and conclusive presumptions covered and this may again be somewhat unsurprising in light of the infrequency with which the provisions were being utilised.

When asked about the amount of evidence necessary to rebut the evidential presumptions barristers generally agreed it was 'not a lot' (barrister 9) and that 'I can't think of a case in which, at least an evidential burden wouldn't be discharged by a defendant' (barrister 8). The defendant's own testimony or ability to 'float the contrary possibility' (barrister 10) and suggest that sex was consensual, was often perceived sufficient to rebut a presumption. This finding provides empirical support for Finch and Munro's (2004) speculation that the amount of evidence necessary to rebut section 75 may not be substantial (Tadros, 2006). Although the 2003 Act does not specifically state whether it is the judge or jury who rebut the presumptions the Judicial Studies Board direction implies it is the judge specifically, with academic commentary supporting this view (Card, 2004). Again, there was confusion in relation to this specific point with several barristers suggested it was the role of the jury to decide. For example, barrister 10 stated: 'there is often evidence [to rebut the presumption], even if it's from the defendant himself, and the jury will latch on to that'. Barrister 12 also argued '... it's just credibility.... it really does very much come down to who the jury believe'. Overall, there was a general consensus, especially amongst the more experienced barristers, that the presumptions have not only been overwhelmingly unsuccessful: 'I don't think they've helped in the slightest' (barrister 3) and 'I don't think that presumptions really have that much impact on the whole thing' (barrister 12); but also that they are considered to be somewhat of an obstacle and something to be avoided, as opposed to a measure which has helped to achieve justice.

**Section 75(2)(f):** To recap, this presumption specifically states that consent will initially be presumed absent if 'any person has administered to or caused to be taken, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act' Presumption (f), whilst considered a logical presumption to have, was not considered especially radical: 'And I think that that.... I mean I think it's absolutely right, having

that presumption. Although, as I say, I think the incidences where it actually occurs are few and they're not at the heart of the problem with the rape statistics' (barrister 6).

No barrister had experience of using this presumption although one barrister was anticipating it to be a potential feature in a future case. In light of the infrequency with which the presumptions were used generally, this may account for its lack of application. A further frequently raised argument for its lack of use was that drugs such as Rohypnol passed quickly through the system. When complainants delayed reporting or indeed reported but then had to go through the process of outlining their complaint and going to a rape unit, it was argued that the substance was likely to have passed through the individual, with there no longer being an evidential basis on which presumption (f) could be applied:

'I did hear of one case, where it was a feature in the case, but I'm not sure whether they used it in a trial. Because I think there was an argument that, by the time she made the complaint or the time she'd been examined.... you know, by the time they did the tests, it had left her system' (barrister 14).

Due to this perceived reality it was surmised to be a presumption that would 'arise very infrequently in trials' (barrister 1). However, as previously stated, this representation does not necessarily correspond with the research evidence that suggests Rohypnol can stay in the system for prolonged periods (Negrusz et al., 2000).

Presumption (f) was conceptualised and understood by barristers as firmly covering the classic instance of drugs such as Rohypnol and GHB being administered into a complainants drink. Broader scoped circumstances which may be applicable under the presumption were not being conceptualised by advocates and taken forward. For example, barristers did not know, or were not making use of the distinction between the terms 'administered' and 'caused to be taken.' As emphasised by Finch and Munro (2004) 'caused to be taken' suggests an activity of broader application than 'administration' which may therefore cover instances of less surreptitious administration of an intoxicant such as encouragement, social pressure and the intentional buying of double measures instead of single. In addition, the range of situations encompassed by the term 'without the complainant's consent' could include the circumstance whereby an already drinking complainant unknowingly consumes higher quantities of alcohol than intended, due to the defendant's misrepresentation (Finch & Munro, 2004). When questioned on presumption (f) several barristers agreed that it could also be applied in circumstances when an individual's drink has been spiked with additional alcohol, when a complainant was being bought double or triple measures when they believed them to be singles and when the complainant's consumption could be demonstrated to be non-consensual and due to some form

of deception. Whilst accepting the possibility of such uses, the presumption was not currently being applied in this way with one barrister arguing 'I've never seen it used like that' (barrister 12). When asked to speculate on why the presumption had been drafted in the way it had, barristers generally viewed it as having been devised to cover all bases and prevent appeals, as opposed to cover the aforementioned circumstances: 'Because the people drafting the legislation are lawyers, wanting to cover every base' (barrister 1). In light of these arguments it may be suggested that presumption (f) has done little to improve the prosecution of alcohol involved rape and that the presumption itself is being interpreted narrowly as covering the classic instance of drug-facilitated sexual assault. Again, the presumption may not be operating in broader ways due to the previously discussed playing down of alcohol by complainants prior to a rape. A complainant might not include within their statement details of their drinks having been bought by a defendant or indeed, may modify the amount of beverages they were purchased. In the absence of complainant's having the right to consult on 'tactics' (barrister 14) with the prosecutor, it is easily understood how the possible issue of a defendant surreptitiously buying the complainant a triple measure for the purpose of procuring sex, is never unearthed and presumption (f) not considered.

***Additional presumption to cover the instance of extreme intoxication:*** In light of the above considerations it is again perhaps unsurprising that no barrister saw the benefit, or the legal legitimacy, of having an additional evidential presumption that covered the instance of being too affected by alcohol to give free agreement: 'I'm not entirely sure myself that it's necessary, or that it's actually gonna change the situation' (barrister 6). Indeed, it was argued that a further presumption or definition would add additional confusion to the law, reflecting closely the arguments provided in response to the Office of Criminal Justice Reform (2007) which consulted on whether the law on capacity should be modified through the inclusion of such a presumption. Barristers' additional reasons for not incorporating such a presumption included that it would have little impact due to the ease with which it could be rebutted and that it would be exceptionally difficult, like capacity, to articulate the point of extreme drunkenness in law: 'I can't see how it would work. Would you give them a blood test as soon as they make the complaint, to see how drunk they were?...' (barrister 7). Again, the point was made that jurors decide cases based on who they believe and like, not on legal instructions and its inclusion would therefore be redundant. Certain barristers also felt that such a presumption would push the balance too far in favour of the complainant and that this was at odds with an adversarial legal system. In light of the previously articulated discourse that suggested barristers' representations will be strongly comprised of attitudes that promote the rights of defendants, this latter point is again, perhaps unsurprising. The point was also raised that the law is not well placed to moralise on the ethics of having sex when individuals are extremely drunk and that

this is an issue which needed to be addressed at a social level through education, not through legislation:

'If it's an evidential presumption, the woman isn't consenting, where there's extreme drunkenness, I would not be happy with that because again, what's extreme drunkenness and how does a defendant tell? I do think that the drunker an individual appears to be to others, including a defendant, the more responsibility there is upon a defendant to take some kind of steps to find out are they really agreeing to this... But then you.... you're back into so many things which the law can't legislate upon. Um that's much more to do with social education and making people aware that they have a responsibility within a society to look out for other people and recognise vulnerabilities and not act in a particular way...' (barrister 12).

It was also stated by several barristers that it would not be necessary to have such a presumption 'written into the act' (barrister 14) because if extreme drunkenness was a feature of a rape, the judge would typically direct on this issue and state that if the complainant was so drunk that they could not rationally have made the decision, that would not be consent.

***Further legal reform in the area of intoxication:*** Advocates did not feel there was a need for further reform within the area of voluntary intoxication and rape. Indeed, barristers perceived any future legal changes as a negative which would inevitably include further instructions, directions and the additional defining of legal concepts. Advocates felt that any future changes should focus on reducing or simplifying current directions. Again, one barrister argued that legal reform was not a cure all measure and that legal changes would only be effective in a society which respected individuals and which took responsibility for its actions. It was acknowledged that society does not always operate with respect and that social education was also necessary to create a fertile environment in which legal procedures could optimally impact. For this barrister, the additional changes that needed to be brought about involved societal changes which encouraged individuals to think and act ethically, even if drinking to excess. This point again corresponds with the suggestions made in the Home Office (2006) stocktake.

The difficulties inherent in establishing innocence and guilt in an acquaintance rape situation where independent evidence is lacking and alcohol has impacted on recollections were again noted here. It was felt that no additional reform in the area of intoxication could help resolve these fundamental problems which made it especially difficult to get convictions in alcohol related rape cases. In addition, it was felt that no further reform, direction or definition could 'make jurors think what they don't think' (barrister 3) and that no further 'tinkering' (barrister 7) with definitions would be sufficient to control for the influence of jurors' perceptions and judgements:

'Um without sounding too cynical, I'm not sure there's more that you can do. Because you're gonna keep coming back to the point that a jury are always gonna assume.... and probably right, people to an extent are disinhibited when they're drunk, but on both sides. Um I'm trying to think if anything.... I don't think there's anything that comes to mind that I could see.... I mean, obviously if anyone's suggested anything, I'm sure they'd be more creative than I am. But no, as a bit of a.... as a criminal hat, I think everything comes back to perceptions, what the jury make of it and whether they think the conduct was acceptable or not' (barrister 8).

### Study limitations

It is perhaps necessary to reiterate that the study findings are based on a small sample of barristers recruited from a specific geographical region. This raises questions over the generalisability of findings and the extent to which the issues raised here reflect those on a broader, more nationally representative level. However, perhaps alleviating the issue of generalisability to some extent, the current study has corroborated existent findings that have utilised a barrister sample to address key issues related to rape trials, as well as a number of initial insights addressing the impacts of the 2003 legislation thus far (Home Office, 2006; Temkin, 2000). The research has also answered some previously unaddressed questions regarding the uses of sexual offence legislation on a day-to-day basis and provides an essential grounding upon which further, more geographically inclusive research may wish to build. The study did not strive for generalisability in isolation but also wished to consider how certain perspectives raised by advocates came into existence and the role of the media, social grouping, discourse, unique life history and identity maintenance impacted on their formulation and repetition. Indeed, by considering these factors it has been possible to propose a more social explanation and understanding of the development of specific viewpoints.

A key issue of consideration is that a number of arguments made in relation to juror behaviour, their use of stereotypes, inability to follow legal directions and so forth are speculations based on barristers' observations (although it may be argued that due to advocates' unique position within the trial process, these are especially informed speculations). Whilst advocates had direct insight and experience of the use of specific sexual offence legislation, making their contribution highly relevant on this topic, their arguments made in relation to jurors are not necessarily indicative of reality, and this should be borne in mind. Indeed, as the analysis has highlighted, barristers' representations may to a large extent be based on identity processes which promote the perspective of the speaker, potentially to the detriment of the 'other' outside group. Unfortunately, whilst it remains prohibited to engage jurors in research directly,

alternative methodologies must be utilised which aim to highlight juror processes, irrespective of whether these remain approximations of jurors' genuine experiences.

### Conclusion and implications

The current research identified that voluntary alcohol consumption by complainants and defendants is a frequent feature of those rape cases that proceed to trial. This helps to contextualise the government's concerns surrounding alcohol involved rape and their decision to consult on whether the law in this area needed to be modified. Study barristers made clear that voluntary alcohol consumption prior to rape, and not involuntary consumption of alcohol and drugs via a spiking method, was the typical type of case reaching court. This accords with a significant body of research that continues to suggest that awareness messages around alcohol involved rape should focus not only on the classic drug-facilitated sexual assault scenario, but principally consider, and promote, messages around the frequency and role of self-induced intoxication. The current study also demonstrates clearly that alcohol consumption impacts on the principal witness's ability to remember key events that led up to the allegation of rape and this is a key boundary in the successful prosecution of cases. The inability to remember details of the offence has been shown to be a major contributor in undermining a complainant's evidence and presenting them as unreliable, non-credible or possibly untruthful.

The problem of trying to deal with complex social interactions and behaviour though the law has been noted. Within the context of the criminal trial the psychological processes that lay behind the 'playing down' of alcohol consumption and the multifaceted array of factors that relate to false rape allegations, are often negated. Such complex processes are often reduced down into simple acts of lying and incredibility.

The research study highlights that certain provisions introduced by the 2003 Act are not being utilised in a way that was intended. Indeed, the presumptions appear to be infrequently incorporated into trials despite the possible existence of the given circumstances. Presumption (f) specifically has been interpreted and applied very narrowly and cases that could potentially fall within its usage are not at present doing so. This raises serious questions over whether these provisions have met their intended aims of encouraging people to report rape and improve the prosecution of alcohol involved cases. The study suggests that for certain advocates, there was a level of unfamiliarity with provisions introduced by the 2003 legislation and that awareness raising to tackle these gaps, as well as to encourage the more dynamic uses of presumption (f), should be considered; only then will the presumptions be likely to optimally impact. As discussed, there were examples of cynicism amongst advocates in terms of the impact and logic of the 2003 legislation. There was a clear perception that jurors were being over directed and



that directions and legal definitions were not always understood and applied by jurors mechanistically. It was argued that the law must be clear and concise if it is to be effectively utilised. The existence of such cynicism may explain why advocates were reluctant to see additional legislative changes being brought in to the area of voluntary intoxication and rape, including a general reluctance towards the legislative defining of capacity. Indeed, the point was made that too much legislation has been introduced over the last several years, that legislation has become politicised and that legal reform was not a cure all solution. Indeed, education and awareness at a societal level which promoted ethical, responsible drinking behaviour was also deemed paramount in order to allow legislation to optimally impact.

It has been highlighted that value judgments and stereotypes around the appropriateness of female drinking were still believed to play a role in the process of acquittal. The study suggests that this may not be as straightforward a relationship as jurors simply blaming complainants for putting themselves in vulnerable positions. Instead, it may also relate to juror attitudes about how they would have behaved if in the position of the complainant or defendant. However, such hypothetical speculations clearly allow for the inclusion of factors external to the case and evidence to be drawn upon in the formation of verdicts. It has also been suggested that in court, there is a disproportionate focus on how alcohol impacts on the credibility of the complainant. Again, this is problematic in light of complainants not being the party 'on trial' and the impact of alcohol on a defendant's memory and subsequent actions also being central to the establishment of innocence and guilt. To counter possible juror prejudices the suggestion of vetting jurors more rigorously was made along with possible brief education sessions for those who sit on rape cases, immediately prior to trial. It was felt that such education could address some of the myths and misconceptions around rape. It was still recognised however that this may be problematic in practice and would not guard against the way in which the complainant presented themselves and their evidence. Lack of independent evidence and inconsistency in account for example would still be viewed as critical factors that would impact on the juror's ability to say beyond reasonable doubt that a rape occurred. Additional public awareness raising around the provisions of the 2003 Act seems necessary to help enlighten the lay public in terms of their understanding of sexual offences and to make clear what is acceptable and unacceptable sexual behaviour. Although such education would not eradicate the problems associated with a lack of supporting evidence, the difficulty of meeting the evidential burden and the inconsistencies in account that may result as a consequence of the impacts of alcohol on memory, it may go some way towards reducing jurors' chances of basing their decisions on their personal assumptions and stereotypes about the principal witnesses.

The research provided some possible suggestions for improvement to the system including complainants being given more input and information about what will happen and be expected

of them at trial. Additional familiarity with the court room through visits was suggested as well as the consideration of additional ways in which complainants could give their evidence effectively. For example, pointing to body parts and using language which is part of the complainant's everyday vocabulary, rather than imposing the official language of the courts to describe sexual details and actions. In addition, being told in advance that complainants are allowed to sit down to give their evidence, to be provided with the opportunity to meet their advocate if they wish and to establish additional, more discreet ways of conveying distress to the judge who can request breaks accordingly. The suggestion of more ethical defending has also been raised so as to avoid repetition of victim blaming discourses that have little empirical research base. Indeed, the complexities around false rape allegations were noted by certain advocates along with the veracity and impact of beliefs around the possibility of a rape allegation being false. Additional research that addresses false rape allegations, and the contribution of alcohol in the false rape reporting process is needed to help unravel the key issues, attitudes and complexities associated with this topic; it is this issue that the following chapter addresses. It is perhaps useful to note the comments of barrister 12 in concluding this section and articulating the current limits of legal modifications. Indeed, they argued 'We have an adversarial system. I think while you maintain a system like that, you're going to have.... it is a combat situation. So there's only so much that you can do.'

## **Chapter 6: study three introduction**

### False rape allegations and the Criminal Justice System

The notion that false rape reports are frequently made has been echoed throughout the Criminal Justice System for decades. Indeed, an array of provisions have been introduced into the criminal law to try and guard against the potential for false allegations including a wide ranging cross-examination of the complainant which had historically included the admission of complainant past sexual history evidence (Kelly et al., 2006). As noted in the literature review, the historic use of the corroboration warning was underpinned by concerns regarding false rape reports with jurors in sexual offence cases being specifically cautioned about the problems of relying on the uncorroborated word of the complainant. Arguments around the introduction of a rebuttable presumption into section 75 of the Sexual Offences Act 2003, which covered the instance of being ‘too affected by alcohol and drugs to give free agreement’, were also dismissed on the grounds that it may result in ‘mischievous accusations’ (Office for Criminal Justice Reform, 2006, p. 12). It may also be argued that the recent government debates around providing anonymity for those accused of rape were premised in part on notions of rape being an accusation easily made, hard to prove and harder to be defended by the individual accused (Hale, 1736, as cited in, Gavey, 2005). Such logic continues to impact on rape law despite academics who have reviewed the related literature arguing that levels of false rape reporting are likely to be no different to the levels of false complaints found across other crimes (Rumney, 2006). Significantly, ideas around the elevated frequency of false rape allegations appear to currently have little evidential base, although additional research is paramount in order to help corroborate this perspective. For example, Lonsway et al. (2009) in a review of related studies noted that research conducted in the UK, America and Australia indicated that the percentages of false rape reporting across these countries converged at around the two-eight percent mark. Kelly et al. (2005) noted from their sample of 2,643 rapes reported to the police in England and Wales, 216 cases were classified by officers as false (eight percent). However, reanalysis of this data, to ensure it conformed to Police Counting Rule guidance, identified that once discrepancies in coding were addressed, this rate fell to three percent.

### Lay endorsement of false rape allegation beliefs and their implications

Ideas that false rape reports are commonplace are deeply embedded within society where biblical, mythological and historical narratives have all portrayed allegations of rape as a way of covering up questionable female sexual behaviour or seeking revenge (Gavey & Gow, 2001). The Opinion Matters (2010a) survey identified that 18 percent of 1,061 respondents agreed with the statement that most claims of rape are probably not true whilst Burton et al. (1998) found

that from a sample of 2,039 young people, 74 percent agreed that females often or sometimes 'cry rape' when really they just have second thoughts. Running in parallel to these findings are studies that continue to highlight that third parties are often reluctant to believe a woman who states she was raped when drinking, or hold her in some way accountable for her victimisation and are therefore reluctant to convict the accused (Finch & Munro, 2005; 2007; Opinion Matters, 2010a). When viewed in conjunction, it is possible to hypothesise that the reluctance to believe an intoxicated female's account relates to assumptions around the possibility of the accusation being false, or, the consequence of a sober retraction of consent (Cowan, 2008). Indeed, barristers in study two speculated that ideas around the disinhibiting impacts of alcohol on sexual behaviour were closely tied in with notions of false rape reports. Study one of the PhD similarly identified that students often felt that being drunk when having sex increases the likelihood of a false rape report with a significant number of survey respondents also agreeing with the statement that women who regret having sex when intoxicated, are more likely to make a false rape allegation. Taken as a whole, alcohol appears to be construed as a substance that increases the likelihood of a woman agreeing to sex, regretting that behaviour when sober and retrospectively revoking her consent.

Fears around not having a rape complaint believed are pronounced and may motivate victims to withdraw cases early on in the criminal justice process, prevent them from reporting initially or seeking services to help deal with the experience (Kilpatrick et al., 2007). Study one of the PhD identified that fear of blame and not being believed were key factors in preventing students from disclosing their non-consensual experiences to the police and other third parties. Kelly et al. (2005) and Jordan (2001) both identified that if rape is reported, anxieties around not being believed can motivate complainants' to modify their stories in order to align them more closely to the real rape script. As noted by study two barristers, such modifications were argued to result in inconsistent accounts and an enhanced ability to present the complainant as non-credible. In light of such significant implications, it is necessary to further investigate lay attitudes and perceptions around drinking individuals who have sex when heavily intoxicated. Indeed, this will illuminate the perceived role of alcohol within the false rape reporting process and provide insights into the way lay individuals talk about alcohol, non-consensual sex and false allegations and potentially apportion blame and responsibility in these cases. Study one of the PhD identified that when scenario individuals are depicted as equally intoxicated, participants are reluctant to label the sex portrayed as rape, despite emphasis being placed on the complainant having been too intoxicated to capably consent. Again, by exploring the intricacies around the labelling process it is possible to identify how lay individuals rationalise and construct understandings of alcohol involved sex and the parameters surrounding its consensual nature. From such findings tenuous approximations may be made in relation to real life rape trials and the thought processes used by jurors when confronted with similar cases. The Stern

Review (2010) specifically states that further research into false rape reporting is needed to build a more comprehensive understanding of this area and to help break down potentially unfounded stereotypes. Indeed, it is through research that identifies perceptions and attitudes around alcohol, rape and false allegations that potentially stereotypical, inaccurate thinking and discourses can be identified and strategies proposed to rectify such misunderstanding and possible prejudice.

The recent Opinion Matters (2010a) survey identified that men were almost twice as likely as women to be of the view that most claims of rape are probably not true. The logistic regression analysis from study one also identified a gender difference in perceptions around false rape reporting; 7.2 percent of women and 1.3 percent of men strongly disagreed with the attitudinal statement 'women who regret having sex when drunk are more likely to report a false allegation of rape' compared to 5.8 percent of females and 15.9 percent of males strongly agreeing with the statement (adjusted odds ratio 0.09, 95% CI 0.02-0.37). In light of this, and the body of past research that suggests men often have less positive attitudes towards rape complainants, are often more cautious labelling an event as rape and often attribute more blame and responsibility to a rape victim (Blumberg & Lester, 1991; Brown & Testa, 2008; ICM, 2005; Schneider et al., 2009), the current research aims to address whether there were differences between males and females in the way they discuss, rationalise and draw upon constructions of rape, alcohol consumption and false rape reports.

### The application of social representations theory

As previously noted, the theory of social representations seeks to emphasise an individual's social context, the role of communication and the mass media in the construction of an individual's attitudes, beliefs and understanding of the world, paying particular attention to the benefits to identity that endorsement of specific perspectives may serve. Making sense of the world, typically through existent knowledge structures and frames of reference, is central to the theory (that is, the re-representing of events and concepts to enable them to be understood within existing frameworks of knowledge), and its application may be useful in helping to better explain lay individuals' endorsements of negative or inaccurate rape blaming perspectives. Indeed, when individuals are presented with the unfamiliar event of a rape, often through the media, social representation processes are likely to be triggered. The novel experience requires objectification and anchoring responses and in order to make the event more understandable, rape may be anchored into pre-existing negative or inaccurate perceptions. For example, rape may be moulded to an existing understanding that dictates individuals who experience negative situations typically act in ways that provoke their victimisation. Existing knowledge may dictate that negative events are associated with risk-taking behaviour or placing oneself in vulnerable

positions and being the victim of rape may come to be anchored with such beliefs. In an attempt to make rape a more understandable phenomenon and to fit with the individual's existing knowledge structures it may also be anchored to existing representations of consensual sex. Rape may therefore come to be regarded as an extension of sexual behaviour and the power, domination and violence associated with the act may be accordingly negated.

As noted, the construction of a representation of rape by a specific group will be motivated to achieve particular aims and to protect certain self-interests. The theory will therefore be applied to the focus group data to examine the benefits to identity that endorsements of certain perspectives may serve, to consider the role of the media in the construction of specific perspectives and to examine how identity is managed when talking about alcohol involved rape and false allegations.

#### Aims and objectives for study three:

In light of the above debates and the research discussed throughout the literature review chapter, study three of the PhD set out the following aims and objectives.

**Aims:** To engage with students to explore and identify attitudes and understanding around:

- 1) Alcohol consumption and non-consensual sex.
- 2) False rape allegations and the perceived role of alcohol in the false reporting process.
- 3) To examine the extent to which men and women draw upon different discourses in their understanding of alcohol involved non-consensual sex and false rape allegations.
- 4) To consider the development, function and benefit to identity endorsement of inaccurate or negative rape blaming perspectives may serve and to identify possible examples of identity management in participants' discussions.

**Objectives:** To conduct single sex focus group discussions with students aged 18-24 years in order to explore attitudes and representations around alcohol involved non-consensual sex and the role of alcohol within the false rape reporting process and to consider how these perspectives develop, relate to identity processes and are managed in discourse.

### **Methodology: study three**

**Research design:** Qualitative data collection took place through the use of four single sex focus groups to identify attitudes around alcohol consumption and non-consensual sex, perspectives towards false rape allegations and the role of alcohol within the false reporting process. All participants were presented with, and questioned on, a study vignette (see Appendix E for the vignette) which was based on a real life rape case. Due to the exploratory nature of the study the qualitative approach and use of focus groups was considered the most appropriate means by which a secure and stimulating forum for discussion could be created (Howarth, 2002), and through which detailed information about participants' perceptions and beliefs could be gained. Puddifoot (1995) states that the focus group method enables the researcher to move beyond an individualistic framework by examining conflict and difference in opinion to help answer questions around how ones attitudinal position links to their social identify and self-concept. This method was therefore highly appropriate for investigating potential difference in opinion between male and female participants as well as for attempting to address the functions that such attitudinal positioning may serve within the context of social representations theory.

**Materials:** The focus group vignette was modelled closely on the case of Bree (2007); this case is recognised to epitomise the problems associated with having sex when parties are extremely drunk and consent is later contested. Here the complainant Michelle and defendant Ben had been drinking heavily together and intercourse took place. The complainant argued that she did not consent to sex although her recollection was hampered by blackout and memory loss. Ben's defence throughout was that the complainant had welcomed his advances; he believed she was lucid enough to consent, that she did so and that he reasonably believed she was consenting. Participants were only told about the verdict of the trial after key topics had been raised for discussion. At this point all participants were informed that the jury did not find Ben guilty of rape (it is recognised that this does not reflect the verdict of the actual case but was stated to encourage further debate. The nature of the case's outcome was clarified with all participants at the end of each focus group). Doherty and Anderson (2004) argue that basing a vignette on a real life case enhances the ecological validity of the study and suggest that the data may be at least partially representative of the conversations held by the lay public in response to a newspaper article on such a case. They also suggest that a vignette approach is advantageous to an interview because it enables participants to freely raise issues for discussion that they deem important. The focus group guide (see Appendix F) was used to direct conversation around a number of issues within the vignette but acted primarily as a template. Indeed, the investigator responded and questioned collaboratively around those topics raised by participants to allow the discussion to evolve in a manner which reflected their concerns (Reissman, 1993). The focus group guide encapsulated key issues debated in the relevant academic literature on alcohol

intoxication, non-consensual sex and false rape reports (for example, Burt, 1980; Lonsway et al., 2009; Rumney, 2006; Temkin & Krahe, 2008) and included:

- Whether participants felt Ben was/should be found guilty of rape and why.
- If not guilty of rape then of some other crime.
- The factors that impact on whether participants believe Michelle was raped.
- Whether Michelle put herself in a vulnerable position.
- Factors that may have been in the minds of the jury when they found Ben not guilty of rape.
- How the verdict may have differed if only Michelle had been drinking or if neither party had drunk.
- Thoughts on the frequency with which false rape allegations are made, if alcohol consumption impacts on the false allegation processes and if so, in what ways.

It was anticipated that the first six areas above would spontaneously raise the issue of false rape reporting due to the association that exists between alcohol consumption and false allegations in the research literature, law in general and messages that are disseminated into the public sphere via the media (Cowan, 2008; Finch & Munro, 2005; Lilith Project, 2008). It was recognised that directly asking about false rape allegations and their frequency may result in socially desirable responding, would be an investigator led line of questioning and would potentially fail to capture the complex way in which alcohol is talked about, rationalised and related back to the false allegation process. However, because the study was also interested in this topic, if participants did not raise the issue of false rape reporting they were specifically questioned on it at this late stage.

All participants were provided with copies of the legal definition of rape, sexual assault and consent to ensure they were aware of the legal position and to control for possible differences in legal knowledge across participants. All study materials were discussed extensively amongst members of the supervisory team and modifications made in accordance to feedback. The first focus group was designed to act as a pilot of the vignette and topic guide but due its smooth running was transcribed, analysed along with the other three groups and included within the results of the study.

**Target population:** The population consisted of 21 students, 12 female and nine male aged 18-24 years who were all full-time undergraduate and postgraduate students studying on psychology (seven participants), criminology (three participants), medicine (two participants) and teacher training (nine participants) courses at the University of Leicester. The 18-24 year demographic was chosen for the purposes of continuity and because the first study of the PhD



recruited students of this age to complete the online survey. As noted, this age parameter captures individuals of late adolescence and early adulthood age who have been identified as at highest risk for experiencing rape and sexual assault (Abbey et al., 2004; Myhill & Allen, 2002), potentially making these issues especially pertinent to this group. Whilst the sample cannot be viewed as representative of all students' attitudes and perspectives it does encompass a range of individuals studying across different courses, enabling important insights to be generated. Importantly, the study does not strive for representativeness in isolation but is interested in identifying and describing the different ways in which events are portrayed as fact and to examine the function associated with endorsing certain 'truths' over others. Indeed, as O'Byrne et al. (2008) point out, qualitative research enables the socio-cultural basis of human interaction to be investigated and that social, cultural, political and moral phenomena will be visible through such research, irrespective of the sampling technique.

**Recruitment:** Participants were all students studying at the University of Leicester who were recruited through non-probability sampling techniques. Existing contacts within the department of education and school of psychology were asked to disseminate information about the research study to a subset of individuals working across specific modules, inviting them to participate. Six individuals made contact in response to the email request saying they were interested in being potential participants and were then provided with additional background information. When these individuals confirmed that they would take part in the research they were asked if they had other student contacts who may be equally interested in being involved in the research and if so, could they email them the background information and invite them to participate. This snowballing process was adopted for several reasons: as Howarth (2002) points out and recommends, making it a study requirement that group participants are friends or known to each other enhances the potential for controversial, sensitive and distressing topics to be discussed with confidence and respect. Due to the sensitive nature of the research topic, the desire to foster uninhibited conversation and the potential for socially desirable responding - especially in the presence of unknown individuals - it was rationalised that this recruitment strategy was highly appropriate for the current study. Through this process a total of 23 participants agreed to take part in the research with four focus groups being run, each group comprising individuals who knew each other at some level. Two participants failed to attend one of the groups resulting in a smaller sample of just three participants. All groups took place within a seminar room in the university of Leicester library and were conducted between 25<sup>th</sup> March 2010 and 28<sup>th</sup> July 2010. All groups lasted between 40 minutes and an hour and five minutes.

**Justification for sample size:** It was rationalised that five people per focus group would provide a sufficient number of respondents to successfully fulfil the aims of the study. It was

also deemed sufficient to generate debate yet to be a small enough group to be successfully managed by the investigator, for key issues to be followed up and for all participants to be provided with sufficient space to allow them to make a meaningful contribution to the discussion. Other research published in the area, that is, qualitative focus group studies investigating rape attitudes have been conducted with a significantly smaller participant pool. O'Byrne et al. (2008) for example used nine participants to generate insights into the way Australian males explicate the role of the rapist in a non-consensual sexual interaction.

**Data management and analysis:** Focus groups were digitally recorded and transcribed by a professional transcribing company immediately after they had been conducted. This approach enabled the identification of additional lines of inquiry that the investigator pursued in subsequent interviews (Strauss & Corbin, 1990). The transcripts were systematically scrutinised by the investigator using thematic analysis and NVivo. This enabled broad topics to be identified with passages that related to the same topic being grouped together and given an appropriate code. Specific sub-themes and ideas emerged within the topics which were also coded resulting in a hierarchical structure where lower order sub-themes sat under the higher level themes. As Howarth (2002) notes, thematic analysis is a systematic approach to the categorisation and consolidation of study findings, enabling explanations and theories of the data to be built.

**Reliability:** Transcripts were transcribed verbatim and therefore participants were not asked to read through them and comment upon their accuracy. If there were gaps in the transcription due to the transcriber being unable to decipher what was said, these gaps were filled in by the investigator. A reliability analysis of the data took place with twenty percent of the transcripts being checked by a member of the supervisory team for consistency in the allocation of codes and themes. During this process discrepancies arose resulting in the re-coding and re-structuring of the data, ultimately helping to better understand the codes, themes and relationships that existed. This latter process can be seen to enhance the validity and consistency of the findings, helping to ensure that what is presented was an accurate reflection of participants' perspectives (Howarth, 2002).

**Ethical considerations:** The British Psychological Societies code of ethical principles and guidelines (2009) was adhered to throughout. Participation in the research was voluntary and participants were told that the study would explore attitudes and understanding in relation to alcohol use and non-consensual sex and that a vignette of a real case would be presented in which heavily intoxicated individuals had sex and consent was later disputed. It was anticipated that the participant recruitment strategy would reduce participant anxiety and enhance feelings of security and ease by ensuring these issues were discussed with a group of known individuals.

All participants provided signed consent (see Appendix G for a copy of the consent form) and kept a copy of the information sheet (see Appendix H) which explained the rationale for the research, ethical rights and provided the principal researcher contact information to enable enquiries to be pursued and for data to be retrospectively removed from analysis. All data were anonymised with transcripts being allocated relevant codes and kept separately from signed consent forms. The interview was deleted from the digital recorder once it has been transcribed. names did not appear on the audio-recordings and only the research team had access to the information provided by participants. All quotes used in the PhD were anonymised and the appropriateness of using direct quotes was established at the informed consent stage. A list of specialist web links, telephone numbers and contact addresses were provided on the participant information sheet to enable any specific concerns in relation to the subject matter to be pursued.

### **Focus group analysis and discussion: study three**

A qualitative research design that utilised focus group discussions took place to explore students' attitudes and understandings around alcohol consumption and non-consensual sex. The study aimed to identify attitudes around the perceived role of alcohol in the false rape allegation process, identify whether males and females drew upon different discourses in the justification of their perspectives and to consider the function and benefit to identity that endorsement of stigmatised or inaccurate perspectives may serve.

#### Reasons to acquit the defendant

The specific reasons that focus group members gave for acquitting the vignette defendant Ben were developed into a broad theme with sub-themes emerging. Sub-themes included the perceived difficulty of meeting the burden of proof in the given case due to the lack of supporting independent evidence. The sub-theme 'making consent clear' was also developed which captured arguments around the complainant having not articulated a clear 'no' response prior to the sex, thus resulting in ambiguous sexual intentions. At this point, the importance of taking personal responsibility when out drinking, so as to avoid vulnerable situations, was also discussed. This issue is therefore addressed under the same sub-theme.

***Burden of proof and independent evidence:*** All participants, irrespective of gender, argued that the jury would most typically acquit the defendant Ben in the given circumstances and reasons for this focused largely on the burden of proof, or more specifically, the inability within such an acquaintance rape situation to be sure beyond reasonable doubt that rape had occurred. The Bree (2007) case was described as 'one story against another. and I think, from that perspective, it's very hard to draw conclusions' (Focus Group 1, Female participant 5; hereafter FG1, F5). Indeed, the majority of participants argued that there was insufficient evidence within the scenario to convict the defendant and that the general lack of independent evidence that could be drawn upon to support and advance the complainant's account would be central in preventing a juror from being sufficiently convinced that rape had occurred. Participants argued that independent evidence was especially relevant in the given case due to alcohol having impacted so profoundly on the complainant's memory of events. It is interesting to note that lay students, similar to barristers working within the field (see study two), pin-pointed independent evidence as critical in the evaluative process of establishing whether rape had occurred. In the absence of such evidence, there was overwhelming consensus that jurors would not be able to make a sufficient judgment based on the facts of the case alone:

'Because it's like... one party versus another, isn't it? It's he said, she said, type of thing. So, there then needs to be something else that can weigh the case one way or the other. And if

there's no evidence, and it's just one person versus another. you can only say not guilty, because they've got no other option really in terms of the law' (FG1, F1).

It was argued that rape is notoriously 'difficult to prove' (FG1, F4) and that there were no signs of 'physical evidence' (FG1, F1) within the vignette that rape had taken place. Whilst independent evidence was often viewed in terms of a lack of third party who had witnessed events and who could be drawn upon to support accounts, several participants specifically focused on the lack of physical evidence within the scenario and felt that if severe bruising, cuts or broken bones had been present, this would categorically be indicative of rape and convince a jury of such. The perceived impact of such evidence is perhaps unsurprising in light of the noted absence of third party evidence which can be used in acquaintance rape situations to help clarify the consent position. However, it should perhaps be reiterated that the law does not require evidence of physical injury in order for consent to be deemed absent; perhaps highlighting the dissonance between the letter of the law and lay expectation. It is also worth reflecting on barristers' comments from study two at this point who argued that when forensic evidence was available, it was typically equivocal, with it often being possible to argue that cuts and bruising were the outcome of 'rough sex' as opposed to a lack of consent, again, potentially highlighting the redundancy of such evidence at trial. It is also necessary to note that from a legal perspective, the harm that arises from rape is in relation to the sex that takes place without consent, the presence of injury would simply exacerbate the seriousness of the crime. Whilst women were more likely to articulate that rape 'doesn't always have to be really physically violent' (FG1, F4), for men there was the enhanced assumption that physical evidence should have been present within the scenario if rape had occurred. One male participant for example argued:

'This is like such an unspeakable, horrible thing to happen to you, and I've no idea what it could possibly feel like. But I'd expect to see some scratches or bruises on her, or something. You know, if it's that horrible, wouldn't she have fought him somehow?' (FG2, M3).

Although certain males challenged this perspective and recognised that alcohol could have impacted on the complainant's ability to fight back, thus preventing her from sustaining injuries, men generally were more disposed towards assuming that physical evidence should have been left as a consequence of the rape. This finding seems to resonate with the wider research literature that suggests men generally are more accepting of rape myths than women (Blumberg & Lester, 1991; ICM, 2005). It is difficult to surmise the origins of such differences although it is possible to implicate the media, at least partially, in this process. Indeed, the rape cases that most frequently receive media attention are those which are typically the most sensationalist and violent in nature. The Lilith Project (2008) highlighted that rape perpetrators are often

represented as demonised, evil monsters where sensationalist and gratuitous accounts receive increased coverage. Such depictions are available to the lay public to be drawn upon in their interpretation of rape and its perceived defining characteristics (Joffe, 2003). Indeed, men specifically made reference to the significance of media messages in helping to inform their perspectives on sexual offences, when direct experience was lacking: 'I'm just like saying my experience of what.... I don't know anyone. The only cases I know are ones in the media, because like I don't know anyone' (FG2, M4).

It may be possible to suggest that sensationalist media depictions of rape are more relevant to the formulation of men's rape representations. In coming to make sense of the rape offence they may anchor or mould the crime to established perspectives that link violent offences with the sustaining of injury (Moscovici, 1988). Repeated violent media depictions may contribute towards the formulation of the representation initially as well as to reinforce and sustain its veracity, through continued subscription to that media type (Joffe, 2003; Moscovici, 1988). Such depictions, if built into a representation, will inevitably impact upon the subscriber's expectations regarding the characteristics that will be present when confronted with a rape scenario. Women by contrast are the gender most likely to experience sexual offences (Kershaw et al., 2008; Walby & Allen, 2004) and may therefore be exposed to additional messages, either through campaign materials that directly address women or through accounts from friends and individuals who have experienced the crime. Indeed, women may have more direct experience themselves, or via the experiences of people they know, of being in sexually exploitative situations where they lacked the ability to respond. Such perspectives may be built into women's representations and these additional influences may result in the development of a more nuanced perspective which recognises that injury is not the inevitable outcome of rape. Whilst it should perhaps be reiterated once again that gender is not a definitive predictor of rape myth adherence, the above discussion is one possible explanation of the different influences that may have contributed towards the disparate perspectives between the genders on this issue. It should also be re-stated that individuals do not passively and uncritically absorb media messages but rather form representations which correspond with their concerns and emotions. Indeed, Joffe (2003) argues that media information is viewed through an existing lens where factors such as trust in media authorities, confidence in experts and an array of accumulated personal experiences, political beliefs and criticisms about the government and media impact on the interpretation of what is read and the representation that is constructed. As previously noted, representations also develop to serve a group's self-interests and to defend against feeling threatened (Breakwell, 2001; Joffe, 2003) and will be motivated to achieve particular aims. It may therefore be in certain men's self-interests to endorse perspectives that state rape will result in injury, due to the implication that rape perpetrators will typically then fall into the category of violent 'other' (Moscovici, 1976). Men are the gender that most frequently perpetrate sex

crimes, and endorsement of the above perspective enables rapists to be distinguished from 'normal', non-violent men, thus enabling study males to distance themselves from this 'other' representation and by default, the likelihood of carrying out non-consensual acts.

Whilst discussing the presence of physical evidence, several male and female participants agreed that had parties not been drinking, there would have most likely been an overt attempt to resist the perpetrator and injury most likely sustained as a consequence: 'I think if she was in a fit state to push him off and to.... um, he would have had to have been more physical, to force himself on her, than if she was drunk' (FG3, F4).

Women appeared to be expressing somewhat incompatible perspectives on this point. That is, that injury is not typically associated with the rape offence, yet, if a rape takes place with no alcohol having been consumed, a complainant is likely to incur injuries. Quenza (2005) argued that contained within a representation's peripheral system are several alternative perspectives in relation to an absolute view on an event. Indeed, this explanation would perhaps account for women's parallel and somewhat contradictory arguments in relation to the presence of physical injury. As demonstrated, representations are complex constructs where a number of arguments that at first glance may sit at odds, can be suitably structured to enable contradictory accounts to be produced at different times. The legitimate basis of participant's line of reasoning on this issue should however be noted. Whilst research indicates that in the majority of instances, irrespective of whether parties are drinking, rape victims will not sustain injuries (Feist et al., 2007; Payne, 2009), there is debate within the academic literature as to whether alcohol involved rape is less violent with there being some evidence to indicate that alcohol induced victim impairment does in fact reduce the need for perpetrator force (Ullman, Karabatsos & Koss, 1999).

It can be argued that perspectives which assume rape involves violence feed into ideas around false rape reports where it may come to be assumed that if there is no evidence of injury, the allegation is likely to be false. Indeed, it is useful to review the comment of FG2. M3 above, in an attempt to identify how the speaker constructs identity, protects against accusations of being non-sympathetic towards the complainant but also subtly questions the legitimacy of the account. The speaker initially raises for discussion the trauma of rape through asserting that 'this is like such an unspeakable, horrible thing to happen to you, and I've no idea what it could feel like.' Thus, having established that he is the type of individual who appreciates the harms of rape and who is sympathetic towards the victim, he establishes credentials which enable him to pave the way for an alternative argument (Doherty & Anderson, 2004). Thus, by then suggesting that he'd 'expect to see some scratches or bruises on her' he begins to introduce an element of doubt around the complainant's account. By exerting 'if it's that horrible, wouldn't

she have fought him somehow?' He also invites the interpretation that, due to the lack of injury, maybe the event wasn't actually 'that' bad and by default, possibly not rape. The speaker manages to make these inferences without being outwardly unsympathetic to the complainant and this extract can be seen to lend weight to the arguments of Doherty and Anderson (2004) who suggest that it is often unlikely that individuals will directly endorse negative stereotypical rape blaming views. Instead, they argue that such attitudes will be expressed subtly and through discourses that are carefully structured so as to maintain the view that they are a neutral observer. This extract perhaps highlights the way in which attitudes, understandings and explanations are carefully constructed during social interactions and demonstrates the action-orientated nature of discourse (Edwards & Potter, 2001).

In the absence of physical or independent evidence there was a consensus amongst participants that there was an insufficient basis on which to find the defendant Ben, guilty of rape. Indeed, echoing the findings of Ellison and Munro (2010), participants stated that 'I don't think his entire life and career should be marred by a conviction, based on this' (FG3, F2) and: 'There's not enough ground there to send somebody down for the massive... what is it? 10 years... There's nowhere near enough evidence to do that to somebody' (FG2, M2).

Both comments demonstrate awareness around the ramifications of being found guilty of rape. It is also evident that in the evaluative process of establishing whether rape occurred, for certain participants the focus centres around, or at least empathy lies with, the position of the accused. There is no deliberation for example around the potential harms to the complainant of having a defendant, who may have raped them, acquitted. Indeed, this links closely to argument made by barristers in study two where certain advocates stated that jurors were aware of the ramifications of labelling an individual a rapist, including the lengthy prison sentence. They argued that in the absence of supporting evidence and when accounts were confused by the impact of alcohol, jurors would find themselves in a position where they would give the defendant 'the benefit of the doubt' (barrister 10) and acquit. The majority of participants in the current focus groups similarly felt that in such ambiguous circumstances, and with such long term ramifications, the defendant should be 'let off the hook' (FG1, F5). It could be argued that the somewhat disproportionate focus on the impacts of a rape label on the defendant, often at the expense of arguments that centre on the consequences for the complainant, is a further example of the way in which the harms of rape are overlooked, trivialised and obscured (Brownmiller, 1975; Burt, 1980; Temkin & Krahe, 2008). Indeed, Doherty and Anderson (2004) argue that such trivialising processes contribute towards the cultural acceptance of sexual violence and keep hidden, at a collective level, the devastating effects of the crime.



***Making consent clear:*** A further argument given as to why jurors would, and probably should, have acquitted the defendant related to the fact that ‘...at no point has she said.... or she can't recall saying no to sex’ (FG4, M1). Several participants specifically focused on the lack of a verbalised ‘no’ in their rationalisation of why jurors would be insufficiently convinced that rape occurred. Again, the dissonance between the law, which does not require consent to be verbally expressed, and lay expectation is apparent. It was emphasised, especially amongst female participants that sexual intentions should be effectively communicated and that it is important to ‘make things clear’ (FG1, F6) either through overt behaviours or verbal responses:

‘She needs to say no beforehand. There's no point in saying I didn't want to do it, afterwards. Because then, you know, that's just gonna confuse everyone. So, like yeah. it's up to the woman to say before it happens, yes or no in an obvious and clear way’ (FG3, F3).

The participant here constructs the complainant to be at least partially responsible for her victimisation due to her failure to articulate her intentions clearly and early on. The implication of this assertion is that the defendant will be left without sufficient ability to negotiate, or read, the sexual situation. The law now requires that defendants take reasonable steps to ensure a complainant is consenting to intercourse, which one may argue could include specifically asking a partner whether they are happy for the sexual interaction to progress. Despite participants being provided with the legal definition of rape, and therefore being aware of this responsibility on the defendant, participants still deemed the female to be the party that should take control over clarifying intentions and expectations. These arguments resonate with the conclusions of study one and the finding that a greater proportion of females assumed that consent should be verbalised in order for it to be deemed legally valid (although it is not possible to comment on whether focus group women believe the law requires consent to be verbally expressed or whether they simply felt that consent is more clearly established through a verbalised response). This finding also reflects the conclusions of Humphreys (2007) who identified that female students, more than male, believed explicit sexual consent is necessary during sexual encounters. Whilst emphasising the need for sexual intentions to be clear, it was paradoxically noted that it could be awkward or a ‘passion killer’ for the man to ask whether he could have sex with his partner. In this sense, consent was still viewed as something that would be more natural and appropriate if controlled by the woman. Female participants painted a one dimensional view of sexual interactions at this point where women were viewed as responsible for setting sexual parameters and clearly communicating whether they wanted intercourse. Men in contrast were viewed to inevitably desire sex and to be oblivious to the ‘reading’ (FG2, M3) of sexual situations unless clearly guided by the female. The articulation of such perspectives reflect heavily the traditional social sexual scripts that suggest men are responsible for the initiation of sexual encounters and the active seeking of sexual partners whilst women set sexual

limits and boundaries (Finch & Munro, 2007; Frith, 2009; Lees, 1993). It is interesting to note that women still reflected heavily on these traditional scripts, lending legitimacy to the argument that they are still relevant and relied upon in current day sexual situations, irrespective of women's increased sexual liberation (Johnson et al., 2001; O'Byrne et al., 2008). It may be the very fact that females are expected to take on the role of sexual gatekeeper which results in certain women expressing the perspective that sexual interactions should be made clear, so as to help inform the gatekeeping process.

When participants were directly asked who had the overall responsibility within the vignette for ensuring consent was present, it was largely agreed that both parties should take responsibility because sex is a 'two person act' (FG1, F1), despite this sitting at odds with the previous emphasis on women specifically needing to make clear their sexual intentions:

'.... it's a very complex issue. But I think, you know, like he's got responsibilities to say do you consent, or something to that effect. But then, she also has the responsibility as well to say no I don't consent, or I'm not feeling great about this' (FG1, F1).

The picture of consent portrayed by the participant above however was still dependent upon the man asking whether consent was present whilst the female was still positioned to be the party to actively respond and control the sexual situation thereon; again negating the responsibility on defendants to ensure active steps are taken to ensure the presence of consent. It is worth noting that each focus group highlighted at this point the importance of personal responsibility when out drinking and being able to recognise the ramifications of extreme drunkenness. Focus group women specifically argued that individuals make bad decisions when drinking, increase their vulnerability to rape and are often unable to communicate clearly and coherently. It was also stated by several female participants that if you choose to be 'irresponsible with alcohol, regardless of gender, age, anything, you've got a responsibility to understand you can get yourself into some serious problems' (FG1, F4). By articulating that an individual should be responsible with alcohol irrespective of 'gender, age, anything' the speaker positions themselves as the sympathetic liberal and by default, avoids accusations of being sexist by focusing only on women's need for caution. Despite such comments, throughout the group discussions it was clear that there was an enhanced focus on the female specifically exerting personal care, with this argument typically being voiced by other women (including participant FG1, F4 above who initially positions herself as neutral): 'And I do think.... I think people do have responsibilities to look after themselves. And I think that the amount that she drank, um and the fact that she went out with a couple, will really go against her in that sense' (FG3, F4).

The disproportionate focus on women taking personal responsibility may relate to females being at enhanced risk of experiencing sexual offences initially (Kershaw et al., 2008; Walby & Allen, 2004), hence their perceived responsibility and role in attempting to reduce that given vulnerability. Indeed, whilst participants argued that the defendant should have taken more direct action in establishing whether the complainant fully consented, Ben was constructed to have ‘taken advantage’ (FG1, F3) of Michelle or to have done something ‘ethically questionable’ (FG3, F3), as opposed to having perpetrated a crime (this issue will be discussed in further depth later in the analysis). Indeed, there was no debate regarding how the defendant’s actions and drinking prior had breached the parameters of personal responsibility and no discussion around men needing to consider how much alcohol they consumed on a night out, and the possible impacts of their intoxication on their ability to read consent relevant cues or to unequivocally recall whether consent has been given. Such findings support the research that demonstrates when rape occurs, the focus resides firmly on the female’s behaviour prior to the assault (Finch & Munro, 2005; 2007; Kelly et al., 2005; Temkin & Krahe, 2008). It also reflects awareness raising discourses that have historically centred on women’s behaviours and actions in isolation in the prevention of rape (Neame, 2003). Clearly, the dissemination of messages that raise awareness around men showing responsibility when drinking, and the impacts of alcohol on their ability to read sexual situations, is also paramount. The fact that such arguments are not spontaneously broached in discourse, suggests that such work is needed.

As noted, representations develop so as to serve a group’s self-interest and to protect their identities (Breakwell, 2001; Joffe, 2003). Therefore, it may be argued that a representation which endorses the importance of women exerting personal responsibility develops to protect specific groups, or subscribers, from having to face the reality of rape. That is, endorsing perspectives that suggest women must exert responsibility enables rape to be categorised as an act that is largely preventable, and that by behaving responsibly, can be effectively avoided. The Stern Review (2010) specifically notes that such perspectives have victim blaming implications whilst the recent edition of the Crown Court Bench Book (2010) attempts to control for such juror biases through its ‘mistaken assumption’ directions. Subscribers to this perspective, in the current instance typically women, (who are the gender most vulnerable to rape initially), can however protect their world view that they are immune to sexual offences and that rape is something that will only happen to the non-responsible ‘other’ (Moscovici, 1976). Indeed, the Opinion Matters (2010a) survey similarly documented that women, more than men, felt that complainants should take personal responsibility for rape if certain drinking circumstances precede the non-consensual intercourse. It is reasonable to suggest that these elevated perceptions serve, at least in part, to guard against women’s increased vulnerability to rape. Whilst certain factors, such as drinking extremely, can predispose a person towards experiencing sexual offences, the issue is far more nuanced. However, reducing the argument

down to singular explanations of personal care enables the belief to be sustained that rape is something that happens to those who provoke it. As Howarth (2002) points out, the learning of value judgements is made easier through obvious visual cues, such as a person's gender or ethnicity, which instantaneously place them into the category to which they belong. Therefore, women, more than men, will be required to defend against value judgements that associate females who get raped with being unduly irresponsible. To cope with threats to identity Howarth (2002) argues that stigmatised representations will be accepted as 'true' with individuals then distance themselves from such representations through emphasising their 'otherness' and distinctiveness from that individual or out-group. It is important to note that not all individuals endorsed these views with certain male and female participants arguing that 'I don't think you can really criticise her for acting too irresponsibly' (FG4, M1). This again demonstrates the way in which different representations on a specific issue can co-exist together in society with the formulation of that representation being heavily influenced by those individuals, media, religions, group memberships, experiences and sciences that are in close proximity. Indeed, these will be the nearest to hand recourses from which to draw when talking about, coming to rationalise, understand and construct representations of rape. Care of these unique factors, certain individuals will develop the representational resources necessary to question and reject stigmatised perspectives and will come to develop self-confidence through the assertion of these perspectives (Howarth, 2002; Moscovici, 1976).

### Intoxicated intercourse

Participants talked extensively about the dual impacts of alcohol on cognitive functioning in determining who should hold responsibility within the vignette for ensuring sexual consent was established. The sub-theme 'capacity' also emerged at this point which addressed discourses around the difficulties of being able to accurately categorise dyad members level of drunkenness. The type of sex that occurs when people are heavily intoxicated was also raised for debate and discussed under the sub-theme 'not quite rape.'

***Dual impact of alcohol:*** Whilst participants argued that the responsibility for ensuring consent was clearly established and present was a joint act (albeit subtly falling back onto discourses which positioned the female to hold more responsibility), or that it was a man's moral duty to ensure his partner was fully consenting, it was evident that if parties were heavily intoxicated men were frequently deemed to be able to legitimately forfeit such duties: 'I think in a normal sexual situation, it would be shared. But when you're both drunk, I think it's just whoever's the most sober should make the decision' (FG3, F4).

'Possibly if he's not as drunk it should be on his.... it should be his responsibility if he's more sober. But then again.... But that's the reason, not because he's the man, because he's the one that's more of sound mind' (FG2, M3).

It was clear that participants felt that if parties had both been drinking alcohol and the complainant was left too intoxicated to capably consent, alcohol may have similarly impacted on the defendant's ability to successfully establish whether the complainant was in a suitable position to consent to the intercourse. Whilst alcohol intoxication is not a defence to a charge of rape in the eyes of the law (DPP v Majewski, 1977; R v Heard, 2007), it was clear that participants did not necessarily recognise this position. Participants felt that being exceptionally intoxicated would impact on cognition and increase the defendant's potential for genuinely assuming that consent was present (even if it was not). Under these circumstances, it was argued that the defendant would not meet all of the necessary criteria to enable him to be convicted of rape. That is, due to the impacts of the defendant's own intoxication, it was argued that he most likely, reasonably believed, that she was consenting to the intercourse. This finding suggests that there may be certain difficulties or inconsistencies in the interpretation of what is meant by 'reasonable belief', with this arguments having been previously raised by Finch and Munro (2006). Indeed, for certain individuals, extreme intoxication may be viewed as a reasonable excuse for incorrectly assuming that consent had been given: 'But if he's drunk to a certain extent that he does reasonably believe that B consents, then he hasn't done anything wrong, in the eyes of the law' (FG2, M6).

'...When you're drunk, your primitive brain switches in. You want food, sex and sleep. And that's evolution, you can't overcome that, do you know.... it's really difficult to say well, you know, if she wasn't of sound mind.... But you know, his rational mind should have kicked in at some point. Well, why? Just because he's a man? Like no, it sits uncomfortably with me, it really does. Because you know, alcohol affects people, no matter whether they're a man or a woman, and or regardless of whether you can be convicted of a crime or not because of your gender...'

 (FG1, F1).

It is interesting to note that in articulating her point participant FG1, F1 draws upon the theories of evolution and biological determinism. By presenting her perspective alongside established scientific theories she presents her opinion as a universal truth, making it increasingly difficult to question the logic of what is said. This may be taken as a further example of the way in which credibility is subtly established and managed through talk (Doherty & Anderson, 2004; O'Byrne et al., 2008; Potter, 1996) as well as emphasising the way in which abstract science is simplified and assimilated into everyday conversation, ready for use in the defending and justification of a perspective (Moscovici, 1976). Indeed, the above comment may be taken as an explicit example

of what Howarth refers to as a lay 'scientist of the social world' (Howarth, 2002, p. 154). Whilst the majority of participants adhered to the argument that 'it's unrealistic to expect a drunken human to take reasonable steps in most things' (FG2, M3), just one participant questioned the logic and ethics of the suggestion that 'because you're drunk, you don't know any better, so you can go after other people who don't know any better' (FG2, M3). This again demonstrates the veracity of the former perspective amongst participants but simultaneously emphasises the existence of alternative agendas which sit side-by-side one another in society (Moscovici, 1976).

When participants were asked whether they felt the defendant in the scenario would have been found guilty of rape if only the complainant had been drinking, there was consensus across the groups and genders that there would have been an increased likelihood of him being found guilty of rape. Reasons for this focused on the power differential that was deemed to exist within the scenario when each party was not equivalently intoxicated. For example, the defendant if sober was perceived to be in a position whereby he could appreciate the state of the complainant and her capacity to consent and would have 'enough coherence to have the responsibility to make the judgement call' (FG1, F6):

'Because it's the.... it's the knowingly consenting bit. If you're sober and you know that someone is drunk, then you know full well that your moral responsibility is not to take advantage of them. So, I kind of.... I suppose, she still.... she might consent when she's sober, but you just.... I dunno.... I dunno if it's a law thing, but you just.... you just wouldn't, would you?' (FG2, M6).

This extract implies that the law in this area is not fully understood, and that legislation is not the motivator that drives appropriate sexual encounters when drinking. Instead, a sense of ethics and what is morally acceptable at the time is deemed to be a paramount determinant of behaviour. Female participants similarly argued 'I think there's a perception of what's right and wrong, rather than have you legally done anything wrong' (FG3, F5). Moral responsibility however still appeared to be something that could be understandably forfeited when parties were equivalently intoxicated but not when there was a disparity in that intoxication. These arguments again support the findings of study one where there was a reduced willingness to describe the sex depicted in hypothetical scenarios as non-consensual when there was a greater equivalency in the dyad members' levels of intoxication. These findings again support the wider research literature which has found that third parties perceive it to be unfair to hold a defendant criminally liable for rape if each party is equally intoxicated (Finch & Munro, 2005). Similarly, participants are more inclined to label sex as rape when a complainant is depicted as drinking independently (Norris & Cubbins, 1992) or the defendant is less intoxicated (Finch & Munro, 2005). Finch and Munro (2005) argue that when a defendant is portrayed as less drunk or sober,

third parties perceive that defendant to be in a position whereby they are able to ensure the complainant is capable of giving consent, and failure to do so, results in perceptions of them having taken advantage. The current study confirms these suggestions as well as highlighting that it is the defendant who is perceived to have not been in the advantageous position whereby they can clearly gauge the complainant's level of intoxication, which is seen to mitigate his responsibility for ensuring consent, when equivalently intoxicated.

**Capacity:** Participants specifically highlighted the difficulty of being able to accurately gauge the defendant and complainant's level of intoxication at the time, to enable a definitive measure of their capacity to be established. Whilst numerous participants focused on the complainant having been sick and felt that this should have been a sufficient indicator to prevent the defendant from having sex with her in the first place, it was clearly not deemed to be a sufficient action in isolation to convince the jury that she lacked capacity entirely. Indeed, it was argued that after being sick people sober up and will function more clearly and that you 'can have a few drinks and be sick, and not even really be that drunk' (FG3, F3). It was also argued that rather than demonstrating the defendant's criminal intent, having sex with a female who has been vomiting, was a further expression of all men's general 'desperation' (FG3, F2) to have intercourse, irrespective of whom it is with. Again, the scripts that dictate all men desire sex were especially pronounced within this argument. Acceptance of such perspectives, along with the normalisation of behaviours that include having sex with very drunk individuals (who may be drunk to the point of sickness), may legitimately have impacted on participants ability to fully evaluate what it actually means to have sex with someone who has been vomiting. It is also interesting to note that in trying to rationalise the defendant's level of capability at this point, or perhaps more specifically, his degree of intoxication prior to the non-consensual act, a sub-set of females implied that his ability to get an erection and engage in penetrative sex may be indicative of him not being exceptionally intoxicated. Such arguments appear to contradict earlier statements that suggest the defendant cannot be held accountable for his actions, due to his equivalency in drunkenness to that of the complainant. This may be a further example of an alternative perspective on an issue sitting within the peripheral system of a representation, enabling contradictory accounts to be offered at different time points (Quenza, 2005): 'And quite frankly, if he's got enough.... if he's got enough to get his penis up and have an ejaculation, then he can't be that drunk, because men can't do it when they're drunk.... they're that drunk' (FG1, F6).

Although certain academic literature suggests that sufficiently high doses of alcohol can impact on men's sexual functioning (for example, Cooper, 1994), there is increasing evidence to suggest that even acute heavy drinking does not diminish erectile performance (George et al., 2006), making such statements of fact somewhat misplaced. Again, the acceptance, repetition

and circulation of discourses that may include 'alcohol increases the desire but takes away the performance' highlights the way in which science is oversimplified and misrepresented as it diffuses down into the public sphere and is transformed into common sense knowledge (Moscovici, 2001). The collaborative acceptance and repetition of this idea amongst certain women suggests it has been developed and reinforced through discourse and debate, access to media and other cultural commentaries, with it eventually being moulded into a common sense truth. Men by contrast may have more direct experiences of being able to sustain an erection and engage in intercourse when heavily intoxicated and may have debated the topic with friends, possibly explaining why such arguments were not drawn upon by men. The above comments demonstrate further the way in which explanations are rooted into supposedly scientific logic (namely, that sexual functioning will be inhibited by certain levels of intoxication), in an attempt to provide them with increased legitimacy and to add credentials to the speaker's perspective (Doherty & Anderson, 2004; O'Byrne et al., 2008).

Certain participants looked for the presence of factors beyond having vomited in helping to determine the complainant's degree of capacity. Michelle's ability to effectively verbalise and to walk without staggering were drawn upon: 'if you can walk, you know, quite well, you'd think that someone was okay' (FG3, F3). It was also evident that participants drew on their own personal experiences of having been drunk and attempted to apply their own level of functioning at the time, to the vignette complainant. It was argued that even when heavily intoxicated 'you still have a kind of sense of what you want, and you kind of know what you're doing' (FG3, F1). Clearly, drawing upon personal experiences and information external to the evidence presented would be problematic if taken into the courtroom environment. Despite these arguments, there was a general consensus that alcohol impacts differently on different individuals, making it exceptionally difficult to be able to articulate the point of incapacity. It was stated that due to these reasons, it would be especially problematic to set a criterion for determining a suitably safe level of alcohol consumption whereby all individuals could be deemed capable of consenting to sex or conversely, no longer capable:

'...alcohol affects different people differently, and there's different times alcohol will affect the same individual. You can have three beers and be absolutely fine on one night. You could have a beer and a cocktail another night and be absolutely blasted' (FG1, F1).

'Where do you draw the line as well? Do you change the law so you say that no one should have sex whilst having consumed any alcohol whatsoever? Because once someone's consumed alcohol, there's a potential that they won't be able to give consent properly. So it's very difficult to draw the line. And, obviously, it says that they consumed a significant amount of alcohol, but what is significant? And then, where do you put the line? Because as you say, he's been foolish.



Obviously, he.... probably once she was sick, he should have realised that he really shouldn't have approached her at all, but where do you draw the line? When is enough alcohol too much?' (FG4, M2).

These arguments echo closely the perspectives of barristers interviewed in study two who stated that the lack of guidance provided by the Sexual Offences Act 2003, regarding how to interpret levels of capacity and an individual's subsequent ability to choose freely, was inevitably complex for the juror to weigh-up. Indeed, participants reiterated at this point their sympathy for the defendant, arguing that it would have been impossible for him 'to judge it really' (FG4, M2). In the absence of 'a breath test' (FG2, M5) participants felt it was unreasonable to assume that the drunken defendant should be able to appreciate the complainant's level of capacity with the majority of participants suggesting that sickness, in the absence of other factors was not sufficient. It was clear that despite the complainant's sickness and Ben's ability to get an erection and engage in sex, the defendant's degree of intoxication was not perceived sufficiently inferior to that of Michelle's, to hold him accountable for the sex that took place.

Whilst the law recognises that an individual may lose the capacity to consent well before they lose consciousness (Bree, 2007, p. 167), the current study again suggests that such an extreme state of intoxication may only be taken as a suitable indicator. Whilst sickness was not deemed indicative of complainant incapacity, additional research is needed to address what behaviours are deemed synonymous with no longer retaining the capacity to consent. These findings again add context to the work of Finch and Munro (2006) and the conclusions of study one where a proportion of participants agreed that as long as the drinking party remained physically conscious, they would be capable of choosing whether or not to have sex. Again, it is legitimate to suggest that such assumptions are likely to cause problems in the legal arena when jurors are asked to make evaluations about a complainant's level of capacity. In the absence of additional research, it is possible to assume that evaluations will be based on faulty assumptions which only equate unconsciousness with being incapable.

***Not quite rape:*** When describing the sex that took place between the complainant and defendant it was evident that the majority of participants did not perceive the sex to be representative of a rape act or were 'on the fence' (FG1, F5) as to whether it should be defined as such. Participants pointed out that the defendant 'offered to spend the night in her bed. So, obviously, he doesn't mean it in a conscious term to be rape' (FG1, F2) and has not 'pinned her down and shagged her' (FG1, F4). It was also argued that 'he's obviously not going in there with the intention to rape' (FG1, F2) or 'just gone ahead with it' (FG2, M2) and that certain actions perpetrated by Ben prior to the sex, such as bringing her a glass of water and helping her clean herself up after being sick demonstrated that he was 'obviously quite respectful of her' (FG3, F5). It is

interesting to note how this latter action is not viewed as one that could have reasonably led the defendant to surmise that the complainant was incapable, but an action framed to demonstrate his 'respect.' Clearly, the behaviours noted here fail to adhere to the real rape script and actions which fall outside of a stranger violently assaulting a woman may not be deemed sufficiently constitutive of rape, thus, impacting on participants' judgements as to whether the crime has occurred. Indeed, at this point, certain participants had a very narrow conceptualisation of what rape might look like and appeared to categorise the sex portrayed in the vignette as something that had 'just' happened as opposed to being pre-meditated. This latter factor appeared to relate to participants' reluctance to label the actions as rape. It was argued by several participants that despite the rape term having become assimilated into popular culture and language, for example, to describe the serious defeat of another team in a game of sport, there was still hesitation to label certain behaviours as rape, due to the 'strong connotations of the word' (FG1, F2):

'...it's odd that it's more acceptable in language now. It doesn't.... it doesn't seem to have that connotation of like oh you can't talk about that, you can't say that word. Um but, there's still a.... there's still a um reluctance to classify stuff that probably, in terms of the law, is rape, but people don't want to give it that label because it's really harsh. So, it's kind.... it's a massive contradiction' (FG1, F1).

Again, the above comment appears to indicate that the rape term is firmly associated with the most extreme or 'harsh' instances of non-consensual sex that inevitably involve violence and strangers. This argument also links to the previous discussion around focus group participants being aware of the ramifications of labelling a defendant a rapist and the resultant hesitation in defining Ben as such. Clearly, applying the rape term to offences that do not adhere to such extremes causes problems for numerous focus group individuals. Past research has frequently reproduced the findings noted here, lending support to the veracity of the real rape script and its impact on third parties perceptions as to whether rape occurred (Ellison & Munro, 2009a; Finch & Munro, 2006; Kelly et al., 2005; Temkin & Krahe, 2008). Adherence to such perspectives is again likely to be at least partially informed by the media, where representations that depict violent stranger offences are most often circulated (Lilith Project, 2008). As argued by Howarth (2006), institutions with the most power and public access are more likely to have their representations heard and are more likely to influence the representations of others. Indeed, who gets to tell their story most loudly, becomes the story that is most likely to constitute 'truth' and determine the definition of rape. By repeatedly articulating the primacy of the violent stranger rape offence, participants enable its supremacy to be sustained. Although competing rape depictions are circulated via the media and society at large, albeit less frequently, it can protect self-esteem to continually adhere to arguments that reinforce violent stranger rape as the only

real form of rape. Such perspectives enable subscribers to guard against the potential for, and harm of, sexual offences by minimising the multiple circumstances that may result in forced sex as well as enabling subscribers to deny the possibility of a perpetrator being a known individual. O'Byrne et al. (2008) argue that certain discourses may be strategically reproduced to achieve specific outcomes. That is, to preserve certain versions of reality that favour specific self-interests. This argument resonates with the wider literature that suggests the circulation of discourses such as female drunkenness is 'unladylike' and less acceptable than male drunkenness, is one means by which women's freedom can be restricted (Sandmaier, 1980). Doherty and Anderson (2004) argue that the discursive resources that support a rape culture are readily accessible. The violent stranger rape may be viewed as one such discursive resource and repetition of these discourses serves to diminish the reality of the rape offence. Again, it must be noted that not all participants adhered to these views with a minority rejecting or failing to articulate them. This again demonstrates that an individual's unique background experience, access and choice of media, friendship group and education all impact on the rape representation that develops.

Whilst reluctant to define the scenario sex as rape, participants were found to be similarly reluctant to define the sex as a crime:

'...If you're gonna sort of go down the moral sort of route, but morals are different for everybody, it's.... there's a certain lack of morality on his part. He's.... I think, taking advantage of someone is vastly different to um.... it's vastly different to committing a sort of offence...'  
(FG4, M1).

Instead, it was frequently reiterated that the defendant had acted morally wrong, been 'foolish' (FG4, M2), made 'an error of judgement' (FG4, M1) and although a possible 'scumbag' (FG2, M4) for taking advantage, had not necessarily 'done anything wrong in the eyes of the law' (FG2, M4). Perhaps unsurprisingly then, participants did not feel that the behaviour drawn out in the vignette was sufficient to warrant a prison term and additional reasons for not imposing custody, beyond the behaviour not being sufficiently criminal to warrant it, focused on the normalisation of the sex depicted. It was stated that 'it must happen too often to send people to prison for doing that' (FG1, F4). Such normalisation again appears to suggest that the behaviour portrayed has to some extent come to be unquestionably accepted as reflective of the reality of heavy drinking situation. This is perhaps unsurprising in light of alcohol frequently being used by young people to facilitate sexual encounters (Bellis et al., 2008). Finch and Munro (2007) also note that it is likely that such normalisation makes third parties less likely to condemn a defendant. In terms of whether the defendant should be punished in some specific way, opinion was divided. Generally, participants felt that 'something kind of needs to be put out there, to

stop this happening again' (FG2, M6) and that may reasonably be some form of education on the ethics of sexual interactions, consent and the impacts of alcohol. It was similarly argued however that it would be unfair to educate the defendant in isolation, and that the complainant should also receive such information, for her perceived role in the confusion that resulted in the sex: 'I would have a problem with like educating him; you know, you really should have asked for consent, when why shouldn't she have been educated as well?' (FG1, F6).

Whilst reluctant to describe the scenario sex as either rape or a crime, participants acknowledged that it was 'obviously an unpleasant experience' (FG1, F4) but more in line with a 'really bad one-night stand' (FG1, F1). It was also deemed to have been the result of 'a bad choice' (FG2, M1) and be 'a regrettable consequence of a certain situation' (FG2, M6). The sex was largely conceptualised to have been the result of mixed messages, poor communication, and a reduction in inhibitions by both the defendant and complainant:

'I think they've got shared responsibilities for what happened, really. I think they've both.... they've both got into sexual activity and got probably far too close for comfort, whereby it's hard to stop at the relevant point. They've both drunk too much, um they've both not made it clear that they don't want sex. Um and in their communications with other people, they've not made it clear about what they do and don't want' (FG3, F6).

O'Byrne et al. (2008) identified similar constructions of rape amongst their focus group participants where miscommunication was typically rationalised to be the catalyst for sexual offences. O'Byrne et al. (2008) however argued that such discourse inevitably results in the seriousness or rape being discounted and the active role of the accused, and impact on victim, being simultaneously overlooked. The above conclusions lend additional weight to the work of Finch and Munro (2005) who identified that when parties are equally intoxicated, participants look for a mid-point between rape and consensual sex to describe that intercourse, although based on the current findings it may be legitimately argued that this mid-point behaviour is far more aligned with consensual intercourse. The focus group conclusions also contextualise the findings of study one where over a third of survey participants described the sex between heavily intoxicated individuals as a mid-point between rape and consensual sex. The past research findings, in conjunction with the current PhD studies, indicate that a significant proportion of participants do not view sex that is described as non-consensual as rape or indeed a criminal act, when certain drinking circumstances exist. Whilst such sex is framed to be morally questionable and unethical, it is simultaneously constructed to be the somewhat understandable consequence of extreme alcohol consumption. This again raises concerns if such perspectives are taken into the court arena where alcohol involved rapes may be reformulated to suggest that 'nothing much' happened. Indeed, certain non-consensual experiences may come to

be understood, at a common sense level, as simply 'bad sex' (Gavey, 2005; Gavey & Gow, 2001).

### False rape allegations

All four of the focus groups spontaneously raised the issue of false rape allegations to varying degrees. Participants frequently addressed, or at least alluded to, the possible motivations that drive a false rape report as well as discussing the relationship between alcohol, inhibitions and false reporting generally. The frequency with which false allegations were perceived to be made was also developed into a sub-theme along with the ramifications of a false allegation for the accused.

***Motivations for a false rape report:*** Participants within three of the groups specifically raised the issue of whether the complainant 'regretted it afterwards...?' (FG2, M3) or questioned whether 'she has consented in a way, but she doesn't like the fact that she's done it' (FG3, F4), thus providing the backdrop for a false rape allegation to be made:

'But what about her, has she not to some extent woken up and just regretted it, and kind of come to and suddenly thought oh God, what are people gonna think of me, what am I thinking of myself? So, it's kind of an afterthought as well' (FG1, F2).

'I just think being used is a very kind of schoolyard term to have used, if you really felt violated and you really felt that there's been wrong. But then again, maybe at 4.25 am, or whatever it was, you wouldn't be quite sure of that. But it kind of shows that her initial reaction was that she'd been used; she hadn't been raped. And then later on, perhaps when she'd thought about it, she.... I don't know, perhaps she altered events in her head, to say it's rape' (FG3, F3).

It is interesting to note that having not used the rape term to describe the experience that occurred is seized upon by several participants to question the validity of the complainant's account. This seems a somewhat extreme perspective in recognition that many individuals do not label an experience they have undergone as rape, despite the act meeting a legal definition. As highlighted in study one of the PhD, the likelihood of labelling an experience as rape is further reduced if alcohol has been consumed prior to the act and the perpetrator is someone known (Bondurant, 2001; Kahn et al., 2003; Kelly et al., 2005; Myhill & Allen, 2002). The complainant's psychological distress and distorted recollection, care of the alcohol ingested, are further factors that are likely to prevent her from immediately classifying the experience as rape. It seems paradoxical that multiple participants pointed out the specific lack of rape term usage as being potentially indicative of a false report and agree that had she classified her experience

as rape, this would have enhanced her credibility. However, multiple participants simultaneously argued that they themselves were ill at ease labelling the vignette sex as rape, thus expecting the complainant to do what they themselves were hesitant to. Study one of the PhD identified that women, more than men, were unaware of what constituted legally defined rape and it is realistic to surmise that numerous women will also be prevented from immediately labelling their experience as rape, due to this unfamiliarity. It seems clear that certain participants had unrealistic expectations around the anticipated behaviour of the complainant. Indeed, this fits with the body of existing evidence that identifies third parties expect rape complainants to adhere to stereotypical victim scripts which include the display of emotion and trauma, the immediate reporting of the offence (Ellison & Munro, 2009a; Temkin & Krahe, 2008) and as suggested by the current study, to categorically identify and label their experience as rape.

There was the clear perception that regretted sex may result in a complainant re-labelling consensual intercourse as non-consensual, upon sober re-evaluation. Although there is no sound evidential basis which can corroborate such speculations, it is evident that such ideas resonate, and are endorsed by, the Criminal Justice System and society at large (Burton et al., 1998; Kitzinger, 2009; Lonsway et al., 2009; Opinion Matters, 2010a; Rumney, 2006). The focus group findings lend additional weight to the conclusion of study one where the online survey methodology identified that 59.6 percent of respondents agreed or strongly agreed with the perspective that women who regret having sex when drunk are more likely to make a false rape allegation, as well as echoing barristers' speculations from study two. Whilst several participants did attempt to contest this perspective, protests were often qualified to some extent. Indeed, a number of 'culturally accessible repertoires' (Burton et al., 1998) were spontaneously provided as possible motivations for making a false allegation. For example, it was argued that 'I don't see what she would get out of crying rape. I mean, unless she's got a boyfriend or something' (FG2, M5). The existence of a boyfriend or prior relationship appeared to increase the potential for a false allegation, based on the premise that such extreme measures would enable the complainant to 'cover' (FG4, M2) up her indiscretion and in turn 'present in a better way' (FG4, M2) to her partner. False reports were also deemed to be a way to seek revenge for failing to have feelings reciprocated or 'to get that person because they didn't text back maybe the day after, and they really liked them' (FG3, F5):

'But also, I look at it um if she's used the term been used, she could also be using this court case as a way to get back at him. If she feels, herself, that she's been used, she could be thinking oh this is my way to get back at him, to show him that I didn't want it to happen; that I feel used, so I'll get my revenge, I'll do payback more than anything, rather than feeling like she's been raped afterwards' (FG3, F2).

Again, the media was often referred to at this point in helping to form understanding around false rape reports with high status celebrity cases being reflected upon and used to support the adherence to certain perspectives:

‘But I always.... I find it very interesting when there's media speculation about a rape, and the involvement, if somebody's famous. And I must admit, like most of the times I hear it, I'm always dubious.....Just because it's kind of like.... I dunno, it always seems to me that they're saying it to get attention. I don't mean it in a negative way; not like.... it's just like a lot of times I've seen it, it's like they're trying to get something out of it, because they've got nothing to lose.....’ (FG2, M2).

It is noteworthy that here, the very act of a woman making a claim of rape against someone famous, is sufficient to instantaneously elicit assumptions that the report will be false. It appears that the gains for such an accusation, inevitably financial and media publicity are deemed sufficient motivators for false reports. As argued throughout, the media is instrumental in terms of informing the lay publics’ representations of rape and in turn, false rape allegations. They enable events that have not been directly encountered to be turned into something knowable and familiar (Joffe, 2003; Moscovici, 1988). The difficulties as previously discussed, include the media portraying de-contextualised accounts of rape that serve to create non-representative images of sex crimes and sex crime victims. The Lilith project (2008) identified a disproportionate media focus on the ‘cry rape girl’ who frequently made false allegations. Kitzinger (2009) points out that controversial cases that dispute women’s testimony make for entertaining reading, hence their continued repetition. Gavey and Gow (2001) also argue that even reportedly objective media rape reports can unwittingly privilege a position that takes the falsity of an allegation as a given. Again, such depictions feed into and shape rape representations for those who access this media and can in turn ‘colour your judgement of things like this’ (FG3, F6). Indeed, past research demonstrates that there is an identifiable correlation between the viewing of myth endorsing rape media and decisions of innocence, guilt and the potential for a complaint to be deemed false, when asked to make judgements on a real life case (Franiuk, Seefelt, Ceyress, & Vandello, 2008). The point to be made is not that media subscribers will uncritically adhere to and accept such depictions, but that different modes of thinking exist and these modes do not simply reflect reality. Different rape representations compete in their stake to be accepted as truth and acceptance of certain representations leads to the exclusion of others (Howarth, 2006). It may therefore be argued that prominent false allegation media discourses feed into lay individual’s understanding of rape and when false reports are likely to be made. The dominance of such perspectives inevitably lead to the marginalisation of other discourses – such as those that suggest that in the majority of instances,

rape accusations are genuine. Repeated exposure to such stories provides the backdrop that enables such perspectives to be assimilated as though they are '... sort of instinctive' (FG2, M3) despite not 'knowing anything about it' (FG2, M3). It can again be argued that adherence to, and repetition of discourses that promote and sustain notions that rape allegations are a cover-up for regretted sex, the logical get-out clause for intercourse when already in a relationship or used for the purpose of getting back at a man, enable the argument that 'in the majority of instances, rape allegations are genuine' to be effectively marginalized (Moscovici, 1976). Again, this serves to keep distorted the extent of rape and its wide reaching reality, further serving to diminish the subscriber's perceived likelihood of experiencing the offence.

***Impact of alcohol on inhibitions and false rape allegations:*** Closely related to the above theme were arguments made by several participants who stated that alcohol reduces inhibitions and increases the potential for engaging in behaviours that may later be regretted or: 'alcohol lowers your inhibitions and fuels you to do things that perhaps you shouldn't' (GF3, F6):

'It's just the nature of alcohol and the fact that it makes you feel less inhibited, and when you go over the line with alcohol, it makes you completely.... well it withdraws your ability to control what's happening around you, to a certain extent' (FG4, M1).

It was argued by multiple male and female participants that if sex takes place during a period of extreme drunkenness, rape may be the 'first reaction when they wake up' (FG1, F3). It was rationalised that whilst sex may have been consensually engaged in at the time - due to the disinhibiting impacts of alcohol on behaviour - the event may subsequently be modified to help rationalise and explain the regretted drunken actions. These perspectives echo closely arguments raised by barristers interviewed for study two who also felt that such possibilities impacted strongly on a jurors judgements in determining whether rape had occurred. Whilst certain participants argued that having drank alcohol prior to a rape is likely to decrease a complainants likelihood of going to the police and reporting the crime - due to fears around not being believed or viewed non-credible - the majority of participants argued that people are more likely to use alcohol 'as their excuse' (FG1, F5) for engaging in uninhibited behaviours. It was clear that when participants talked about a complainant subsequently modifying the sex that took place to align it with a rape act, this was not always deemed to be a conscious or vindictive process but one that may also be more subtle:

'When you're drunk, you sometimes.... you know, you're not sure what happened or what was a dream. And when you've spoken to Naomi, when you've still been drunk, that might all mesh into what you remember as well' (FG2, M3).



The study clearly indicated that alcohol was viewed to play an integral role within the false allegation process, complimenting the findings of study one where 81 percent of survey respondents either agreed or strongly agreed that being drunk when having sex increases the likelihood of a false rape report. The current research builds upon these initial conclusions by suggesting that it is the impact of alcohol on inhibitions specifically and the perceived likelihood of engaging in behaviours that one may later regret, which relates to participants assumptions that false rape reports are more likely when drinking. As noted however, this process was not always deemed to be an intentional distortion of the truth but also the consequence of the cognitive impacts of alcohol on memory and the way in which events are subtly altered to enable a coherent account to be built.

***Frequency of false rape reports:*** After the issue of false rape allegations had spontaneously been raised by focus group participants, it was followed up with additional questions including whether participants felt that false reports were frequently made. When asked this direct question the majority of individuals stated that they thought it would be infrequent and reasons for this often related to there being ‘no real reward’ (FG3, F5):

‘I wouldn't have thought so, because I wouldn't have thought people would want to go.... I imagine it does happen, but I wouldn't have thought it'd be often. Because people wouldn't want to have to go through the cross-examination and accusations that it would entail. And also, you would possibly face your own prosecution, if you're found out to be.... is that right?’ (FG3, F6).

It was also rationalised that women would not want to go through the intrusive physical examination and that females generally are not that ‘mean’ (FG1, F6) or ‘horrible’ (FG3, F4). The argument that false rape allegations were unlikely to be frequently made, sits at odds somewhat with the ease with which participants spontaneously suggested the possibility of the vignette being a false rape report. Indeed, this may relate to the points made above and the frequent media exposure to false rape allegation cases which can result in such discourses being assimilated as though they are instinctively true and reproduced in talk as common sense explanations (Moscovici, 1976). Lonsway et al. (2009) similarly argue that media accounts of false allegations, often made against popular cultural figures, contributes towards the overestimation of false allegations in everyday life. Whilst arguing that false reports were likely to be infrequently made study participants also noted that ‘it's easy to say rape, which I do think happens’ (FG1, F1). It may be the perceived ease with which a false allegation can be made that relates to the possible elevated assumptions around the frequency with which such reports occur. This very philosophy has resonated within criminal law and the Criminal Justice System for decades, impacting on rape provision and legislation (Rumney, 2006). Matthew Hale, the seventeenth century English Chief justice for example argued that rape is an accusation easily

made, hard to prove and harder to be defended by the individual accused (Hale, 1736, as cited in, Gavey, 2005). However, the current study findings which emphasise participants' reluctance to label the vignette sex as rape, and Ben a rapist, does call into question the legitimacy of the argument that rape is inevitably 'harder to be defended by the individual accused.'

***The ramifications of a false rape allegation:*** Three of the four focus groups specifically addressed, and talked at length, about the impacts of a false rape allegation on the accused. Multiple male and female participants focussed on how false reports can 'ruin people's lives' (FG1, F1) and that the 'rumours will carry on' (FG1, F6), even if the case is subsequently identified as false. In this sense, men were often constructed to be the victims of false reports, with the language of victimology being adopted to describe this. Again, the serious impact of the 'rapist' label, care of a false report, was identified:

'It's like my friend was joining the army and he went for um, you know, his interview and had to declare that he was being investigated for rape. And they basically said like, you know, it's iffy as to whether we'll accept you, even for being investigated; despite the fact that he was never convicted or charged with rape. It was just the connotation of being investigated. Because there's still that thing in the back of their heads, well he must have done something because somebody's accused him of, you know what I mean?' (FG1, F1).

Certain participants also stated that due to the possible impact of a false allegation on the defendant, it could be viewed as irresponsible to take a complaint to the police, unless the complainant is entirely sure that rape has occurred:

'So, if you're not sure, then I think it's quite irresponsible to make that claim. Because if he does get found guilty and goes away for life when, actually, she was up for it and she did enjoy it at the time. It's just afterwards she thought well, actually, no that wasn't for me, and I'm really upset about it' (FG2, M2).

Although this perspective was challenged by other males in the group, for certain participants there was the expectation that when memory of events was hampered by severe intoxication, at a minimum, the complainant should seek legal advice on how best to proceed with a complaint rather than 'cry rape' (FG2, M3) at the onset. This argument again seems somewhat unsympathetic towards the position of the complainant who having experienced a traumatic event is expected to be suitably placed to take immediate coherent action. The comment does however perhaps rightfully suggest that certain individuals may be confused about the sex they have experienced and would benefit from contact with someone suitably trained who could advise and help categorise what has been encountered, without placing pressure to officially

report and pursue the case, prior to that clarification. In light of study one indicating that students had a poor understanding of rape and the legal stance, it is possible that for certain individuals the police reporting process is a fact finding endeavour which helps to categorise what has been experienced. One study participant similarly noted:

‘The impression that you get from reading this case, is that she’s been.... she’s going to court to find out if something happened to her, if she didn’t consent or not. So, she’s going there for like an answer, rather than trying to get justice really. It just seems to try and be an answer to a question, rather than um an argument already stated’ (FG3, F5).

If at the police reporting stage it is established that rape has not occurred, this may feed into notions around false rape reports (Kelly et al., 2005) with the genuinely confused complainant being categorised/perceived to have made a careless, hasty decision to report which they subsequently retract (and which may come to be conceptualised as a retraction based upon a sober re-evaluation of the facts). The availability of services that could be sought following an experience that is deemed victimising, and awareness raising of services that already exist, may go some way towards enabling a clearer account of what has happened to be established at the onset, of what may come to be, the official reporting process.

The above findings once again demonstrate awareness around the ramifications and significance of the rape term. That is, the ‘wrongness’ of a false rape report was seen to relate, in part, to the impact of having the term rapist attributed to the individual, a term that was viewed to be as detrimental as the label ‘murderer’ (FG1, F6) and one that is ‘always gonna be with him’ (FG4, F3), irrespective of whether the complaint is found to be false. The spontaneous and repetitive discourses that focused on men being wrongly and knowingly accused of rape, again disproportionately outweighed conversation held in relation to the harms of the offence to the complainant and society at large. Gavey (2005) similarly notes that an overriding focus around the wrongs of false rape allegations, above and beyond the harms of rape itself, has long been a feature of Western society. This agenda was also found to override focus group participants’ conversations around the possibility of a defendant intentionally targeting an intoxicated female, for the purpose of procuring sex from someone unable to resist. Indeed, no focus group member addressed the possibility of alcohol being strategically used by defendants to procure intercourse. Instead, certain individuals constructed intoxicated complainants to have put ‘themselves in this sort of situation... and then putting the man..... dragging them through the court’ (FG4, F5). The vignette complainant was also viewed by a minority to have ‘led on’ (FG2, M3) the defendant and then ‘called the police and tried to get him sent down for life’ (FG2, M3). Such positioning may again be viewed as an example of the way in which the traumas of rape are collectively avoided, through a re-focus and repetition on alternative topics.

such as the impact of false rape reports on the accused. By disproportionately focusing on the issue of false rape allegations, participants are again able to avoid engaging directly on the trauma of rape, thus effectively enabling them to side-step and keep hidden, the reality of the offence and by default, the possibility that they themselves may be vulnerable to the crime (Moscovici, 1976).

### Study limitations

It is acknowledged that the study sample is comprised of a relatively small number of participants who were largely self-selecting, middle class and White-British university students. Those individuals who volunteered for the study may therefore have specifically defined views on the topics raised which motivated their participation. This clearly sits at odds with the process of selecting jurors who are typically chosen at random. Whilst the recruitment strategy adopted has previously been advocated (Howarth, 2002), it is noted that the sample cannot be viewed as representative of the student population at large, societal members on a broader scale or indeed transferable to other contexts. However, it should be reiterated that this is not inevitably problematic in light of qualitative research not inevitably striving for generalisability and due to the study aiming to generate initial insights into perceptions around alcohol involved non-consensual sex and false rape reports, an area where there is currently a paucity of research (The Stern Review, 2010). In addition, the study did not just aim to address the extent of culturally shared understandings around alcohol involved non-consensual sex, but also to apply the theory of social representations to enable the functions, benefits to identity and possible origins of participants' perspectives to be considered, as well as to observe examples of identity management during the social, focus group process.

In a related vein, it is recognised that the study methods adopted only roughly approximate real life jury decision-making in rape cases and conversations jurors may have in relation to a similar case. That is, whilst a significant body of previous social psychology research has used a vignette methodology to examine third party assessments of rape, and make inferences about juror behaviour in the trial context, such measures can be seen to lack ecological validity. It is recognised that mock jurors realise that another person's fate does not hinge on their decision: and their motivation to engage fully with the task may not parallel a real juror (however, it should be noted that all focus group participants deeply engaged with the research process). Again, whilst findings from vignette research and other mock jury studies cannot be viewed to inevitably generalise to real life jury decision-making (and it should be noted that almost all focus group participants felt Ben should not be found guilty of rape whilst the actual jury in the case of Bree found him guilty), this again is not inevitably problematic. As Finch and Munro (2006) note, all juries are comprised of different groups of individuals who are provided with

different cases and facts. It may therefore not be logical to assume that the reasoning processes of one set of jurors can, or indeed should, translate to a different group of jurors. Vignette research does however allow for the illumination of the reasoning process that certain individuals use when reaching verdicts in rape cases and as discussed above, enables the identification of contrasting and shared perspectives and the motivations and influences that lay behind adherence to certain realities to be considered.

A final issue that should also be noted is that the researcher conducting the focus groups was a university educated female and as acknowledged in the general introduction of the PhD, this background cannot be divorced from the research process. It is possible that these background factors impacted on participant's readiness to discuss their perspectives, with there being potential for individuals to present their views in diluted versions. However, it was evident that controversial topics and perspectives were raised and by observing the conversations held at a closer discursive level, it was possible to identify examples of judgements being subtly constructed. Indeed, it is likely that the presence of all other group members, as opposed to just the researcher, impacted on the way in which perspectives were presented. As had been argued throughout, when in a social context individuals often attempt to present as neutral sympathetic observers, even when subsequent examination identifies an action orientated agenda to their discourse.

### Conclusion and implications

The research demonstrated that there was considerably more consensus across the genders on alcohol involved rape perspectives, and false reports, than there was divergence. Whilst men more frequently assumed that physical evidence should have been present within the vignette and women more often argued that sexual intentions should be clearly and overtly expressed and that the vignette complainant, and women generally, should show personal responsibility when out drinking, men and women similarly adhered to numerous view points. For example, the argument that alcohol is likely to impact on a defendant's cognitive capacities reducing their ability to interpret a partner's sexual wishes, thus suitably explaining why a defendant may have believed his partner to have been consenting to sex at the time (even if this was not the case). Whilst alcohol intoxication is not a defence to a charge of rape in the eyes of the law, it appeared that participants did not appreciate this position, or if they did, still viewed extreme intoxication as a factor that was sufficient to reasonably mitigate the defendant's responsibility for ensuring consent was present. It seems clear that additional awareness raising around this issue is paramount to help articulate the legal stance and make clear, intoxication is not a suitable defence to a rape charge.

The majority of study participants did not view the vignette intercourse as rape, or indeed a breach of the law, but rather, ethically or morally questionable sex. The vignette intercourse was collectively constructed to have been the somewhat unpleasant, but understandable, consequences of extreme intoxication. It was viewed as an experience that 'just' happened or a bad one night stand, as opposed to having been an intentionally victimising act. It was clear that the divergence of the sex depicted from the real rape script impacted on participants' willingness to label the intercourse as rape. As argued throughout, reformulation of the non-consensual experience to suggest 'nothing much' happened, demonstrates further the way in which non-consensual acts are often collectively reformulated to be understood at a common sense level as bad sexual experiences. This has concerning implications if such attitudes are expressed by jurors in rape trials. Indeed, non-consensual sex that takes place between heavily intoxicated individuals may, during the social deliberation process, be re-categorised as an unpleasant one night stand. Repetition of arguments and discourses which reframe the agenda to focus on the ramifications of false rape allegations or the impacts of the rape label for a defendant, provide the context that enables non-consensual experiences to be obscured, minimised and ultimately justified. As noted, the benefits to group identity and self-esteem that subscription to such perspectives serve are instrumental in their continued endorsement and this must be recognised within promotional campaign literature that attempts to dispel inaccurate beliefs. Additional research must focus extensively on this issue to enable the development of targeted campaigns that address the role of identity within them. The media has been pinpointed as instrumental in the formulation of rape representations and responsible for disseminating de-contextualised and sensationalised images and stories around rape. Whilst it is acknowledged that viewers do not uncritically absorb all information disseminated to them via the media, they must still play a central role in the promotion of more representative perspectives which give context and clarity to the lived experiences of rape and rape complainants.

The difficulty of being able to accurately gauge the defendant and complainant's level of drunkenness was raised by both men and women. The act of being sick was not deemed sufficient by either gender to demonstrate incapacity to consent in isolation. It appeared evident that the normalisation of heavy drinking impacted at least in part, on participants' abilities to subjectively evaluate the implications and 'wrongness' of having sex with someone who has been vomiting or who is extremely intoxicated. It was also clear that both men and women drew on their own personal experiences and encounters of having been drunk to assess the vignette characters' levels of functioning at the time. Clearly, it is problematic if such perceptions are taken into the court environment and judgements made on factors external to the evidence. It is also possible that juror evaluations in intoxicated rape cases will be based on questionable assumptions which equate incapacity with extreme forms of complainant inability. That is,

unconsciousness or the combined presence of vomiting, slurred speech and an inability to walk. It is realistic to surmise that due to the normalisation of drinking culture, younger jurors may be less likely to challenge the acceptability of individuals having sex with others who are highly intoxicated. Indeed, the perceived normality of such acts may override the capacity to evaluate, or consider, whether a defendant had intentionally targeted a drunken complainant for the purpose of having sex with someone who is unable to resist. Dissemination of messages that raise awareness around the strategic use of alcohol to procure sex, as well as emphasising that men are also instrumental in preventing non-consensual experiences, is paramount. That is, educational messages should also focus on men showing responsibility when out drinking, and the impacts of alcohol on their ability to read sexual situations and consent based cues. Participants felt that such messages should be put into the public domain, targeted towards both men and women, to educate on the ethics and legal stance of having sex with highly intoxicated partners.

It was clear that numerous participants questioned whether the vignette complainant had actually been raped or regretted the sex afterwards, thus providing the backdrop for a false rape allegation. The complainant's failure to classify her experience as rape initially was also deemed to be partially indicative of a false report. The disinhibiting influence of alcohol linked closely to false rape allegations. That is, the impact of alcohol on cognition and inhibitions was deemed central in encouraging individuals to partake in behaviours they would not if sober. The potential for sex to have occurred, care of a disinhibited state, and later reformulated as non-consensual to excuse that behaviour, was a possibility that weighed heavily on participants' minds. It was also evident that the 'wrongness' of a false report related to the devastating impact the rapist label had on the person accused. As had been demonstrated so many times before, false reports were still argued to be motivated by the seeking of revenge, getting back at a male and for covering up sexual indiscretion or misbehaviour. Awareness raising should therefore focus specifically on attitudes held in relation to false rape reports and dissemination of the facts that can dispel such myths. Namely, information that emphasises false reports are currently no more inflated than they are for other serious crimes and that when a false allegation is made, the identity of the defendant is frequently not specified (Lonsway et al., 2009). Again, ensuring the issue of subscriber identity is addressed when such messages are formulated is paramount. Further research is needed to help clarify and categorically establish rates of false rape allegations and the factors that lay behind making a false report. Only then will the extent of the situation and the contextual and motivational factors surrounding false allegations be fully understood.

## Chapter 7: overarching PhD discussion

### Discussion

A discussion of the findings from the PhD's individual studies has been provided throughout; this chapter therefore provides an overarching discussion, drawing together the PhD as a whole. In doing so, it is necessary to review the aims of the PhD as set out in the general introduction and to establish how each study has contributed to their fulfilment:

- 1) To identify a UK student samples' experiences of, attitudes towards, and understandings around, alcohol involved non-consensual sex and how these varied by gender and alcohol use.
- 2) To identify the barriers that exist to successfully prosecuting alcohol involved rape cases and to explore how certain amendments made to the law via the Sexual Offences Act 2003 have been perceived, work in practice and their overall contribution in terms of improving the law of alcohol involved rape.
- 3) To examine attitudes and understandings held by students in relation to alcohol consumption and non-consensual sex and to explore the perceived contribution of alcohol in the false rape allegation process.

### *The need for further research*

Heavy alcohol consumption has received increased attention across the UK and Europe in the last decade where it is currently considered a major public health priority (North West Public Health Observatory (NWPHO), 2007). Research conducted in 2006 indicated that the United Kingdom was ranked third highest in terms of the number of drinks consumed in one sitting by its residents when compared with 25 EU member states. Twenty-four percent of persons within this group were found to consume five or more drinks during an alcohol-drinking sitting (European Commission, 2007). Research has estimated that in England alone, 18.2 percent of adults binge drink. That is, they drink double the daily-recommended maximum levels in a single drinking session (Centre for Public Health, 2006). English and American research continues to document increases in problematic alcohol consumption amongst college and university students, identifies that they consume more alcohol than their non-student peers (Dawson et al., 2004; Kypri et al., 2005) and experience numerous negative outcomes as a consequence of their drinking (Cashell-Smith et al., 2007; White et al., 2003; 2004; YouGov, 2010). Alcohol use, including heavy alcohol use, has also been found to be associated with experiencing sexual offences (Abbey et al., 2004; Finney, 2004; Kilpatrick et al., 2007; Lovett & Horvath, 2009; Muehlenhard & Linton, 1987; National Union of Students, 2010) with academics arguing that heavy drinking, with its associated negative outcomes, is the most important public health consideration currently facing student populations. Despite the well



documented association between alcohol ingestion and experiencing non-consensual sex, little is known about the facilitative role of alcohol within a sexual offence (Zawacki, et al., 2005) or the alcohol related strategies used to procure intercourse (Lovett & Horvath, 2009): emphasising the need for additional exploration. There is a specific dearth of empirical study surrounding English students' experiences of non-consensual sex when drinking, including men's alcohol involved encounters generally (Koss et al., 2007). Study one of the PhD therefore provides one of the first European explorations of students' experiences of alcohol involved non-consensual sex. In doing so it provides original and timely insights into the alcohol related strategies used to procure intercourse from a group who are recognised as high risk for experiencing non-consensual outcomes. The study also provides original exploration into the characteristics associated with UK students' alcohol involved sexual victimisation, including men's non-consensual experiences, again, a neglected group. The research raises awareness around the victimisation of UK based students and the possible role of universities in the reduction of that violence.

Research demonstrates that when alcohol is involved in a non-consensual sexual experience this impacts on perceptions of complainant credibility (HMCPSI, 2007; Kelly et al., 2005). When combined with concerns around low conviction rates for rape (Home Office, 2002), prevalent attitudes in relation to the frequency of false rape allegations (Opinion Matters, 2010a), criticism of the usefulness of the Sexual Offences Act 2003 (Cowan, 2008; Elvin, 2009; Finch & Munro, 2004; 2006; Temkin & Ashworth, 2004), and continued reluctance to believe a woman who states she was raped when drunk (Finch & Munro, 2005; 2007; Opinion Matters, 2010a), there is clear need for further empirical work to ascertain the contribution of rape legislation in the prosecution of alcohol involved cases specifically. Study two of the PhD therefore provides an original, timely and important contribution to knowledge by generating empirical data relating to the impact and effectiveness of the Sexual Offences Act 2003, via interviews with legal practitioners, a participant group infrequently recruited to research studies despite their unique insight into the workings of legislation (Temkin, 2000). Such work enables the barriers to successful prosecution to be highlighted and for continued problems in the law of intoxication to be illuminated. This background also emphasises the need for additional research to address understandings around false rape allegations and attitudes that presuppose the potential for making false reports is enhanced when a complainant has been drinking. This work is essential in light of the frequency with which alcohol consumption is associated with non-consensual sex and fears around not being believed resulting in victims not officially disclosing offences or seeking services to address that experience (Kilpatrick et al. 2007; The Stern Review, 2010). Lonsway et al. (2009) argue that the issue of false rape allegations is potentially the greatest barrier to the successful prosecution and investigation of sexual offence cases and gaining an empirical insight into individual's attitudes towards false rape reports, and the role of

alcohol in this process, will provide an essential evidence base from which to begin challenging stigmatised assumptions. Little investigation has thus far examined attitudes around alcohol involved false rape reports resulting in calls for additional research to focus on this area specifically (The Stern Review, 2010). Study three of the PhD consequently provides a timely and important examination of attitudes surrounding false rape allegations.

### ***Experiences of alcohol involved non-consensual sex and implications for the prosecution of cases***

Study one of the PhD provides one of the first UK insights into an English student samples' experiences of non-consensual sex when drinking, the characteristics associated with assaults and the types of alcohol related strategy used to procure intercourse. The study identified that from a sample of 1,079 students, 30.7 percent had experienced at least one act of non-consensual oral, anal or vaginal penetration by the penis, fingers or other objects since the age of 14, due to the employment of an alcohol related strategy. The tactic most frequently used to procure non-consensual sex was to use the student sexually after they had been drinking alcohol and were conscious, but too intoxicated to give consent or stop what was happening. This finding supports the well documented association between drinking alcohol and experiencing non-consensual outcomes as well as highlighting further that voluntary alcohol consumption, prior to a non-consensual experience, is the major area for preventative work to focus (Beynon et al., 2008; Horvath & Brown, 2007; Scott-Ham & Burton, 2005; Slaughter, 2000). Barristers from study two also unanimously identified that voluntary alcohol consumption by the complainant, and not alcohol or drugs having been surreptitiously administered to them via a spiking method, was the most frequent type of intoxication related rape case proceeding to trial.

Both men and women from study one were found to experience non-consensual acts following the consumption of alcohol and deployment of a related tactic (the logistic regression model identified that 33.4 percent of women and 21.5 percent of men said 'yes', they had experienced non-consensual oral, anal or vaginal sex). In the previous 12 months men were found to have experienced non-consensual oral sex, or been made to perform oral acts due to encouragement or pressure being placed to drink alcohol, more frequently than women (13 percent of men compared to 0.5 percent of women having experienced this behaviour 3+ times). This clearly demonstrates that non-consensual sex is not experienced by females in isolation and that men are also the recipients of victimising behaviours. Study one identified that men most frequently experience female initiated non-consensual sex and although not statistically significant during the chi-square analysis stage, a greater proportion of males stated that they were not adversely affected by their experience. Further research should address potential differences in the perceived severity of non-consensual encounters to help develop a more complete understanding of men's non-consensual encounters and to identify

possible difference across the genders in the immediate and long-term impact of such acts. Despite the identification of a proportion of men who had experienced non-consensual sex, study one highlighted that a significantly greater proportion of women experienced non-consensual acts at the hands of males. This was again reflected by barristers who argued that the vast majority of alcohol involved sexual assault cases that they prosecuted involved females as complainants, thus, the discussion focusing on this gendered dynamic. The survey data also highlighted that non-consensual outcomes were typically perpetrated by someone the complainant knew, occurred within the privacy of either parties home and failed to result in physical injury (Feist et al., 2007; National Union of Students, 2010; Payne, 2009; Ullman, 2003; Walby & Allen, 2004). Again, barristers reflected these findings and argued that they were key barriers in achieving convictions in alcohol involved cases. That is, the lack of injury sustained, lack of third party who had witnessed events and could be called upon to corroborate accounts, when combined with an established acquaintanceship or association, made it increasingly difficult to meet the burden of proof needed to convict in rape cases. These findings clearly contradict notions of 'real rape' which presuppose, and promote, ideas around rape being perpetrated by strangers, involving the use of violence and occurring outdoors (Kelly et al., 2005; Temkin & Krahe, 2008). Participants in study three similarly noted in their evaluation of a vignette based on the case of Bree (2007) that the absence of independent evidence, including physical injury, made it especially difficult to meet the burden required to convict in the given circumstances; clearly highlighting the evidential difficulties facing the prosecution when representing rape complainants (Temkin, 2000).

The survey data identified that a significantly greater proportion of hazardous drinkers had experienced non-consensual sex when compared to non-hazardous, suggesting that it is heavier drinking lifestyles that are associated with an increased risk of non-consensual outcomes (as opposed to the simple presence of alcohol). Although it is not possible to establish whether heavy drinking proceeded or followed non-consensual acts, due to the cross sectional nature of the methods adopted, the survey highlights that large quantities of alcohol were consumed prior to the majority of participants' non-consensual experiences (with individuals typically drinking at the heavy end of the alcohol consumption continuum). Whilst physical violence is frequently promoted as the outcome of excess drinking, it is clear that sexual violence and non-consensual experiences are also behaviours associated with heavy drinking and should be promoted accordingly within awareness raising literature. The survey documented that the impacts of the alcohol consumed on memory processes, and the subsequent inability to recall events clearly, related to men and women's decisions not to disclose to the police. Barristers highlighted that such memory impairment was a key barrier to successful prosecution in those alcohol involved cases that did proceed to trial. Indeed, the inability to remember aspects of a non-consensual experience or the providing of inconsistent accounts enhanced the ease with which a

complainant could be presented as unreliable, potentially untrustworthy and non-credible. Alcohol is a substance that impacts on the ability to code and store information within memory; it is therefore likely that a significant proportion of individuals who drink alcohol prior to a sexual offence will have gaps or inconsistencies in their recollections and subsequent accounts. Such gaps inevitably cause problems at trial, and will continue to do so, in a Criminal Justice System that relies so heavily on a consistent account of the events that took place. It is possible to ask whether it is realistic to expect a full and coherent explanation to be provided when alcohol, often combined with the impact of trauma, influences the way in which information is perceived, stored and subsequently retrieved (Atkinson & Shiffrin, 1968; Lodrick, 2007; White, 2003). When viewed in these terms it is possible to suggest that the legal framework currently disadvantages rape complainants on the basis of natural, cognitive responses and functioning.

### *Understandings around alcohol involved non-consensual sex*

Study one identified misunderstanding in relation to the legal definition of sexual consent and the existence of ambiguity, especially amongst non-hazardous drinkers and females, around whether it is necessary for consent to be verbalised in order for it to be legally valid or whether physical injury must be present in order for it to be deemed legally absent (Lim & Roloff, 1999; Opinion Matters 2010a; 2010b; Sawyer et al., 1998). As noted throughout the PhD, if individuals cannot identify what constitutes legally defined rape, they may not report a non-consensual experience to the police, other third parties or seek help and support to deal with that experience. Study one clearly identified that a lack of comprehension around the law impacted on participants' labelling of their non-consensual experiences and subsequent decisions to report to the police (Fisher et al., 2000). Study three also identified that a sub-set of participants perceived the official reporting of the vignette complainant's experience to be a fact finding process that would enable her to help categorise what she had undergone. In light of the PhD highlighting the ambiguity that exists around what constitutes a sex crime, it is realistic to surmise that the genuinely confused complainant may go to the police to help have their experience defined. If it is subsequently established that the act did not constitute a sexual offence, and is retracted accordingly, this is likely to feed into notions around false rape allegations, their frequency and the factors that relate to them being made (for example, an increased likelihood if a woman is drinking prior to intercourse). The availability of services, and promotion of services where they already exist, that can help clarify this position, without pressure being placed to officially report the incident at the onset as rape, is likely to go some way towards remedying the confusion an individual may experience in the labelling of their sexual encounter. The lack of appreciation for the legal position on consent and rape is perhaps unsurprising in light of the lack of publicity and active dissemination of information on the topic. Whilst government campaigns have historically warned that if there is no consent prior to

sex this will result in a prison sentence, this seems a somewhat premature message if the ways in which consent can legitimately be communicated and expressed are not fully understood.

Study one highlighted confusion as to whether the issue of 'capacity' was deemed relevant to the law of sexual consent with a proportion of students (11.9 percent) inaccurately stating it was not, whilst others remained unsure (17.5 percent). Responses in relation to capacity based survey questions also identified a subset of participants who had a narrow conceptualisation of the construct with 20.5 percent agreeing or strongly agreeing that as long as the drinking party remains physically conscious, they will be capable of choosing whether or not to have sex. The logistic regression analysis identified that a greater proportion of women, and non-hazardous drinkers, strongly agreed that being drunk affects the capacity to make reasonable decisions with women appearing to have an enhanced appreciation of the impacts of alcohol on behaviour across a number of the study one capacity based survey questions. This latter gender awareness however was not maintained in study three where male and female participants both assumed that the vignette complainant was capable of consent, despite having vomited prior to the intercourse. At this point, the normalisation of heavy drinking impacted at least in part on participants' abilities to subjectively evaluate the harms of having sex with someone who is so intoxicated they are being sick (Finch & Munro, 2007). Study three participants also noted that it was difficult to establish whether the vignette complainant retained capacity, due to differences in people's resistance and ability to cope with alcohol, and lack of specified formula that may be drawn upon to help elucidate this position. In light of the wider academic literature which has suggested that the Sexual Offences Act 2003 provides inadequate assistance with interpreting the capacity term, especially in cases involving extreme intoxication (Cowan, 2008; Elvin, 2008; Finch & Munro, 2004; 2006; Rumney & Fenton, 2008), barristers were asked how capacity was interpreted at trial and whether defining the construct in law would help in the prosecution of cases. Advocates reflected closely those arguments made in study three, namely, that due to different individuals greater or lesser ability to cope with alcohol, it would not be possible to define the term in legislation and offer a specified point at which all people may be deemed incapable of consent. Despite barristers' resistance towards the defining of capacity, they still perceived certain jurors to experience difficulties when asked to make judgements on complainant capability. It may therefore be suggested that additional consideration must be given to the term to help remedy these perceived difficulties (and actual difficulties as observed in study three). In the absence of further guidance, the PhD studies indicate that for certain participants, complainants in alcohol involved rape cases may only come to be deemed incapable of giving informed consent if they reach the point of unconsciousness, with the points of incapability prior to this threshold potentially being negated (Finch & Munro, 2005; 2006). Such ambiguity may result in participants drawing upon their own personal experiences of

having been drunk to help assess third parties levels of functioning (Finch & Munro, 2005: 2006), as was clearly identified in study three.

### *Attitudes around alcohol involved non-consensual sex*

When members of a drinking dyad are presented as equally intoxicated, both the survey data and vignette discussions identified that there was a reduced willingness, especially amongst hazardous drinkers, to label the depiction of non-consensual sex as rape (Finch & Munro, 2005; Norris & Cubbins, 1992; Richardson & Campbell, 1982). Study three highlighted that this reluctance related to the impacts of alcohol on the defendant's abilities to judge whether consent was present. That is, multiple participants felt that the impact of alcohol on cognitive functioning could legitimately result in the defendant genuinely believing that consent was present, even if it is not. In such circumstances it was perceived unfair to hold the defendant liable for rape. Whilst alcohol intoxication is not a defence to a charge of rape in the eyes of the law, it appeared that participants still viewed comparable degrees of drunkenness as a factor that was sufficient to reasonably mitigate the defendant's responsibility for ensuring consent. The survey data also identified that when non-consensual sex took place between equally intoxicated individuals, participants were not only reluctant to label the sex as rape, but also reluctant to label it a criminal act (Finch & Munro, 2005). Study three again contextualised these findings by highlighting that the sex was instead conceived to have been ethically and morally questionable, but not a crime. Indeed, it was collectively constructed to be the somewhat unpleasant, but understandable, outcome of extreme intoxication. This raises clear concern if such attitudes are expressed by jurors in rape trials and if non-consensual intercourse is re-categorised during the deliberation process to be understood as just 'bad sex'. Gavey (2005) argues that such minimising tactics provide the all important scaffolding that enables non-consensual experiences to be negated and justified. Running in parallel to these debates are the findings that survey respondents, especially non-hazardous drinkers, held women who had consumed alcohol more responsible for a rape or sexual assault compared to women who had not been drinking alcohol at the time (Abbey et al., 2004; Finch & Munro, 2005: 2007; ICM, 2005; Opinion Matters, 2010a; Sims et al., 2007). When these findings are considered together, they may be seen to lend weight to notions of a drinking double standard (Finch & Munro, 2005; Norris & Cubbins, 1992; Richardson & Campbell, 1982). That is, women are blamed more for a sexual offence when consuming alcohol whilst defendants are viewed as less likely to have perpetrated a crime, if they are as intoxicated as the complainant. In the circumstances documented, alcohol appears to work in favour of defendants and against complainants. The differences noted amongst the drinking groups may also suggest that an individual's own drinking background and history may to some extent impact on attributions, with those who show increased drinking restraint, attributing increased responsibility to third parties. Such

findings would correspond with what Wall and Schuller (2000) argue is an increasing disapproval of drunken behaviour and its resultant consequences.

Study two highlighted that in their evaluations of how much alcohol had been consumed, complainants often 'played down' their degree of intoxication (Jordan, 2001; Kelly et al., 2005; Temkin, 2000). In light of women being held more accountable for a non-consensual outcome if drinking, this is perhaps an understandable occurrence despite barristers arguing that such under estimates were used to suggest the complainant were lying or unreliable in court. This latter perspective contrasts with the findings that when defendant and complainant are equally intoxicated there was a reduced likelihood of the sex being labelled non-consensual by survey respondents (only 6.1 percent of participants agreeing or strongly agreeing that it is rape in such circumstances), yet when the complainant is depicted as more intoxicated, there is an enhanced consensus that this is rape (53.6 percent of participants stating it is rape when a defendant is portrayed as mildly drunk and a complainant severely drunk). It may therefore be the case that at trial, reporting a reduction in the number of drinks consumed, reduces the likelihood of complainants having their experience categorised as non-consensual.

Study one identified that 37.2 percent of participants agreed or strongly agreed that a significant number of rapes reported to the police are false allegations. Alcohol consumption was seen to play an integral role within the false allegation process with the logistic regression model identifying that a greater proportion of men strongly agreed with the statement that women who regret having sex when drunk are more likely to report a false allegation of rape (5.8 percent of females and 15.9 percent of males saying this was the case). Study three again contextualised these findings, highlighting that the disinhibiting influence of alcohol specifically impacted on ideas around false rape reporting. That is, the impact of alcohol on cognition and inhibitions was deemed central in encouraging individuals to partake in behaviours they would not if sober. The potential for sex to have occurred, care of a disinhibited state, and later be reformulated as non-consensual to excuse that behaviour, to safe-guard an existing relationship and to present in a 'better way', were possibilities that played heavily on both male and female participants' minds. This latter point corroborates the speculations made by barristers in study two who felt that juror assumptions around complainants having given 'drunken consent' at the time of intercourse, which they later retract, was a significant barrier to the successful prosecution of alcohol involved cases.

It is possible to surmise that notions around the frequency of false rape allegations interlink closely with the perceived ease with which they can be made, a potential which is enhanced yet further via the disinhibiting impacts of alcohol. Indeed, this suggestion emerged from the focus group discussions and resonates with the arguments of Matthew Hale who stated that rape is an

accusation easily made, hard to prove and harder to be defended by the individual accused (Hale, 1736, as cited in, Gavey, 2005). The current PhD has consistently highlighted a reluctance to label the depiction of non-consensual sex as rape, especially when parties are portrayed as equally intoxicated, thus calling into question the legitimacy of such suggestions. As noted throughout, ideas around false rape allegations being frequently made, and false reports disproportionately impacting on the rape offence, currently have little evidential basis (Kelly et al., 2005; Lonsway et al., 2009; Rumney, 2006) although additional research is paramount in order to help corroborate this perspective and extend current understandings.

### ***Rape legislation***

The research provides some original insights into the application of rape legislation and highlights that certain amendments made to law by the 2003 Act are not always utilised in a way that was intended. The presumptions appeared to be infrequently incorporated into trials, despite the existence of the given circumstances (Home Office, 2006). The directions associated with the presumptions were largely conceived to confuse the jury and were generally viewed to trespass into their decision-making domain. If a section 75 presumption was applied, it was unanimously accepted that the level of evidence required to rebut it was minimal. Presumption (f), which specifically covers the circumstance of intoxicated rape, had been interpreted and applied very narrowly in practice as covering the classic drug-facilitated sexual assault scenario. As such, cases that could potentially fall within its remit, such as the surreptitious administration of alcohol and the deliberate misrepresentation of the strength of the drink purchased for a consumer, were not being considered. This appears somewhat inadequate in light of study one identifying that the tactic of taking advantage of a person who is conscious, albeit too intoxicated to consent, is the approach most frequently used to procure sex. These findings therefore call into question whether a number of the 2003 provisions have met their intended aims of helping to improve the prosecution of rape cases, including alcohol involved cases and by default, the rape conviction rate. Study two indicated that there was a level of unfamiliarity with provisions introduced by the 2003 Act, such as the different circumstances covered within section 75, suggesting additional awareness raising is necessary amongst the legal profession. Almost all barristers were reluctant to see further legislative changes be introduced in relation to voluntary alcohol intoxication. However, they did feel that more procedural changes to the court environment could help in the prosecution of rape cases, and by default, alcohol involved cases. These included additional complainant visits to the court and familiarity with court procedures and what would be expected from them at trial. It was also argued that legal reforms were not necessarily a cure all solution and that additional societal messages were needed which promoted the importance of acting ethically when drinking, of acceptable behaviour and social responsibility on the part of men, as well as women. It was felt that such messages should be built into the educational curriculum and that this was the integral



background to developing a society that could negotiate sexual consent, openly discuss sexual issues, expectations and intentions and which would enable legislation to optimally impact. It is recognised that such arguments may appear idealistic, especially within a society where alcohol features so prominently and is specifically used to facilitate the meeting of sexual partners and reduce inhibitions in order to talk to individuals of the opposite sex (Bellis et al., 2008; Sumnall et al., 2007). Whilst it is therefore necessary to educate individuals at a young age around the multi-facilitated nature of consent, around what constitutes a healthy sexual relationship and the role of alcohol in non-consensual experiences, in order for those messages to become firmly embedded within understanding, they will only fully impact within a wider society that disassociates sex from the consumption of alcohol. Media and advertising messages must therefore be more responsible in the messages they promote and universities who encourage their students to drink excessively during freshers week as a way of bonding and meeting people of the opposite sex, must recognise the tension between these messages and the potential for non-consensual sexual outcomes. It is recognised that societal changes will take significant time to implement and impact but which will form part of the essential grounding that can foster healthier future sexual encounters.

As noted, advocates were sceptical about further reforms to the law and envisaged any future amendment to be unhelpful and to inevitably involve the defining of legal concepts and application of further direction - which jurors were perceived to infrequently apply - due to their complex, rhetorical nature. Although barristers' speculations around juror's application of direction cannot be taken as factual without further investigation, study three did highlight that when participants were provided with the legal definition of rape, it was not necessarily factored into the decision-making process. The definition explicitly states that whether a defendant's belief in consent is reasonable, is determined by the circumstances and steps taken by him to establish whether the complainant consents. Throughout the study three focus group discussions, it was evident that the overriding focus remained on Michelle's actions prior to the intercourse. That is, her failures for having not explicitly verbalised whether she wanted sex and for placing herself in a vulnerable position were drawn upon. No equivalent arguments were made in relation to the steps Ben should have taken in terms of asking whether consent was present and how his extreme alcohol consumption may have placed him in a position whereby he increased his potential for misperceiving Michelle's sexual intentions. Such findings reflect existent research which highlights that the spot-light remains firmly on the rape complainant's behaviour prior to a non-consensual act (Finch & Munro, 2006; 2007; Opinion Matters, 2010a; Temkin & Krahe, 2008) and may relate to the norms around the acceptability of female alcohol consumption and drinking to excess (Leigh, 1996). Attitudes that endorse notions of women exacerbating rape by behaving in 'risky' ways may equally be instrumental in protecting individuals from the reality and harm of rape and suggestion that they may be personally

vulnerable to the crime (Breakwell, 2001). As Horvath and Brown (2007) suggested, lay individuals may not be aware of the legal requirement now placed on defendants to ensure they take suitable steps or action to ascertain consent. The current PhD indicates that even when participants are made aware of this responsibility it does not inevitably result in the defendant's actions being given equivalent scrutiny to those of the complainant. Barristers in study two similarly articulated that in alcohol involved rape cases, there is a disproportionate focus on how alcohol impacts on the credibility of the complainant and this may reflect what Kitzinger (2009) argues is the patriarchal discourse that is engrained within the law at large. It may also reflect the way in which the current system disadvantages the complainant in rape cases and acts to put victims 'on trial'. It is perhaps only with the dissemination of further messages that highlight the legal stance on rape, will the responsibilities now placed on men be fully factored into third parties evaluations in rape cases.

### ***Social representations theory and its implications for awareness raising campaigns***

The PhD provides one of the first applications of social representations theory to the area of rape. In doing so, the PhD provides a more socio-cultural understanding of the development and repetition of rape perspectives than has perhaps historically been given. As evidenced in study two and three, in an attempt to make sense of the rape event, and rape trials, lay individuals and barristers draw upon media messages, peer group attitudes, beliefs around science and personal life experiences to help shape the rape perspective they construct and promote. As noted throughout these studies, endorsement and repetition of specific perspectives is intrinsically entwined with issues of identity, self-concept and esteem (Breakwell, 2001; Holloway & Jefferson, 2000; Joffe, 1997; 2003). That is, representations do not provide a neutral picture of events but typically serve to protect oneself from the harms of rape, the possibility that one may be vulnerable to experiencing the crime or indeed perpetrating the offence. As demonstrated in study two, representations also serve to positively maintain notions of the law, the adversarial system, its competence at addressing the problem of rape and by default, the legitimate role of the barrister. In order to maintain such world views it is inevitable that those who experience and perpetrate rape will be construed as different or distinct from the subscriber and that the rape offence will be re-shaped to minimise its impact and potential. As noted in study two, processes that may be perceived to impact on the legitimacy of the court system (such as jurors) are distanced from that system and their 'otherness' from the wider court process promoted. It has been suggested that identity maintenance lies behind subscription to perspectives around false rape allegations being frequently made (as part of the process of downplaying the potential for sexual offences), the re-framing of the vignette sex as an unpleasant sexual act, rape being the consequence of unclear verbal communication (and thus easily avoided) and the jury being a distinct entity from the wider court system (to protect from the harms to self-concept and esteem that may result from potential 'perverse' juror verdicts). Through the application of social

representations theory it is made clear that subscription to stigmatised perspectives relates closely to identity maintenance. Messages that try and dispel negative or inaccurate thinking must therefore recognise the self-motivated interests that lie behind adherence to these perspectives and repetition of them. In light of the multifaceted array of factors that have led to the development of an individual's rape representation it will be more complex than simply providing information to fill knowledge gaps, in an attempt to eradicate prejudicial and inaccurate thinking. Additional research must therefore focus extensively on exploring how identity and self-esteem can still be maintained through the promotion of more accurate rape representations in the campaign literature and health education messages that have been advocated throughout. As Howarth (2002) points out, there is constant pressure to re-examine our identity against the representations that circulate amongst us, suggesting it is possible to modify established modes of thinking through appropriately targeted information; this is critical if long term change is to be encouraged and acted upon (The Stern Review, 2010). As study two and three highlight, despite there being consensus on multiple rape perspectives, there were examples of alternative viewpoints being offered and stigmatised attitudes being challenged. As Howarth (2002) notes, certain people will develop the representational resources necessary to question and reject victim blaming perspectives and will come to develop self-confidence through the assertion of these world views. This is again an area of significant research importance where investigation must explore the factors and influences that relate to an individual's ability to reject stigmatised world views. Such factors provide the building blocks from which more sympathetic rape representations can be fostered and promoted. The media has been pin-pointed as instrumental in the formulation of rape representations and a primary source through which abstract events are transformed into common sense realities and understanding. The media have however been identified to disseminate de-contextualised images and stories around rape that give disproportionate focus to false rape allegations and that reinforce notions of violent 'real rape'. They must consequently play a central role in the promotion of representative perspectives which give context and clarity to the lived experiences of rape victims.

### ***Limitations of the research***

The limitations of the PhD's study methods must be reiterated, including the reliance on geographically specific samples, self-report measures, cross sectional designs and proxy real life juror decision-making approaches; impacting on the degree to which generalisations can be made from the data or causal assertions offered. In addition, the benefits of using an online survey methodology to gather information about non-consensual experiences, and the appropriateness of administering Sexual Experiences Survey items online, are still not fully established (Koss et al., 2007). However, it has been proposed that online surveys are no more likely to result in erroneous responding when compared to paper-and-pencil equivalents.

especially if measures are taken to counter such potential (Miller & Somerland, 2010). The PhD survey used the inclusion of an embedded question, to which no participant answered (Turner et al., 1998), possibly providing an indicator of truthful responding and potentially suggesting that online approaches are a useful methodological advance for identifying non-consensual experiences. Whilst the limitations of self-report measures have been noted, including the potential for recall bias - exacerbated by making retrospective judgments - and the possibility of events being reframed to reduce ones perceived responsibility, self-report approaches are currently some of the only methods available for identifying personal information that is typically not reported or witnessed by third parties (Lovett & Horvath, 2009). As noted, study three provided only a rough approximation of the jury deliberation process which questions whether such discussions can be viewed equivalent to those that would occur in the actual jury deliberation room. Whilst similar methodological approaches have been frequently used to make assertions about real life juror behaviour, issues of generalisability must be recognised. Findings from such studies are however essential for describing the target population and allowing for the illumination of the reasoning process that certain individuals use when reaching verdicts in rape cases. They also enable the identification of contrasting and shared perspectives and for the motivations and influences that lay behind adherence to certain realities to be considered.

Despite the limitations noted, the PhD findings reflected many of the existent arguments within the research literature including the frequency of voluntary alcohol consumption prior to non-consensual sex, the co-occurrence of shared drinking behaviour between complainant and defendant, the acquaintanceship between individuals involved in non-consensual acts, a lack of injury and the event most frequently occurring at either the complainants or defendant's house. In addition, there was consistency in relation to the infrequent reporting of experiences to police or specialist counselling services, labelling ones experience as rape, enhanced potential for disclosing what took place to friends and reasons for not officially reporting focusing on the complainant's perceived degree of responsibility for the events that occurred. This consistency perhaps goes some way towards suggesting that the limitations of the research did not sufficiently impact on the overall reliability of the conclusions made. The consistency in findings across the PhD studies and different methods adopted also increases the reliability of the conclusions. As Cresswell (2003) argues, convergence in findings across different methodological approaches adopted enhances the robust nature of assertions made in relation to those findings.

## Chapter 8: conclusion and recommendations

### Conclusion

The PhD has identified that just under one third of UK based students had experienced alcohol involved non-consensual sex, at the hands of a known individual, but that such experiences are infrequently reported to the police. Reasons for this focus on fears around not being believed, due to the impacts of alcohol on the ability to remember events clearly, concerns around having placed oneself in the given position and a failure to categorise and label a non-consensual act as a crime. The PhD identified that a greater proportion of hazardous drinkers experienced non-consensual sex, supporting existent research that has found an association between non-consensual sexual outcomes and heavier drinking lifestyles (Mohler-Kuo et al., 2004). Non-consensual acts were found to most frequently occur at either the complainant's or perpetrator's home with physical injury infrequently being sustained; also supporting the existent body of research evidence. Barristers in study two unanimously identified that a lack of supporting evidence in rape cases, and the enhanced ability to discredit the complainant if they had been drinking and to suggest the sex was the consequence of lowered sexual inhibitions, were key barriers to the successful prosecution of alcohol involved cases at trial. A number of provisions introduced into law via the Sexual Offences Act 2003, including the evidential presumptions appeared to be infrequently used and presumption (f) specifically was failing to capture within it instances of alcohol involved rape. Whilst barristers did not wish to see further provisions introduced into rape law, or for the 'capacity' construct to be defined in legislation, it was still perceived to be a problematic term which jurors struggled to interpret. Study three demonstrated that participants experienced difficulties applying the 'capacity' construct and argued that despite a complainant having vomited, this should not be deemed synonymous with incapability. In line with barristers' concerns, focus group participants highlighted the difficulties associated with making capacity based judgements in the absence of further guidance upon which their arguments could be contextualised. Study three also identified that alcohol was perceived to be a substance that impacted on a complainant's inhibitions and increased the potential for engaging in behaviours that one may not have if sober. It was these arguments specifically that were viewed to increase the potential for a woman to engage in sex when drunk, regret that behaviour when sober and re-categorise the intercourse as having been non-consensual at the time.

In light of these findings it is possible to argue that voluntary alcohol consumption prior to a non-consensual sexual experience disproportionately acts to disadvantage the complainant. Indeed, study one and three identified that a drinking woman is viewed as more responsible for non-consensual sexual outcomes whilst an equally intoxicated defendant is viewed as less likely

to have done something wrong. In such circumstances non-consensual sex is framed to be ethically questionable intercourse, but not necessarily rape or a criminal behaviour. Study two and three also demonstrated that alcohol serves to disproportionately impact on the complainant's credibility at trial and enhances assumptions around the possibility of the rape allegation being false, and the consequence of regretted drunken sex. These factors make the prosecution's job of achieving convictions in alcohol involved cases especially difficult and this may be confounded further by a failure to utilise provisions which were initially introduced into law to aid in the prosecution of such cases. It is clear that further work and awareness raising is needed to shift the third party focus away from a rape complainant's behaviour prior to a non-consensual experience and to ensure equal scrutiny is given to the defendant's actions and active attempts to ensure consent was given. In light of the PhD findings the following recommendations are made:

#### Recommendations:

##### ***Public health recommendations***

In light of the frequency with which voluntary alcohol consumption was associated with non-consensual sexual outcomes there must be an emphasis on promoting messages and literature that focuses on the use of alcohol related strategies to procure non-consensual intercourse. Specifically, the frequency and potential for a complainant to be taken advantage of when they have been voluntarily drinking and although conscious, too intoxicated to capably consent. These messages should be given priority to those which currently focus on the surreptitious administration of substances in the procuring of sex, due to the identified infrequency of this approach. The survey identified that both men and women were the victims' of non-consensual experiences suggesting that awareness raising should focus on the potential for non-consensual outcomes for both genders. However, in light of men most frequently being identified to perpetrate non-consensual acts against women, there should be a move away from messages that focus exclusively on female drinking and behaviour in the reduction of sexual offences. Emphasis must also be placed on men preventing these acts through a focus on their need for responsibility when drinking and being able to recognise the impacts of alcohol on their capacity to read sexual situations and consent based cues. The PhD suggests that these factors are not currently integrated into third parties evaluations of non-consensual experiences and subsequent attributions of responsibility. In light of the misunderstanding that exists around consent, its parameters and whether it must be verbalised to be deemed legally legitimate, further dissemination of messages, information and campaign literature around rape and the legal stance is necessary to make clear what is acceptable and unacceptable sexual behaviour. In particular, emphasis should be placed on alcohol intoxication not being a defence to a charge of rape and emphasis placed on the law requiring defendants to actively establish whether a

partner consents. In light of the proportion of PhD participants who adhered to attitudes around the potential for false rape allegations and barristers' speculations around the enhanced possibility of a false report being made when parties have been drinking, educational messages must challenge these attitudes by providing factual information that can dispel these myths. For example, that existent research suggests false reports are infrequently made and that when they are, a perpetrator's name is not typically given (Lonsway et al., 2009), thus challenging notions that women lie for the purpose of getting back at a specific man who has 'scorned' them.

### ***Educational recommendations***

In light of the pervasive attitudes that surround rape, drinking women and sexual behaviour, consideration should be given to the inclusion of sexual consent based issues within the educational curriculum to help develop, from an early age, the skills necessary to talk about and negotiate healthy sexual interactions and expectations as well as to educate on the legal stance. Due to the increased potential for experiencing non-consensual sex between the ages of 18-24 years, the heavy drinking norms associated with student populations and individuals often engaging in sexual relationships for the first time, universities and colleges must also play a central role in raising awareness around the enhanced potential for experiencing alcohol related non-consensual sex during these years. Targeting new students during freshers week with campaigns and literature around extreme alcohol consumption, its association with non-consensual outcomes and information around the legal position on consent and rape seems especially timely. Universities and colleges must ensure they have appropriate counselling and support services available to deal with students' non-consensual experiences, that clear lines of communication are established for the reporting of offences and the adoption of a zero tolerance policy around having sex with individuals who are so drunk they are incapable of consent. Universities and colleges must also address the current tension between the messages they promote which support heavy drinking, especially during freshers week, and the potential for experiencing sexual offences. They should also be instrumental in challenging some of the current complacencies which seem to so readily accept that individuals who are so drunk they are vomiting, are still capable of making informed sexual choices.

### ***Legal recommendations***

In light of the subset of PhD participants who experienced problems with the 'capacity' construct, and barristers' concerns around jurors struggling with the interpretation of the term at trial, further consideration must be given to the framing of capacity and the appropriateness of its usage within the law. Awareness raising amongst barristers to tackle gaps around certain provisions included within the Sexual Offences Act 2003, such as the circumstances covered by the presumptions, appears warranted as well as to encourage the more dynamic uses of presumption (f) to enable alcohol involved cases to fall within its remit. Barristers emphasised

that procedural aspects of the court environment could be modified to help the complainant give their evidence more effectively and that certain processes could be put in place (or where they were in place, utilised more efficiently) to improve their experience in court. For example, being given the opportunity to meet their advocate at least once prior to the day of trial to establish rapport and discuss possible concerns. For complainant's to be explained to, prior to the day of trial, either via the prosecuting advocate or their solicitor, what will happen in court and be expected of them and to make clear that due to the structuring of the adversarial system, the advocate represents the state, as opposed to the complainant directly, thus differentiating their role and responsibilities from that of the defending advocate. Barristers also felt that additional complainant familiarity with the court room through encouraged visits would help to reduce anxiety as would being told in advance that they are allowed to sit down in court to give their evidence. Further consideration of the ways in which complainants can give their testimony effectively was also suggested including pointing to body parts and using language which is part of the complainant's everyday vocabulary, as opposed to imposing the official language of the court room to describe sexual details and actions. Establishing additional, more discreet ways of conveying complainant distress to the judge who could request adjournments before a complainant breaks down was also advocated. In light of certain arguments defence counsel routinely used in rape trials, promotion of more ethical defending to avoid repetition of victim blaming discourses that have little empirical research base (including the argument that the allegation is likely to be false) appears necessary. In light of PhD participants' confusion around the legal position on rape and uncertainty around the labelling of their non-consensual experiences, services are required, and promotion of those services where they already exist, where an individual can discuss an exploitative sexual experience with an expert, to help establish whether that experience constitutes a sex crime. Their reporting options should then be made available, without pressure being placed to officially disclose to the police. Such services could reasonably be aligned with Sexual Assault Referral Centres with there needing to be clear awareness raising around the existence of the provision.

### ***General recommendations***

The media have been pinpointed as instrumental in the construction of understandings around rape. The media must therefore focus less heavily on false rape reports and provide more contextualised, in depth explorations of rape which give priority to the victim's voice, to survivor services and to accurate depictions of this crime. Throughout the PhD the difficulty of establishing rape and sexual assault prevalence rates have been noted. Future research should therefore aim to use a standardised approach to the measurement of non-consensual experiences to enable comparable data to be recorded and which can give more accurate estimates of the extent of sex crime across different populations.



### ***Further research recommendations***

Additional research that can address the extent of false rape allegations is needed. Whilst negative lay attitudes and perspectives around the phenomena are now largely established, methodological work that can reproduce and extend that of Kelly et al. (2005) is required. That is, the examination of police databases to address the frequency with which false reports are recorded and whether records adhere to Counting Rule guidance (the regulations that ensure the consistent recording of crimes, including the categorisation of rape reports as false, across English and Welsh counties). When a genuine false report can be established, examination of the characteristics associated with the report is needed. Namely, around the demographics of the individual making the allegation, establishing whether the perpetrator is named, if there are existent mental health issues, the time period taken before the allegation is identified as false and possible reasons for making the report. Such work will help to develop an empirical grounding upon which educational literature can focus and informed decisions related to the inclusion or exclusion of specific rape provisions can be based. It is recognised that additional research must also address men's alcohol related non-consensual experiences, especially those perpetrated by women. As noted, although not statistically significant, a greater proportion of study one males stated that they were not adversely affected by their non-consensual experience, implicating potential difference across the genders in the impact of such acts. The use of qualitative work to help extend and contextualise such speculations would prove useful in building a more comprehensive account of men's sexually exploitative encounters and how these possibly differ from women's. Further work also needs to address jury decision-making, including establishing what actions and behaviours jurors deem synonymous with an absence of capacity. Future research should aim to approximate real life trials as closely as possible to provide participants with a more complete and realistic picture of a rape case. Whilst trial simulation approaches still pose certain problems with generalisability (Finch & Munro, 2006; 2007), it is perhaps a standard which should be aspired to. As had been noted throughout, the PhD survey was disseminated to a specific geographical sample. Work which could build upon this and randomly sample students nationwide, through the support of an organisation such as the National Union of Students, would enable more generalisable, robust findings to be collected which could comment more substantially on rape prevalence rates. Again, the importance of research which further addresses the motivational factors and dynamics that underlie adherence to certain perspectives must continue to enable such findings to be fed into campaign literature. If meaningful change is to occur then identity must be considered within the campaign material that is formulated and disseminated and how self-esteem and identity can still be maintained via the adoption of more representative, accurate rape representations.

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## **Appendix A: survey instrument**

### **Participant Information**

Hi

Thanks for your interest in this survey which is being conducted as part of a PhD that is exploring students' views and experiences of non-consensual sex after drinking alcohol. Your participation in this survey is completely voluntary and should take about 30-35 minutes to complete. You will not be asked to give your name or any other identifying information at any point.

We ask that each person completes only one survey. The survey is open to anyone aged 18-24 years and who is currently a university/college student studying in England or Wales. You are invited to complete this survey even if you have not experienced non-consensual sex following alcohol use as the research is also interested in attitudes and perspectives around this.

The survey will ask about unwanted sexual acts that occurred when drinking. Some people may find this distressing and not wish to disclose their experiences. If this is the case, you are advised not to complete the survey. Data from this questionnaire has the potential to highlight the impact of alcohol on sexual activity and to help propose strategies for reducing instances of non-consensual sex when drinking or drunk.

Send the survey weblink to friends who might also be interested in completing it:  
<http://www.survey.ljmu.ac.uk/sexandalcohol>

**Press continue**

### **Participant Consent and Data Protection**

Your responses will be kept strictly confidential. Cookies and personal data stored by your Web browser are not used in this survey. Data from this research will be combined in final reports and you will not be identified individually at any stage. If you would prefer to print and post your questionnaire (there is only one screen for you to print) you can do this by sending it to the following address:

Ms Clare Gunby  
Centre for Public Health  
Liverpool John Moores University  
4th floor Kingsway House  
Hatton Gardens  
Liverpool  
L3 2AJ

If you feel uncomfortable answering any questions, you can stop completing the questionnaire at any time.

If you have any questions or wish to contact the researchers with concerns, please contact Clare Gunby on [c.gunby@2008.ljmu.ac.uk](mailto:c.gunby@2008.ljmu.ac.uk) (Tel: 0151 231 5834) or Dr. Caryl Beynon at [c.m.beynon@ljmu.ac.uk](mailto:c.m.beynon@ljmu.ac.uk) (Tel: 0151 231 4540).

## Consent Statement

- I understand that my participation in this research is voluntary and that I may withdraw from the research at any time, without giving any reason.
- I am aware of what my participation will involve.
- My responses will be held confidentially and only the researchers will have direct access to them.
- My responses will be held in compliance with the Data Protection Act 1998.
- All questions that I have about the research have been satisfactorily answered.

If you are happy with everything that has been said please make sure you fit the survey demographics below before commencing. You agree to take part in the research by clicking on the Continue button.

You are aged 18-24 years  
You are currently a university/college student  
You are studying at an English or Welsh institution

**Press continue**

## Main Survey Page

Note that once you have clicked on the CONTINUE button your answers are submitted and you cannot return to review or amend the page. There is only this one page to the survey and it should take approximately 30-35 minutes to complete.

Your responses will remain confidential

### Section 1: Alcohol use

We will be asking you five questions about your alcohol use. Please answer each question by selecting the response option that best describes you.

Please assume one drink contains 1-2 units of alcohol and includes the following:

- A can/pint or bottle of ordinary strength beer, lager or cider (e.g. Carling, Boddingtons, Woodpecker)
- A standard 175ml glass of red or white wine
- A single pub measure of spirits
- A bottle of alcopop (e.g. Smirnoff Ice, Barcardi Breezer, WKD)

1. How often do you have a drink containing alcohol?

Never (go to question 3)

Monthly or less

2-4 times a month

2-3 times a week

4 or more times a week

2. How many drinks containing alcohol do you have on a typical day when you are drinking?

1 or 2

3 or 4

5 or 6

7 to 9

10 or more

3. How often during the past year have you found you were not able to stop drinking once you had started?

- Never
- Less than monthly
- Monthly
- Weekly
- Daily
- Almost daily

4. How often during the past year have you failed to do what was expected of you because of drinking?

- Never
- Less than monthly
- Monthly
- Weekly
- Daily or almost daily

5. Has a relative, friend, doctor, or health worker been concerned about your drinking or suggested you cut down?

- No
- Yes, but not in the last year
- Yes, during the last year

## Section 2: Consent and capacity

The following questions ask for your opinions on alcohol, sexual behaviour, and a person's ability to consent (agree) to sex

6. Below are a set of actions that may be taken as a sign that another person wants to have sex with you. Please indicate how relevant each of these actions/circumstances is when helping you to decide whether someone will agree to have sex with you

	Very relevant	Relevant	Undecided	Irrelevant	Very irrelevant
a. If the other person has been flirting with you during the evening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. If the other person has been kissing you during the evening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. If the other person has voluntarily removed some of their clothing for you	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. If the other person has voluntarily removed some of your clothing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. If the other person has accepted a drink from you during the evening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. If the other person verbally agrees to have sex with you	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



g. If you've had sex with the other person previously	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. If the other person has a reputation for sleeping around	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. If the other person has agreed to go back to your house	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. Do you know how English law defines sexual consent?

Below are a list of items that relate to sexual consent. Please indicate whether each item is (Yes), is not (No), or you're **Unsure** whether it's included in the English and Welsh definition of consent.

	Yes	No	Unsure
a. Consent is agreeing to sex through choice			
b. Consent is about having the capacity to choose to have sex			
c. Consent is about having the freedom to choose to have sex			
d. Consent needs to be verbally agreed			
e. To prove consent was not present, there must be evidence (e.g. bruises) of a struggle having taken place between the individuals			

8. Please answer the statements below by choosing a response that best represents how far you agree/disagree with that statement.

**Consider being drunk to represent a state of high intoxication whereby a person would remain conscious and able to communicate but would show confusion, difficulty walking and slurring of their words**

	Strongly agree	Agree	Disagree	Strongly disagree	Undecided
a. Being drunk affects the capacity (ability) to make reasonable decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Being drunk affects a person's capacity (ability) to consent (agree) to sex	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. A drunk person is unable to consent to sex	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. If a person is drunk, as long as they remain physically conscious, they are capable of choosing whether to have sex	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. Please read the following questions carefully. The assessment of intoxication (drunkenness) below details degrees of drunkenness and symptoms that would be experienced when at that point. Intoxication ranges from no intoxication through to very severe. However, the most extreme point of drunkenness that can be experienced by any individual in the next three questions is **severe intoxication**:

**No intoxication**

**Mild intoxication**

Slightly slurred speech  
Slight impairment of co-ordination  
Slightly altered attention/judgment

**Moderate intoxication**

Slurred speech  
Decreased co-ordination  
Clearly impaired attention/judgment

**Severe intoxication**

Severely slurred speech  
Severe difficulty in co-ordination  
Severely impaired attention/judgment

**Very Severe intoxication**

Please read the following three questions and answer accordingly. Assume person A and B know each other vaguely but are not in a relationship and never have been. They meet at a party one night and drink together:

	Strongly agree	Agree	Disagree	Strongly disagree	Undecided
a. Person A is MILDLY drunk whilst person B is SEVERELY drunk. Person B can no longer give consent. Both individuals have sex together. The next morning person B states rape has taken place. Please indicate whether you agree/disagree with person A being held responsible for rape	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Person A is MODERATELY drunk whilst person B is SEVERELY drunk. Person B can no longer give consent. Both individuals have sex together. The next morning person B states rape has taken place. Please indicate whether you agree/disagree with person A being held responsible for rape	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Person A and B are both SEVERELY drunk. Person B is too drunk to consent to sex and person A is too drunk to establish whether consent is present. Both individuals have sex together. The next morning person B states rape has taken place. Please indicate whether you agree/disagree with person A being held responsible for rape	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. Would you describe the scenario in question 9c above as:

- Rape
- Consensual sex
- A mid-point between rape and consensual sex
- Undecided

11. If you think the scenario in question 9c is a mid-point between rape and consensual intercourse, do you think it should be considered a criminal offence? (for those who replied rape, consensual sex or undecided, skip to question 12)

- Yes
- No
- Undecided

### **Section 3: Attitudes towards alcohol and sex**

For each statement please answer by choosing a response that best represents how far you agree/disagree

12. A significant number of rapes reported to the police are false allegations:

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Undecided

13. Being drunk when having sex increases the likelihood of a false allegation of rape:

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Undecided

14. Women who regret having sex when drunk are more likely to report a false allegation of rape:

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Undecided

15. Women are more interested in sex when drunk compared to when sober:

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Undecided

16. If on an evening out, a woman has voluntarily drunk alcohol and is clearly drunk, she should hold some degree of responsibility for a rape/sexual assault that may then happen to her:

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Undecided

17. If on an evening out, a woman **has not drunk any alcohol**, she should hold some degree of responsibility for a rape/sexual assault that may then happen to her:

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Undecided

18. If on an evening out, a woman has her alcoholic drink **deliberately spiked by another person** with additional alcohol, she should hold some degree of responsibility for a rape/sexual assault that may then happen to her:

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Undecided

#### Section 4: Alcohol related sexual activity

• The following questions concern sexual experiences that you may have had that were unwanted. We know these are personal questions, so we do not ask for your name or other identifying information. Your details are completely confidential. We hope this helps you to feel comfortable answering each question honestly.

• Each question appears in **bold type**. Place a tick in the box showing the number of times each experience has happened to you. If several experiences occurred on the same occasion - for example, if one night somebody served you high alcohol content drinks (option a) and also pressured you to drink alcohol (option c), you would check boxes a and c.

The past 12 months refers to the past year going back from today

Since age 14 refers to your life starting on your 14th birthday and stopping one year ago from today

**19. Someone had oral sex with me or made me have oral sex with them without my consent by:**

	How many times in the past 12 months				How many times since age 14			
	0	1	2	3+	0	1	2	3+
a. Serving me high alcohol content drinks when they appeared to be regular strength drinks until I was too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Using me sexually when I was asleep or unconscious from alcohol, and when I came to (regained consciousness) I could not give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Encouraging or pressuring me to drink alcohol until I was too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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20. If you are a male, skip this question and go to question 21

A man put his penis into my vagina, or someone inserted fingers or objects without my consent by:

	How many times in the past 12 months				How many times since age 14			
	0	1	2	3+	0	1	2	3+
a. Serving me high alcohol content drinks when they appeared to be regular strength drinks until I was too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Using me sexually when I was asleep or unconscious from alcohol, and when I came to (regained consciousness) I could not give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Encouraging or pressuring me to drink alcohol until I was too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

21. A man put his penis into my anus or someone inserted fingers or objects without my consent by:

	How many times in the past 12 months?				How many times since age 14			
	0	1	2	3+	0	1	2	3+
a. Serving me high alcohol content drinks when they appeared to be regular strength drinks until I was too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Using me sexually when I was asleep or unconscious from alcohol, and when I came to (regained consciousness) I could not give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

c. Encouraging or pressuring me to drink alcohol until I was too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Using me sexually after I had been drinking alcohol and was conscious but too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**22. If you marked 0 to questions 19, 20 and 21 on all items, please skip to Section 5 below. If not, please complete the following questions:**

Thinking about the sex that took place when you were too drunk to consent, can you think about a time which you consider to have been the most severe (or the only time it occurred) and say whether it happened with:

- A woman
- A man
- Multiple individuals
- I don't know

23. What was your relationship with that person before the experience occurred?

- A stranger (someone you had no prior contact with)
- A recent acquaintance (Someone known for less than 24 hours)
- An acquaintance (someone you've seen/spoken to before but who you've never dated or had sex with)
- A friend
- A current partner
- An ex-partner
- A family member/relative
- Other (please specify)

24. Roughly, how many drinks had you consumed before this experience occurred?

- 1 or 2
- 3 or 4
- 5 or 6
- 7 to 9
- 10 or more
- I don't know

25. Over how many hours did you consume them?

- 1-2 hours
- 3-4 hours
- 5-6 hours
- 7-9 hours
- 10 or more
- I don't know

26. Regardless of the amount you had consumed, did you feel drunk?

- Not at all
- A little
- Moderately
- Very
- I don't remember

27. To your knowledge, was the other person drinking alcohol?

Yes  
No  
Unsure

28. Would you classify the specific experience as rape?

Yes  
No  
Undecided

If No or you're undecided, please could you briefly explain why (if yes, skip to question 29)

29. Did you tell anyone about the experience?

Yes  
No

30. Who did you tell? (if you told no one skip to question 34)

(select all that apply)

A family member  
A friend  
The police  
Doctor at an accident and emergency department  
Your GP  
A rape crisis counsellor  
A counsellor from victim support  
Another specialist counsellor or support service  
Other (please specify)

31. Did you report the incident to the police? If so, how long after did you do report?

I didn't report the incident to the police (If not, skip to question 34)  
Within 4 hours  
Within 12 hours  
Within 24 hours  
Within 2 days  
Other (please specify)

32. If you reported the incident to the police, was your complaint:

Withdrawn at some point by yourself  
Discontinues at some point by the police  
Followed through to trial

If your complaint was withdrawn by yourself or discontinued by the police please indicate at what stage this occurred:

During the police investigation stage  
When the case was passed to the Crown Prosecution Service (CPS)  
During the trial process  
Other (please specify)

33. If you reported the incident to the police, please indicate how satisfied you were with the police response

Very dissatisfied  
Dissatisfied  
Satisfied  
Very satisfied  
Neither dissatisfied or satisfied

34. If you **Did Not Report** the incident to the police, why not? (If you reported to the police skip to question 35)

(Select all that apply)

Lack of proof that the incident took place  
Fear of disbelief by the police because I had been drinking  
Fear of disbelief by others because I had been drinking  
Fear of blame/judgement by the police  
Fear of blame/judgement by others  
Because alcohol had affected my memory of the events  
Because I felt responsible in some way  
I was unsure whether a crime had taken place  
A crime did not take place  
I didn't want my family to know  
I didn't want other people to know  
I didn't think the event was serious enough to report  
Fear of reprisals from the person who committed the act  
Other (please specify):

35. Where did the event take place?

At my house  
At the other person's house  
At the Student Union bar  
Any other pub/club/bar  
A public place e.g. park  
A vehicle  
Other (please specify):

36. Please indicate whether you suffered any of the below physical injuries as a consequence of the incident

(select all that apply)

Bruises  
Black eye  
Broken bones  
Cuts  
Scratches  
Chipped teeth  
None of the above  
Other (please specify):

37. When the incident took place, were you taking substances other than alcohol at the time?

Yes  
No  
Unsure

If yes, please specify what  
(select all that apply)

Amphetamines (speed, whiz, uppers, billy)  
Cannabis (marijuana, grass, hash, ganja, blow, draw, skunk, weed, spliff)  
Cocaine/coke  
Crack/rocks/stones  
Ecstasy (E)  
Heroin (smack, 'H', Brown)  
LSD/ACID  
Magic mushrooms  
Methadone or Physeptone  
Semoron  
Tranquillizers (e.g. Temazepam, Valium)  
Amyl Nitrite (poppers)  
Ritalin (Methylphenidate)  
Viagra



GHB (Gamma Hydroxy Butyrate)

Anabolic steroids (Muscle, roids, juice). Steroids used specifically for body building/enhancement. These are not the same as corticosteroids which are used to treat asthma/skin conditions

Glues, solvent, gas or aerosols

Ketamine (green, K, Special K, Super K, Vitamin K)

Other (please specify):

**Section 5: Alcohol Related Sexual Activity Continued**

- The next set of questions refers to different sexual experiences that you might have had.
- We know these are personal questions, so we do not ask your name or other identifying information. Your information is completely confidential.
- Again, each question appears in bold type. Place a tick in the box showing the number of times each experience has happened to you. If several experiences occurred on the same occasion (e.g. options a and b), tick all boxes that apply.

**38. I had oral sex with someone or had someone perform oral sex on me without their consent by:**

	How many times in the past 12 months				How many times since age 14			
	0	1	2	3+	0	1	2	3+
a. Serving someone high alcohol content drinks when they appeared to be regular strength drinks until they were too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Finding someone who was asleep or unconscious from alcohol, and when they came to (regained consciousness) they could not stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Encouraging and pressuring someone to drink alcohol until they were too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Finding someone who had been drinking alcohol and was conscious but too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**39. I put my penis (men only) or I put my fingers or objects (all respondents) into a woman's vagina without her consent by:**

	How many times in the past 12 months				How many times since age 14			
	0	1	2	3+	0	1	2	3+
a. Serving someone high alcohol content drinks when they appeared to be regular strength drinks until	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

they were too intoxicated (drunk) to give consent or stop what was happening								
b. Finding someone who was asleep or unconscious from alcohol, and when they came to (regained consciousness) they could not stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Encouraging and pressuring someone to drink alcohol until they were too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Finding someone who had been drinking alcohol and was conscious but too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**40. I put my penis (men only) or I put my fingers or objects (all respondents) into someone's anus without their consent by:**

	How many times in the past 12 months				How many times since age 14			
	0	1	2	3+	0	1	2	3+
a. Serving someone high alcohol content drinks when they appeared to be regular strength drinks until they were too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Finding someone who was asleep or unconscious from alcohol, and when they came to (regained consciousness) they could not stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Encouraging and pressuring someone to drink alcohol until they were too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Finding someone who had been drinking alcohol and was conscious but too intoxicated (drunk) to give consent or stop what was happening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section 6: Demographics

This is the final section of the survey

41. Would you describe yourself as:
- White British
  - White Irish
  - White and black Caribbean

White and black African  
White Asian  
Indian  
Pakistani  
Bangladeshi  
Caribbean  
African  
Chinese  
Other (please specify):

42. Are you:  
Female  
Male  
Transgender

43. Do you have sex with:  
Men  
Women  
Both

44. Are you aged:  
18-19 years  
20-21 years  
22-23 years  
24 years

45. Which university/college do you attend?

**Press continue**

### **Concluding Information**

Many thanks for completing this survey which was looking at experiences and attitudes towards alcohol use and subsequent sexual activity. If you wish to send this survey back via post then please send it to the following address:

Ms Clare Gunby  
Liverpool John Moores University  
Centre for Public Health  
4th Floor Kingsway House,  
Hatton Gardens  
Liverpool L3 2AJ

If you have become distressed as a consequence of disclosing your unwanted experiences then please contact one of the below specialist services who will be able to offer you advice:

- Liverpool John Moores counselling service Tel: (0151) 2313153 counselling@ljmu.ac.uk  
Only for students currently studying at Liverpool John Moores University
- The Samaritans Tel: 08457 90 90 90 jo@samaritans.org  
24 hour confidential support available to everyone
- Rape Crisis England and Wales <http://www.rapecrisis.org.uk/members.html>  
To access information about rape and to contact rape services in your locality use the above link
- Mpower: Tel: 0808 808 4321 support@male-rape.org.uk  
Specifically supporting male survivors of rape and sexual assault

If you have any further questions about the research please contact either:

Clare Gunby

Tel: 0151 231 5834

email: [c.gunby@2008.ljmu.ac.uk](mailto:c.gunby@2008.ljmu.ac.uk)

Dr. Caryl Beynon

Tel: 0151 231 4540

email: [c.m.beynon@ljmu.ac.uk](mailto:c.m.beynon@ljmu.ac.uk)

If you wish to receive a summary of findings please email Clare Gunby with requests.

Send the survey weblink to friends who might also be interested in completing it:

<http://www.survey.ljmu.ac.uk/sexandalcohol>

## **Appendix B: study two interview schedule**

### **Introduction**

- Reasons for the research
- Confidentiality of interviews, use of tape recorder, nothing said in interview will be individually attributed etc.
- Pass over information sheet and ask for signed consent.

### **Barrister background**

- How many rape trials have you tried?
- What proportion of your work is made up of sexual offences?
- Are rape cases different from other criminal trials? Do you deal with them in exactly the same way as other cases?
- The government has expressed concerns about the low rape conviction rate in the UK, what are your perspectives on these concerns?

### **Intoxication**

- Could you talk about the number of rape cases you see where the complainant has been drinking alcohol
- Have defendants also been drinking?
- What levels of intoxication are you seeing?
- When alcohol is involved in a rape case, does this impact on conviction? In what ways?
- What for you are the main problems prosecuting/defending these cases?
- Academic research has found that mock jurors hold stereotypes regarding alcohol consumption which impact on their attributions of responsibility in rape cases. Do you have similar concerns?

### **Capacity**

- In your experience, are the jury provided with assistance on how to address the problems of intoxication and the capacity to consent?
  - What does that assistance typically include?
- Do you think 'capacity' needs to be defined in legislation?
  - Is it possible to define in law the point of incapacity?
- In relation to the evidential presumptions, during the draft phases of the 2003 act it was initially proposed that there should be an additional evidential presumption which covers the circumstance of extreme drunkenness. What do you think the advantages/disadvantages of having this additional presumption are?

- Do you think further legal change in the area of voluntary intoxication and rape is necessary? What would you recommend if so?

### **The presumptions**

- In how many cases that you have tried have the presumptions come into play/or should have come into play?
  - Rebuttable
  - Conclusive
- In your experience/opinion, how much evidence is needed to rebut a presumption
- To what extent do judges explain to the jury how the presumptions operate?

### **Evidential presumption f**

*'any person has administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.'*

- Do you have experience of using this presumption?
- Is a distinction drawn between the terms 'administered' and 'caused to be taken' in practice?
  - If so, how are these circumstances being defined/interpreted?
- What are the range of situations encompassed by 'without the complainant's consent'?
  - Would it include the circumstance where an already drinking complainant unknowingly consumes higher quantities of alcohol than intended, due to the defendant's misrepresentation?

### **Concluding questions**

- Is there anything further you would like to add which hasn't been addressed?

**Appendix C: study two consent form**



Informed consent form: Barrister copy

Title of study: Sexual activity and consent: legal Perspectives

Researchers: Ms Clare Gunby, Centre for Public Health, Faculty of Health and Applied Social Sciences; Dr Anna Carline, School of Law, Faculty of Business and Law, Liverpool John Moores University.

- I confirm that I have read and understood the information sheet for this study and have had the opportunity to ask questions.
- I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason and without prejudice.
- I agree to participate in this interview.
- I understand that I can decline to answer any questions which I feel uncomfortable answering.
- I consent to the interview being audio recorded.
- I understand that my responses will be held confidentially and only the researchers will have direct access to them.
- I confirm that quotes from the interview may be reported in published documents but that this will be anonymous and no-one will be able to identify that it was I that spoke the quoted words.

Name of Participant	Date	Signature
Name of Researcher	Date	Signature

**LIVERPOOL JOHN MOORES UNIVERSITY  
PARTICIPANT INFORMATION SHEET:  
Barrister copy**



**Title of Project: Sexual Activity and Consent: legal perspectives**

**Researchers: Ms Clare Gunby, Centre for Public Health, Liverpool John Moores University; Dr Anna Carline, School of Law, Liverpool John Moores University.**

You are being invited to take part in a research study conducted by Ms Clare Gunby from Liverpool John Moores University. Please take time to read the following information and ask if there is anything that is not clear or if you would like more information. You are also free to contact Dr Carline in confidence, on the following number, if you have any questions or want more information about the study: 0151 231 3723. This study has the approval of Judge David Harris, QC and Liverpool John Moores ethical research committee.

**Purpose of the study**

The research is a joint venture between the School of Law and Centre for Public Health at Liverpool John Moores University. The aim of this strand of the research is to interview counsel who have experience in trying rape cases either on behalf of the defence or the prosecution.

The interviews will focus on the law of consent and examine issues relating to voluntary intoxication and consent. We are interested in your experiences and opinions with respects to: the problems of trying rape cases; the definition of consent; the presumptions; and whether the Sexual Offences Act 2003 has improved this area of law. We anticipate interviews will last for approximately 1 hour. The research will help to highlight the workings of the 2003 Sexual Offences Act in practice, its merits and possible areas of concern.

**Confidentiality and Participation**

We recognise that this is a sensitive area of law and will treat all responses with the utmost respect and confidentiality. The interview will be recorded so that important information is not missed. However, if at any time you wish for the recorder to be turned off, it can be. You are free to end the interview at any time. Only the research team will have access to your responses and we will not identify you in person at any stage in the research process. If you are happy to have your quotes used in final reports they will be anonymised and not attributed to you individually. Your involvement is completely voluntary and you can withdraw from the study retrospectively by contacting one of the researchers below.

Research participants will be assured of confidentiality. In accordance with the British Psychological Societies code of ethics, in exceptional circumstances, and where there is sufficient evidence to raise serious concern regarding the safety or interests of the participant or others who may be threatened by the participants behaviour or actions, such steps will be taken that are judged necessary to inform third parties. Only then will the confidentiality rule be broken by the researcher.





## **Appendix E: study three vignette**

*On the 26<sup>th</sup> October 2006 the following case appeared in Bournemouth crown court before the judge and jury. Please read the case carefully:*

On the 4<sup>th</sup> of February 2006, Benjamin visited his brother Michael who was a student at the University of Bournemouth. Michael shared his flat with five other students, one of whom was a female student called Michelle. Ben and Michelle had met on a previous occasion and Michelle agreed to spend the evening with Ben, Michael and Michael's girlfriend Holly. All four drank a considerable amount during the evening. Michelle drank two pints of cider and around 4-6 vodka and red bulls. Ben, who had also been drinking earlier in the day, had two pints of lager before also moving on to vodka and red bull. Michael and Holly left the bar first at about 2.00am and were shortly followed by Ben and Michelle. CCTV documents Ben and Michelle walking back to the shared flat arm in arm.

Both girls were affected by the alcohol; when they got back to the flat Holly was sick in the kitchen and Michelle in the shower in her bedroom. Michelle reported to the jury that her next memory of events was lying on her bed having no recollection of how she got there. She recalls Ben also being on the bed, his face close to hers and asking if she had a condom, to which she replied 'no'. Michelle reported not wanting to have sex but not knowing how to stop it. She stated that she was not feeling coordinated within her body due to the effects of alcohol. She recalls Ben's penis in her vagina but had no recollection of how long intercourse lasted, whether Ben has used a condom or whether he had ejaculated. After the sex, Ben asked Michelle if she wanted him to stay with her in the room, to which she replied 'no'. Michelle remembers Ben leaving and shutting the bedroom door behind him. At around 4.25am Michelle called her friend Naomi, the conversation was marked with tears and crying. Michelle gave some detail of the evening and complained that she had 'been used'; she did not use the word rape.

Michelle acknowledged that her memory of events was patchy, that she did not explicitly say no to intercourse and agreed that there were periods where she had no recollection and therefore could not say whether she was responding to Ben's advances or giving him encouragement during these times. Her case remained that she did not consent to the sexual activity. The medical evidence collected from the forensic examiner neither advanced or undermined her case of rape.

Ben's defence throughout was that although Michelle may have been less inhibited because she was drunk, she was lucid enough to consent to sex, that she did so and that he reasonably believed she was consenting. Ben acknowledged that Michelle was worse for drink but that he was 'absolutely positive' she was awake and conscious throughout the sexual intercourse. Ben reported that after he had witnessed her be sick when they arrived back at the flat, he bought her some water and helped clean her up, after which he went out for a cigarette. When he returned to Michelle's room to check she was ok she was awake and laying on her bed having changed into her pyjamas. Ben stated that after she had been sick Michelle was far more lucid and coherent. He sat on the bed and stroked her, he insisted Michelle welcomed his advances which progressed from stroking of a comforting nature to sexual touching. Ben reported that Michelle seemed keen and responded to his touching positively by moaning quietly, rolling onto her back, removing her own pyjama trousers and opening her legs. Ben agreed that Michelle was intoxicated and influenced by alcohol but did not perceive her to be so drunk that she was incapable of consenting.

## Appendix F: study three focus group guide

To act as a template of issues to discuss:

- Do you think Ben was found guilty of rape or acquitted and why?
- Do you think Ben should have been found guilty of rape and why?
- If not rape then some other offence?
  - How serious an offence?
  - Would you send Ben to prison?
  - For how long?
- What factors impact on whether or not you believe Michelle was raped?
- Should Michelle be held at all accountable for the events that occurred?
- Ben was not found guilty of rape,
  - Why do you think this might have been?
  - What may have been in the minds of the jury?
- Do you think the outcome would have been different if only Michelle had been drinking?
- Do you think the outcome would have been different if neither Michelle nor Ben had been drinking?
- What percentage of rape cases reported to the police do you think are false allegations?
- What percentage of rape cases that involve alcohol consumption do you think are false allegations?
- Are false rape reports more likely when alcohol has been consumed and if so, why?

## Appendix G: study three consent form



Informed consent form: Participant copy

Title of Study: Lay perspectives towards non-consensual sex and alcohol use

**Researchers: Ms Clare Gunby and Dr Caryl Beynon, Centre of Public Health, Liverpool John Moores University. Dr Anna Carline, School of Law, Liverpool John Moores University**

- I confirm that I have read and understood the information sheet for this study and have had the opportunity to ask questions.
- I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason and without prejudice.
- I agree to participate in this focus group.
- I understand that I can decline to answer any questions which I feel uncomfortable answering.
- I consent to the focus group being audio recorded.
- I understand that my responses will be held anonymously and only the researchers will have direct access to them.
- I confirm that quotes from the focus group may be reported in published documents but that this will be anonymous and no-one will be able to identify that it was I that spoke the quoted words.

Name of Participant

Date

Signature

Name of Researcher

Date

Signature

LIVERPOOL JOHN MOORES UNIVERSITY  
PARTICIPANT INFORMATION SHEET



**Title of project:** Lay perspectives towards non-consensual sex and alcohol use

**Researchers:** Ms Clare Gunby and Dr Caryl Beynon, Centre for Public Health, Liverpool John Moores University. Dr Anna Carline, School of Law, Liverpool John Moores University

You are being invited to take part in a research study. Before you decide it is important that you understand why the research is being done and what it involves. Please take time to read the following information. Ask if there is anything that is not clear or you would like more information on.

**1. What is the purpose of the study?**

The research project aims to examine student's attitudes and perspectives towards non-consensual sex that takes place after people have been drinking alcohol and are very drunk. The research is a joint venture between the School of Law and Centre for Public Health at Liverpool John Moores University.

**2. Do I have to take part?**

No. It is up to you to decide whether or not to take part. If you do you will be given this information sheet and asked to sign a consent form. You are still free to withdraw at any time and without giving a reason. A decision to withdraw will not affect your rights/any future treatment/service you receive.

**3. What will happen to me if I take part?**

- The aim of this strand of the research is to carry out focus group discussions with participants and to gauge opinions on a vignette (a brief written scenario that involves two people drinking together and then having sex) that will be presented.
- The focus group will involve discussions between about six people, who will all be of the same gender.
- We are interested in your perspectives, not your personal experiences, and anticipate that the focus group will last for approximately 45 minutes.

**4. Are there any risks / benefits involved?**

This is an especially sensitive area and if the content of the discussions raises concerns for you then we have identified specialist agencies that you can contact for advice. These are provided at the end of this information sheet. The research will help provide further insight into the role of alcohol in peoples' understandings of non-consensual sex.

**5. Will my taking part in the study be kept confidential?**

We recognise that this is a sensitive area and will treat all responses with the utmost respect and anonymity. We will record the focus group so that we do not miss important information. Only the research team will have access to your responses and we will not identify you in person. If you are happy to have your quotes used in final reports they will be anonymised and not attributed to you individually. Your involvement is completely voluntary and you can withdraw from the study retrospectively by contacting one of the researchers below:

**Contact Details of Researcher**

Ms. C. Gunby (MSc (Hons), BSc)  
PhD Research Student  
Centre for Public Health  
Faculty of Health and Applied Social Science  
Liverpool John Moores University  
4<sup>th</sup> Floor Kingsway House  
Hatton Gardens  
Liverpool L3 2AJ

Email: [c.gunby@2008.ljmu.ac.uk](mailto:c.gunby@2008.ljmu.ac.uk)  
Tel: 0151 2315843

Dr. Anna Carline (LLB (Hons), LLM, PhD)  
Senior Law Lecturer  
The School of Law  
Faculty of Business and Law  
Liverpool John Moores University  
John Foster Building  
98 Mount Pleasant  
Liverpool L3 5UZ

Email: [a.carline@ljmu.ac.uk](mailto:a.carline@ljmu.ac.uk)  
Tel: 0151 231 372

### **Contact Details of Specialist Support Agencies**

If you have been affected by the issues raised in this study please contact one of the below agencies:

- Juniper Lodge (support for men and women who have experienced rape or sexual assault)  
[www.juniperlodge.org.uk](http://www.juniperlodge.org.uk)  
Tel: 0116 2733330
- Leicester Rape Crisis: (support for women who have experienced sexual violence)  
[www.jasminehouse.org.uk](http://www.jasminehouse.org.uk)  
Tel: 0116 2558852
- First step (supporting men who have experienced sexual violence)  
[www.firststepleicester.org](http://www.firststepleicester.org)  
Tel: 0116 2548535
- Rape & Sexual Abuse Centre Merseyside:  
<http://www.rasamerseyside.org/>  
Tel: 0151 666 1392
- The Rape Crisis Federation:  
<http://www.rapecrisis.org.uk/>