



From Report to Court

A handbook for adult survivors of sexual violence



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Disclaimer: The guide provides a basic overview of complex terminology, rights, laws, processes and procedures for England and Wales (other areas such as Scotland have different laws and processes). This guide is for information purposes only and is not legal advice. The information contained in this guide is correct to March 2014. The law may have changed since then so you should seek legal advice on the current law and your situation. Rights of Women cannot accept responsibility for any reliance placed on the legal information presented in this guide.

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From Report to Court

A handbook for adult survivors of sexual violence

Acknowledgements

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This fifth edition of *From Report to Court: A handbook for adult survivors of sexual violence* has been revised to take into account a number of legal and practical developments in the way that sexual violence is investigated and prosecuted. We hope that you find it useful. Many people have given their time and expertise over the years to ensure that *From Report to Court* is as accurate and accessible as possible. Rights of Women would like to thank Jo Smith, a criminal law solicitor specialising in sexual violence for her invaluable contributions to this new edition and Mary Aspinall Miles, a criminal law barrister specialising in prosecuting and defending sexual offences for her comments and expertise. We would also like to thank Catherine Briddick, our Head of Law and Emma Scott, our Director as well as our staff and volunteers for their time and commitment to the revisions.

In 2009 Sara Payne MBE, the Victim's Champion, talked to women who had been raped about their experiences of the criminal justice system. In her focus groups with survivors *From Report to Court* was singled out for praise. One woman said: "...I think the publication *From Report to Court* should be much more available for women, I know women who have read it not wanting to report, and decided to report afterwards – it's having the knowledge and knowing about what steps will be taken." Rights of Women is committed to ensuring that legal information about sexual violence and the criminal justice system is available to everyone who needs it. We would therefore like to thank the Home Office for their continued commitment to and funding of *From Report to Court*.

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1. Introduction

1.1 About *From Report to Court: A handbook for adult survivors of sexual violence*

From Report to Court has been written to provide information and support to people who have experienced sexual violence, as well as to their families, friends and the organisations that support them. Sexual violence is any sexual act, or attempt to carry out a sexual act, that takes place without the consent (agreement) of the person who has experienced it. This includes, but is not limited to, situations where physical or other violence is used.

This handbook will explain the different stages of the legal process, from the point of deciding whether or not to report the incident to the police, through to the trial, verdict and sentence. *From Report to Court* also sets out the relevant law and what obligations the different agencies in the criminal justice system (for example, the police and the Crown Prosecution Service) have to survivors of sexual violence.

From Report to Court is divided into the following sections:

Part 1 discusses the Sexual Offences Act 2003 (the SOA 2003, which came into force in May 2004) and in particular sections 1 to 4 which define the non-consensual sexual offences of rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent.

Part 2 discusses the decision to report an offence to the police and provides an overview of the investigative process. It also describes the medical, legal and support options available to a survivor of sexual violence.

Part 3 discusses the criminal justice system's response to sexual violence. It outlines the role of the Crown Prosecution Service, explains the decision to charge and discusses court proceedings, including the trial, giving evidence at court and the verdict.

1.2 Language

Sexual violence is most commonly perpetrated by men against women. Consequently, in this handbook we refer to the perpetrator of sexual violence throughout as “he” and the person who has experienced it as “she”. However, the information in this handbook relates equally to male survivors of sexual violence. Depending on the stage of proceedings we will use the terms “suspect” and “defendant” to describe the perpetrator and “complainant” or “victim” to describe the survivor of sexual violence as these are the terms most commonly used in law.

1.3 Sexual violence

According to a survey conducted by the Home Office 2.5% of women aged 16-59 and 0.4% of men had been a victim of a sexual offence within the previous 12 months. One in twenty women reported being the victim of a serious sexual offence since the age of 16. When all sexual offences were included, such as sexual threats or unwanted touching, this increased to one in five women.¹

Sexual violence affects people from all ages and backgrounds, regardless of economic or social status, race, religion or immigration status. The following paragraphs deal with issues that may affect some survivors of sexual violence, it may be that more than one section is relevant to you.

Sexual violence by an intimate partner

56% of female victims of serious sexual assault reported that a partner/spouse or ex-partner/spouse had been the perpetrator. This means that you are more likely to be sexually assaulted by a current or ex-partner than by a stranger.

The Government defines domestic violence as “*Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse: psychological, physical, sexual, financial, emotional.*” Family members are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family. Whilst

1. *An Overview of Sexual Offending in England and Wales* – Findings from the Ministry of Justice, Home Office and Office for National Statistics which can be downloaded here: www.gov.uk/government/publications/an-overview-of-sexual-offending-in-england-and-wales

domestic violence is predominantly perpetrated by men against women it can and does occur in same-sex relationships and, in a small percentage of cases, by women against men.

Sexual violence can therefore be a form of domestic violence and someone who has experienced sexual violence from a current or former partner may also have experienced other forms of abuse, such as physical violence or emotional abuse.

When sexual violence is discussed it is often referred to in terms of who the perpetrator is and what relationship, if any, he has or had with the survivor. In relation to rape, for example, reference is made to “marital rape”, “acquaintance rape”, “date rape” or “stranger rape” as if these were different offences. None of these phrases have any legal meaning as it is not relevant, in law, what relationship, if any, a defendant has or had to a complainant. Nor is it relevant if the act complained of occurred within a relationship or following relationship breakdown. This means that the police and criminal justice system should take sexual violence seriously whether it occurs within a relationship or is perpetrated by a stranger. Indeed, the sentencing guidelines (guidelines that assist Judges who sentence perpetrators of sexual violence) make it clear that sexual violence within a relationship is a factor that should result in an increased sentence because of the breach of trust involved.

If sexual violence has occurred within a relationship then there are a number of legal remedies that are available in addition to, or instead of, reporting violence to the police. You can get a domestic violence injunction against the perpetrator to protect you and any children from further violence or to prevent him from returning to the family home. From March 2014 the Government plans to launch an extension of the Domestic Violence Protection Notice scheme. Under this scheme the police are able to issue a temporary notice barring a suspected perpetrator of domestic violence from the victim’s home and preventing them from contacting the victim.

In March 2014, following a 14-month pilot scheme, the Government will be extending the scope of the Domestic Violence Disclosure Scheme (also known as ‘Clare’s Law’). Under this scheme you are entitled to ask the police about your partner’s previous history of domestic violence or violent acts. In some circumstances the police can proactively disclose this information to you. As sexual violence within a relationship is a form of domestic violence, convictions for such offences should be disclosed.

If you have decided that you want to end the relationship you may want to consider divorce proceedings or reconsider who lives in the family home. Further information on these and other issues relating to domestic violence

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and relationship breakdown is available from Rights of Women's website.² For details of other specialist organisations that may be able to assist you see Appendix A.

Sexual violence by a family member

Where sexual violence is perpetrated by a family member it is a form of domestic violence and, if it occurred when you were under 18, it will also be child abuse. Where the perpetrator is a family member you may be able to get a domestic violence injunction to prevent the perpetrator from contacting you or using or threatening further violence against you. You can do this whether or not you decide to report the violence to the police. As discussed above in relation to sexual violence from a current or former partner, the fact that sexual abuse has occurred within a family will be considered to be very serious because of the breach of trust involved.

Sexual violence by someone you know

Around a third of female victims of any sexual assault reported that it had been committed by someone known to them such as an acquaintance, work colleague or friend.³ If the perpetrator has harassed or intimidated you or made you fear that violence may be used against you, you may be able to get a restraining order against him under the Protection From Harassment Act 1997. You can do this whether or not you decide to report the sexual violence to the police. For further information about restraining orders visit Rights of Women's website.

If the perpetrator is a work colleague you may want to take steps to ensure that you do not have to come into contact with him again professionally. Equally you may want to discuss any inappropriate behaviour in the work place with your employer. Employers have legal obligations to protect their employees from sexual harassment and discrimination. If you are concerned about your employment situation you can seek legal advice from one of the organisations at Appendix A.

2. Rights of Women publishes legal guides on domestic violence injunctions, housing, divorce and matters relating to children that can be downloaded free of charge from our website at www.rightsofwomen.org.uk. For detailed advice on your situation contact our legal advice line, details of our lines and their opening times are given at the front of this book.

3. Victim-offender relationship among female victims, *An Overview of Sexual Offending in England And Wales*

Black and Minority Ethnic survivors

Black and Minority Ethnic survivors may face particular barriers which affect their ability to access services, protection, support and legal justice.

Under the Equality Act 2010 public authorities, such as the courts, the police and the Crown Prosecution Service are required to ensure that their practices and procedures do not unlawfully discriminate on the grounds of race. If you feel that you have been discriminated against or treated inappropriately on the grounds of race you can complain about the agency responsible and may also be able to take other legal action against them (although you will need specialist legal advice for this). Further information about how to complain about the police and Crown Prosecution Service is given in Parts 2 and 3 of this handbook.

In any involvement you have with the justice system, such as with the police or at court, if you do not speak English an interpreter will be provided for you. There is a National Agreement on Use of Interpreters which provides guidance to all those involved in criminal investigations and proceedings on the selection and treatment of interpreters within the criminal justice system.⁴

Lesbian, gay, bisexual or transgendered (LGBT) survivors

As discussed above, LGBT survivors may have experienced sexual violence within a relationship or within their family. If this happens then, in addition to being sexual violence it will also be a form of domestic violence.

If you have experienced sexual violence, whoever the perpetrator was, it may be that the violence was motivated by homophobia, biphobia or transphobia. Information collected by Stonewall on homophobic hate crime found that 12% of the victims of homophobic hate crimes experienced unwanted sexual contact, compared to, for example, 10% who experienced physical violence.⁵

Everyone has the right to be safe regardless of their sexual orientation or gender identity. If you are an LGBT survivor you may have concerns about

4. This document replaces the National Agreement on Arrangements for the Attendance of Interpreters in Investigations and Proceedings within the Criminal Justice System (2002) and Home Office Circular 17/2006. It is available at www.justice.gov.uk/courts/interpreter-guidance

5. *Homophobic Hate Crime, The Gay British Crime Survey 2013*, Stonewall www.stonewall.org.uk/documents/hate_crime.pdf

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getting a homophobic or transphobic response from the police.⁶ If this is the case you should contact one of the specialist organisations at Appendix A and see the sections in *From Report to Court* that outline the protections available to survivors of sexual violence. The Equality Act 2010 offers protection against discrimination on the grounds of sexual orientation and gender reassignment. If you feel that you have been discriminated against or treated inappropriately because of your sexual orientation or gender identity you can complain about the agency responsible and may also be able to take other legal action against them (although you will need specialist legal advice for this). Further information about how to complain about the police and Crown Prosecution Service is given in Parts 2 and 3 of this handbook.

Disabled survivors

Under the Equality Act 2010 a person has a disability if:

- (a) she or he has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on her or his ability to carry out normal day-to-day activities.

Under the Equality Act 2010 public authorities, such as the police and the courts, must make reasonable adjustments to enable disabled people to access them. This means that people who have disabilities affecting their ability to communicate should be provided with intermediaries to enable them to give evidence to the police and in court. Rooms and buildings should also be made accessible to those with physical disabilities. Breaks in making a statement or giving evidence should be organised for those who have difficulties concentrating for long periods of time. If you need reasonable adjustments to be made to enable you to report an offence to the police, or give evidence in court, you should discuss this with the relevant agency e.g. the police or the Witness Care Unit.

In terms of the law, sections 30 to 41 SOA 2003 create special offences, which cover situations where the victim has either a mental disorder or severe learning disabilities. There are also offences designed to protect vulnerable people from those who are in a position of trust. While these offences are not covered in this book you can contact Rights of Women for advice on these and any other legal issues relating to sexual violence (see the inside front cover of this book).

6. 28% of victims of homophobic hate incidents did not report them to anyone because they did not think that it would be taken seriously and 10% did not report because they did not want to out themselves (*Homophobic Hate Crime, The Gay British Crime Survey 2013, Stonewall.*)

If you are involved in prostitution

The sexual offences discussed in this handbook are non-consensual; this means that they are offences because the person involved did not or could not consent to the sexual activity concerned. Consent is discussed in detail in Part 1 of this handbook but it involves making a free choice about whether or not to engage in sexual activity. Consent may be given to one thing but not another, for example, oral penetration but not vaginal penetration. Similarly, consent may be given and then withdrawn. Consequently, as a matter of law, the fact that a person has paid for sex, or attempted to pay for it, does not mean that you have given your consent. Specific offences also cover situations where a person has been forced or coerced into involvement in prostitution. Contact Rights of Women's advice line for further information on these or other issues relating to sexual violence.

If you come from outside the UK

The SOA 2003 deals with offences that have taken place in England and Wales. Similar (but different) legislation deals with Northern Ireland and Scotland. If you have experienced sexual violence outside of the UK you should seek legal advice on your situation. However, sexual violence that has occurred outside of the UK cannot usually be investigated and prosecuted in the UK. Many people who come to the UK to claim asylum or human rights protection have experienced sexual violence in their country of origin. We have written a book, *Seeking Refuge? A handbook for asylum-seeking women* to assist women in this situation, it is available free of charge. See our website for further information about it and other useful Rights of Women publications.

The SOA 2003 applies to everyone in England and Wales (the jurisdiction).⁷ This means that agencies in the criminal justice system, like the police and Crown Prosecution Service, have the same obligations to assist and protect you whether or not you are British, an asylum-seeker, an overstayer or someone with leave to remain as a spouse, student or worker.

In addition to protecting people within the jurisdiction, the SOA 2003 also makes certain things criminal offences in England and Wales even if they were done outside of the jurisdiction. This is known as extra-territoriality. The SOA 2003 therefore criminalises trafficking for the purposes of sexual exploitation and some of these offences are extra-territorial. If you have been trafficked into the

7. Scotland and Northern Ireland have different criminal laws and processes. If you are a victim of a sexual offence in Scotland you can contact Rape Crisis Scotland for further information (www.rapecrisisscotland.org.uk/). Survivors of sexual offences in Northern Ireland can contact Rape Crisis Ireland (www.rapecrisishelp.ie/)

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UK for the purposes of sexual exploitation you may have been forced to engage in sexual activity without consent or have experienced other forms of violence. The law and procedures discussed in this handbook apply to women who have been trafficked into the UK for the purposes of sexual exploitation as they do to other women who have experienced sexual violence. However, a woman who has been trafficked into the UK may have additional issues that she wishes to resolve, for example, her immigration position. If this is the case you can contact Rights of Women or one of the specialist organisations at Appendix A to discuss your immigration position and how it might be affected by reporting sexual violence to the police.

Male survivors

Research indicates that almost 3% of men have experienced sexual violence as adults and over 5% of men have experienced sexual abuse as a child.⁸ As with women, the perpetrator of violence is more likely to be a family member or someone known to you. The SOA 2003 and the criminal procedures that relate to sexual violence apply equally to men and women. However, men, like women, may require specialist advice and support. See Appendix A for details of organisations that may be able to assist you.

Sexual violence that occurred before 1 May 2004

The effects of sexual violence do not necessarily diminish with time and some survivors of sexual violence may not feel able to discuss their experience for months or even years. There is no time-limit for investigating and prosecuting perpetrators of sexual violence. This means that you can report sexual violence to the police and it will be investigated, whenever it occurred. While there may be additional issues in terms of securing evidence, there have been numerous cases where perpetrators of sexual violence have been convicted of offences that occurred years and even decades ago.

The law that determines what offence(s) a perpetrator of sexual violence has committed is determined by the date on which the sexual violence occurred; over time the law on sexual offences has changed, as have the names given to some of the sexual offences. The legal section of this handbook, Part 1, explains

8. Coxell A, King M, Mezey G, Gordon D. 'Lifetime prevalence, characteristics, and associated problems of non-consensual sex in men' *British Medical Journal* 1999; 318:846-850 (27 March). This is born out by the British Crime Survey which found that 4% men report as having experienced some form of sexual assault (Prevalence of intimate violence by category among adults aged 16 to 59, *Homicides, Firearm Offences and Intimate Violence 2005/2006* (Supplementary Volume 1 to Crime in England and Wales 2005/2006), British Crime Survey).

the non-consensual sexual offences in the SOA 2003. The SOA 2003 came into force at midnight on 1 May 2004. This means that sexual violence that took place after midnight on 1 May 2004 will be dealt with under the SOA 2003. If the sexual violence took place before midnight on 1 May 2004 then the relevant law may be the Sexual Offences Act 1956 and Part 1 (the section on the law) will not apply to you. If you do not know when the offence was committed and it cannot be proved that it occurred either before or after midnight on 1 May 2004 then the defendant may still be convicted of an offence (under section 55 Violent Crime Reduction Act 2006).

While the relevant law is determined by the date on which the offence took place, the relevant procedures and protections available to survivors of sexual violence are not affected by that date. This means that Parts 2 and 3 of this handbook which describe the police investigation and court process will be relevant to you.

1.4 Myths about sexual violence

- **People are most likely to be raped outside, late at night, by a stranger.**
Sexual violence is most usually perpetrated by someone known to the person who has experienced it and usually takes place within the home or somewhere else familiar to that person (like their place of work or at a friend's house). A person is not to blame if they experience sexual violence and should not be made to feel that they cannot be in public spaces alone or at particular times. Such myths serve to reduce freedom and seek to shift the blame for the offence away from the one person who is responsible for it, the perpetrator.
- **People who are sexually assaulted are 'asking for it' by the way they dress or behave.**
Sexual assaults happen to people of all ages, classes, cultures, sexualities, races and faiths. No one is 'asking' to be sexually assaulted and no one is to blame in any way if they experience sexual violence. Sexual assaults are acts of violence for which the perpetrator alone is responsible.
- **When someone says "no" to sexual activity they often mean "yes".**
Sexual activity without consent is a sexual assault. No always means no.
- **A person cannot be raped or sexually assaulted by a husband or partner.**
Having previously had sex with a person or being in a relationship with them does not mean that consent is given to all (or indeed any) sexual activity. Consent must be given every time people engage in sexual

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contact. Legally a person can choose to engage in different forms of sexual activity at different times and change their mind about sexual activity at any point. Their partner must respect that.

- **If a person did not fight back / scream / get hurt, they probably were not assaulted.**

There is no typical response to being sexually assaulted and a person may respond in many different ways. Many are afraid to struggle or fight back, or may freeze. A perpetrator may use tricks, verbal threats or mild force during an assault. A lack of injury, or not fighting back, does not mean that the person was not sexually assaulted or that the perpetrator will be believed.

- **If a person did not immediately report the sexual assault, it probably did not happen.**

A person may be scared to report sexual violence for one of many different reasons – for example, they may think they will not be believed or they may fear repercussions. If a person does not report an assault immediately it does not mean that they cannot do so at any time in the future. Delay in reporting sexual violence should not affect how the person reporting it is responded to by either the police or Crown Prosecution Service.

- **If a person is not upset about the sexual assault it probably did not happen.**

People respond to sexual violence in different ways. Some people may be upset, others may be angry. Some want to talk to their friends and family and others are embarrassed or too distressed. There is no typical way of behaving following a sexual assault.

- **People often lie about sexual assault or make false allegations.**

Between January 2011 and May 2012 the Crown Prosecution Service examined rape allegations. There were 5,651 prosecutions for rape and only 35 prosecutions for making a false allegation of rape.⁹ Even if the Crown Prosecution Service decide not to take a case to court, or the jury do not find the defendant guilty, this does not mean that the allegation was false.

- **People involved in prostitution cannot be raped or sexually assaulted.**

If someone engages in sexual activity without consent an offence has been committed. If someone has paid for sexual activity this does not

9. The report, *Charging Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Rape and Domestic Violence Allegations*, can be found at www.cps.gov.uk/publications/research/perverting_course_of_justice_march_2013.pdf

mean that the person involved in prostitution has consented to it. The law on consent applies equally to people involved in prostitution, no one can assume consent and a person involved in prostitution can choose what sexual activity they want to engage in and with whom and can change their mind at any time.

2. The legal framework

2.1 The Sexual Offences Act 2003

This section of *From Report to Court* explains four offences in the Sexual Offences Act 2003 (the SOA 2003):

- rape;
- assault by penetration;
- sexual assault; and,
- causing someone to engage in sexual activity.

The SOA 2003 covers over 50 sexual offences; however, for reasons of space we cannot deal with all of them in this handbook. Further information about other offences in the SOA 2003 and other relevant policies and procedures can be found on the Home Office's and Crown Prosecution Service's websites.¹⁰

Does the SOA 2003 apply to me?

The SOA 2003 came into force at midnight on 1 May 2004. This means that if the sexual violence you experienced took place after midnight on 1 May 2004 the relevant law is the SOA 2003 and this section of the handbook will apply to you. If the sexual violence you experienced took place before midnight on 1 May 2004 then the relevant law may be the Sexual Offences Act 1956 and not the law covered in this handbook. If you do not know when the offence was committed, and it cannot be proved that it occurred either before or after midnight on 1 May 2004, then the defendant may still be convicted of an offence.¹¹

The age of the complainant

Under the SOA 2003 a person can generally consent to sexual activity if she or he is 16 years old or over. If a child is under 13 years old then in law she is not able to consent to sexual activity (even if she expressed consent or believes that she is able to decide whether or not to consent to sexual activity). A person who is between the ages of 13 and 16 has the capacity or ability

10. For further information about sexual offences see www.homeoffice.gov.uk and www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/soa_2003_and_soa_1956/

11. Under section 55 Violent Crime Reduction Act 2006. The section brings into operation a set of presumptions regarding when the offence is deemed to have occurred (section 55(3)) to enable a prosecution to occur.

to consent to sexual activity. However, it is an offence for anyone to engage in sexual activity with them (unless that person has a reasonable belief that person concerned was 16 years old or over).

Consequently, a number of offences under the SOA 2003 refer to the age of the complainant. Section 1 SOA 2003 creates the offence of rape while section 5 creates the offence of rape of a child under 13. Section 3 SOA 2003 creates the offence of sexual assault while section 7 creates the offence of sexual assault of a child under 13. In this handbook we are focusing on the offences that relate to those aged 13 and over and the legal procedures that apply to adult survivors of sexual violence. There are additional protections available for survivors of sexual violence who are under 18. For further information please see our guide *Your Rights, Your Body, Your Life: Sexual violence and the law, a young person's guide* which is available from our website.

2.2 Concepts common to all four offences

As explained above, this section of the handbook explains the offences of rape, assault by penetration, sexual assault and causing someone to engage in sexual activity without consent. Before we can discuss these offences we first need to explain two concepts that apply to all four offences:

- what behaviour is “sexual”; and,
- consent.

“Sexual”

Under section 78 SOA 2003 touching or any other activity is “sexual” if a reasonable person would think that:

- the act is sexual by its nature; or
- the act may be sexual and because of the circumstances in which it occurred or the purpose any person (like the defendant) has, or both, it is sexual.

Sexual intercourse is an act that is sexual by its very nature. However, if the penetration, touching or other behaviour you are concerned about is not sexual by its nature, for example, touching a part of someone’s body through clothes, whether it is considered to be sexual or not will depend on:

- the circumstances in which the touching, penetration or other sexual activity occurred (for example, where the touching occurred, what was touched and with what); and/or,
- any person's, such as the defendant's, purpose.

What makes the activity “sexual” is the intention of the person doing the particular act and/or the circumstances in which the act was carried out. For example, touching a woman's breasts for the defendant's sexual gratification would be considered sexual, while touching a woman's breasts for the purposes of carrying out a necessary medical examination would not. If the behaviour you are concerned about is not sexual but done without consent it may, depending on the circumstances, be a different criminal offence such as common assault.

Consent

The four offences discussed in this section of the handbook are non-consensual sexual offences. This means that they are offences because the complainant did not consent to the sexual activity concerned.

Consent can be expressed, for example, through a verbal statement that a person wishes to engage in sexual activity, or implied, for example, by behaviour. Consent can be given immediately before sexual activity is entered into or it can be given through a couples' habit or behaviour (for example, a couple may regularly wake each other up with consensual sexual activity). Consent may also be given for a specific act but not others. For example, a woman may consent to sexual touching but not to penetration, or she may consent to vaginal penetration but not to anal penetration. You can imply your agreement to sexual activity by your conduct. Evidence of your consent can be things you said or did at the time or on a previous occasion or occasions. You can withdraw your consent to sexual activity at any time before or during a sexual act.

Section 74 SOA 2003 states that: “...a person consents if (s)he agrees by choice, and has the freedom and capacity to make that choice.”

Consequently, consent has two elements: the freedom to choose to enter into sexual activity and the capacity to choose.

Having the freedom to choose means being able to exercise real choice about whether to engage in sexual activity or not. You may not be able to refuse sexual activity because violence or threats have been used against you or you have been detained against your will. You may have been denied access to your children or financial support. Whether or not a particular threat is capable

of preventing a person from being able to choose will depend on a number of factors, including your age and personal circumstances as well as whether it is likely the particular threat would be carried out.

Having the capacity to choose refers to the ability a person has to make a particular choice. Capacity is not defined in the SOA 2003. However, previous case law states that a person will lack capacity to consent if at the relevant time she has no understanding of what is involved or has such limited knowledge or understanding that she is not in a position to decide whether or not to agree. Being unconscious or under the influence of drugs or alcohol may remove a person's capacity to consent.¹²

Under the SOA 2003 a girl under 13 years old does not have the capacity to consent to sexual activity. If a complainant does not have the capacity to consent to sexual activity because, for example, she has severe learning difficulties, then a defendant may be charged with sexual activity with a person with a mental disorder impeding choice (under section 30 SOA 2003). However, the effect of a mental disorder (such as a mental illness or learning difficulty) has to be considerable before it would result in a person being considered to be unable to choose whether or not to engage sexual activity¹³.

In order for an offence to have been committed the victim must not have consented to the particular sexual activity and the defendant must not have reasonably believed that the complainant consented to the activity. A defendant could not argue that he believed in the complainant's consent solely because of the way she was dressed because this could not reasonably affect the defendant's belief (or lack of belief) in consent. A defendant will not have a reasonable belief in consent if:

- he knows or believes that the complainant has not consented;
- he is reckless (does not care or is indifferent to) whether or not she has consented.

This means that a man who has sexual intercourse with a woman without attempting to find out whether she consents to sexual activity or not may have committed the same crime as the man who knowingly has sexual intercourse with a woman without her consent (depending on all the circumstances of the case).

12. See, for example, *R. v Howard (Robert Lesarian)* [1965] 3 All E.R. 684; *R. v Lang (Christopher Michael)* (1976) 62 Cr. App. R. 50 and *R. v Bree (Benjamin)* [2007] EWCA Crim 804.

13. *R. v C (Mental disorder: Sexual activity)*, Judgment May 23, 2008, reported in *The Times* on 9 June 2008.

Whether the defendant's belief in the complainant's consent is reasonable or not is decided by looking at all the circumstances of the case. This includes any steps that the defendant took to find out whether the complainant was consenting (such as asking her).

Finally, the SOA 2003 outlines certain situations where in law it will be harder or impossible for the defendant to argue that the complainant consented to the activity and that the defendant reasonably believed that she consented. These include where the defendant deceives the complainant as to his identity or gives her a substance without her knowledge or consent that has the effect of overpowering her. These situations are known as "presumptions" and are explained in more detail later in this chapter.

Relationships and consent

Many women feel pressured into sexual activity by a husband or partner. A woman who is married or in a relationship does not have to consent to sexual activity of any kind if she does not want to. The fact that a woman is married or in a relationship is no defence to committing a non-consensual sexual offence, rather, it should be considered an aggravating factor in any prosecution and sentencing. This applies whether or not you are in an opposite-sex or same-sex relationship.

Voluntary intoxication, capacity and sexual activity

In order to consent to sexual activity a person must have the freedom and capacity to choose (see above). However, there may be some circumstances where a woman's capacity to choose to enter into sexual activity is affected because she has voluntarily consumed alcohol or another substance (this is often referred to as voluntary intoxication).

If a complainant has temporarily lost her capacity to choose whether or not to enter into sexual activity and sexual activity takes place then (depending on whether the defendant has a reasonable belief in her consent) the defendant will have committed an offence. Whether or not a woman has lost the capacity to consent depends on her ability to understand and make a decision at the time the sexual activity took place. While some people may be able to consume significant quantities of alcohol without losing their capacity to consent, others may not. A person's response to alcohol may also differ from day to day. A complainant may have lost the capacity to consent without having lost consciousness. If the complainant is asleep or unconscious when the sexual activity occurs then there is a presumption that the complainant did not consent and that the defendant did not reasonably believe that she consented (see below).

Where the complainant has consumed significant quantities of alcohol or another substance but did in fact consent to sexual activity then no offence is committed, even if the woman concerned would not have consented if she had not consumed the alcohol or substance.¹⁴

Voluntary intoxication examples: Mike and Rita

Mike had sexual intercourse with Jack at a friend's party. They had both consumed substantial quantities of alcohol. Jack's memory of the incident is a bit hazy but he remembers discussing condom use with Mike before the incident and then voluntarily going into another room to engage in sexual activity. Mike also remembers that at the time Jack seemed keen to have sex with him but that he himself was not so interested. The next morning Mike states that he would not have had sex with Jack had he not been drunk. The issue in this case is whether or not Mike had the capacity to consent to sexual activity, and if he did, whether or not he did consent. It is clear that Mike did understand the nature of the act that he engaged in (he was able to discuss condom use) and that he did in fact consent. The fact that Mike's judgement was affected by alcohol does not mean that he did not have the capacity to engage in sexual activity and that he therefore did not consent.

Rita went out with work colleagues and consumed a substantial amount of alcohol. At the end of the evening Rita was taken home and put to bed by her manager, Jez. After he undressed her Jez had sexual intercourse with her. Rita states that she had been too drunk to undress herself or speak properly. She also states that Jez did not ask her or do anything else to find out whether or not she consented to sexual activity or was even able to do so. At trial Jez states that he knew that she consented to sex because she did not push him away or do anything to prevent him from having sex with her. In this case it is unlikely that Rita had the capacity to consent to sexual activity. Although she was not unconscious, she was not able to get home

14. For a discussion on voluntary intoxication and consent see *R v Bree* [2007] EWCA Crim 804 where at paragraph 34 it was stated "If, through drink.... the complainant has temporarily lost her capacity to choose whether to have intercourse on the relevant occasion, she is not consenting, and subject to questions about the defendant's state of mind, if intercourse takes place, this would be rape. However, where the complainant has voluntarily consumed even substantial quantities of alcohol but nevertheless remains capable of choosing whether or not to have intercourse and in drink agrees to do so, this would not be rape. We should perhaps underline that, as a matter of practical reality, capacity to consent may evaporate well before a complainant becomes unconscious".

on her own, undress or speak properly. As she did not have the capacity to consent, the issue is whether or not Jez could have reasonably believed that she was able to consent. Given that she was unable to speak or move it is likely that Jez did not have a reasonable belief in her consent.

While the new definition of consent introduced by the SOA 2003 was designed to ensure that more perpetrators of sexual violence are convicted of criminal offences, there may be practical issues that make it difficult for an offence to be investigated or prosecuted. For example, it may be that the complainant cannot remember the incident either well or at all because of her use of alcohol or drugs. For this reason you are likely to be questioned on whether or not you can be sure of what happened if your ability to remember the incident has been affected by drinking alcohol or consuming any other substance.

Consent and the presumptions

The SOA 2003 includes a set of situations which, if proved and which the defendant knew existed, make it harder for the defendant to argue that the complainant consented to the sexual activity concerned. These are called presumptions. There are two kinds of presumptions within the SOA 2003:

- The evidential presumptions mean that the defendant has to produce sufficient evidence to persuade the Judge that the issue of consent should be given to the jury to decide.
- The conclusive presumptions make it impossible for the defendant to argue that the complainant consented or that he reasonably believed in her consent.

Section 75 of the SOA 2003 sets out the evidential presumptions, a set of circumstances which may lead to the presumption that you did not consent to sexual activity. If before or during the relevant sexual act, one or more of the circumstances set out in section 75 existed and the defendant knew that those circumstances existed, the Judge will conclude that you did not consent to the sexual activity and the defendant did not believe that you were consenting. The circumstances are that:

- any person was, at the time of the relevant act or immediately before, using violence against you or causing you to fear that immediate violence would be used against you;
- any person was, at the time of the relevant act or immediately before, causing you to fear that violence was being used, or that immediate violence would be used, against another person;

The legal framework

- you were, and the defendant was not, unlawfully detained;
- you were asleep or otherwise unconscious at the time of the relevant act;
- because of your physical disability, you would not have been able to communicate to the defendant whether or not you consented to the sexual activity;
- any person (the defendant or someone else) had given you or caused you to take a substance without your consent, which made you stupefied or overpowered at the time of the relevant act.

In all these situations the defendant can rebut the evidential presumption if he can produce enough evidence to persuade the Judge that the issue of consent should go to the jury. If the Judge is not persuaded, it will be presumed that you did not consent and that the defendant did not reasonably believe that you were consenting. The defendant will not be expected to prove anything to a high standard to counter the presumption. He may do so by, for example, giving evidence that, although he had taken you hostage and held you against your will, you had formed a relationship with each other that was consensual. The Judge will decide whether the evidence presented is sufficient or not. If it is, the issue of your consent and/or his belief in your consent will go to the jury to decide.

Evidential presumptions: an example

Jo had been in a relationship with Mark for a number of years and they have two children together. During the relationship Mark has been violent to Jo and has recently told her that he would also punish their children for her disobedience. One evening, after an argument during which Mark had punched and slapped Jo, Mark told her that he wanted to have sex with her to show that they had “made up with each other”. Mark told Jo that if she did not have sex with him he would wake the children up and “punish them as he had punished her”. Jo then had sex with Mark and reported the incident to the police the next day.

At the subsequent trial for rape, once the allegations about the violence and the threats are proved, if Mark wants to argue that Jo consented to the sexual intercourse he has to produce enough evidence to persuade the Judge that the question of whether or not Jo consented should be decided by the jury. If the Judge decides that Mark has called enough evidence then the jury will have to decide whether or not Jo consented to the sexual intercourse and whether Mark reasonably believed in her consent. If the

Judge decides that Mark has not produced sufficient evidence he/she will instruct the jury that Jo did not consent to the sexual intercourse and that Mark did not reasonably believe in her consent. Mark can then only argue in his defence that no sexual intercourse occurred or that, if it did, he was not the perpetrator.

Section 76 of the SOA 2003 sets out the conclusive presumptions. These are circumstances which cover the following situations:

- when the defendant intentionally deceives you into thinking that his actions have another purpose, such as a medical examination;¹⁵ or,
- when the defendant intentionally pretends to be someone you know, such as your partner, in order to engage in sexual activity with you.

If either of these situations are proved at trial then you will be taken not to have consented to the sexual activity concerned and he will be taken not to have reasonably believed in your consent. As these are 'conclusive' presumptions, once they are proved, the defendant will be found guilty of the offence.

Conclusive presumptions: an example

Following the breakup of his daughter's relationship Mr D contacted his daughter's former boyfriend (the complainant) via the internet and pretended to be a young woman who wanted to form a relationship with him. Mr D believed that the complainant had treated his daughter badly and wanted to punish him for this. Whilst impersonating the young woman, Mr D persuaded the complainant to masturbate in front of a webcam. He did so as he hoped to embarrass and humiliate the complainant. The complainant, who was 16 years old, believed that he was masturbating for the sexual gratification of the young woman he had been corresponding with. At trial evidence was placed before the court that showed that Mr D had impersonated a young woman and induced the complainant to masturbate. The issue was therefore whether the complainant had consented to engage in sexual activity or not. The Judge ruled that it was open to the jury to

15. For example, see *R v Tabassum* [2002] 2 Cr App R 328 in which the defendant received sexual gratification by conducting breast examinations on the pretence that he was collecting data for a screening programme. There was no genuine consent because the complainants had consented only to an act of a medical nature and had not consented for any other reason.

conclude that the complainant was deceived as to the purpose of the act of masturbation. Mr D then changed his plea to guilty.¹⁶

At the time of writing the presumptions are not frequently used. Unless one of the above presumptions applies in your case and the prosecution choose to rely on it, it is always for the prosecution to prove that you did not consent and that the defendant did not reasonably believe that you consented.

Conditional consent

Conditional consent refers to the situation where consent is only granted on particular conditions being fulfilled. Where the conditions were not complied with, or where there was a deception, consent to the sexual activity may then no longer exist. For example, if you agreed to have sexual intercourse with someone only if they used a condom and the person then (without your consent) did not use a condom, your consent may have been negated and an offence committed.¹⁷

2.3 The offences

Rape

Under section 1(1) SOA 2003 a defendant, A, is guilty of rape if:

- A intentionally penetrates the vagina, anus or mouth of B (the complainant) with his penis;
- B does not consent to the penetration; and,
- A does not reasonably believe that B consents.

16. This example is based on the case of *R v Devonald (Stephen)* [2008] EWCA Crim 527. In this case an application to appeal the conviction was made to the Court of Appeal. The Court of Appeal refused, holding that it was open to the jury to conclude that C had been deceived as to the purpose of the masturbation and that it was difficult to see how they could have come to any other conclusion given the evidence of Mr D's deception.

17. See *Julian Assange v Swedish Prosecution Authority* [2011] EWHC 2849 (Admin) in which the High Court considered this situation. It was said that "It would plainly be open to a jury to hold that if AA had made clear that she would only consent to sexual intercourse if Mr Assange used a condom, then there would be no consent if, without her consent, he did not use a condom, or removed or tore the condom His conduct in having sexual intercourse without a condom in circumstances where she had made clear she would only have sexual intercourse if he used a condom would therefore amount to an offence under the Sexual Offences Act 2003...." See also *In R (on the application of F) v The DPP* [2013] EWHC 945 (Admin).

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The offence of rape in section 1(1) SOA 2003 includes oral and anal penetration with a penis. This is a change from the previous law which was only concerned with vaginal penetration and used other offences to criminalise other forms of sexual violence (such as indecent assault).¹⁸ The person who commits the offence of rape must be a man (as the penetration has to be with a penis).¹⁹ However, both women and men may experience rape. If the penetration is with something other than a penis then the offence is assault by penetration (see below).

Penetration is the act, which starts at entry with the penis and ends with withdrawal. As penetration is a continuing act, if a man penetrates a woman with her consent, but then she withdraws her consent, his continuing penetration will be rape. The slightest amount of penetration is enough for an offence to have been committed. Ejaculation is not necessary. The defendant must have penetrated you intentionally, which means it must have been his purpose or his aim rather than, for example, a mistake.

For the offence of rape to have been committed the defendant must have penetrated you without your consent, or continued to penetrate you after you withdrew your consent, and the defendant must not have reasonably believed that you were consenting. Even if you can show you were not actually consenting if he reasonably believed you were, he has not committed an offence. The question as to whether his belief was reasonable has to be answered by looking at all the circumstances of the case, including what he did to make sure you were consenting.

As discussed earlier in this chapter and in the introduction, it is not relevant what relationship, if any, a defendant has or had with a complainant. Nor is it relevant if the act complained of occurred within a relationship. If the defendant intentionally penetrates with his penis the vagina, anus or mouth of the complainant without her consent where he does not reasonably believe in her consent the defendant has committed rape.

You do not need to have physical evidence that shows that sexual intercourse took place, or evidence of injuries to show that you did not consent. Your account to the police and in court is evidence of what happened. However, any medical evidence that supports your account is useful.

18. The old law can be found in the Sexual Offences Act 1956, Section 1.

19. A woman can be charged with, or convicted of, rape as a secondary party. For example, a woman may be convicted of rape where she helped a man who raped another person.

Criminal proceedings and sentence for rape

Although all criminal proceedings start in the magistrates' court, rape trials can only be heard in the Crown Court. The maximum sentence someone convicted of the offence can receive is life imprisonment. The Crown Prosecution Service will usually prosecute rape cases unless there are public interest factors tending against prosecution which outweigh factors in favour of prosecution. Prosecution is almost certainly required in the public interest.²⁰

Assault by penetration

The SOA 2003 introduced a new offence designed to cover situations where the complainant is penetrated with objects or parts of the body other than the penis.

Under section 2(1) SOA 2003 a defendant, A, is guilty of assault by penetration if:

- A intentionally penetrates the vagina or anus of B (the complainant) with a part of his body or anything else;
- the penetration is sexual;
- B does not consent to the penetration; and,
- A does not reasonably believe that B consents.

The penetration may be by a part of the defendant's body (his finger or tongue) or with an object (such as a vibrator or bottle). If the penetration is using the defendant's penis then the relevant offence is rape rather than assault by penetration (see above). A defendant can be tried for assault by penetration in circumstances where the complainant does not know what she was penetrated with (because, for example, she is visually impaired, was confused or blindfolded) as the offence can be committed with any object.

Both men and women can commit assault by penetration and it can be committed against both men and women. Penetration of the mouth is not included in this offence (as it is in rape). However, sexual penetration of a woman's mouth (for example, with the defendant's tongue) would be considered sexual assault (see below).

As with rape, the penetration has to be intentional and without your consent. The penetration must also be sexual (see above) and so it is not an offence to perform medical examinations with the patient's consent (for example, a smear test) or, in an unconscious patient, in her best interests for medical reasons. As with rape, the prosecution must prove that you did not give consent and that the

20. The Crown Prosecution Service's policy and guidance on offences can be found at www.cps.gov.uk/

defendant did not reasonably believe you did. The sections on consent and the presumptions apply to this offence in the same way as they do to rape.

Criminal proceedings and sentence for assault by penetration

Assault by penetration is considered to be as serious an offence as rape. It can only be tried in the Crown Court and the maximum sentence someone convicted of the offence can receive is life imprisonment. Again, prosecution is almost certainly necessary in the public interest.

Sexual assault

Sexual assault was one of the new offences created by the SOA 2003. Under section 3(1) SOA 2003 a defendant, A, is guilty of sexual assault if:

- A intentionally touches B (the complainant);
- the touching is sexual;
- B does not consent to the touching; and,
- A does not reasonably believe that B consents.

Sexual assault is an offence that criminalises non-consensual sexual touching. It replaces the old offence of indecent assault. Both men and women can commit sexual assault and it can be committed against either a man or a woman.

The touching concerned can be done with a part of the body, such as a hand, or with an object. Touching can also be done through clothes, for example, pinching someone's bottom. The touching must also be sexual (see above) which means that a person who accidentally bumps into you on a busy train is not committing any offence. Finally, the touching must be without your consent and the defendant must not reasonably believe that you consented. The way this is decided and the factors taken into account are the same as for rape and assault by penetration.

Examples of sexual assault

- Where a man touches his girlfriend's breast for his sexual gratification without her consent and he did not reasonably believe that she consented.
- Where a man forces a woman to masturbate him without her consent and he did not reasonably believe that she consented.
- Where a man kisses a colleague at an office party where he did not consent to the kissing and the defendant did not reasonably believe that he consented.
- Where a man strokes a woman's hair for his sexual gratification without her consent and he did not reasonably believe that she consented.

Criminal proceedings and sentence for sexual assault

Sexual assault can be dealt with in either the magistrates' court or the Crown Court depending on the nature and seriousness of the offence. The maximum sentence that a person can receive in the magistrates' court is 6 months imprisonment for one offence and 12 months imprisonment for more than one offence. The maximum sentence for sexual assault following Crown Court trial is 10 years imprisonment.

Causing a person to engage in sexual activity

Causing someone to engage in sexual activity without consent is a new offence created by the SOA 2003. Under section 4(1) SOA 2003 a defendant, A, is guilty of causing someone to engage in sexual activity if:

- A intentionally causes B (the complainant) to engage in an activity;
- the activity is sexual;
- B does not consent to engaging in the activity; and,
- A does not reasonably believe that B consents.

The offence of causing someone to engage in sexual activity covers situations where the defendant causes you to engage in sexual activity alone (for example, by forcing you to masturbate) or with a third person. The defendant does not have to touch you in order for an offence to have been committed.

A person may be caused to engage in sexual activity because violence is used against her or because she is threatened with something else, such as harm to others or loss of a job. One person forcing or coercing another into the sexual activity without consent may commit the offence of "causing" but it is not necessary that violence is used against you. Tricking someone may amount to "causing", provided there is some action by a person that results in another engaging in sexual activity.

Whether or not a particular thing causes you to engage in sexual activity without consent will depend on your personal circumstances, such as your age and other characteristics, as well as the circumstances of the case. For example, a threat to end someone's employment will be a significant threat to someone who has a family to support or is in financial difficulties but may not be a significant threat to someone who is financially secure and confident of finding employment elsewhere. What is important is that the defendant is able to exercise power or influence over you that prevents you from being able to exercise free choice.

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The causing has to be intentional and the prosecution have to prove that you did not engage in the sexual activity consensually and that the defendant did not reasonably believe that you consented. The way that this is decided and the factors taken into account are the same as for rape, assault by penetration and sexual assault. The presumptions about consent also apply to this offence.

Examples of causing someone to engage in sexual activity without consent

- Where a woman forces her partner to touch herself sexually where she does not consent and the defendant does not reasonably believe she consents.
- Where a man forces his partner to penetrate herself using a vibrator where she does not consent and he does not reasonably believe she consents.
- Where a man forces a woman to have sex with a third person (regardless of whether this is for his sexual gratification or for another reason, such as financial gain) where she does not consent and he does not reasonably believe she consents.
- Where a man forces a woman to perform oral sex on a third person where she does not consent and he does not reasonably believe she consents.

Criminal proceedings and sentence for causing someone to engage in sexual activity

This offence has two levels of seriousness, each attracting a different maximum sentence.

Where the sexual activity involves:

- penetration of the complainant's anus or vagina (with anything including a penis);
- penetration of the complainant's mouth with a person's penis (not necessarily the defendant's);
- penetration of a person's anus or vagina with the complainant's body or by the complainant with anything else; or,
- penetration of a person's mouth with the complainant's penis;

the offence can only be tried in the Crown Court and the maximum sentence is life imprisonment.

This means that, if in committing this offence, the defendant causes you to insert any object into your anus or vagina without your consent he will be liable to the maximum sentence of life imprisonment. If he causes anyone to place their penis in your mouth he will be liable to life imprisonment. If he causes you to penetrate anyone else's anus or vagina he will be liable to imprisonment for life. Finally, if you are a man and he causes you to place your penis in anyone's mouth, he will be liable to life imprisonment.

Where the offence does not involve penetration in one of the ways outlined, the offence can be tried in either the magistrates' court or the Crown Court depending on the nature and seriousness of the offence. In this case the maximum sentence that the Crown Court can impose is 10 years imprisonment, while the maximum sentence that the magistrates' court can impose is 6 months imprisonment for one offence and 12 months imprisonment for more than one offence.

Attempted offences

A defendant may be guilty of an offence even if he did not complete it. This is called an 'attempt'. The prosecution must prove that the actions of the defendant went beyond simply preparing to commit the offence and that the defendant's aim or purpose – his intention - was that the offence be committed. For example, a defendant may be guilty of an attempted rape if he tried to penetrate a complainant's vagina with his penis, but the complainant managed to stop him and no penetration occurred.

Attempted offences are taken seriously by the police and courts. A person found guilty of an attempted sexual offence will face the same maximum sentence as someone who succeeds in carrying out the offence.

3. The decision to report an offence to the police

3.1. Some reasons to report sexual violence

The decision to report sexual violence to the police is often very difficult and always very personal. There are a number of organisations that support people who have experienced sexual violence and you may benefit from making contact with one of them (see the list at Appendix A).²¹ The information provided in this part of the handbook is intended to help you to make an informed choice about reporting an offence to the police by explaining the investigative process and outlining the support that is available.

There are many reasons for reporting sexual violence to the police. The following are reasons that we have heard from women who have contacted us:

- Reporting can assist you emotionally as part of the process of recovery.
- Reporting may bring the perpetrator and his behaviour to the attention of the police, which may assist them to solve other cases and prevent him from committing further offences.
- Where the sexual violence occurred in an abusive relationship, reporting may enable you to end the relationship and live free from violence.
- Reporting may be the first step towards a successful prosecution.
- Reporting opens up the possibility of claiming compensation for any harm you have been caused.

3.2 How to report sexual violence

In an emergency you can contact the police for assistance by dialling 999 or textphoning 18000. If it is not an emergency you can report sexual violence by going to your local police station in person. You can also ring 101 or textphone 18000 101 and ask for your local police station. You can report an offence anonymously to the police. However, in order for the police to be able to

21. Women survivors or those who are supporting them can also contact Rights of Women for free, confidential, legal advice (see front inside cover).

The decision to report an offence to the police

investigate the crime they will need your personal details such as your name and where you live, as well as information about the offence.

You may be able to contact a Sexual Assault Referral Centre (SARC) for advice and support. One of the benefits of contacting a SARC is that you can obtain a forensic medical examination and any medical treatment that you need without having to decide on whether or not to report an offence to the police. For further information about SARCs see section 4.4 below.

It may be that you want the police to be aware about an incident of sexual violence but do not want to make contact with them yourself. If this is the case you can ask a third party (such as your GP, friend or support organisation) to report the incident to the police. A third party report can include as much or as little detail as you wish. The third party does not have to reveal who you are or give full details about the sexual violence you have experienced. The police value third party reports because it gives them information about criminal activity that is occurring in their area.

Third party reports are confidential. However, there are circumstances when the police may try and make contact with you. For example, it may be that the information you give links your case to others, or that they are able to identify the person responsible. If this is the case the police would contact the person or organisation that made the third party report and ask them to contact you.

If you make a third party report on behalf of someone who has experienced sexual violence the police officer you speak to should:

- take a detailed report of the incident from you; and,
- give you details of a nominated Investigating Officer so that you can contact them again to provide any additional information.

3.3 Preserving evidence

The sooner you report sexual violence to the police, the better the chances of the police recovering evidence that may assist in a future prosecution. If you have been sexually assaulted you can preserve evidence by trying to avoid:

- drinking or eating anything, including any non-essential medication you might be taking;
- washing any part of you, including your hair and teeth;
- combing or brushing your hair;
- smoking;
- going to the toilet or discarding any tampons or sanitary towels; and,

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- removing or washing any clothing worn at the time of the incident or afterwards.

The place where sexual violence took place is a crime scene. If possible, avoid disturbing, moving, washing or destroying anything that might be a useful source of evidence. This may include clothing, bedding, any glass or cup that the suspect has drunk from, discarded cigarette stubs, condoms or any other object the suspect touched.

Other evidence that may be useful and should be identified and preserved includes:

- mobile phone evidence, such as call lists, texts and voicemails;
- photos;
- emails; and
- messages on social media such as Facebook and Twitter

If you are supporting someone who has just been sexually assaulted you may want to advise her (or him) about the above and help her (or him) obtain professional advice and support (for example, from a SARC). While someone who has experienced sexual violence may not initially want to report the incident to the police, they may want to in the future. By safeguarding any evidence there is and assisting them to get professional support you will be keeping their options open so that if they want to report in the future they will have the best possible case.

3.4 Sexual violence that occurred in the past

While some incidents of sexual violence are reported to the police in the immediate aftermath of the offence, most incidents are reported days, months or even years later as it can take time for someone who has experienced sexual violence to feel able to disclose what has happened. There are no time limits for investigating and prosecuting incidents of sexual violence. If you want to report sexual violence that occurred in the past you can do so by contacting the police at any time. The fact that you are reporting the offence sometime after it occurred should not affect the police's response to you. You may feel like there is less evidence available when an offence has occurred in the past, but this should not put you off reporting the offence if you want to. The police should still take your report seriously and should investigate thoroughly regardless of when the offence occurred. The suspect may still be prosecuted and convicted where the only evidence is your account.

The decision to report an offence to the police

Example of a case: R v Doody [2008]²²

The defendant in this case, Doody, had been in a relationship with the complainant for approximately five years. On the 13th January 2006 an incident occurred in their home which led to the police being called. When the police came the complainant did not disclose that she had experienced sexual violence. However, two days later a Police Constable visited her to take her statement about what had happened on the 13th, at this point she disclosed that the defendant had been physically and sexually violent towards her for a number of months. Before October 2005 he raped her twice; between October and December 2005, he picked her up from work, abducted her and raped her in a car. The final incident occurred on the 13th January 2006 when he raped her vaginally, orally and anally before inserting a deodorant can into her vagina. The incident only stopped when the complainant's son returned home.

At his subsequent trial for six incidents of rape and one of assault by penetration Doody argued that the complainant was not telling the truth as she had delayed reporting the incidents to the police. The Judge, in his summing-up of the case for the jury, went into detail about the effects of sexual violence on women and how a delay in reporting could come from feelings of shame or confusion. Doody appealed against his conviction on the grounds that the summing up was unfair. The Court of Appeal dismissed his appeal and concluded that: "...the fact that the trauma of rape can cause feelings of shame and guilt which might inhibit a woman from making a complaint about rape is sufficiently well known to justify a comment to that effect."

This case is significant because it means that in any case where sexual violence is not reported to the police straight away, whether the delay is a matter of days and months (as it was in Doody); or years, as it is in cases where the sexual violence occurred in childhood, the Judge will inform the jury that the fact a person has delayed does not necessarily mean that they are not telling the truth.

22. R v Doody [2008] EWCA Crim 2394. More information about the trial process is given in Part 3 of this book.

4. Medical issues

4.1 Some reasons for seeking medical attention

If you have experienced sexual violence you should seek medical attention as soon as you can. In addition to receiving treatment you can discuss any concerns that you have about pregnancy or sexually transmitted infections. You may also be able to access other specialist support services, such as counselling. In sections 4.4-4.6 we outline the various places that you can go to for medical treatment following sexual violence.

4.2 Forensic medical examination

The purpose of a forensic medical examination is to obtain evidence that may be useful in any subsequent investigation or trial. Whether or not a forensic medical examination is necessary will depend on how recently you were assaulted. The further away the assault in time, the less reason for a forensic medical examination. The forensic medical examination cannot take place without your agreement, and you can agree to some parts of the examination but refuse others. You can stop the examination at any time. The appointment with the doctor will take around 2-3 hours but only about 20-30 minutes of that time will be the medical examination itself. You can ask a friend to be with you during the examination if you wish. If you need an interpreter you can ask for one to be provided.

A forensic medical examination will involve gathering all traces of any bodily fluid, skin or hair that the suspect has left. If you have washed before you have the examination, tell the doctor, as it may still be possible to find physical evidence. You may be asked to give a blood or urine sample, particularly if you had consumed drugs or alcohol or are concerned that someone had interfered with your drink.

In addition to taking samples you will also be examined for injuries such as internal bruising or cuts. Any injuries that are found will be recorded and if they are visible, they may be photographed. Samples collected from you, from your clothes or from the scene of the assault may be sent for testing by a forensic scientist. It may, therefore, be a good idea to take a change of clothes and underwear with you to change into after the examination. Because the clothes

you were wearing during the incident may be evidence, they may not be returned to you until the criminal proceedings have ended.

During the examination the doctor may have to ask you intimate questions such as when your last menstrual period was, whether you use contraceptives and whether you have recently engaged in consensual sexual activity. These questions are necessary to find out whether you are at risk of becoming pregnant and are also important when it comes to testing physical evidence, such as semen.

DNA evidence

DNA stands for Deoxyribonucleic acid, it is a chemical found in almost every cell in our bodies. It carries information that determines our physical make-up such as our hair and eye colour. Every person's DNA is unique. Except for identical twins, not even sisters and brothers have the same DNA. Because DNA is found in so many of our cells including the blood, semen, skin, saliva and hair, it is often relied upon to identify suspects of sexual violence.

Physical injuries

You may or may not have been physically injured in the assault. Some injuries are internal and only noticed when you are medically examined. Some people who experience sexual violence do not receive physical injuries. You do not need to have evidence of injuries in order to prove you were forced to engage in sexual activity. The police and others working in the criminal justice system should understand the fear that sexual violence causes and that sexual violence often occurs without physical injuries being sustained.²³

Alcohol and drugs

Alcohol and drugs that are given to you without your consent

It may be that the suspect gave you a substance without your knowledge or agreement to enable him to commit the offence. The signs that should make you suspicious include:

- You felt more drunk than usual for the amount of alcohol you had or you felt drunk or woozy despite only drinking soft drinks.

23. The British Crime Survey 2002 found that less than half the assaults recorded using self-completion involved the use of force; and although almost three quarters (74%) of rapes involved the use of force or violence, physical injuries were sustained by the victim in only 37% of cases.

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- You woke up feeling confused, with little or no memory and/or there are gaps in your memory.
- The room you wake up in is unfamiliarly messy or you do not recognize where you are and have no memory of how you got there.
- You can remember drinking something, whether alcohol or not, and cannot remember what happened next.
- You have a vague feeling that you had sex but it is not a clear memory.
- You have flashes of memory of a sexual experience.

You may also feel nauseous, dizzy, sluggish, have been unconscious or find it difficult to wake up.

You may also be:

- Without your underwear or other clothing and cannot remember getting undressed.
- Sore around the genital area or bruised and sore elsewhere without any explanation.

If you think you have been drugged and sexually assaulted go to a safe place and get medical attention as soon as you can. Some drugs only remain in the body for a short amount of time so try and get a urine sample by going to a hospital, Sexual Assault Referral Centre (see below) or your GP as an emergency. If you are unable to get medical attention as quickly as you need to you can urinate into a clean cup and then hand it the police as soon as you can. Keep any sample that you take yourself in the fridge until you are able to hand it to a police officer.

Alcohol and drugs that you chose to consume

If you have consumed alcohol or drugs it is vital you tell the doctor and the police as much as you can about what you have consumed and when. You should not be judged because you have drunk a lot of alcohol or consumed drugs, nor should you be investigated for drug use, or the investigation of the sexual offence be taken less seriously. However, if in court it emerges that you had drunk alcohol or used drugs and you had not told the doctor or police about it, it could affect your case.

After the examination

After the examination the doctor will write a report about the samples taken from you during your examination. If the case goes to court the doctor who examined you and the forensic scientist will have to produce written statements and may attend court to give evidence.

4.3 Early evidence kits

If you contact the police following an incident of sexual violence the police's first concern is to ensure that your medical needs are met. After this, arranging for a forensic medical examination will be a priority to ensure that as much physical evidence as possible is obtained. For this reason, police officers who attend incidents of sexual violence should have an early evidence kit with them.

An early evidence kit is a kit that enables you (not a police officer or anyone else) to take certain non-intimate samples, such as mouth swabs or urine samples. You can take your own urine sample to test for any drugs that might have been given to you. If oral penetration has occurred you can also use the early evidence kit to take a mouth swab to test for traces of semen.²⁴ This process does not replace the full medical examination but helps to make sure that important evidence is preserved. Once samples have been taken with the early evidence kit you can go to the toilet or have a drink without having to worry about evidence being destroyed. As with forensic medical examinations, no evidence can be taken with an early evidence kit without your consent.

4.4 Sexual Assault Referral Centres

If you have experienced sexual violence you may be able to get both medical treatment and a forensic medical examination from a Sexual Assault Referral Centre (SARC). SARCs are available 24-hours a day and are usually run through local partnerships between police, national health services and voluntary organisations.

If you have contacted the police after an incident of sexual violence they may take you to a SARC. Alternatively, you can go to a SARC independently without contacting the police. In addition to receiving medical care and treatment you will receive a forensic medical examination, as described above, and can be referred to other specialists for any additional assistance you need. Any samples taken can be stored for you while you decide whether or not to report the offence. You can also pass on your samples for testing anonymously and then be informed if the suspect is identified. If you decide that you do want to report the incident you will be put in touch with a specially trained police officer. The services provided by SARCs are free, confidential and entirely independent from the police and other agencies in the criminal justice system. They are

24. Semen can remain in the mouth for up to two days after the assault.

available to people immediately after an incident as well as for up to a year later.²⁵

There are a number of SARCS throughout England and Wales. To find your local SARC as well as other relevant services visit www.nhs.uk/livewell/sexualhealth/pages/sexualassault.aspx.

4.5 Medical treatment from your GP or at the hospital

If you are unsure about reporting sexual violence to the police and there is no SARC in your area you should still consider getting medical attention as soon as possible. You can get medical treatment by visiting your local hospital accident and emergency department or by going to see your GP.

There is a general duty on doctors to respect the confidences of their patients. This means that you can tell a doctor about your assault and get treatment and advice without involving the police if that is your wish. However, there are circumstances when a doctor has to contact the police:

- When a doctor believes a patient has been sexually abused and is, for whatever reason, unable to agree or not to tell the police.
- Where a patient is unconscious or without the mental capacity (ability) to make a decision.
- Where reporting is in the public interest, for example, because a failure to inform the police may put the patient or another person at risk of serious harm.

Even if the doctor believes that it is necessary to report the sexual violence to the police it does not mean that you have to make a statement or co-operate with any investigation.

4.6 The Forensic Medical Examiner

If there is no SARC in your area, getting a forensic medical examination will be dependent on reporting your assault to the police who can arrange for you to see a Forensic Medical Examiner (FME). An FME is a doctor who is trained to collect evidence that can go before a court. If the police arrange for you to see an FME you may have to travel to the surgery of a doctor on duty or the nearest examination suite.

25. Although this may vary from area to area, contact your local SARC to see what services they offer and how they can assist you.

Medical issues

You can ask to be examined by either a female or male FME, depending on what you feel most comfortable with. However, there are fewer female FMEs than there are male, so you may have to wait longer. There may even be no female FME available. The forensic medical examination cannot take place without your consent. If you agree to the forensic medical examination you will be agreeing to the results, the evidence gathered, being given to the police.

5. The investigation

5.1. The role of the police

It is the police's responsibility to investigate crimes and gather evidence that may later be used in court. Evidence gathered by the police is then handed over to the Crown Prosecution Service (the CPS) who make the decision to charge and prepare the case for court. Your role is as a witness in these proceedings.

Further information about the decision to charge and trials are given in Part 3 of this handbook. In this chapter we will explain how a sexual offence may be investigated.

5.2 After reporting sexual violence to the police

As discussed above in Chapter 4, there are a number of ways in which you can report an offence to the police. You may have dialled 999, contacted your local police station or have been put in touch with a police officer by a Sexual Assault Referral Centre.

When you make an initial report to the police you will be asked detailed, open questions about you, the offence and the person responsible. If you made contact with the police by telephone the person answering your call will need to make sure you are safe. If you called 999 the person you speak to may want to keep talking to you until police officers arrive. Your safety will be the most important thing. If you are not calling in an emergency they may ask you about how they can make contact with you again, so, for example, if you are living with the suspect you can make arrangements to speak to an officer without the suspect knowing about it, at a time convenient to you. If the sexual violence occurred recently you may be asked whether you need any medical treatment and be advised on how you can preserve evidence (see section 3.3 above).

If you have gone into a police station to report sexual violence you will be taken to a suitable private waiting area to make your report after you have spoken to a police officer on the front desk. The fact that you are reporting in this way rather than through the 999 system should not affect the police's response to you, or the importance of your case.

However you report sexual violence, either a police officer or a representative from the police will talk to you to take an initial account. This should be done in private and you can ask to speak to either a male or female officer, depending on what makes you most comfortable. Wherever possible, your initial account will be taken by a Specially Trained Officer (an STO, see section 5.3 below). When you give your initial account you will not be asked detailed questions about the incident. Instead you may be asked the following:

- Whether you need medical assistance or, if you have sought medical treatment, when and from whom.
- The type of incident (for example, rape or sexual assault).
- If you know the person responsible, who he is and where he may be.
- If you do not know the person responsible, what he looks like.
- Where the offence took place, when and what you have done since.
- Whether you have told anyone else about the incident.
- Whether there were any witnesses to the incident or events either before or after the incident.

These questions are asked to find out whether you are at risk from further incidents of violence and to enable the police to start an investigation. Notes will be taken of your initial report because if your case goes to court they can be used to support the prosecution's case. If you make the initial report over the telephone, a transcript of your telephone call might later be used to support the prosecution's case if your case goes to court.

5.3 Specially Trained Officers (STOs)

Specially Trained Officers (STOs) are also referred to as Sexual Offences Investigative Techniques Trained Officers (SOIT Officers) or Rape Chaperones depending on the police force concerned. The role of the STO is to provide you with care and support throughout the investigation. They will meet with you as soon as possible, in person. Where possible the STO will:

- take your initial report;
- arrange for a forensic medical examination where appropriate and help you get there and back;
- take your statement;
- keep you updated on developments in your case; and,
- support you by giving you information about the criminal justice system and other organisations/agencies who may be able to assist you.

In addition to supporting you, the STO will also be involved in the investigation of your case. If you want information about what is happening in your case or have any concerns about your safety the STO is the person to discuss these with. The person with overall responsibility for your case is the Investigating Officer.

5.4 Making a statement or attending a video interview

The initial report that you give the police enables them to start their investigation. The next stage is to take a formal statement from you.

The support that a person may be offered when their statement is taken and later at court depends on the nature of the criminal offence and their personal circumstances. Certain witnesses are considered vulnerable and in need of special protection and support.²⁶ They are:

- intimidated witnesses (witnesses suffering from fear and distress);
- young witnesses (under 18);
- learning disabled witnesses;
- physically disabled witnesses; and
- witnesses with mental disorders or illnesses.²⁷

Complainants of sexual violence are considered to be intimidated witnesses.

If you have experienced sexual violence your statement will usually be recorded on video. This is to enable it to be shown to a court if there is a trial. If your statement is not video recorded then your account will be recorded by a police officer and written up into a statement. When this has been done you will be given the opportunity to read it through to check everything is correct before you sign it.

The interview will take place in private and in the language of your choice. If English is not your first language or you have a disability that affects your ability to communicate the police will arrange for an interpreter for you. If you are supporting someone with a learning disability you can ask for someone else to attend the interview with her to ensure that she understands what is being said and to assist her to communicate. This person may be referred to as an

26. As per Chapter 1 of the Youth Justice and Criminal Evidence Act 1999 as amended by the Coroners and Justice Act 2009.

27. This is defined in the Mental Health Act 1983, section 1(2) as mental illness, arrested or incomplete development of the mind, psychopathic disorder or any other disorder or disability of the mind.

intermediary and should have the necessary skills to enable them to assist the victim.

The officer who interviews you should be your STO (see section 5.3 above) and you should be given the option of having either male or female police officers present, depending on what makes you feel most comfortable. There may be only one officer with you in the interview room but another officer will be watching the interview from outside the room. You can also ask to have someone with you to offer you support, such as a friend or rape crisis worker. Whoever the supporter is, they must not be linked to the case and they will not be able to answer questions for you. The interview should be carried out at a pace that is suitable for you with breaks to ensure that you can rest and get refreshments when you need to. You can also ask to take a break whenever you need to. The interview will last as long as is necessary to get all of the relevant information.

When making your statement you will need to give the police as much information as possible. At the beginning of your interview, you will be asked for your personal details, such as where you live, your age and occupation. You will then be given the opportunity to describe what happened to you. You may be asked where the assault took place, when and how it happened. You will also be asked about the suspect. The police have no right to ask you questions about previous relationships, your sex life or whether you have been raped or assaulted in the past. Questions like these, which relate to your previous sexual history, are not relevant to the investigation and any answers that you give to such questions are unlikely to be allowed to be used as evidence in any subsequent trial. For further information about what questions you may and may not be asked about your previous sexual history in court see Chapter 13. However, it may be necessary to ask when you last had consensual sex; or your relationship with the suspect, if you have one. These questions may be necessary to interpret any DNA results or other forensic evidence.

If you consumed alcohol or drugs before the incident you will be asked about this. The purpose of these questions is to find out whether you had the capacity to consent to sexual activity or not (see section 2.2 above) and whether or not you are able to be sure about what happened. The fact that you drank alcohol or used drugs should not affect the police's response to you.

When making your statement it is important to give as accurate an account to the police as you can, not just about the sexual violence but on all issues. This is because your statement will form part of the prosecution's case if the matter goes to court and if something that you said is later found to be untrue it may

PART 2: THE INVESTIGATION

negatively affect the case and undermine your credibility. Even if you have a good reason for not telling the police everything or the truth about a particular issue, it is important that you do so.

You may find that you remember things after your interview that you did not remember at the time, or that you want to clarify something that you did say. If this is the case write it down and contact your STO. If necessary you can then make an additional statement to cover the new information.

Achieving Best Evidence in Criminal Proceedings, Guidance on interviewing victims and witnesses, and guidance on using special measures (March 2011) is guidance that has been produced to ensure that victims making statements (and later giving evidence in court) are able to give the best evidence they can. The *Guidance* also contains information for those supporting victims at their interview and later in court and explains what special measures (see Part 3 for more information) are available to victims who are vulnerable or intimidated. The *Guidance* can be downloaded from here www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf

5.5 The Victim Personal Statement

Once you have made your formal statement you should be given the opportunity to make a Victim Personal Statement (VPS). This may be done either straight after making your formal statement, or at any time before the defendant has been sentenced. Making a Victim Personal Statement is entirely optional. The purpose of the Victim Personal Statement is to give the Crown Prosecution Service and the court information about how the crime has affected you. It may also be done to explore your views about giving evidence in court and what can be done to enable you to do this. You can say as much or as little as you wish and in your own way. Details about your entitlement to make a statement and the use of your statement in criminal proceedings can be found in the Victims' Code.²⁸

The VPS and evidence in support of it should be considered and taken into account before the court passes sentence. For more information on sentencing

28. The Code of Practice for Victims of Crime can be found at www.gov.uk/government/uploads/system/uploads/attachment_data/file/254459/code-of-practice-victims-of-crime.pdf. A further helpful document about victim personal statements can be found at www.gov.uk/government/publications/victim-personal-statement

see section 14.4. The VPS might also be considered by the Parole Board when they are assessing whether it is safe to release an offender from prison or move them to an open prison. In this situation you can update the statement in order to tell the Parole Board how the offence has continued to affect you.

The police are responsible for taking the statement from you, and should act on anything within it, for example in relation to any fears you have about your safety. The Crown Prosecution Service has a duty to pass this statement on to the court. They will also tell the court whether you wish your statement to be read to the court and (if so) whether you want to read this statement yourself or have it read for you by the prosecutor. Ultimately the court will decide whether and what sections of the VPS will be read, and by whom. Even if the statement is not read aloud, the court will still take it into account when passing sentence. The defence will also be given a copy and it is possible, although unlikely, that you may be asked questions about this at trial.

5.6 The police investigation

In order to investigate the offence the police may:

- contact any witnesses to the incident or to events before and afterwards and ask them to make a statement;
- visit the scene of the assault and/or take photographs, fingerprints and collect any other forensic evidence;
- conduct door-to-door enquiries in the area;
- seize any evidence that may be relevant, such as from CCTV, a computer or a mobile phone;
- send evidence for forensic examination or analysis;
- complete identification procedures (see section 5.7 below);
- trace the suspect's movements;
- arrest the suspect; and/or
- interview the suspect.

Any clothes or items that are seized for the investigation will be returned to you once the criminal proceedings have ended.

5.7 Identification procedures

If the suspect is a stranger you may be asked to help the police find him by looking through photographs of known sex offenders. You may be asked to help a police artist create an image of him or, if the police have a suspect, take part in an identity parade. If you have reported the offence immediately after it occurred, you may be asked if you are willing to be driven around the local area by the police and asked if you can identify the suspect.

The most common method of identifying a suspect is the video identification parade. Video identification parades involve looking at images of a number of different people on a computer or television and trying to identify whether the suspect of the offence is among them. When you view the images the suspect's legal representative may be present. The officer in charge of the parade will then ask you a number of procedural questions to see if you can identify the suspect. If you require an interpreter, one will be provided for you.

Some police forces still use live identity parades although this happens much less often than video identification parades. Live identity parades involve looking at a line up of suspects through one-way glass. Again a legal representative for the suspect may be present. If you did not get a clear view of the suspect during the assault, but heard his voice, line-up members may be asked to repeat whatever words you heard and you will be asked if you can identify him in that way. There are other less common identification procedures, such as group identification. If the police wish to use this method of identification they will explain this to you and you can also speak to your STO about this. Whichever method is used, the aim of the parade is to see if you are able to identify the suspect from a group of men who have a similar appearance.

5.8 Arrest and interview

A suspect may be arrested as part of an investigation in order to enable the police to question him or carry out further enquiries. A police officer may arrest someone if he or she:

- knows or suspects that person's involvement or attempted involvement in a criminal offence; and
- has reasonable grounds for believing that the person's arrest is necessary.

The police should inform you within 24 hours of a suspect's arrest so that you are aware of how your case is progressing.

Once a suspect has been arrested he will be interviewed by police officers. A suspect can be interviewed without being arrested. Before a suspect is interviewed he will be cautioned that he does not have to say anything to the police, but that it may disadvantage him at trial if he does not give an account during interview. Furthermore, anything he says in the interview can be used at court. The suspect can have a legal representative present to advise him. The interview will be recorded and it may be used at any subsequent trial as part of the prosecution's case.

5.9 The end of the police investigation

The police investigation can end in a number of different ways. It may be that the suspect is charged with an offence, if this happens court proceedings against him will begin. During the police investigation, or after charge, the suspect may be on bail.

The investigation may end without the suspect being charged and with no action being taken against him. It is also possible that the police conclude that no crime has been committed.

For further information about the decision to charge (and what to do if a decision is made not to charge the suspect), bail and court proceedings see Part 3 of this handbook.

In the case of DSD and NBV[1] a Judge ruled that the police have a duty under the Human Rights Act 1998 to conduct investigations into "particularly severe violent acts in a timely and efficient manner." This case concerned two women who had been raped and whose reports to police were not initially investigated properly. At the time of writing it is not known whether or not this decision will be appealed. However, if you believe that the investigation of your case has been insufficient you can discuss this with your STO. If this does not resolve the issue you can make a complaint or seek legal advice from Rights of Women or one of the organisations listed in Appendix A.

6. The decision to charge

6.1 The role of the Crown Prosecution Service

The police are responsible for investigating criminal offences and protecting the public. Evidence and other information gathered in an investigation may be passed on to the Crown Prosecution Service (the CPS) who will then usually decide whether or not the suspect should be charged with a criminal offence. The CPS is responsible for advising the police during an investigation, preparing the case for trial and either presenting it at court or instructing a barrister to do so. The police and CPS have an agreement which sets out in detail their different responsibilities in rape cases. It is called: *A protocol between the Police and Crown Prosecution Service in the investigation and prosecution of allegations of rape*. You can read the protocol here www.cps.gov.uk/publications/agencies/rape_protocol.html.

The lawyers who work for the CPS are called Crown Prosecutors. The head of the CPS is the Director of Public Prosecutions (the DPP). Just as the police have specialist officers who deal with offences of sexual violence, the CPS have specialist lawyers who deal with sexual offences. Only barristers who have undertaken the required training courses and demonstrated the right skills will be allowed to prosecute rape cases and the CPS are committed to ensuring that your case is dealt with by prosecutors who are highly experienced in dealing with sexual offences and alert to the needs of victims of sexual violence.

The CPS has made a 10-point pledge which states that if you are a victim of crime you can expect the CPS to:

- Take into account what impact a decision to charge (or not to charge) will have on you.
- Inform you if a charge is withdrawn, discontinued or substantially altered.
- When practical, seek your view on the acceptability of any guilty plea offered.
- Address any specific needs you have (for example, to assist you to give the best evidence in court that you can).
- Assist you to refresh your memory from your written or video statement and answer your questions on court procedure.
- Promote and encourage communication between you and the Prosecutor at court.
- Protect you from unwarranted or irrelevant attacks on your character and

intervene where cross-examination is inappropriate.

- On conviction of the defendant, challenge defence mitigation which attacks your character.
- On conviction, apply for an appropriate order for compensation or any order that could assist in protecting you in the future.
- Keep you informed of the progress of any appeal against conviction and/or sentence and explain any judgement.

Further information about the role of the CPS and the Prosecutor's Pledge can be found on their website.²⁹

6.2 The decision to charge

The decision to charge is usually taken by the CPS.

When making a decision to charge, the CPS will look at all of the available evidence and ask two questions:

- Is there sufficient evidence to provide a realistic prospect of conviction? (The 'evidential stage'.)

And

- Is it in the public interest to prosecute? (The 'public interest stage'.)

This is often referred to as the two-stage test. As stated in the Prosecutor's Pledge (see section 6.1 above), the CPS should take your opinion into account when making the decision to charge.

In some cases the police will make the decision as to whether to charge or to discontinue a case. When doing so, the police will only apply the evidential stage of the two-stage test.

Is there sufficient evidence?

There has to be sufficient evidence to show that a sexual offence took place and that the suspect was responsible for it. To assess this, the Prosecutor will look at all the evidence available, including anything the defendant says in his defence. When assessing the evidence the Prosecutor has to ask whether a jury (or the magistrates), when informed about the law, will be more likely than not to convict the defendant. The Prosecutor has to assess the evidence available, how reliable it is, how credible (believable) it is and whether it is of sufficient quality. The test the Prosecutor is applying here is not the same that is applied in the criminal courts. At a criminal trial the jury (or magistrates) has to be sure of

29. www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

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the defendant's guilt in order to convict him. What the Prosecutor is doing when looking at the evidence is deciding whether or not a jury (or magistrates) could have sufficient evidence to reach that decision. If there is not enough evidence to provide a realistic prospect of conviction then the case cannot proceed, no matter how serious or sensitive it may be.

Is it in the public interest?

If there is sufficient evidence the Prosecutor will consider whether it is in the public interest to prosecute the suspect. Deciding whether or not prosecution is in the public interest involves balancing the factors in favour of prosecution with those against.

The factors that might influence a Prosecutor to prosecute include:

- a conviction is likely to result in a lengthy sentence;
- a weapon or violence was used or threatened;
- the suspect was in a position of authority or trust;
- there is evidence that the offence was planned;
- the victim was vulnerable, has been put in fear, or personally attacked and the level of harm caused;
- the offence was committed in the presence of, or near to, a child;
- the impact on the community;
- the offence was motivated by discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect was hostile to the victim for one or more of these reasons; and/or,
- the defendant has relevant, previous convictions.

A decision taken not to prosecute a serious offence would have to be supported by clear reasons. Sexual violence is taken very seriously by the CPS so if there is sufficient evidence available the public interest test will also usually be met unless one of the following factors are present. For example, depending on the seriousness of the offence, it may be decided that a prosecution is not in the public interest if:

- it would have a negative effect on the physical or mental health of the victim;
- the suspect is very old or very young; and/or
- the suspect was, at the time of the offence, suffering from serious mental or physical ill health.

The decision to charge

All these issues should be weighed against the seriousness of the offence.³⁰

If you need more information about how the CPS makes charging decisions and prosecutes cases that involve rape or domestic violence you can read the relevant guidance which is available here www.cps.gov.uk/legal_resources.html.

A Rape Specialist should make charging decisions in rape cases; s/he will work closely with the Investigating Officer to build the case against the suspect. In cases that involve sexual violence but not rape, a Rape Specialist or another experienced CPS Prosecutor may make the decision. The Victims' Code sets out who is responsible for keeping you informed about whether or not a decision to charge has been made in your case. The obligations in the Victims' Code are set out in detail in section 10.2 below. You should be told of the decision to charge the suspect with an offence within one working day.

If a decision is made not to charge a suspect, or to drop or reduce the charges, then who is responsible for telling you depends on how the decision was made:

- Where the CPS made the decision during a meeting with the police, the police are responsible for telling you the decision and must also tell you how to get further information about the decision from the CPS and of your right to review the decision.
- Where the decision was made by the CPS without a meeting with the police, the CPS are responsible for telling you the decision and providing you with details of how you can seek further information about this decision and of your right to review the decision.
- Where the decision was made by the police without referring the case to the CPS, the police will be responsible for informing you of this decision.
- Where a decision has been made by the CPS to alter a charge or discontinue proceedings, they are responsible for informing you of this and giving reasons for the decision. If the proceedings are completely stopped, you must be told how you can get further information about this decision and how you can seek a review of it.

6.3 Pre-trial witness interviews

In some cases the CPS Prosecutor responsible for your case may want to meet you in a Pre Trial Witness Interview (PTWI). Whilst not often used, PTWIs enable

30. The full list of factors that Prosecutors take into account can be found in the Code for Crown Prosecutors which is available to read and download from the CPS website www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html. There is also specialist guidance for Prosecutors who are dealing with domestic violence and rape cases.

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the Prosecutor to assess your evidence directly. PTWIs may be carried out in serious cases of sexual violence that are tried in the Crown Court. A PTWI may take place at any stage in the proceedings once a witness has given a statement and before s/he starts to give evidence in court. Usually, a PTWI will take place before a decision to charge has been made. PTWIs may therefore be used to assist the CPS when they are deciding whether or not to charge the suspect or, following charge, when they are preparing the case for trial.

If it is decided that a PTWI would be useful the CPS will write to you and explain this. The letter will set out who the Prosecutor is, why they want to meet you, where the meeting will take place and who will attend. You can take someone to the meeting to support you. The person you take should not be involved in the case in any way and should be someone who you can speak freely in front of. Your supporter could be an Independent Sexual Violence Advisor (see 10.4 below) or someone from your local rape crisis centre. If you decide to take a supporter to the PTWI you need to provide their name. The letter that you are sent should tell you how to do this. This is to enable the police to check that the person you want to bring is not involved in the case. The Prosecutor is responsible for making the final decision about who can and cannot attend the interview. The CPS will arrange and pay for an interpreter or intermediary to attend the meeting if they think that it is necessary. You will also receive expenses for attending the interview; these can be paid to you in advance if that is necessary.

During the PTWI you may be asked questions about the sexual violence you have experienced. These may relate to the witness statement that you gave to the police or they may explore something that you mentioned in your statement in more detail. The purpose of these questions is to enable the Prosecutor to hear your answers in person. What you say to the Prosecutor may assist them to make a decision to charge or to prepare your case for trial. What you say may also be disclosed to the defence as part of the process of disclosure (see 8.4 below). You do not have to attend the PTWI if you do not want to. However, if you do not attend it may affect whether or not the CPS charge the suspect or how they prepare the case for trial. The defence will also usually be told if a witness does not attend a PTWI. If you have any concerns about the PTWI speak to your STO (section 5.3 above) or contact Rights of Women for legal advice. Further information about PTWIs can be found here www.cps.gov.uk/victims_witnesses/going_to_court/interviews_ga.html.

6.4 If the suspect is not charged – the Victim’s Right to Review

If the CPS decides not to charge him with an offence the suspect will have no further action taken against him (sometimes referred to as being NFA'd). The case will then be closed but information relating to the investigation should be kept in case further evidence is obtained or he commits further offences.

The Victims’ Right to Review Scheme (VRR) makes it easier for victims to review a CPS decision not to charge a suspect with an offence or a decision to terminate proceedings. The scheme applies to decisions made on or after 5th June 2013.³¹ Prior to June 2013 there were around 800 complaints to the CPS about decisions not to prosecute or to discontinue proceedings. Only 2% of the decisions were overturned. Since the scheme was implemented there have been 70 decisions overturned – a success rate for victims of around 10%.³²

When the CPS notifies you of the decision not to prosecute or to discontinue proceedings you will also be notified of the right to request a review of that decision and how to exercise that right. In the first instance your case will be referred to the CPS area that made the decision. The decision will be checked and an explanation of the decision will be provided. If you are unhappy with the decision, you can then ask for your case to be referred to the Appeals and Review Unit, the relevant Chief Crown Prosecutor, or the Head of a Casework Division. A further review will take place and a Reviewing Prosecutor will decide whether the decision was wrong. If they conclude that the decision not to charge the suspect or to terminate the case was wrong, they will decide whether a charge should now be brought or whether proceedings should be re-started. As a vulnerable victim you should be offered a meeting at the end of the review process to discuss the outcome.

If you wish to exercise this right to review, you should contact your local CPS within 7 days of the decision being made. You have the right to review a decision any time within three months of the decision being made. Where possible the CPS aim to complete the review within six weeks of you requesting the review.

31. If the decision in your case was made before 5th June 2013 you should seek specialist legal advice about your options.

32. www.lexology.com/library/detail.aspx?g=c8ac34b8-c8e0-4e9e-9cf9-df76eb7707eb

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If the decision not to charge the suspect was taken by the police then the VRR does not apply. In this situation, you can write to the police and ask them to review this decision and / or pass your case on to the CPS. If they will not do this you can ask them for reasons why. If you do not receive a satisfactory response to your letter you can complain about this. Information about how you can do this can be found on the Independent Police Complaints Commission website here www.ipcc.gov.uk/page/about-us.

6.5 Alternatives to charging a suspect

In the case of minor offences, a suspect who is a first-time offender or who has not offended for some time and who admits an offence to the police may be offered the opportunity to accept a caution for the offence. If an offender accepts a caution the case will not go to court. However it will form part of his criminal record, and it may be raised in court if he later appears on other matters. A caution is only offered in very exceptional circumstances if the offence is a serious sexual offence because it will usually be in the public interest to prosecute such offences. There is no right of appeal against the administration of a caution although you may be able to make a complaint to the police about the decision to give the suspect a caution.

6.6 If the suspect is charged

If the suspect is charged with an offence he can either be released on police bail to attend the magistrates' court on a set date or be remanded in custody (held in prison) and taken to court the next day. Once charged, the suspect will be referred to as the defendant. On his first appearance at the magistrates court matters such as which court his trial will be held at will be decided. If he has been held on remand (in prison) he will be given the opportunity to make a bail application.

6.7 Keeping the charge under review

Throughout the proceedings the Prosecutor must review the evidence and keep applying the two-stage test. As further evidence in the case comes to light, if the Prosecutor decides that the charge is not justified he or she has either to discontinue the proceedings or charge the defendant with a different, relevant offence. The CPS should write to you to explain any decision to drop or alter charges. They should also give you an opportunity to attend a meeting with the

Prosecutor who took the decision to explain it further and listen to your views. If your case is discontinued you have the right to request a review of this (above). However that right does not apply if a charge is altered or if some but not all charges are dropped.

6.8 Private prosecutions

Private prosecutions are those that are brought by the victim and/or their family, rather than by the CPS, against the defendant. This may happen because the CPS has decided that there is not sufficient evidence to prosecute.

There is no public funding (legal aid) available to bring a private prosecution and if the case gets to court you will probably have to involve solicitors and/or a barrister. You may be able to find one who will act free of charge³³ but otherwise you risk having to pay high costs. The Director of Public Prosecutions (DPP) can take over a private prosecution and stop it, provided s/he does not act unreasonably. This is likely to happen if there is insufficient evidence and the DPP finds that there is no case for the defendant to answer. If there is evidence to support a prosecution the DPP is unlikely to intervene to stop the case but may take over the prosecution and continue it in the normal way, with the State paying the legal costs. There have been successful private prosecutions of perpetrators of sexual violence but to be effective you will need to be supported by a committed legal team.

33. Contact the Bar Pro Bono Unit for information about contacting barristers who may be able to act free of charge www.barprobono.org.uk.

7. The first appearance of the defendant in court

If the defendant indicates that he is pleading not guilty to the offence he is charged with (if he is denying the offence) a number of decisions have to be made about which court will hear the trial and whether or not he will be granted bail.

7.1 Which court should the defendant be tried in?

One of the decisions that has to be made at the defendant's first appearance is which court his case will be tried in (prosecuted in). All criminal cases start in the magistrates' court with more serious cases being transferred to the Crown Court for trial. Cases that are 'triable on indictment only' are considered the most serious and must be tried in the Crown Court. Cases that are 'summary only' are considered the least serious and can only be tried in the magistrates' court. 'Either way' offences can be tried in either the magistrates' court or the Crown Court depending on two things: sentencing powers and the defendant's decision. The first question is whether the magistrates' sentencing powers are sufficient. The maximum sentence that a person can receive in the magistrates' court is 6 months imprisonment for one offence and 12 months imprisonment for more than one offence and/or a fine. Cases where the sentence required may be more than this must be sent to the Crown Court to be tried. If the magistrates decide that their sentencing powers are sufficient, the defendant can then choose whether to be tried in the magistrates' court or the Crown Court.

Trials for rape and assault by penetration are always heard in the Crown Court. Whether or not a trial for sexual assault or causing someone to engage in sexual activity is heard in the Crown Court will depend on factors including the nature and seriousness of the offence.

7.2 Bail

During a police investigation or before trial a defendant can be given bail. A defendant who has been charged with an offence and remanded in custody has the right to have an application for bail considered by the court. His first

The first appearance of the defendant in court

opportunity to make a bail application will usually be at his first appearance at the magistrates' court.

When deciding whether or not to grant a defendant bail, the court will take into account the:

- type and seriousness of the offence;
- defendant's character, previous convictions, friendships and community ties;
- defendant's record of attending court and fulfilling bail conditions in the past;
- strength of the case against the defendant;
- whether there is a real prospect that the defendant would receive a custodial sentence if convicted; and
- any other considerations the court thinks relevant.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has inserted a new provision in the Bail Act 1976 to allow a court to refuse bail where the defendant, if bailed, might commit an offence involving domestic violence. There has also been a change to the law to allow the CPS to appeal to the High Court if a Crown Court Judge grants a defendant bail (in some circumstances).

The court can impose any condition it considers necessary on the defendant to ensure that he attends court and does not commit any further offences, including:

- Non-contact with the victim or witnesses, either directly (for example by telephoning the victim or messaging her on Facebook) or indirectly (such as passing messages through friends).
- Residence at a certain address (including at a bail hostel).
- A surety (where a third party who has influence over the defendant promises to secure his attendance at court and to pay a certain amount of money to the court if the defendant does not then attend when required).
- A security (where someone pays the court money which is forfeited if the defendant does not then attend court when required).
- Reporting to a police station at certain times or frequencies (for example, 'twice a day at 10am and 2pm' or 'every Wednesday afternoon').
- Curfew (having to be at his place of residence between certain times such as overnight. This can be monitored by electronic tagging equipment or by the police).
- Staying in or out of certain areas.

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If a defendant is charged with murder, manslaughter or rape (or attempting any of these offences) and has a previous conviction for one of these the court may only grant bail him in “exceptional circumstances” and must give reasons if it does.

If you are concerned about whether the defendant will be granted bail, or, if he is granted bail, under what conditions, you should discuss those concerns with the Specially Trained Officer (STO, see section 5.3 above) dealing with your case. The officer should discuss your concerns with you and pass these on to the CPS. The CPS should then make representations (arguments on your behalf) to the court which reflect your concerns (where they relate to the statutory reasons set out above). The court will then decide whether or not the defendant should be granted bail.

It is a criminal offence to fail to surrender to custody (attend court on the required day at the appointed time). It is not a criminal offence to breach a bail condition but someone who breaches his bail can be arrested and must be brought to the court that granted bail within 24 hours. If the defendant is found to have breached his bail the court can then reconsider whether to re-release the defendant on bail. Bail may be taken away (revoked) or more onerous conditions added.

A defendant can make two applications for bail. Further applications can only be made if there has been a change of circumstances (for example, a family bereavement). The defendant also has the right to appeal the decision to refuse him bail to the Crown Court.

If you are threatened or harassed in any way by the defendant, his family or friends, either before or after he appears in court, you can tell the police. In addition to being a possible breach of his bail conditions, it is a serious criminal offence to do something that stops you from giving evidence in a criminal trial. You should keep a record of any behaviour of the defendant, his friends or family which might be a breach of the defendant’s bail conditions or an attempt to intimidate you. This will help the police decide whether or not the defendant has breached his bail or whether or not another offence has been committed. It may be used as evidence against him in court.

8. Preparation for trial

Many months may pass between the defendant being charged with an offence and his trial. During this time the prosecution and defence will be preparing the case, by, for example, typing up statements and getting the results of any forensic tests that were done. The defendant will use this time to instruct his solicitor and prepare his case.

8.1 Preparing for magistrates' court trial

If the trial is heard in the magistrates' court the defendant will be asked to enter a plea at his first appearance in court. If he pleads guilty, the case may be adjourned (deferred until another date) for sentencing (see section 14.4 below). If he pleads not guilty, a trial date will be set. There may be other hearings in the magistrates' court before the trial to arrange issues like special measures and to ensure that the case is being prepared and ready for trial. Special measures are practical arrangements that are made to assist you to give evidence in court; they are discussed in detail in section 13.1 below.

In the magistrates' court trial either a District Judge or three non-legally qualified (lay) magistrates will hear the evidence and decide whether the defendant is guilty or not guilty.

8.2 Preparing for Crown Court trial

If a case is being tried in the Crown Court the first significant hearing will be the Plea and Case Management Hearing (or PCMH). At this hearing the defendant will be asked to formally enter a plea of guilty or not guilty. If the defendant pleads guilty the case may be adjourned for sentencing (see section 14.4 below). If he pleads not guilty the Judge will set a trial date and make various orders (give directions) to the parties about things that need to be done before the trial. Applications for special measures (see section 13.1 below) may be made or an arrangement made to deal with them at a later hearing. There will usually be additional hearings, called mentions, between the PCMH and the trial to deal with any other matters that arise. During this process the CPS should keep you informed of any developments in your case. For cases involving serious sexual offences, the prosecutor at all Crown Court hearings should be a specially trained sexual offences prosecutor.

PART 3: COURT PROCEEDINGS

In a Crown Court trial legal decisions (such as about whether particular evidence can be heard during the trial) are made by the Judge, while decisions about facts (such as whether the defendant is guilty or not guilty) are made by the jury. The jury will be made up of twelve people selected at random from the public.

8.3 Young defendants

Even though the criminal justice system tries to divert young offenders from prosecution by dealing with them in other ways, they can still be prosecuted, particularly if an offence is serious. A young defendant would usually be tried in a Youth Court (a part of the magistrates' court that deals with under 18 year olds). However, very serious or 'grave' offences, including sexual violence, are usually tried in the Crown Court. If the trial is in the Youth Court it will not be open to the public but the press can attend. They cannot report the name, address, photograph or anything else that may identify the youth without the permission of the court (or indeed, that of the person who has experienced sexual violence, see Chapter 13 for further information). One reason the Youth Court might lift the reporting restrictions on a young defendant is if it decides it is in the public interest to do so. The court will then allow the youth's details to be published. Similar reporting restrictions are likely to be ordered when young defendants are tried in the Crown Court.

8.4 Disclosure

Whichever court the defendant is tried in, one of the key issues that will be dealt with in pre-trial hearings is disclosure. Everyone has the right to a fair trial. This means that the CPS has to show (disclose to) the defence not only the evidence they have against him but also any evidence that may undermine the prosecution's case or assist the defendant's. The evidence that will be disclosed to the defence will include witness statements (including your own), forensic medical reports and any other evidence that may be relevant.

9. Withdrawing a complaint

9.1 Withdrawal statements

You may decide that you do not want the criminal proceedings against the defendant to continue. If this is the case you can contact the police officer dealing with your case and ask to make a withdrawal statement.

In the withdrawal statement you will have to explain why you do not want the proceedings to continue. You may be anxious about giving evidence in court or be put under pressure to withdraw your support of the investigation or prosecution by others. You may be concerned about the impact of the investigation or trial on your health or wellbeing, or on your family. You may be in fear of the defendant or you may not have the information and support you need.

If you make a withdrawal statement the police will want to discuss with you why you no longer support proceedings, particularly if you have been put under pressure, or fear, by the defendant. If the person responsible for the violence (or one of his friends or family members) has contacted you or threatened you, he may have either breached his bail conditions or committed further offences, such as interfering with a witness or perverting the course of justice. These serious criminal offences are designed to protect witnesses. There are also a number of measures to support complainants through the criminal justice process; these will be discussed further in Chapter 10.

The police may ask you whether the original statement that you made reporting the offence was true. A person who gives incorrect or misleading information to the police can be charged with wasting police time or perverting the course of justice. If you are concerned that you may be investigated for, or charged with an offence after withdrawing your support of a prosecution, you should seek legal advice, either from our advice line (see inside front cover) or a solicitor. The police and the CPS should be able to tell the difference between someone who deliberately makes a false allegation to the police and someone who honestly or truthfully reports an offence, but later decides that they do not want the case to proceed. Further information and guidance on this can be found on the CPS website.³⁴

34. Guidance can be found at www.cps.gov.uk/legal/p_to_r/perverting_the_course_of_justice_-_rape_and_dv_allegations/

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Whether or not the investigation or court proceedings are stopped after you have made a withdrawal statement will depend on factors including what stage your case is at and how much evidence there is against the suspect/defendant. If you make your withdrawal statement before the suspect is charged with any offence it is likely (but not certain) that the police investigation will stop. However, if the defendant has been charged the proceedings against him may continue.

When deciding whether or not to continue with a prosecution without your support the CPS will consider factors like your safety, the strength of the evidence against the defendant and the public interest in prosecuting him. The CPS has guidance on the prosecution of rape and domestic violence offences that deals in more detail with the factors that the CPS will consider when deciding whether or not to continue with a prosecution. This guidance is available here www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/. If the CPS decides to continue with a prosecution that you do not support they can either continue without your evidence (for example, by relying on the evidence of other witnesses) or compel you to attend court with a witness summons (see 9.2 below).

9.2 Witness summonses

A witness summons is a court order that compels someone to attend court and give evidence. It has to be issued (made) by a court following a request by either the CPS or defence and served on you (delivered to your home or given to you personally).

Under section 169 of the Serious Organised Crime and Police Act 2005³⁵ a magistrates' court or Crown Court will issue a witness summons if:

- the person against whom the summons is sought is a person likely to be able to give material evidence, or produce any document or thing likely to be material evidence for the criminal proceedings; and
- the court is satisfied that it is in the interests of justice to do so.

If you receive a witness summons and do not attend court a warrant may be issued for your arrest. You may then be arrested and brought to court. If the court finds that you do not have a reasonable excuse for not attending court when summonsed you could face a fine or imprisonment.

35. Section 169 of the Serious Organised Crime and Police Act 2005 amended section 69 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (issue of witness summons on application to Crown Court) and section 43 of the Magistrates' Courts Act 1980 (summons to witness).

10. Support for people who have experienced sexual violence

10.1 Your human rights

Everyone in the UK has certain fundamental rights that are protected by law. The Human Rights Act 1998 incorporated rights in the European Convention on Human Rights 1950 (ECHR) into British law. These rights include the right to life (Article 2 ECHR), the right not to be subject to torture or other inhuman or degrading treatment (Article 3 ECHR) and the right to private and family life (Article 8 ECHR). The Human Rights Act 1998 places obligations on certain public authorities, such as the police, the CPS and the courts, to respect and protect your and the defendant's human rights.

10.2 The Code of Practice for Victims of Crime

The Code of Practice for Victims of Crime, the Victims' Code,³⁶ is part of a strategy to put victims first within the criminal justice system.

Victims of domestic and sexual violence are considered to be vulnerable or intimidated victims who should receive an enhanced service from the different agencies involved in the criminal justice system.

According to the Code you can expect:

- To be given information about the criminal justice system and your role in it.
- To be given a needs assessment to work out what support you need.
- To be referred to a specialist organisation(s) who may provide support and other services.

36. The Code was issued by the Home Secretary and is governed by sections 32-34 of the Domestic Violence Crime and Victims Act 2004. The most recent edition came into force on 10th December 2013.

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- To be informed, within 1 working day, about key stages in your case, including if the suspect / defendant:
 - is arrested;
 - is interviewed under caution;
 - is released with no further action taken;
 - is released on police bail, or if police bail conditions are changed or cancelled;
 - is charged or not charged (and the reasons for this);
 - is given an out of court disposal, such as a caution;
 - is proceeded with on a substantially different charge or if proceedings against him are stopped (for example, if proceedings are discontinued or if the CPS decide to offer no evidence);
 - pleads guilty.
- To be informed of other key information, such as the date, time, location and outcome of any court hearings that relate to your case, usually within 1 working day.
- To be given information about giving evidence and what help the Witness Care Unit can offer.
- To make a Victim Personal Statement and to have this taken into consideration if the defendant is found guilty.
- To meet with the CPS prosecutor and be given the opportunity to ask questions about the court process.
- To be offered a visit to the court to familiarise yourself with it and to be offered options which will allow you to enter the court and wait in a different area from the defendant (where possible).
- To be informed of any appeal lodged by the offender against conviction and / or sentence.
- To opt into the Victim Contact Scheme and, if you wish, make a Victim Personal Statement or representations to the Parole Board about the offender's release from prison and any conditions attached to that release.
- To apply to the Criminal Injuries Compensation Scheme for compensation.

Agencies covered by the Victims' Code include all police forces in England and Wales, the Crown Prosecution Service, Her Majesty's Court Service, Witness Care Units, the Criminal Injuries Compensation Authority and the National Offender Management Service.

The Code of Practice for Victims of Crime can be read here www.gov.uk/government/uploads/system/uploads/attachment_data/file/254459/code-of-practice-victims-of-crime.pdf.

Support for people who have experienced sexual violence

10.3 Anonymity

Under the Sexual Offences (Amendment) Act 1992 victims of rape, assault by penetration, sexual assault and causing someone to engage in sexual activity without consent are given life-long anonymity in criminal proceedings. This means that if you decide to report the offence, no identifying personal details or photographs of you can be published in your lifetime. If your details are published the person publishing the details can be prosecuted.³⁷

There can be no publicity about the offence or the offender that would lead to you being identified as the victim. This is the case even if you withdraw your complaint or he is found to be not guilty. Your name, however, will still be given in court. Some Judges are now allowing reporters to ‘tweet’ about cases live from the courtroom. Your name cannot be included in such tweets. You may also have heard that cameras are now allowed in courts. At this time cameras are only allowed in the Court of Appeal, not the Crown Courts or magistrates’ courts. This means that the trial cannot be filmed and photographs cannot be taken in the courtroom. Even in those hearings in the Court of Appeal that are being filmed, victims of sexual offences should not be named, and the cameras will not film any defendants, witnesses, victims or members of the public who are in the courtroom.

The law does not give anonymity to defendants in trials for sexual offences, except where revealing their name would identify the victim (unless the defendant is under 18, see section 8.3 above).

10.4 Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs)

Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs) were introduced to provide specialist support to victims of sexual and domestic violence. ISVAs may be able to support you by:

- Supporting you when you give your statement to the police by attending the interview with you.
- Assist you to access healthcare and other specialist support services, such as counselling.

37. For example, 10 people were prosecuted after naming a rape victim on twitter, all were fined. www.bbc.co.uk/news/uk-wales-north-east-wales-21123465

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- Support you through the criminal justice process by keeping you informed of developments in your case and accompanying you to court.
- Challenge agencies in the criminal justice system on your behalf if you do not get the service from them that you are entitled to.

ISVAs may be based in local Sexual Assault Referral Centres, Rape Crisis organisations or police stations. Wherever they are based their role is to be a source of support that should be independent from other agencies in the criminal justice system. ISVAs usually work with people who have experienced serious sexual violence (such as rape and assault by penetration). Not everyone who has experienced serious sexual violence may be able to access support from an ISVA or IDVA as services vary between areas across England and Wales.

10.5 Multi-Agency Risk Assessment Conferences (MARACs)

As discussed in Part 1 of this handbook, sexual violence often occurs within the context of a violent and abusive relationship. Because people who experience domestic violence often have many criminal offences committed against them (this is sometimes referred to as re-victimisation), it has been recognised that specialist services are necessary to protect them from further violence.

Multi-Agency Risk Assessment Conferences (MARACs) have been developed to respond to the needs of people who are experiencing domestic violence. MARACs are made up of local agencies that come into contact with people who experience domestic violence, such as the police, social services and local domestic violence support services. When a domestic violence case is referred to a MARAC for consideration, those attending the conference are able to develop a safety plan and a multi-agency response to ensure the safety of the person referred and other family members, including children, who may be at risk. At the time of writing there were over 260 MARACs operating across England and Wales. However, some areas do not have MARACs so the availability of this service depends on where you live. The cases that are referred to the MARAC are those that are considered to be at high risk.

Support for people who have experienced sexual violence

10.6 Pre-trial therapy

Some people who have experienced sexual violence need support in the form of therapy or counselling. The decision as to whether or not you would benefit from therapy is one that only you can make with the support of relevant health professionals (e.g. your doctor or a counsellor). However, if a witness has therapy before they give evidence in a criminal trial they need to make the CPS aware of this by telling their STO (see 5.3 above). This is because what a witness says in court about what has happened to them and how they answer questions is extremely important in enabling a jury (or magistrates or a District Judge) to reach a decision about whether or not the defendant is guilty of the offence. Pre-trial discussions about a witness' evidence may affect whether or not it is considered to be reliable; it may be argued that the witness has been "coached". Different types of therapy present different challenges for the criminal justice process. For example, cognitive behavioural therapy (CBT) that helps you deal with feelings of anxiety is considered to be less problematic than group therapy where your account of what you have experienced may be influenced by what others in the group say.

The fact that a witness is undertaking pre-trial therapy may have to be disclosed to the defence. This could lead to the defence applying to the court for information about what is said during the therapy. This cannot be done simply to find out what a witness is doing or thinking; only where the information could be important for the defence. This could be because a witness has told the police one thing about what happened to them and their therapist another, or where a witness has a mental health problem that affects their credibility (e.g. because they have visions or delusions).

Guidance on all these issues has been given in the *Provision of Therapy for Vulnerable or Intimidated Adult Witness Prior to a Criminal Trial* which is available to download from here www.cps.gov.uk/publications/prosecution/pretrialadult.html. You can discuss the consequences of having therapy with one of the organisations listed at Appendix A or in confidence on Rights of Women's legal advice line. If you attend a SARC, they may have counsellors available who you can talk to.

11. Being a witness in criminal proceedings

11.1 The role of witnesses in criminal proceedings

Criminal cases that are prosecuted in England and Wales are brought on behalf of the State, by the Crown Prosecution Service (CPS), against the defendant. Your role is as a witness for the prosecution. You will not, therefore, have your own legal representatives as it is the CPS, which brings the prosecution on behalf of the State. The CPS will, however, consider your interests when making decisions about the case. The defendant will have their own lawyers representing their interests.

11.2 Being a witness

If you have made a statement to the police (whether that is a video statement or a written statement) you may have to attend court to give evidence. Some witnesses in criminal proceedings are called to give evidence about things they have seen or heard. This includes the evidence of the person who has experienced sexual violence. Expert witnesses are called to give the court their professional opinions (for example, on whether there is a DNA match between the suspect and evidence that has been recovered from the scene of a crime). Character witnesses are called to give the court an insight into the character of someone relevant to the case.

If you have given the police a witness statement you will be told when you have to attend court, usually by letter. The CPS, usually through the Witness Care Unit, will try to arrange a court date that is as convenient for you as possible, although the decision as to when a case is listed (when a date is set for trial) is ultimately up to the court. It is therefore important to keep the police informed if you change your address. If you have any concerns about this or if you think it may be difficult for you to attend, you must let the person who asked you to go to court know as soon as possible. If something unexpected happens on the day of the trial and you cannot get there you should contact the police officer dealing with the case or the court as soon as possible to ensure that those who need to know are aware of your situation.

Being a witness in criminal proceedings

It may be that you attend court expecting to give evidence but that the case is delayed and you have to return at a later date. It can be very frustrating if the trial has been delayed and you have had to attend court unnecessarily. The court will do everything it can to ensure that cases are not delayed. It is, however, important to attend court each and every time you are asked.

As a victim of crime you have the right to be present during the defendant's trial. If you are a witness for the prosecution you will not be allowed into court until after you have given your evidence to ensure that your evidence is not influenced by anything else that happens during the trial. If you are the victim of the criminal offence you are likely to be one of the first prosecution witnesses to give evidence in court. Once you have given evidence you can stay for the rest of the trial if you wish. You are entitled to take a friend or other supporter with you. Usually (except in the youth court) any members of the public can sit in the public gallery and watch the trial.

11.3 Witness Care Units

Witness Care Units are joint units staffed by representatives of the police and CPS. They are responsible for managing and supporting anyone who gives evidence for the prosecution in criminal proceedings, from the point at which a defendant is charged through to the end of criminal proceedings.

Witness Care Units should:

- Give you a single point of contact, with a named officer, who will assist you through the criminal justice process and be responsible for coordinating support and other services for you.
- Assess and meet your needs. For example, by identifying what assistance you need in order to be able to attend court and give evidence. This could be support with arranging childcare, an interpreter or transport to court. They will also be available to discuss any concerns you have about giving evidence or intimidation.
- Inform you about your case, including the outcome.

If you are not contacted by a Witness Care Unit after the defendant has been charged, talk to the police officer dealing with your case (for example, your STO) and ask them to put you in touch with your nearest Unit. Witness Care Units are bound by the Victims' Code (above).

11.4 The Witness Service

The Witness Service, which is part of Victim Support, provides free and confidential support to victims of crime, witnesses and their families.³⁸ The Witness Service can:

- Arrange a pre-court visit for you so that you can see the court and court room and are familiar with the roles of those who will be present during the trial.
- Provide information and emotional support through the court process.
- Provide separate waiting areas, where provided by the court.
- Provide practical help around attending court such as with claiming expenses.
- Provide support in the court while you are giving evidence and throughout the trial.

To contact your local Witness Service contact Victim Support (see Appendix A for their details).

11.5 Preparing for court

Depending on the complexity of your case you may have to attend court over a number of days. It is therefore important that when you attend court you wear clothes that make you feel comfortable. If the defendant is pleading not guilty you know that your account of the sexual violence is going to be challenged. You may not know what the defendant's defence is; it may be that he intends to argue that you consented to the sexual activity or that he was not responsible for the sexual offence that was committed.

Whilst you cannot practice or rehearse your evidence with anyone (your evidence is your account of what happened, not anyone else's) you can think about the questions that you might be asked, what your answer may be and how you want to say it. You can also think about the support that you want at court. For example, do you want someone from the Witness Service to come in court and sit near you while you give evidence? If you are receiving support from an ISVA or another specialist service, such as a local Rape Crisis, do you want them to attend court with you? As most criminal trials occur in public you might also want to think about whether you want your friends or family to attend.

38. Those who work for the Witness Service can give support throughout court proceedings. They cannot, however, discuss your evidence with you.

11.6 Publicity

Trials are usually heard in open court, which means that the public has access to the courtroom and the press can report on the proceedings as they take place. This is because it is an important principle in democratic societies that justice can be seen to be done.

If a case involves sexual violence or intimidation a Judge will consider whether your evidence should be heard in private (with one named person present to represent the press as well as the defendant, legal representatives and any interpreters).³⁹ It is unusual for the court to allow all or part of a trial to be held in private. The principle concern of the court is to see that justice is done. The fact that you might find giving evidence in open court difficult or embarrassing may not be enough to persuade the court to hear your evidence in private. Whether or not the court sits in private, if you have experienced sexual violence your identity should not be revealed by the press. It would be a criminal offence for anyone to publish any details about you that might identify you (see section 10.3 above).

11.7 Accepting pleas

The CPS may decide to accept a guilty plea to a different or less serious offence than the one that the defendant is charged with. This might happen if:

- you have indicated that you do not want to give evidence;
- the defendant has pleaded guilty to some but not all of the charges against him; or,
- new evidence has come to light.

The plea should only be accepted to a less serious charge if the court is able to pass a sentence that meets the seriousness of the offence. This is particularly relevant if there are aggravating factors (factors that makes the offence even more serious) such as where violence or a weapon was used. Your views and interests should be taken into account when pleas are being considered and if a plea is accepted you should be informed in writing and invited to a meeting with the CPS. The Victims' Right to Review does not apply to decisions by the CPS amend the charge and accept a plea to that amended charge.

39. Section 25 Youth Justice and Criminal Evidence Act 1999

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It is also possible that the defendant will change his plea to guilty before trial, on the first day of trial once they know that the prosecution witnesses have turned up to give evidence, or even in the middle of the trial. Defendants get credit (a reduction in their sentence) if they plead guilty to an offence. The earlier they plead guilty the greater the credit they may get.

11.8 Newton hearings – when the facts are disputed

In some circumstances a type of trial may be held, even if a defendant pleads guilty. These trials are called Newton hearings (after the case *R v Newton* [1983] Crim LR 198). A Newton hearing may occur if a defendant pleads guilty on particular facts, and the Crown Prosecution Service and/ or Judge does not accept the plea on those facts.

For example, a defendant might plead guilty to a sexual assault on the basis that he kissed you without your consent, but did not do anything else, whereas your account was that he kissed you and also touched your breasts without your consent. The Crown Prosecution Service may decide that they will not accept the guilty plea on that limited basis, and ask the Judge to hold a Newton hearing to decide the specific question of what happened. You will have to give evidence, but the hearing should be restricted to deciding the specific factual question of exactly what happened – in the above example, you should not be asked questions about whether you consented to the behaviour as that is not the issue in dispute.

A Newton hearing will usually only be necessary where the difference between the defendant's basis of plea and your account will make a difference to sentence (i.e. the difference in accounts is significant). The procedure for a Newton hearing is slightly different from a trial, although the matters set out in section 13 still apply.

12. Trial

A criminal trial involves the prosecution, for whom you are a witness, presenting their case supported by evidence and the defence challenging that case and evidence. The order of events at a trial differs slightly depending on whether your case is heard in the magistrates' court or at the Crown Court. In this chapter we explain what happens in criminal trials while in the next we focus entirely on your evidence at court and the protections you are entitled to.

12.1 Outline of a Crown Court trial

Preliminary matters

Any legal arguments relating to evidence may be argued now or later during the trial.

The jury is sworn.

Jurors are chosen at random from the electoral roll for the local area. Most people between 18-70 who have lived in the UK for at least 5 years are eligible, unless they have particular types of criminal convictions or mental disorders. Others may be excused if they have language difficulties or for reasons such as work obligations. When a juror recognises the name of one of the witnesses involved in the trial or recognises the defendant, the Judge may excuse them from sitting on the jury to avoid any suggestion that the juror might be biased. Neither the prosecution nor the defence have the right to seek to exclude jurors without a good reason.

Prosecution opening speech

The speech may include:

- What charges the defendant faces.
- Who will be called to give evidence and what it is hoped they will establish.
- The burden and standard of proof (that it is for the prosecution to prove the case so that the jury are sure of the defendant's guilt).

Prosecution evidence

- The prosecution's evidence may include witnesses giving evidence in court or having their statements read.
- Statements can be read either with consent of the defendant where the evidence is not disputed or, without the defendant's consent in certain limited circumstances (e.g. with the permission of the Judge where the witness does not testify because of fear).
- Each witness will be examined-in-chief by the prosecution and then cross-examined by the defence. They may then be re-examined by the prosecution and the Judge may also ask some questions.
- Witnesses may have exhibits to show the jury, such as photographs or CCTV.
- The police officer in charge of the investigation may read out the defendant's interview and answer questions about the investigation.

Submission of no case to answer

This is a submission that can be made by the defence where it is thought that the prosecution have not provided the jury with enough evidence to safely convict the defendant (see section 12.4 below).

Defence opening speech

The defence are only allowed to make an opening speech where the defendant is calling at least one other witness to the facts of the case (in addition to the defendant himself).

Defence evidence

A defendant does not have to give evidence, although the jury may be entitled to take this into account when reaching a verdict. If the defendant gives evidence he will be examined-in-chief by his legal representative and then cross-examined by the prosecution and finally re-examined by his legal representative. The defendant's case may then include other evidence such as witnesses who support the defendant's account of events, or 'character witnesses' who will speak of their knowledge of the defendant's character.

Prosecution closing speech

The prosecution is not usually allowed to make a closing speech where the defendant is unrepresented and has called no witnesses other than himself.

Defence closing speech

The defence always has the right to make a closing speech.

Summing up by the Judge

The Judge should sum up the relevant facts of the case to the jury and give them any directions on the law that they need in order to make their decision.

Jury returns a verdict

- The Jury can decide that someone is either guilty or not guilty.
- If someone is found guilty then he will be sentenced for the offence. Sentencing can happen immediately after the jury gives its verdict or after pre-sentence reports are obtained on the defendant.
- If the jury finds the defendant not guilty then he is acquitted of the offence and no further action can be taken against him.
- Someone who has been acquitted of an offence cannot usually be tried again for the same offence.
- Where the defendant is being tried on multiple charges, the jury may reach mixed verdicts; convict on some charges and acquit on others.
- If the jury cannot reach a verdict on a particular charge it is said that the jury is 'hung' and the prosecution may decide to have a second trial (often referred to as a re-trial).

Appeal against conviction

- The defendant may seek to appeal against his conviction and/or sentence.
- Appeals from the Crown Court are made to the Court of Appeal if the Court of Appeal gives its permission.
- A notice of appeal has to be lodged with the Crown Court within 28 days of conviction or sentence, although a defendant can apply for permission to appeal outside of the time limit.

12.2 Outline of a magistrates' court trial

The case is tried before either a single District Judge or three magistrates.

Before the trial begins

Any outstanding legal issues, for example about evidence, are resolved.

Prosecution opens and makes their case

- In the magistrates' court the prosecution can give either an opening or a closing speech, they will usually make an opening speech.
- The prosecution's evidence may include witnesses giving evidence in court or having their statements read.
- Statements can be read either with consent of the defendant where the evidence is not disputed or, without the defendant's consent in certain limited circumstances.
- Each witness will be examined-in-chief by the prosecution and then cross-examined by the defence, and then may be re-examined by the prosecution. The District Judge or magistrates may also ask some questions.
- Witnesses may produce exhibits such as photographs or CCTV.
- The police officer in charge of the investigation may read out the defendant's interview and answer questions about the investigation.

Submission of no case to answer

If appropriate (see section 12.4 below).

Defence opens and makes their case

- The defence can make either an opening or closing speech; they will usually choose to make a closing speech.
- Defence witnesses will be called (including the defendant if he is giving evidence).
- Defence witnesses will then be cross-examined by the prosecution and re-examined by the defence lawyer.

Defence closing speech

The magistrates or District Judge will retire

Magistrates will be given any advice on the law they need from the legal advisor.

Verdict

Either guilty or not guilty.

Sentence

Sentencing may be dealt with either immediately or after pre-sentence reports.

Appeal

- There is a right of appeal to the Crown Court.
- Notice of appeal has to be lodged at the magistrates' court within 21 days of sentence (even if appeal is only against conviction). On application by the defendant this time limit may be extended.

Whichever court hears your case the prosecution begins the trial by making an opening speech summarising the case and the charges to the jury or magistrates. The complainant in any trial will usually be called to give evidence after the Prosecutor has opened the case.

12.3 The prosecution case

We will discuss you giving evidence to the court in detail in Chapter 13. Once you have given your evidence the prosecution will call any other witnesses that they have. If you told someone about the assault soon afterwards, for example, that person may be called to tell the court what you said. This is known as recent complaint evidence. It is one of the few occasions when the court will attach importance to what a victim of crime tells a third party who is not either their doctor or a police officer investigating the case.

If the defence do not dispute a witness's account, their written statement may be read to the court. This often happens when scientific evidence (such as the presence of DNA) is not disputed by the defence or when medical evidence

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is not contested. Another way for undisputed evidence to be presented to the court is by admissions. Admissions are formal agreements between the prosecution and defence, which are put in writing and read to the court. They relate to facts in the case that both sides agree on.

At the end of the prosecution's case, when all evidence against the defendant has been heard, the prosecutor will tell the court that s/he has reached the end of the prosecution case.

12.4 No case to answer

A submission of no case to answer is an argument made by the defence, at the end of the prosecution's case. In a criminal trial the burden is on the prosecution to prove that an offence took place, not on the defendant to prove that it did not. If the Judge believes that the prosecution have not produced sufficient evidence during their case for the jury to convict the defendant, s/he will direct the jury that they have to find the defendant not guilty and the case will end. This may happen if the evidence produced by the prosecution is shown to be unreliable in cross-examination, for example, because a key witness contradicts him/herself or changes their account of events. If the Judge rejects the submission and decides that there is a strong enough case against the defendant it will be the defendant's turn to call evidence.

There are other circumstances where due to legal issues a case has to be dismissed (ended) at this point in a trial. This includes situations where the defendant was charged with the wrong offence.

12.5 The defence case

The defence case starts as soon as the prosecution case ends. The defence case must begin with the defendant's evidence if he is choosing to give evidence followed by any witnesses he has.⁴⁰ A defendant can only be asked about any previous convictions he has in certain circumstances, which include when a Judge has decided that they are relevant to the case or when the defendant has attacked another person's character.

40. A defendant cannot be forced to give evidence at trial, but if he does not the jury may be directed by the Judge to take this into account when deciding their verdict. Whether or not he gives evidence in person, he may rely on others to give evidence about the disputed issues in the case or to speak about his character.

12.6 Closing speeches and summing up

At the end of the defence case the prosecution and then the defence address the court in closing speeches. In a closing speech, the prosecutor or defence barrister will summarise their side of the case to the jury, emphasising the evidence that is important and helpful to their case, and explaining to the jury why they should convict (prosecution) or acquit (defence). The lawyers are allowed to be biased in favour of their own case in these closing speeches and do not have to be neutral in discussing their and their opponent's cases.

Following this, if the case is heard in the Crown Court, the Judge will summarise the case for the jury. The Judge's summing up consists of two parts – directions in relation to the law, and a summary of the evidence. The Judge **must** be fair to both the prosecution and defence when he summarises the evidence. S/he is entitled to keep his summary brief and not mention every point raised at trial as long as s/he does not show bias to one particular side, any particular witnesses, or particular pieces of evidence.

When the Judge gives directions to the jury, they are obliged to follow those directions. The most important direction is about the burden and standard of proof (below). *The Crown Court Bench Book* provides a very comprehensive guide to the directions that Judges should give at trial, and the particular words that they should use in those directions.⁴¹

In a case involving sexual violence, there may be further directions that are very important. The courts are alert to the fact that some people make assumptions about the victims of sexual offences, and those who are accused of such crimes. The Judge, in her or his summing up, will tell the jury to deal with the case without prejudice or resorting to stereotypes and may direct them as follows:

- To avoid making assumptions based on stereotypes as to who a 'typical victim' is or how they behave;
- That the experience of rape or a sexual offence may be as traumatic if the complainant and defendant know each other as if they are strangers, and whether or not violence is used;

41. The Crown Court Bench Book can be found: www.judiciary.gov.uk/Resources/JCO/Documents/Training/benchbook_criminal_2010.pdf. Chapter 17 in particular deals with trials of sexual offences.

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- To avoid preconceived views as to how a complainant will react to the experience of sexual assault, that some complainants will display signs of distress and others will not;
- That it would be wrong to assume that a complainant will always report the offence immediately. A late complaint, or delay in reporting, does not necessarily mean a complaint is false;
- That there is no requirement in law that sexual assault be accompanied by force or threats of force for the defendant to be found guilty;
- That there is no typical response to being sexually assaulted. The complainant not 'fighting back' should not be taken to mean that she consented to the sexual activity;
- Not to assume that where there is inconsistency in the complaint, that this means that the account is necessarily untrue; it depends on the circumstance and the individual, and quality of memories can be affected by trauma.

12.7 The burden and standard of proof

As mentioned above, in a criminal trial the burden is on the prosecution to prove that an offence took place, not on the defendant to prove that it did not. This is called the burden of proof. Whoever makes the decision about whether or not the defendant is guilty of the offence, they have to be sure that the defendant is guilty before they can convict him. If they are not sure they must acquit him. This is called the standard of proof. It is the prosecution's responsibility to present enough evidence so that the jury or magistrates are sure.

If a defendant is found not guilty, it does not necessarily mean that the jury or the magistrates/District Judge did not believe the victim, it means that there was insufficient evidence for them to be **sure** that the defendant was guilty of the offence that he was charged with.

13. Giving evidence at trial

13.1 Special measures

Special measures are practical steps that are taken to make the process of giving evidence at trial less intimidating for vulnerable and intimidated witnesses; they are available under section 19 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999).

A vulnerable witness (as defined by section 16 of the YJCEA 1999) is a witness:

- who is under 18; or
- whose evidence would be weakened because of a mental or physical illness or disability.

An intimidated witness (as defined by section 17 of the YJCEA 1999) is a witness:

- who is a victim of a sexual offence (unless the victim does not want to be treated as an intimidated witness); or,
- who is experiencing fear and distress about testifying. When deciding whether someone's evidence is weakened because of their fear and distress, the court will consider factors including the witness's age, social, cultural, religious and ethnic origins, the nature of the offence and the defendant's behaviour towards the witness either directly or indirectly.

Special measures that may be available to assist eligible witnesses give evidence are:

- screening a witness from the defendant;
- giving evidence by a live link;
- giving evidence in private (this special measure is limited to cases that involve sexual offences and those involving intimidation);
- removal of wigs and gowns;
- video-recorded evidence-in-chief (see section 5.4 above);
- examination of a witness through an intermediary (someone appointed by the court to assist a witness because, for example, they have a disability that affects their ability to communicate); and
- examination using communication aids (such as a symbol book or alphabet boards).

The Coroners and Justice Act 2009 makes changes to the YJCEA 1999 to improve the protections offered to victims through special measures. These

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changes include changes to offer better support to witnesses who are under 18 and to:

- make specific provision for the presence of a supporter to the witness in the live link room. They do not have to be a court official but they have to comply with National Standards that relate to witness supporters. Organisations like Victim Support may provide this service.
- relax the restrictions on a witness giving additional evidence-in-chief after the witness's video-recorded statement has been admitted as evidence-in-chief.
- make special provision for the automatic admissibility of video-recorded evidence-in-chief of adult complainants in sexual offence cases in the Crown Court unless this would not be in the interests of justice.

In addition to special measures, the YJCEA 1999 offers the following additional protections for witnesses:

- protection of witnesses in cases involving sexual offences from cross-examination by the defendant in person;
- restriction on evidence and questions about the complainant's sexual history (see further below); and
- restrictions on media reporting of information likely to lead to the identification of certain adult witnesses in criminal proceedings (see also the section on anonymity, above).

Changes to legal aid mean that more defendants are likely to be representing themselves at trial. Even so defendants do not directly cross-examine those who give evidence about their experiences of sexual or domestic violence. In these cases the Judge or magistrates will appoint a lawyer to represent the defendant only for the purpose of cross-examining the victim and other vulnerable witnesses.

If you have experienced sexual violence you are automatically entitled to receive special measures (although you can decide not to receive them if you wish). The type of special measures that you can have depends on what would best enable you to give evidence and what is available at the court that will hear your case. How you feel about giving evidence and what special measures are available may be discussed with you when you make a Victim Personal Statement (see section 5.5 above). If a trial date has been set, and you have not discussed special measures with anyone, you should contact the police officer dealing with your case. Your views on special measures will be passed by the police to the CPS who will make an application for special measures to the court before the trial begins. The decision about what special measures you receive is made

by a Judge or the magistrates (depending on whether the trial occurs in the magistrates' or Crown Court).

If English is not your first language an interpreter will be provided for you. Your interpreter should be familiar with the court process and any legal terms and be able to translate into the language or dialect of your choice.

13.2 Before you give evidence

Before you give evidence in court you will be given an opportunity to refresh your memory by either re-reading your written statement or watching your video statement. This will usually take place just before you give evidence; for example, on the morning or day before you are due to attend court. If your video statement is going to be played during the trial it may have been edited since you gave it to the police. This could be to remove information that would affect your or another witness's confidentiality or to ensure that evidence that is inadmissible (not allowed for a legal reason) does not go before a jury. If you are concerned about the way that your video has been edited you can discuss this with the police officer dealing with your case.

When you arrive at court to give evidence you should be provided with a private place to wait so that you do not come into contact with the defendant, his family or any other defence witnesses. You can be accompanied by someone from the Witness Service or another support organisation while you wait and they can also accompany you into court and support you while you give evidence. The Prosecutor should introduce her or himself to you and answer any questions that you have although s/he will not be able to discuss your evidence with you. S/he will have prepared the case and should know if you have any particular fears or concerns. As the prosecutor is responsible for the trial, the amount of time that s/he will have to discuss things with you may be limited.

The CPS should ensure, as far as is possible, that you are not asked to attend court unnecessarily. You may, however, have to wait before being called into court. The CPS and trial Judge will try to ensure that you do not have to wait longer than two hours in the Crown Court and one hour in the magistrates' court. If there is likely to be a longer delay the CPS should explain the reason and try to give you an idea of how long you will have to wait. There are a number of reasons why cases are delayed. Sometimes it is because a juror is late attending court or because legal arguments need to be made and resolved before the trial can begin. If something causes the case to be put off until another day, the CPS will try to make sure this date is convenient for you. If, as sometimes happens, you

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attend court to give evidence and the case is discontinued, you should be invited into the courtroom and given an explanation by the Judge.

13.3 Examination-in-chief

Your evidence is what you say in court. When a person gives evidence they are asked questions by the prosecution and defence to enable them to present their evidence. However, it is the answers to the questions that you give (and not the questions you may be asked) that is the evidence that will be used by the magistrates/jury to reach a decision.

As a prosecution witness and the person against whom the offence has been committed you are likely to be called to give evidence before anyone else is. Before giving evidence you will be invited to take an oath on the holy book of your choice or, if you do not have a religion, to affirm that you promise to tell the truth.

Evidence-in-chief is the part of your evidence to the court about what happened. If you gave a video statement this may be played to the court as your evidence-in-chief. If you made a written statement, you will be taken through your evidence by the prosecutor, who will ask you questions to enable you to explain what happened. You will not be allowed to read from your written statement but you may be asked to look at it while you give evidence to refresh your memory on a particular point.

The prosecutor is not allowed to ask you leading questions when you give your evidence. This means s/he cannot ask you a question that suggests the answer. For example, if you alleged that the defendant touched your breast without your consent, the prosecutor cannot ask "Did Mr. X then touch your breast?" Prosecutors have to limit themselves to asking non-leading questions, such as, "What did Mr. X do then?"

When giving your evidence you will need to speak clearly so that everyone in court can hear you. Listen carefully to the questions asked and take your time giving your answers. Do not feel rushed into answering a question you are not sure about. If you do not know something, say so. If you cannot remember a particular detail, say so. It is important to give the court as much information as you can as truthfully as you can. If you are worried about where to look when giving evidence, focus your attention on the jury or magistrates.

It is important to be honest about the offence and any other related issues. For example, it is important to be clear about how much alcohol you consumed or

how you knew the defendant. If you do not answer certain questions fully the defence will draw attention to your answers and use this to suggest that your evidence cannot be relied upon to convict the defendant.

13.4 Cross-examination

At trial your account of the offence will be challenged in court by the defence. It is the responsibility of the defendant's legal representative to put the defence case (the defendant's explanation or version of events) to you. This process is called cross-examination. The defendant is not allowed to ask you any questions himself or speak to you directly.⁴²

The defence barrister (or solicitor) may state that you consented to sexual activity or that the defendant reasonably believed you were consenting. Alternatively, s/he may argue that you are unable to be sure whether or not an offence was committed or that it was the defendant who committed it. Your credibility (trustworthiness) may be questioned. Questions may be asked that are intended to make you appear untruthful, mistaken or unreliable. Inconsistencies between the account of the offence that you gave to the police and the account that you gave to another person or the court may be drawn to your attention and you may be asked to explain them. You can deal with these questions with a firm denial of the defendant's account and the development of your own.

In cross-examination there are no rules preventing leading questions. This means that you can be asked questions that suggest an answer such as "you did not leave the café until after 11pm did you?" Defence barristers (or solicitors) are bound by ethical rules which mean that they should not ask questions that are intended to insult, degrade or annoy you. The Judge (or magistrates) is responsible for making sure that the questions put to you in cross-examination are asked politely and are relevant to the issues in the case. The prosecution barrister may also intervene if s/he feels that particular questions are unfair. Whatever you are asked, listen carefully to the questions and take your time in answering. You should not feel rushed or pressured into giving an answer.

42. You may have heard that defendants can cross-examine witnesses personally; this is not permitted in trials for sexual offences.

13.5 Questions about your previous sexual history

Section 41 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999) placed limits on the defence's ability to cross-examine a victim on her previous sexual history (including her sexual orientation). This means a defence barrister (or solicitor) is not allowed to question you about any previous sexual experience you have had with anyone, including the defendant, without the Judge's permission. The Judge should not give permission for such questioning unless certain conditions are met; these are explained further below and are designed to ensure that the defendant has a fair trial and that any conviction obtained is safe (cannot be challenged at any appeal). Any questions asked or evidence obtained as a result of such questioning must relate to a specific example of your behaviour. This may include being asked questions about previous reports you have to the police or others about other experiences of sexual violence, whether involving the defendant or someone else. You cannot be asked wide-ranging questions to produce general evidence about your sexual habits or to undermine your credibility.

The rule does not apply to the prosecution and so does not stop the Prosecutor from referring to your past relationship with the defendant (if you had one). For example, in making the opening speech s/he may want to tell the jury if you and your defendant were in a relationship or had dated, to put the offence in context. If you have concerns about your sexual past being mentioned in the Prosecutor's speech or brought out during your evidence you should raise your concerns when you meet the Prosecutor before you give evidence. The Prosecutor will have to make decisions about how best to run the prosecution case and will not be able to talk to you about what to say in evidence but s/he should listen to you and consider your views.

It may be helpful to have a feel for when these questions may be allowed and when they are unlikely to be allowed. The courts have said that the test to be applied is one of relevance (what bearing or significance does the question have to an issue in the case). It is not possible to say precisely what questions may and may not be asked as it depends on the particular facts of your case and how the Judge assesses them.⁴³ The following is a guide.

Unlikely to be allowed:

- If you have consented to sexual activity in the past it does not mean that you will consent again. If a defendant tries to use a previous consenting

43. See R v A (no 2) [2002] 1 A.C.; R v R (CA (Crim Div), [2003] EWCA Crim 2754.

sexual experience between the two of you to prove that you consented to sexual activity this time he should not be allowed to do so.

- Where there have been only isolated acts of sexual activity, even if fairly recently, without a background of an affectionate relationship, it is unlikely that questions will be allowed about them.
- Where the sexual behaviour that he wants to question you about did not take place at the same time as the alleged offence and was not so similar to it that it could not be explained as a coincidence, he is unlikely to be allowed to question you about them.

May be allowed:

- Where the defendant claims consent and establishes a pattern of prior consensual sexual relations between the two of you, questions may be allowed to show that, because of them, he believed you were consenting to sexual activity.
- Where there has been a recent close and affectionate relationship between you and the defendant, questions may be allowed to show he believed you were consenting to sexual activity.
- Where the defendant says you consented and the sexual behaviour he wants you to be questioned about (not necessarily with him) took place at about the same time as the alleged assault, questions may be allowed.
- Where the defendant says you consented and the sexual behaviour he wants you to be questioned about was so similar to what he says took place this time; or, was so similar to any other sexual behaviour of yours that (according to him) took place about the same time as the alleged offence, questions may be allowed unless the similarity can reasonably be explained as a coincidence.

Questions are only permitted where your answers to them may be crucial in the context of the defendant's particular defence – for example, if they are relevant to the question of the defendant's honest belief in your consent. Evidence about your previous sexual relationships with the defendant can only be heard if it fits within certain limited categories and refusal to admit the evidence (hear your answer to the questions) would make any subsequent conviction unsafe. However, the courts have a duty to ensure that the defendant has a fair trial⁴⁴ and different Judges interpret the law in different ways. You may, therefore, want to consider how you would respond to questions about your previous sexual history.

44. Human Rights Act 1998, section 3.

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If the defence wants to ask you questions about your previous sexual history they have to make an application (for permission to ask those questions) to the court before the start of the trial. The application will involve the defence arguing why this information is necessary and the prosecution arguing why it is not. The decision will be taken by a Judge. The CPS is responsible for making sure that you are told of the Judge's decision on whether or not to allow cross-examination about your previous sexual behaviour.

Example of a case: R v R.D. [2009]⁴⁵

The defendant in this case had been convicted of nine counts of incest; three counts of rape and eight counts of indecent assault of a man; he was appealing against his conviction and sentence. The defendant argued that the Judge who heard his trial had made the wrong decision in refusing his application to cross-examine the complainant about a previous allegation of rape, which she had made about another man. He wanted to ask her questions about this to persuade the jury that the complainant's earlier complaint had been false. The trial Judge had looked at previous case law when making his decision to refuse the application and observed that: "The courts have been careful to limit the scope of that sort of cross-examination where it would involve a wide-ranging examination of evidence in the other matter". The Court of Appeal dismissed the appeal finding that the Judge had been correct to prevent the defence questioning the complainant about the previous allegation of rape.

13.6 Re-examination

Once you have been cross-examined the prosecutor may want to ask you some further questions. This is known as re-examination and its purpose is to allow you to clarify any issues raised during cross-examination. This is likely to be very brief.

45. R v R.D. [2009] EWCA Crim 2137

13.7 Questions from others

In addition to answering prosecution and defence questions you may also be asked questions by the magistrates or Judge. Sometimes in Crown Court trials, jurors ask questions by sending notes to the Judge. The Judge deals with these by sending the jury out of court and talking to the barristers about how to deal with the jury note. Once there is an agreement about the best way to deal with the question, the Judge will send for the jury and deal with the question as far as s/he can. The Judge may ask you the question directly or allow the prosecuting or defending barrister to ask you.

13.8 Protecting your evidence

If the court has to break, either over lunch or overnight, in the middle of your evidence you will be asked by the Judge not to speak to anyone about it, not even to the CPS or the police. This is to make sure that the evidence you give is not affected by anyone else's view.

13.9 When you have given evidence

When you have given your evidence the prosecutor will make an application to the court to enable you to leave the court building. If you wish, you can stay in court and watch the rest of the trial from the public gallery. You should not discuss your evidence with any of the witnesses who have yet to give evidence as this may lead the defence to suggest that you have behaved inappropriately and the defendant cannot have a fair trial.

14. After the trial

14.1 The verdict

When the trial was in the magistrates' court

If the trial took place in the magistrates' court it is the magistrates or District Judge who decides whether or not the defendant is guilty. Magistrates do not need to all agree on a verdict. Where there are 3 magistrates and 2 have one view, that is enough for the verdict to be given. If there are only 2 magistrates and they cannot agree, the case will have to be reheard by different magistrates. If the trial has been heard by a District Judge then it is their decision that is the verdict.

When the trial was in the Crown Court

Juries are always initially asked to reach a unanimous verdict – a verdict upon which they all agree. After a certain time has passed⁴⁶ without the jury reaching a unanimous verdict they will be told they can return a majority verdict; that is where 11 agree and 1 disagrees or where 10 agree and 2 disagree.

Sometimes jurors are unable to agree on a verdict and the Judge has to discharge them (end their deliberations). This is not an acquittal and the CPS can decide to hold a retrial of the defendant with a different jury and only in very limited circumstances will it be prevented from doing so.⁴⁷

The Judge can only question a jury's verdict in very unusual circumstances.⁴⁸

14.2 A verdict of not guilty

If the defendant is found not guilty this does not mean that you were not believed or that the crime did not happen. It means that the prosecution were

46. The statutory requirement in the Juries Act 1974 is 'not less than two hours.' Once a jury has deliberated for a minimum of 2 hours and 10 minutes the judge can decide whether and when to give a majority direction.

47. For example when there has been a long delay and the offence is not very serious.

48. For example if the jury try to convict of an offence not charged; if the jury's decision is unclear; or if the jury return two verdicts on separate charges that could not be reconciled with each other because they were inconsistent with one another, having regard to the evidence.

not able to prove the defendant's guilt to the very high standard required – so that the jury (or magistrates) could be sure.

A defendant who is found not guilty (acquitted) cannot be tried again for the same offence except in exceptional circumstances when new and compelling evidence comes to light, and only for those sexual offences which involve penetration (for example, rape and assault by penetration), and attempted rape.

14.3 A verdict of guilty

Once a defendant is found guilty⁴⁹ (or convicted) of any offence he has to be sentenced. The court may sentence the defendant right away or may adjourn the case (defer sentence) to another occasion to enable a pre-sentence report to be prepared. A report may be necessary to look at the defendant's background, previous convictions and mental health. Pre-sentence reports are prepared by the Probation Service, and usually take at least a month. Doctors' reports may take considerably longer to prepare if they first have to see the defendant. The defendant may be released on bail during this period, even when the sentence is likely to be one of imprisonment, but he will have to convince the court that he will return to court to be sentenced. In serious cases in the Crown Court where the defendant is likely to be sent to prison he will probably be remanded in custody (kept in prison) while any reports are prepared.

14.4 Sentencing

There are a number of options open to the court when sentencing a defendant. The aim of the sentence is to punish the offender and protect the public from him, but also to try to rehabilitate the offender and stop them from re-offending. For the least serious offences a court may sentence a defendant to a fine or a Community Order, which may include them being placed on a curfew, having to do unpaid work for the community, or being given a Drug Rehabilitation Requirement to help the offender address addiction issues. Where an offence is so serious that only a custodial sentence is appropriate, the court will send the offender to prison, unless they choose to suspend the sentence (see below).

There are three types of prison sentence that can be passed: determinate, extended and life.

49. The same process follows a plea of guilty.

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A **determinate prison sentence** is one that has a fixed end date. Offenders who receive a determinate sentence of up to one year's imprisonment, will usually be released from prison after serving half of the sentence. If he re-offends during the remaining part of the sentence he can be sent back to prison to serve the rest of the sentence. Offenders who receive a determinate sentence of over one year will also usually be released from prison after they have served half of the sentence (so if the offender received a sentence of 5 years imprisonment, he would be released after 2 ½ years). The offender will then spend the remaining period (2 ½ years) 'on licence'. During this time they will be subject to supervision by the Probation Service and may be required to comply with specific licence conditions. Failure to comply with the conditions, or re-offending may result in the offender being sent back to prison to serve the rest of his sentence.

An **extended sentence** is one in which there is both a prison sentence and an extended period of supervision on licence after release from prison. Such a sentence may be passed when the offender is assessed as being of significant risk to the public by the commission of further serious offences (when he is considered 'dangerous' under the provisions of the Criminal Justice Act 2003). When passing this sort of sentence the Judge will fix the length of time that the offender should spend in prison (custodial term) and also the additional length of time that the offender should be on licence (extended licence period). The offender will usually be released from prison after serving 2/3 of the custodial term, but may have to apply to the Parole Board to be released. He will spend the remaining 1/3 of the custodial term plus the extended licence period under the supervision of the Probation Service. As above, he may be returned to prison if he reoffends or breaches any conditions attached to the licence in that time.

For example: if the Judge passes an extended sentence with a 6 year custodial term and a 4 year extended licence period, the offender will remain in prison for 4 years (2/3 of 6 years) and will then spend 2 years (1/3 of 6 years) + 4 years on licence.

A **life sentence** is passed when an offence is particularly serious. Only in very rare cases does a life sentence mean that the offender will spend the rest of his life in prison. In most cases the Judge will set a 'minimum term', which is the minimum number of years that an offender has to spend in prison before he can be considered for release. When the offender has spent the minimum term in prison, he can apply to the Parole Board to be released. He may not be released for a number of years beyond the minimum term if the Parole Board does not think he is safe for release. Once released the offender is on licence for the rest of his life, and may be subject to conditions for some of that time. Any breach of

those conditions or reoffending could see him returned to prison until (and only if) he is considered safe for release again.⁵⁰

In some circumstances the court can choose to suspend a determinate prison sentence for a specific period of time. If the offender does not reoffend during that period of time and complies with any conditions attached to this Suspended Sentence Order he will not go to prison. However if he reoffends or breaches any of the conditions, he may be sent to prison. Similarly, if an offender is given a Community Order and fails to comply with this, the court may revoke (withdraw) that sentence and re-sentence the offender to a harsher sentence.

In the magistrates' court the maximum prison sentence an offender can receive is 6 months for one offence or 12 months for two or more offences. In the Crown Court the maximum prison sentence that can be passed is determined by the offence itself. In Part 1 of this handbook we explain the maximum prison sentence that may be given for each offence. Maximum sentences are reserved for the most serious types of each offence.

Before deciding sentence, the Judge or magistrates will hear the facts of the case from the prosecution. If you have made a Victim Personal Statement this will be read or passed to the court. The Judge may be handed a pre-sentence report if one has been prepared by the Probation Service, and may also be given psychiatric or medical reports. The Judge will then hear mitigation from the defendant, usually through his lawyer. The lawyer will also hand up any written character references or call any character witnesses.

When deciding sentence the Judge or magistrates will look at whether there are any sentencing guidelines, which are produced by the Sentencing Guidelines Council (SGC). There are specific guidelines applicable to sentencing sexual offences, and the court must follow these guidelines unless it would be contrary to the interests of justice to do so. At the time of publication, new guidelines are due to come into force on 1st April 2014 and will apply to anyone sentenced on or after this date. These can be found at [sentencingcouncil.judiciary.gov.uk/docs/Final_Sexual_Offences_Definitive_Guideline_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Final_Sexual_Offences_Definitive_Guideline_(web).pdf)⁵¹

50. Where an offender is aged 10 – 18 a discretionary life sentence will be called 'detention for life.' For offenders between 18 – 21 years old the sentence is called 'custody for life.'

51. The previous version of the sentencing guidelines applies to offenders sentenced between 17th May 2007 and 31st March 2014. It can be found at sentencingcouncil.judiciary.gov.uk/docs/web_SexualOffencesAct_2003.pdf

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The guidelines require the Judge to place the offence within categories in terms of the harm caused by the offence and the culpability (blameworthiness) of the offender. Once the Judge has decided which categories the offence falls into, there is then guidance as to the point that the Judge should start at when considering sentence, and the range within which the sentence should fall.

After the Judge has decided the appropriate starting point she or he will consider all that has been heard from the prosecution and defence, and will also consider any aggravating and mitigating features. Aggravating features are those that make an offence more serious and may include:

- Using force or a weapon.
- Exploiting a position of trust or authority.
- Targeting someone who is particularly vulnerable, such as someone who is young, elderly or disabled.
- Having previous criminal convictions.
- Whether the offence was planned.
- Whether this offence was part of a pattern of offences.
- The location and timing of the offence, and presence of others.

Mitigating features are those that reduce the seriousness of the offence, such as:

- Genuine remorse.
- Any relevant physical or mental health problems such as mental illness or a serious illness.

The Judge will also take into account whether the offender has pleaded guilty, and will give him credit for this by way of a reduction in the length of sentence. Finally, the Judge will reach a decision on the appropriate sentence and will explain this to the defendant giving reasons for the sentence. Any time that the offender has spent in prison before he is sentenced will be credited against any prison sentence he will serve.

Where the offence being sentenced is a historic offence, the defendant will be sentenced under the law as it was at the time of the offence – this means that the sentencing Judge will be bound by the maximum sentence that existed at the time of the offence. However the sentence passed should reflect the attitude of the courts as it is today, rather than how it may have been at the time of the offence.⁵²

52. R v H [2011] EWCA Crim 2753

14.5 Offending behaviour work

Whilst in prison, the defendant will be asked if he wishes to undertake any offending behaviour work. Many prisoners choose to participate in the various programmes that are on offer, which are designed to address why the person might have offended and what can be done to prevent any further offending in the future. If an offender does not complete these courses in prison, he may be asked to complete them as one of his licence conditions.

Specific courses are available for sex offenders and those who have committed acts of domestic violence, such as the Sex Offenders Treatment Programme, the Community Domestic Violence Programme, the Healthy Relationships Programme and the Integrated Domestic Abuse Programme. These programmes are designed to encourage offenders to look at why they have committed sexual and violent offences, to develop new thinking and behavioural skills, and to understand more about the harm their behaviour has caused. There are also programmes for offenders whose behaviour is linked to drug and alcohol misuse.

14.6 Release from prison

The provisions for an offender being released from prison are set out above. In some cases an offender will be released automatically but in others he will need to persuade the Parole Board that he is safe to be released.⁵³

In cases where the defendant is sentenced to 12 months imprisonment (or more) for a sexual or violent offence the National Offender Management Service should contact you. If you want them to they should:

- Give you information about key stages in his sentence, such as whether he is applying for release.
- Give you the opportunity to express your views about what licence conditions or supervision requirements should be placed on him when he is released (such as not to contact you or come to a particular area).
- Tell you what conditions or supervision requirements he will be subject to if they relate to you or your family.⁵⁴

53. For further information about the Parole Board visit www.justice.gov.uk/downloads/offenders/parole-board/quick-guide-to-parole.pdf

54. Further information about the National Offender Management Service is available here www.justice.gov.uk/about/noms. Further information for victims about parole and release is available here www.justice.gov.uk/offenders/parole-board/victims-and-families

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In those cases where the Parole Board is considering a defendant's release from prison, the Parole Board may consider any Victim Personal Statement (VPS) that you have made. You may be asked if you want to make a further VPS (if you have opted to receive contact under the Victim Contact Scheme). You will be able to tell the Parole Board about the impact that release of the offender or a change in his custodial conditions might have on you. If you wish, and at the discretion of the Parole Board, you may be able to appear in person to read your VPS.

The Parole Board's role is to decide whether someone is safe to be released. They will consider the behaviour of the defendant whilst in prison, what they plan to do when released and whether they are likely to commit further offences or be a danger to the public. If the defendant has not completed any offending behaviour work, it will be very difficult for them to convince the Parole Board to release them. Further information about the Parole Board can be found at www.justice.gov.uk/offenders/parole-board

If you have received unwanted contact from a prisoner by letter or telephone or are worried about his release contact the National Offender Management Service Victim Helpline on 0845 7585 112 or write to them at the address given at Appendix A.

14.7 Measures designed to protect you and the public from further harm

The details of those who are convicted of sexual offences are placed on the Sex Offender's Register. This is to enable the police (not other members of the public), to know who is a sex offender and to have information about him such as where he lives and whether he intends to travel outside the UK. Failure to notify the police of such details, without reasonable excuse, is an offence. The length of time that the offender remains on the Register depends on the sentence that he received.

The defendant may also be given a sexual offence prevention order (SOPO) which is an order that forbids him from doing certain things specified in the order, such as going to particular places. The order can be for a fixed term or indefinite, but must have a minimum term of five years. A defendant can apply for the SOPO to be varied or discharged, and he can also appeal against the imposition of a SOPO.

14.8 Appeals

Appeals against conviction

A defendant's right to appeal against his conviction depends on which court he was tried in.

A defendant who pleaded not guilty and was convicted in a magistrates' court has an automatic right of appeal to the Crown Court. If he appeals to the Crown Court there will be a fresh trial (where you might be asked to give evidence again) before a Judge and two magistrates (not a jury). If a defendant wants to appeal against his conviction a notice of appeal should be lodged at the magistrates' court within 21 days of his being sentenced (even if the appeal is only against conviction). In some circumstances this time limit can be extended.

If the defendant was convicted in the Crown Court he may appeal to the Court of Appeal if the Court of Appeal gives its permission.⁵⁵ An application for leave (permission) to appeal against conviction should be lodged with the Crown Court within 28 days of conviction, although this time limit may be extended on application to the Court of Appeal. If permission to appeal against a conviction is given, the Court of Appeal will examine the case to see whether the conviction is safe or not. The Court of Appeal will not hear the same evidence that the jury heard and reach their own decision; instead they will hear legal arguments about whether something occurred at trial that meant that the defendant's conviction is unsafe. There are a number of things that can make a conviction unsafe including:

- faults in the Judge's summing up;
- new evidence coming to light which was not available at the time of trial;
- mistakes in the legal advice that the defendant was given; and
- a failure to disclose certain information to the defence.

If the Court of Appeal finds the verdict unsafe it will quash the conviction (set it aside). If this happens the defendant is considered to be not guilty of the offence. Unless the court orders a retrial the defendant will be treated as if he had been found not guilty by the jury and will be released. A retrial will be ordered where the court considers it is in the interests of justice. If a retrial is ordered, the defendant may be remanded into custody or released on bail. If he is retried and convicted again, he cannot be sentenced to a longer period of imprisonment than that passed by the first trial Judge.

55. Unless the Crown court has granted a certificate to appeal – which is very rare and must be for a particular reason such as where a point of law is unclear.

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Appeals against sentence

In addition to or instead of appealing against his conviction, the defendant may appeal against his sentence. If the defendant was sentenced in the magistrates' court he can appeal to a Crown Court Judge to have his sentence reconsidered. If he was sentenced in the Crown Court he can seek permission to appeal against his sentence to the Court of Appeal. A sentence may be appealed if it is unjustifiably long or if the Judge took irrelevant factors into account when passing sentence. If a defendant is successful in his appeal the court can replace his sentence with one that is more appropriate.

Criminal Cases Review Commission

In some cases, a defendant may apply to the Criminal Cases Review Commission, who will undertake a review of his conviction or sentence, and if they think there are grounds for appeal, will refer the conviction or sentence to the Court of Appeal. They will usually only review a case following an unsuccessful appeal to the Court of Appeal.

Unduly lenient sentences

If the Judge passes a sentence which the CPS considers is unduly lenient because it does not reflect the seriousness of the offence, the CPS will ask the Attorney General to review the sentence.

If the prosecution does not consider the sentence unduly lenient but the victim disagrees, she can ask in person for the Attorney General to consider it, but this has to be done within 28 days of the sentencing decision. If the CPS decides not to submit the case for the consideration of the Attorney General, it must notify the victim without delay so that the victim's option of complaining direct to the Attorney General is preserved and so that the Attorney General will have sufficient time, if a complaint is made, to consider the case.

If the Attorney General thinks that the sentence is unduly lenient, s/he can refer it to the Court of Appeal. The application to the Court of Appeal must be made within 28 days of the sentence. The defendant and his legal representatives may appear at the Court of Appeal to argue that the sentence was not unduly lenient. The Court of Appeal decides whether or not the sentence is unduly lenient and, if it is, whether to increase the sentence.

For further information about unduly lenient sentences is available here www.cps.gov.uk/legal/s_to_u/unduly_lenient_sentences/

15. Compensation for people who have been subject to sexual violence

15.1 The Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Scheme 2012 (the Scheme) came into force on 27th November 2012 and applies to applications made on or after that date.⁵⁶ The purpose of the Scheme is to compensate the victims of violent crime for the physical or mental injuries they have received. This may include, in some cases, compensation for lost earnings or certain other expenses such as for medical treatment or equipment. The compensation that a victim receives comes from the Criminal Injuries Compensation Authority (the CICA), which administers the Scheme, not the person who committed the offence.

In order to be able to apply for criminal injuries compensation you have to have received a criminal injury on or after 1st August 1964 in England, Scotland or Wales. Under the Scheme a criminal injury is a physical injury, a mental injury (for example, mental illness) or a disease (a medically recognised illness or condition), which is directly attributable to a crime of violence. The definition of a crime of violence includes a sexual assault to which a person did not consent. Where a claim for compensation is made by a person who has experienced sexual violence, that person does not need to show evidence of a physical or mental injury because the fact they have experienced the crime is as an injury in itself.

It is not necessary for a perpetrator of sexual violence to have been charged or convicted of a criminal offence in order for you to be able to claim compensation, but the offence must have been reported to the police. However, a claim for compensation may be reduced or refused in certain circumstances,

56. Information in relation to applications made prior to 27th November 2012 can be found at www.justice.gov.uk/victims-and-witnesses/cica/information-if-you-applied-before-27-november-2012.

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for example, if you fail to co-operate with the police investigation. An award may be reduced if you have been awarded compensation from a court.

An application for compensation must be made as soon as possible after the incident that caused the injury and should be received by the CICA within two years of the date of the incident. The two year time limit can only be waived if:

- it is practicable to do so; and,
- in the circumstances of the case it would not have been reasonable for the applicant to have made an application within two years of sustaining the injury.

If the suspect of sexual violence has been charged you might want to consider delaying applying for compensation until after he is tried (while making sure that any application made is still received by the CICA within the two year time limit). This is because no decision will be taken on your application until the trial has ended and because applications for compensation may be disclosed to the defence and may be used to undermine you at trial (for example, by arguing that you have fabricated the allegation because you want compensation).

If you want to apply for compensation you need to complete and sign an application form. By signing the application you are giving the CICA permission to seek and obtain information about you and your injury. The CICA may, for example, seek copies of your medical records to confirm the injuries you received or from the police to confirm that you reported the incident and cooperated with them. All information received by the CICA is confidential. The CICA aims to make a decision on compensation within 12 months.

Decisions on compensation are made by claims officers who will decide whether compensation should be paid and if so, how much. They may ask you to provide evidence to support your claim. The claims officer should write to you and explain how s/he reached a decision in your case. In order for a claim to be successful you have to show on the balance of probabilities that you suffered a criminal injury. If you are successful, you must write to accept the award within 56 days of the date of the decision. If you think that a claims officer has made the wrong decision you can ask for it to be reviewed and then, if you think that it is still incorrect, you can appeal against it.

The application process is designed for people to be able to make their own application. You can contact a solicitor for help but you will usually have to pay for this advice. Victim Support can provide information about the Scheme as well as help you completing the form. You can also approach your local Citizens' Advice Bureau, Law Centre or Rights of Women's legal advice line. For further information about the Scheme, to obtain an application form or

to claim online telephone 0800 3583601 or visit www.justice.gov.uk/victims-and-witnesses/cica. Rights of Women has produced a legal guide *A Guide to Criminal Injuries Compensation* which explains the Scheme and application process in more detail. The guide is available to download free of charge from our website and hard copies of it are available on request.

15.2 Suing for damages

In addition to, or as an alternative to, claiming criminal injuries compensation you may wish to bring a civil claim for damages against the person responsible for your injury or against someone who failed to protect you from violence (such as Social Services). If you are awarded damages by a civil court, the CICA will take these into account in assessing your compensation. In order to recover damages you will have to show a civil court (not a criminal court) that you have received a personal injury as a result of someone's blameworthy behaviour. There are time limits for bringing a civil claim which vary depending on the nature of the injury that you received. However, case law has enabled these time limits to be applied more flexibly in certain circumstances. In order to bring a civil action you will need a solicitor. You may be eligible for public funding to help you with your case or you may be able to instruct solicitors to represent you under a Conditional Fee Agreement ("no win, no fee"). To find a solicitor who can assist you, you can contact the Law Society via their website at www.lawsociety.org.uk/find-a-solicitor/

Sexual Assault Referral Centres

To find your local SARC as well as other services for survivors of sexual violence visit www.nhs.uk/livewell/sexualhealth/pages/sexualassault.aspx

Organisations for survivors

NAPAC National Association for People Abused in Childhood

P O Box 63632
London SW9 1BF
Helpline: 0800 085 3330 (landlines, 3, EE, Vodafone, Virgin mobile phones)
Helpline: 0808 801 0331 (O2, EE, Vodafone mobile phones)
Email: support@napac.org.uk
www.napac.org.uk

NSPCC

Weston House
42 Curtain Road
London EC2A 3NH
Helpline: 0808 800 5000 (24 hours)
Email: help@nspcc.org.uk
www.nspcc.org.uk

One in Four

219 Bromley Road,
Bellingham
London SE6 2PG
Tel: 0208 697 2112
Email: admin@oneinfour.org.uk
www.oneinfour.org.uk

Rape Crisis South London

PO BOX 383
Croydon CR9 2AW
National helpline: 0808 802 9999
Email: info@rasasc.org.uk
www.rasasc.org.uk

Rape Crisis Federation, England and Wales

BCM Box 4444
London WC1N 3XX
Helpline: 0808 802 9999
Email: rcwinfo@rapecrisis.org.uk
www.rapecrisis.org.uk

Samaritans

Freepost RSRB KKBY
PO Box 9090
Stirling FK8 2SA
Helpline: 08457 90 90 90 (24 hours)
Email: jo@samaritans.org
www.samaritans.org.uk

The Survivors Trust

Unit 2, Eastlands Court Business Centre
St. Peter's Road
Rugby
Warwickshire CV21 3QP
Tel: 01788 550554
Email: info@thesurvivorstrust.org
www.thesurvivorstrust.org

Victim Support

Hallam House
56 – 60 Hallam Street
London W1W 6JL
Helpline: 0845 30 30 900
Tel: 0207 268 0200
Email: supportline@victimsupport.org.uk
www.victimsupport.org.uk

Black and Minority Ethnic (BME) survivors

Angelou Centre

17 Brighton Grove
Fenham
Newcastle-Upon-Tyne NE4 5NS
Tel: 0191 2260394
Email: admin@angelou-centre.org.uk
www.angelou-centre.org.uk

BAWSO

9 Cathedral Road
CARDIFF CF11 9HA
Helpline: 08007318147
Email: Info@bawso.org.uk
www.bawso.org.uk/

Bradford Rape Crisis and Sexual Assault Survivors' Centre

c/o BCVS, 19-25 Sunbridge Road,
Bradford
West Yorkshire BD1 2AY
BME helpline: 01274 308270
Email: contactus@brcg.org.uk

Support After Rape and Sexual Violence Leeds

PO Box 827
Leeds
West Yorkshire LS1 9PN
Helpline: 0808 802 3344
Email: support@sarsvl.org.uk
www.supportafterrapeleeds.org.uk

Trafford Rape Crisis

Unit 314, Peel House
30 The Downs
Altrincham
Cheshire WA14 2PX
BME helpline: 0800 434 6484
Email: dorothybme@hotmail.co.uk
www.traffordrapecrisis.com/

West London Rape Crisis

PO Box 13095
London W14 0FE
Helpline: 0808 801 0770
Email: rcc@wgn.org.uk
www.wgn.org.uk/west-london-rape-crisis

Wycombe, Chiltern & South Bucks Rape Crisis

PO Box 1448
Desborough Road
High Wycombe
Buckinghamshire HP11 9GW
Helpline: 07528 245304 (Punjabi/
Urdu) or 01494 462222
Email: info.rapecrisis@virgin.net
www.wycomberapecrisis.org.uk

Disabled survivors

Disability Law Service

12 City Forum
250 City Road
London EC1V 8AF
Tel: 020 7791 9800 option 5
Email: admin@dls.org.uk
www.dls.org.uk

Respond

3rd Floor
24-32 Stephenson Way
London NW1 2HD
Helpline: 0808 808 0700
Email: admin@respond.org.uk
www.respond.org.uk

LGBT survivors

Broken Rainbow

PO Box 68947
London E1W 9JJ
Helpline: 0300 999 5428
Trans* specific service Tuesday 1pm
– 5pm
Email: help@brokenrainbow.org.uk
www.brokenrainbow.org.uk

GALOP

2G Leroy House
436 Essex Road
London N1 3QP
Helpline: 020 7704 2040
Email: info@galop.org.uk
www.galop.org.uk

London Lesbian & Gay Switchboard

(National Service)
PO Box 7324
London N1 9QS
Helpline: 0300 330 0630
Email: chris@llgs.org.uk
www.llgs.org.uk

Male survivors

Male Survivors Trust

Helpline: 0709 222 9264
Email: malesurvivorstrust@gmail.com
www.malesurvivorstrust.org.uk/

M Power

Sue Lambert Trust
St Julians Hall
6 Music House Lane
Norwich NR1 1QL
Helpline: 0808 808 4321
Email: admin@suelamberttrust.org
www.male-rape.org.uk/

SurvivorsUK

Unit 1 Queen Anne Terrace
Sovereign Court
The Highway
London E1W 3HH
Helpline: 0845 122 1201
Email: info@survivorsuk.org
www.survivorsuk.org

Support in relation to domestic violence and abuse

National 24hr Domestic Violence Helpline (England)

Helpline: 0808 2000 247 (24 hour)
Email: helpline@womensaid.org.uk
www.nationaldomesticviolencehelpline.org.uk

Welsh Women's Aid

Pendragon House
Caxton Place
Pentwyn
Cardiff CF23 8XE
Helpline: 0808 8010 800 (24 hours)
Email: admin@welshwomensaid.org.uk
www.welshwomensaid.org

Support in relation to prostitution and trafficking

Poppy Project (part of Eaves)

Unit 2.03, Canterbury Court
Kennington Business Park
1-3 Brixton Road
London SW9 6DE
Tel: 020 7735 2062
Email: post@eavesforwomen.org.uk
www.eaves4women.co.uk

UK Network of Sex Work Projects UKNSWP

Unit 114 Cariocca Business Park
Sawley Road
Miles Platting
Manchester M40 8BB
Tel: 0161 629 9861
Email: admin@uknswp.org.uk
www.uknswp.org

Support on elder abuse

Action on Elder Abuse

PO Box 60001
Streatham SW16 9BY
Helpline: 080 8808 8141
Email: enquiries@elderabuse.org.uk
www.elderabuse.org.uk

Human rights

Equality Advisory and Support Service

Freepost
Equality Advisory Support Service
FPN4431
Helpline: 0808 800 0082
www.equalityadvisoryservice.com/

Legal advice

Law Society

The Law Society's Hall
113 Chancery Lane
London WC2A 1PL
Tel: 020 7242 1222
www.lawsociety.org.uk/find-a-solicitor/

Rights of Women

See inside front cover

Criminal Injuries Compensation

Criminal Injuries Compensation Authority

Tay House
300 Bath Street
Glasgow G2 4JR
Helpline: 0300 003 3601
www.justice.gov.uk/about/criminal-injuries-compensation-authority

Tribunals Service – Criminal Injuries Compensation

Wellington House
134 – 136 Wellington Street
Glasgow G2 2XL
Tel: 0141 354 8555
Email: enquiries-cicap@tribunals.gsi.gov.uk
www.justice.gov.uk/tribunals/criminal-injuries-compensation

Complaints about the police

Independent Police Complaints Commission (IPCC)

PO Box 473

Sale M33 0BW

Tel: 0300 020 0096

Email: enquiries@ipcc.gsi.gov.uk

www.ipcc.gov.uk/

Sentencing and post-release matters

National Offender Management Service

P.O. Box 4278,

Birmingham B15 1SA

Helpline: 0845 7585 112

Email: victim.helpline@noms.gsi.gov.uk

www.justice.gov.uk/about/noms

The Parole Board for England and Wales

Grenadier House

99 – 105 Horseferry Road

London SW1P 2DX

Tel: 0300 047 4600

www.justice.gov.uk/about/parole-board

Rights of Women also produces a number of handbooks and guides that you might find useful on issues including:

- Cohabitation
- Marriage and divorce
- Children and relationship breakdown
- Civil partnerships and lesbian parenting
- Domestic violence and abuse
- Sexual violence
- The criminal justice process
- Immigration, asylum and trafficking

To find out more about our advice lines and legal information for women visit www.rightsofwomen.org.uk or call 020 7521 6575.

An original publication from Rights of Women

Sexual violence affects thousands of people in England and Wales every year.

From Report to Court provides information and support to people who have experienced sexual violence, as well as to their families, friends and the organisations that support them. It explains the different stages of the legal process, from the point of deciding whether or not to report the incident to the police, through to the trial, verdict and sentence. **From Report to Court** also sets out the relevant law and the obligations different agencies in the criminal justice system have to people who have experienced sexual violence.

From Report to Court covers:

- The Sexual Offences Act 2003 and, in particular, the non-consensual sexual offences of rape, assault by penetration, sexual assault and causing a person to engage in sexual activity.
- The decision to report an offence to the police and the investigative process.
- The decision to charge, the role of the Crown Prosecution Service and what happens at trial, including giving evidence.
- Verdicts, sentencing, post-release matters and criminal injuries compensation.



helping women through the law

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52-54 Featherstone Street
London EC1Y 8RT
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Textphone: 020 7490 2562
Fax: 020 7490 5377
Email: info@row.org.uk
Website: www.rightsofwomen.org.uk

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