

Rights of Women

# From Report to Court

A handbook for adult survivors  
of sexual violence



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# From Report to Court

A handbook for adult survivors of sexual violence

## Acknowledgements

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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. 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”. 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 “accused” 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

Recent statistics from the British Crime Survey indicate that 24% of women have experienced sexual violence since the age of 16<sup>1</sup>. 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.

### 1.3.1 Sexual violence by an intimate partner

54% 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 of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality.” An adult is any person aged 18 years and over and family members are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family. Whilst 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

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1. 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.

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 clear that sexual violence within a relationship is an aggravating factor 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. 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 domestic violence and relationship breakdown is available from Rights of Women's website<sup>2</sup>. For details of other specialist organisations that may be able to assist you see Appendix A.

### **1.3.2 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.

### **1.3.3 Sexual violence by someone you know**

40% of female victims of serious sexual assault reported that it had been committed by someone known to them, for example, an acquaintance, work

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2. Rights of Women has information sheets 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](http://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.

colleague or friend<sup>3</sup>. 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.

### **1.3.4 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 **Race Relations (Amendment) Act 2000** and the **Race Relations Act 1976 (Amendment) Regulations 2003** public authorities, such as the courts, the police and the Crown Prosecution Service, are under a duty to promote racial equality. This means that they 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.

If you do not speak English an interpreter will be provided for you by the relevant agency, for example, the police or the Crown Prosecution Service. There is an **Agreement on Arrangements for the use of Interpreters** which provides guidance for all agencies on the procedures to follow at each stage of the criminal justice process where an interpreter may be required<sup>4</sup>.

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3. 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.

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 can be downloaded from <http://police.homeoffice.gov.uk/publications/operational-policing/national-agreement-interpret.pdf>.

## 1.3.5 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 one in eight of the homophobic hate incidents experienced by gay men and one in twenty experienced by lesbians involved sexual violence<sup>5</sup>.

Everyone has the right to be safe regardless of sexuality or gender identity. If you are an LGBT survivor you may have concerns about reporting the offence that relate to your sexuality or gender identity; for example, you may be concerned about getting a homophobic response from the police or about outing yourself<sup>6</sup>. 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. If you feel that you have been discriminated against or treated inappropriately because of your sexuality or gender identity you can complain about the agency responsible. Further information about how to complain about the police and Crown Prosecution Service is given in Parts 2 and 3 of this handbook.

## 1.3.6 Disabled survivors

Under the **Disability Discrimination Act 1995** (DDA 1995) disabled people are protected from discrimination in certain areas. Disability is defined as “a physical or mental impairment which has a substantial and long term adverse effect on a person’s ability to carry out normal day to day activities.” Physical impairments include those that affect the senses such as sight and hearing whilst mental impairments include mental illness and learning difficulties.

Under the **DDA 1995** agencies in the criminal justice system, such as the courts, must make reasonable adjustments to enable disabled people to access them. This means the courts will have to provide translators for disabled people relating to communication and make rooms accessible to those with physical disabilities. Any necessary arrangements should be discussed with the agency involved.

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5. *Homophobic hate crime*, The Gay British Crime Survey 2008, Stonewall [www.stonewall.org.uk](http://www.stonewall.org.uk).

6. One in ten victims of homophobic hate incidents did not report them to the police because they were concerned about homophobia and 7% did not report because they did not want to out themselves (page 22 *Homophobic hate crime*, The Gay British Crime Survey 2008, Stonewall [www.stonewall.org.uk](http://www.stonewall.org.uk)).

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<sup>7</sup>.

### **1.3.7 If you are working in prostitution**

The sexual offences discussed in this handbook are non-consensual; this means that they are offences because the person involved did 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, vaginal penetration but not anal penetration. Similarly, consent may be given and then withdrawn. Consequently, as a matter of law, the fact that a man has paid for sex does not mean that you have given your consent. Sexual activity without consent is a criminal offence.

### **1.3.8 If you have an insecure immigration status**

The criminal law of England and Wales that deals with sexual violence applies to everyone within England and Wales (the jurisdiction).<sup>8</sup> This means that the criminal justice system has the same obligation to assist and protect you whether you are a British citizen, an overstayer, an asylum seeker or someone with leave to remain in the UK 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 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

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7. Details of Rights of Women's advice lines are given at the front of this book.

8. Scotland and Northern Ireland have different criminal laws and processes.

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.

### 1.3.9 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<sup>9</sup>. As with women, the perpetrator of violence is 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.

### 1.3.10 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. The legal section of this handbook, Part 1, explains 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**).

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9. 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).

# INTRODUCTION

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.

# 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. Information and leaflets about the other offences contained in the SOA 2003, including those offering protection to children and vulnerable adults, can be found on the Home Office website<sup>10</sup>.

### 2.1.1 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<sup>11</sup>.

### 2.1.2 The age of the complainant

Under the SOA 2003 a person can legally 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

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10. <http://www.crimereduction.homeoffice.gov.uk/sexualoffences/sexual04.htm>

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.

is between the ages of 13 and 16 has the capacity or ability 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 focussing on the offences that relate to over 13 year olds and the legal procedures that apply to adult survivors who report sexual violence to the police. There are additional protections available for survivors of sexual violence who are under 18.

## 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.

### 2.2.1 “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 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,
- 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.

## 2.2.2 Consent

The four offences discussed in the 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 real understanding of what is involved or has such limited knowledge or understanding as not to be in a position to decide whether or not to agree<sup>12</sup>.

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 activity<sup>13</sup>.

In order for an offence to have been committed the defendant **must not have reasonably believed** that the complainant consented to the sexual activity. A defendant could not argue that he believed in the complainant's consent 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 has committed the same crime as the man who knowingly has sexual intercourse with a woman without her consent.

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

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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 as reported in the *Times* on 9 June 2008.

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 below at 2.2.3.

### *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.

### *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<sup>14</sup>.

### ***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.

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 as although she was not unconscious, she was not able to get home on her own, undress or speak properly. As she did not have the capacity to consent, the issue is

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14. For a recent 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".

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.

### 2.2.3 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**. This is a list of circumstances, which if the defendant knew existed, results in it being concluded that you did not consent to the sexual activity and that the defendant did not reasonably believe in your consent **unless** the defendant can call sufficient evidence to persuade the Judge that the issue of consent should be given to the jury to decide. 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;
- 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 will be required to 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 that 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; 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 is 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 Mr D had deceived the complainant as to the purpose of the act he had engaged in. Mr D then changed his plea to guilty as he could not argue that the complainant had consented to the act<sup>15</sup>.

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15. 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.

Unless one of the above presumptions applies, it is always for the prosecution to prove that you did not consent and that the defendant did not reasonably believe that you consented.

## 2.3 The offences

### 2.3.1 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.

The new 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 these forms of sexual violence (such as indecent assault)<sup>16</sup>. The person who commits the offence of rape must be a man (as the penetration has to be with a penis)<sup>17</sup>. 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

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

17. 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 facilitated (helped) a man who raped another person.

answered by looking at all the circumstances of the case, including what he did to make sure you were consenting.

As discussed above and in section 1.3.1, it is not relevant what relationship, if any, a defendant has or had with you. 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.

## **2.3.2 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.

## **2.3.3 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 2.3.5 below).

As with rape, the penetration has to be done intentionally without your consent. The penetration must also be sexual (see 2.2.1 above) which excludes medical examinations carried out 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 defendant did not reasonably believe you did. The sections on consent (2.2.2) and the presumptions (2.2.3) apply to this offence in the same way as they do to rape.

### **2.3.4 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.

### **2.3.5 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 2.2.1 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 (see sections 2.2.2 and 2.2.3).

## *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 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.

### **2.3.6 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. The maximum sentence for sexual assault following Crown Court trial is 10 years imprisonment.

### **2.3.7 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.

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.

## 2.3.8 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.

# 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 survivors of sexual violence and you may benefit from making contact with one of them (see the list at Appendix A)<sup>18</sup>. 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 to survivors of sexual violence.

There are many reasons for reporting sexual violence to the police. The following are reasons that we have heard from survivors of sexual violence 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 0800 112 999. If it is not an emergency you can report sexual

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18. Female survivors or people who are supporting them can also contact Rights of Women for free, confidential, legal advice.

# The decision to report an offence to the police

violence by contacting your local police station by either going there in person or ringing the number listed in your local telephone directory.

You can ask a friend or family member to report an offence for you. You can also report an offence anonymously to the police. However, in order for the police to be able to investigate the crime they will need your personal details, such as your name and where you live, as well as information about the offence.

If the sexual violence occurred recently or within the last year you can 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.

## 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;
- smoking;
- going to the toilet or discarding any tampons or sanitary towels; and,
- 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 perpetrator has drunk from, discarded cigarette stubs, condoms or any other object the perpetrator 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; and
- emails.

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 the survivor 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

There is no time limit 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. Delays in reporting sexual violence should not affect either the quality of the police's response to you or of the investigation.

### 3.5 Third party reports of sexual violence

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 a survivor of 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.

# 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.

A forensic medical examination will involve gathering all traces of any bodily fluid, skin or hair that the perpetrator has left. If you have washed before you have the examination, tell the doctor, as it may still be possible to find physical evidence. 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.

### 4.2.1 DNA evidence

DNA stands for Deoxyribo-Nucleic 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 perpetrators of sexual violence.

### 4.2.2 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 survivors 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. It may be that you did not physically resist the perpetrator. Your experience is no less valid because of the absence of physical injury. 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 the survivor sustaining any physical injury.<sup>19</sup>

### 4.2.3 Alcohol and drugs

#### *Alcohol and drugs that are given to you without your consent*

It may be that the perpetrator 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.
- 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 recognise 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.

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19. 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.

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 about what you have consumed and when, as you can. You should not be judged because you have drunk a lot of alcohol or consumed drugs, nor will you be investigated for drug use, nor 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.

#### **4.2.4 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<sup>20</sup>. 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 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 the police, national health services and voluntary organisations.

If you have contacted the police after an incident of sexual violence they may take you to 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 and 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 perpetrator 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 available to people immediately after an incident as well as for up to a year later<sup>21</sup>.

There are currently 22 SARCs across England and Wales with others scheduled to open, see Appendix A or visit the Home Office website to see a

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

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

full list<sup>22</sup>. The Government is committed to continue to increase the number of SARCs so that by 2011 there is one in every police force area. This will mean that by 2011 every part of the country should be covered by a SARC to ensure that all survivors of sexual violence can access this specialist care and support<sup>23</sup>.

## 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 Forensic medical examination

If there is currently 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)**. A FME is a doctor who is trained to collect evidence that can go before a court. If the police

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22. To find your local Sexual Assault Referral Centre (SARC) visit [www.homeoffice.gov.uk/crime-victims/reducing-crime/sexual-offences/](http://www.homeoffice.gov.uk/crime-victims/reducing-crime/sexual-offences/) and follow the links.

23. *Saving Lives. Reducing Harm. Protecting the Public. An Action Plan for Tackling Violence 2008-11*, page 5.

arrange for you to see a FME you may have to travel to the surgery of a doctor on duty or the nearest examination suite.

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 as a survivor of sexual violence 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 perpetrator you can make arrangements to speak to an officer without the perpetrator 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. 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.

### 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. Where possible the STO will:

- take your initial report;
- arrange for a forensic medical examination where appropriate;
- 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;<sup>24</sup> they are:

- intimidated witnesses (witnesses suffering from fear and distress);
- learning disabled witnesses;
- physically disabled witnesses; and
- witnesses with mental disorders or illnesses<sup>25</sup>.

Survivors 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 a survivor with a learning disability you can ask for someone 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 intermediary or appropriate adult and should have the necessary skills to enable them to assist the survivor.

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. You can also ask

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24. As per Chapter 1 of the Youth Justice and Criminal Evidence Act 1999.

25. 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.

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 perpetrator. 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. However, it may be necessary to ask when you last had consensual sex; or your relationship with the perpetrator, 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 2.2.2 above) and whether or not you are able to be sure about what happened. The fact that you drank alcohol or used drugs will 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 negatively affect the case.

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.

There are guidelines<sup>26</sup> that set out how a statement from a vulnerable witness should be taken and how vulnerable witnesses can be assisted to give their best

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26. *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, Including Children* (2006) which is available to download from <http://www.homeoffice.gov.uk/documents/achieving-best-evidence/>

evidence in court. If you are supporting a survivor of sexual violence it may be useful to read them.

## 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**. This may be done either straight after your formal statement, before a trial, or both. 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.

If your case goes to court, the police, Crown Prosecution Service, Judge (or magistrate) and the defence will be able to read it. The police have to take your victim personal statement into account and act on it, for example, in relation to any fears about your safety that you have. The Crown Prosecution Service will use your statement to decide how best to assist you at trial. If your perpetrator is convicted, the Judge or magistrates will read your statement before sentencing. As the defence will also be given a copy of your statement you need to be prepared for the possibility that they will ask you questions about the information in it 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;
- conduct door-to-door enquires 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 5.3.1 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 perpetrator 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.

The most common methods of identifying suspects are video identity parades and live identity parades. Video identity parades involve looking at images of people on a computer or television. Live identity parades involve looking at a line up of men through one-way glass. 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. If you did not get a clear view of the perpetrator 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. When you view the images or see the men 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 perpetrator.

### 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 identified he will be interviewed by police officers. A suspect may be arrested and then interviewed, or invited to attend a police station for interview at a particular time. Before a suspect is interviewed he will be cautioned that 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.

The police will pass on the evidence they have obtained to the Crown Prosecution Service who decide whether or not the suspect can be charged with an offence. Once a suspect is charged with an offence the investigation comes to an end and court proceedings begin. During the police investigation or after charge the suspect may be on bail. For further information about the decision to charge, bail and court proceedings see Part 3 of this handbook.

If you want further information about the way that the police investigate serious sexual offences you can read their *Guidance on Investigating Serious Sexual Offences 2008*.<sup>27</sup>

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27. *Guidance on Investigating Serious Sexual Offences (2008)* available to download from the Association of Chief Police Officers (ACPO) website at [www.acpo.police.uk](http://www.acpo.police.uk).

# 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 will be passed on to the **Crown Prosecution Service** (the CPS) who will then 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 lawyers who work for the CPS are called **Crown Prosecutors**. The head of the CPS is the **Director of Public Prosecutions** (the DPP).

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<sup>28</sup>.

## 6.2 The decision to charge

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?  
And
- Is it in the public interest to prosecute?

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.

### 6.2.1 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 do 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 type of evidence available, how reliable 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 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.

### 6.2.2 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 more serious the sexual violence, the more likely it will be in the public interest to prosecute.

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28. [www.cps.gov.uk](http://www.cps.gov.uk)

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;
- the offence was committed in the presence of, or near to, a child;
- 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 very clear reasons. 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; and/or
- the suspect was, at the time of the offence, suffering from serious mental or physical ill health.

All these issues are meant to be weighed against the seriousness of the offence<sup>29</sup>.

You should be told by the CPS Prosecutor whether or not the suspect is to be charged within 24 hours of the decision being made. Decisions in cases of rape are taken by specialist Prosecutors.

### 6.3 If the suspect is not charged

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.

When the CPS informs you that they are not able to charge the suspect, they should offer to meet with you to discuss their decision. If, following a meeting,

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29. 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 [http://www.cps.gov.uk/victims\\_witnesses/code.html](http://www.cps.gov.uk/victims_witnesses/code.html). There is also specialist guidance for Prosecutors who are dealing with domestic violence and rape cases.

you disagree with the decision taken by the CPS Prosecutor you may be able to challenge the decision through judicial review proceedings in the High Court. The time limit for applying for judicial review is three months. You will need specialist legal advice and representation to do this<sup>30</sup>.

## 6.4 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 within a week or be **remanded in custody** (held in prison) and brought 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.

## 6.5 Keeping the charge under review

Throughout the proceedings the Prosecutor must review the evidence and keep applying the two stage test. As new 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 change the charge to a lesser 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.

## 6.6 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 available (legal aid) 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 charge<sup>31</sup> but

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30. To find a solicitor visit the Community Legal Advice website at [www.clsdirect.org.uk](http://www.clsdirect.org.uk).

31. Contact the Bar Pro Bono Unit for information about contacting barristers and solicitors who may be able to act free of charge [www.barprobono.org.uk](http://www.barprobono.org.uk).

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.

# 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. Whether or not a case is prosecuted in the magistrates' or the Crown Court depends on a number of factors including:

- Whether the offence is:
  - **summary only** (can only be tried in the magistrates court),
  - **either way** (can be tried in either the magistrates or Crown Court), or
  - **triable only on indictment** (can only be tried in the Crown Court).
- Whether the magistrates' sentencing powers are sufficient.
- Whether the defendant has a right to trial by jury (because the offence is an either way offence) and exercises it.

The sentencing powers of the magistrates are limited to 6 months' imprisonment and/or a fine<sup>32</sup>. Cases where the sentence required may be more than 6 months' imprisonment must be sent to the Crown Court to be tried. If the magistrates' sentencing powers are sufficient for a particular case and the offence is an either way offence the defendant can choose where he is tried. If the offence is summary only, or triable only on indictment, then the defendant has no choice which court his case is heard in.

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

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32. This may be increased to 12 months if the sections of the Criminal Justice Act 2003 on custody plus come into force.

activity is heard in the Crown Court will depend on the nature and seriousness of the offence, as well as whether the defendant chooses Crown Court trial and whether the sentencing powers of the magistrates would be sufficient. For further information on these offences and which court they may be tried in see Part 1 of this handbook.

### 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 opportunity to make a bail application will 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; and
- any other considerations the court thinks relevant.

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 or indirectly.
- 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 pays the court money which is forfeited if the defendant does not then attend court when required).
- A security (where the defendant personally pays the court money which he forfeits if he does not attend court).
- 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).

# The first appearance of the defendant in court

- Staying in or out of certain areas.

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 (make arguments on your behalf) to the court which decides whether or not he 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. The decision to grant a defendant bail and the conditions imposed can then be reconsidered by the court.

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 or the High Court. If the defendant is released on bail after the CPS has opposed it, it may be possible for the Prosecutor to appeal against the decision to release him.

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<sup>33</sup>.

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33. You should keep a record of any behaviour that might be a breach of the defendant's bail conditions and give it to the police for use 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 will 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 make decisions.

### 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 formerly enter a plea of guilty or not guilty. If the defendant pleads guilty the case will 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 arranged to be dealt with 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.

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 for first offences by dealing with them in other ways, they can be prosecuted for very serious or 'grave' first offences, including sexual violence. A young defendant may be tried in a Youth Court (a part of the magistrates' court that deals with under 18 year olds) depending on the seriousness of the offence. The most serious sexual offences 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 permission of the court. 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 perpetrators 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 prosecution has to show (disclose to) the defence not only the evidence they have against him but also any evidence that may assist him. 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 police investigation or court proceedings against the perpetrator of sexual violence to continue. If this is the case you can contact the police officer dealing with your case and ask to make a **withdrawal statement** at any time during proceedings. In the withdrawal statement you will have to explain why you do not want the proceedings to continue. You may also be asked whether the statement that you made to the police reporting the offence was true<sup>34</sup>.

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.

If you make a withdrawal statement the police may want to explore with you why you no longer support proceedings, particularly if there is a chance that it is the result of pressure from or fear of the perpetrator. It may be that you fear further violence or that you are not receiving the information and support you need. If the person responsible for the violence (or one of his friends or family members) has contacted you or threatened you, the defendant may have either breached his bail conditions or committed further offences such as interfering with witnesses or **perverting the course of justice**. In addition to specific criminal offences there are other measures that are designed to support survivors of sexual violence through the criminal justice system (see Chapter 10 below).

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34. A person who gives incorrect or misleading information to the police can be charged with wasting police time, perjury or doing acts tending to pervert the course of justice. If you are concerned that you may be charged with an offence after reporting sexual violence to the police seek legal advice.

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<sup>35</sup>. If the CPS decide 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 by compelling you to attend court with a witness summons.

## 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 the CPS and served on you (delivered to your home or given to you personally).

Under section 169 of the **Serious Organised Crime and Police Act 2005**<sup>36</sup> 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.

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35. There are policies that set out how the CPS will prosecute cases of sexual or domestic violence. These can be found on the CPS website.

36. 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 survivors

## 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 of 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<sup>37</sup>.

## 10.2 The Code of Practice for Victims of Crime

The Code of Practice for Victims of Crime (the Victims' Code)<sup>38</sup> sets certain standards that victims can expect to receive from agencies involved in the criminal justice system including:

- A right to information about your crime and the development of your case within certain time scales, including the right to be told if the defendant is arrested, charged, given bail or appearing in court.
- A right to Information about Victim Support and, if you wish, referral to them.
- A right to information about and access to a Prison Service helpline to enable you to seek advice about unwanted contact by anyone convicted of or on remand for (being held in prison for) relevant criminal offences (see Appendix A for details of the helpline).
- A right to information from the Criminal Injuries Compensation Authority (CICA) on compensation.
- A right to make representations about post-release matters, such as any licence or supervision requirements, and to receive information about any

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37. For further information about how human rights are protected in international and domestic law see Rights of Women's publication *Pathways to Justice: BME women, violence and the law* (available from [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)) or contact Liberty (details given in Appendix A of this handbook).

38. The Code was issued by the Home Secretary under section 32 of the **Domestic Violence Crime and Victims Act 2004**.

conditions which are imposed on the perpetrator if you are a victim of a violent or sexual crime and the defendant has been sentenced to at least 12 months' imprisonment.

## *Agencies in the criminal justice system that are bound by the Victims' Code*

- All police forces in England and Wales including the British Transport Police
- Crown Prosecution Service
- Her Majesty's Court Service
- Joint police/CPS Witness Care Units
- Parole Board
- Prison Service
- Local Probation Boards
- Youth Offending Teams
- Criminal Compensation Authority and Appeals Panel
- Criminal Cases Review Commission

Victims of domestic and sexual violence are considered to be vulnerable or intimidated victims who should receive an enhanced service from the agencies in the criminal justice system. Those who are receiving the enhanced service should be told about the decision to arrest, charge or release the perpetrator on bail **within 24 hours**. Victims of crime who are not receiving the enhanced service should be given this information within 5 days.

If you do not get the service outlined in the Victims' Code you can complain about the agency concerned. The Code itself contains information about how to do this.

## 10.3 Anonymity

Under the Sexual Offences Act 2003 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. 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. 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 survivors 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.
- 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 for the survivor that should be independent from other agencies in the criminal justice system. ISVAs usually work with survivors of serious sexual violence (such as rape and assault by penetration). Whilst currently not every area has an ISVA service, the Government has committed to enabling all victims of sexual violence to access an ISVA by 2011<sup>39</sup>.

### 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

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39. Evidence from 2004 suggests that the use of IDVAs to support survivors resulted in an increased number of perpetrators being brought to justice, a reduction in the number of victim withdrawals and greater victim satisfaction with the criminal justice process. The Government has therefore committed to supporting the national roll-out of ISVAs and IDVAs nationally in *Saving Lives. Reducing Harm. Protecting the Public. An Action Plan for Tackling Violence 2008-11* page 47.

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 survivors of 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 survivor and other family members, such as children, who may be at risk. MARACs are currently operational in 100 areas across England and Wales. Evidence from those areas indicates that there is an average reduction of 50% in repeat victimisation among those cases reviewed at a MARAC<sup>40</sup>. Consequently, the Government is committed to expanding the number of MARACs to ensure that they are available to all victims of domestic violence<sup>41</sup>. As with IDVAs/ISVAs, the cases that are referred to the MARAC are those that are considered to be high risk.

## 10.6 Further support for survivors who are witnesses

In addition to the rights outlined in this Chapter, witnesses in criminal trials are also entitled to other support, such as special measures to assist them give evidence. These are dealt with in detail in Chapter 11.

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40. MARAC data monitoring, undertaken by Coordinated Action Against Domestic Abuse, 2007.

41. *Saving Lives. Reducing Harm. Protecting the Public. An Action Plan for Tackling Violence 2008-11* page 43.

# 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. As a survivor of sexual violence 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 decision about the case.

## 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. There are two types of witnesses in criminal proceedings: witnesses who give evidence about things that they have seen or heard, and **expert witnesses** who 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).

If you have given the police a witness statement you will be told when you have to attend court, usually by letter. The CPS 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.

## 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 co-ordinating 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 child care, 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.

### 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<sup>42</sup>.

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 criminal trials occur in public you might also want to think about whether you want your friends or family to attend.

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42. 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 have access to the court room 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)<sup>43</sup>. However, the fact that you might find giving evidence in open court difficult may not be enough to persuade the court to hear your evidence in private. Whether or not the court sits in private, as a survivor of 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.

It is also possible that the defendant will change his plea to guilty either before trial or 'at the door of the court' once they know that the prosecution witnesses have turned up to give evidence. 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.

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43. Section 25 Youth Justice and Criminal Evidence Act 1999

# 12. Trial

A criminal trial process involves the prosecution, for whom you are a witness, giving evidence and the defence challenging that 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

### *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. The prosecution can only call witnesses whose statements have been shown to the defence when the case was prepared and sent to the Crown Court for trial.

### *Submission of no case to answer*

This is a submission that can be made by the defence where it is thought that the prosecution does not have 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***

If the defendant gives evidence he will be examined-in-chief by his legal representative and then cross-examined by the prosecution. The defendant's case may also include other evidence such as witnesses who support the defendant's account of events.

### ***Prosecution closing speech***

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

### ***Defence closing speech***

The defendant 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.
- If the jury cannot reach a verdict 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.

## 12.2 Outline of a magistrates' court trial

### *Defendant enters plea*

#### *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 will call their witnesses who will then be cross-examined by the defence.

#### *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.

#### *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 done 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).

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. If you are the survivor of sexual violence you will usually be called to give your evidence after the Prosecutor has opened the case.

## 12.3 The prosecution case

We 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 evidence of a recent complaint. 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 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, that the prosecution has not produced enough evidence to enable the defendant to be safely convicted. 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. A successful submission of no case to answer will result in the defendant being found not guilty. 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.

### 12.5 The defence case

The defence case starts as soon as the prosecution case ends. The defence case usually begins with the defendant's evidence followed by any witnesses he has<sup>44</sup>. 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.

At the end of the defence case the prosecution and then the defence address the court in **closing speeches**. Once this has been done, if the case is heard in the Crown Court the judge will summarise the case for the jury and explain the relevant law they have to apply. If the case is being heard in the magistrates' court by lay magistrates (who are unqualified volunteers, rather than by a District Judge), they may take legal advice from their legal advisor.

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44. A defendant cannot be forced to give evidence at trial. 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 The standard 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. It is the prosecution's responsibility to present enough evidence so that the jury (or magistrates) are sure.

# 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 17; 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 witnesses' 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 include:

- **Screens** which can be placed either around the defendant or you so that the defendant cannot see you. The screens are placed so that the prosecution and defence lawyers, the judge and the jury (if there is one) can see you while you give evidence.
- A **live link** enables you to give evidence by a live televised link from another part of the court building (or a different building).
- Exclusion from the court of the public and press (except for one named person to represent the press) will be considered in all cases which involve sexual violence or intimidation.

# Giving evidence at trial

- **Video recorded evidence** enables a pre-recorded interview with you (usually the one you made to the police in which you described the offence, see section 5.4 above) to be played to the court as your examination-in-chief.
- Giving evidence through an **intermediary** who is appointed by the court to assist a witness. This is only available to witnesses who are entitled to special measures because of their age or a disability.
- **Aids to communication**, such as an interpreter or a communication aid (for example, a symbol book or alphabet board), may be used to enable a witness to give evidence. As with the use of an intermediary, these special measures are to assist witnesses with disabilities to communicate their evidence.
- **Protection from cross-examination by the defendant** ensures that the defendant cannot ask you any questions himself (they have to be asked by his legal representative).
- **Restrictions on evidence and questions about your sexual behaviour** limits the types of questions that you can be asked about your sexual history (and sexuality). This is discussed in further detail at section 13.5 below.
- **Removal of wigs and gowns** in the Crown Court where someone who is under 18 years old is giving evidence (in the magistrates court and Youth Court wigs and gowns are not worn)<sup>45</sup>.

As a survivor of 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).

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45. A form of special measure that has been proposed, but that is not yet available, is enabling a witness's cross-examination to be video-recorded before the trial and then played to the court during the trial. It is not yet known when (or if) this special measure will be available.

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 yours or another witness' 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 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

If the defendant has pleaded not guilty 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<sup>46</sup>.

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.

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<sup>46</sup>. 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 survivor on her previous sexual history (including her sexuality). 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 but 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. 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.<sup>47</sup> 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 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.

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

- Where there has 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.

This shows that cross-examination should not be allowed on sexual activity with the defendant (or anyone else) that was:

- not very close in time to; and/or,
- not very similar to,

the offence being considered at trial. The judge should only allow questions about particular incidents that the defendant alleges have occurred. Questions are only permitted where your answers to them may be crucial in the context of the defendant's particular defence. Evidence about your previous sexual relationships with the defendant can only be heard if it fits within in 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 trial<sup>48</sup> and different judges

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48. Human Rights Act 1998, section 3.

interpret the law in different ways. You may, therefore, want to consider how you would respond to questions about your previous sexual history.

These provisions of the YJCEA 1999 Act have not changed as a result of the implementation of the Sexual Offences Act 2003 (SOA 2003, see Part 1 for further information). However, the fact that under the SOA 2003 a defendant has to have a reasonable belief in the complainant's consent should limit the use of this type of evidence (see Part 1 for further information about consent).

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.

## 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.

## 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.

# 14. After the trial

## 14.1 The verdict

### 14.1.1 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.

### 14.1.2 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 passed<sup>49</sup> 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<sup>50</sup>.

The judge can only question a jury's verdict in very unusual circumstances<sup>51</sup>.

## 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

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49. A minimum of 2 hours and 10 minutes; the judge can decide to leave the jury for a much longer period and will do so in a particularly long, serious or complicated case.

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

51. 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.

### 14.3 A verdict of guilty

Once a defendant is found guilty<sup>52</sup> 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 usually prepared by the National Offender Management 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

The courts have a number of options for dealing with defendants who have been convicted of criminal offences. The most serious offences are dealt with by a prison sentence. Other options may be community sentences, for example, curfews, drug treatment and testing orders or fines. The maximum sentence that can be imposed by the magistrates' court is 6 months imprisonment and/or a fine<sup>53</sup>. The magistrates may send the defendant to the Crown Court for sentencing if they feel the offence merits a longer sentence than 6 months imprisonment.

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

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52. The same process follows a plea of guilty.

53. This may be increased to 12 months if the sections of the Criminal Justice Act 2003 on custody plus come into force.

serious types of each offence. When passing sentence the court will look at the aggravating and mitigating factors.

Aggravating factors are factors that make an offence more serious, they 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.

Mitigating factors are those that reduce the seriousness of the offence, they may include:

- Confessing to the police and/or pleading guilty at the earliest opportunity.
- Any relevant physical or mental health problems such as mental illness or a serious illness.

The sentencing judge has to weigh any aggravating or mitigating factors alongside the seriousness of the offence that has been committed. The judge will read your victim impact statement (if you made one) and consider the effect that the crime has had on you. Whether a sexual offence was committed by a stranger or by a person known to you should not, of itself, have any direct impact on the sentencing decision. This is because it has been recognised that it can be as damaging to have an offence committed against you by someone you know and trust as it is by a stranger.

Rape and assault by penetration are considered to be very serious offences that call for an immediate sentence of imprisonment<sup>54</sup> unless there are extremely exceptional circumstances. Someone convicted of rape or assault by penetration may receive one of the following sentences:

- A sentence of imprisonment for a specified amount of time (the average sentence for rape is seven and a half years)<sup>55</sup>.
- If the defendant is considered by the sentencing judge to be “dangerous”, (under the dangerousness provisions of the **Criminal Justice Act 2003**) he

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54. If the defendant is under the age of 21 and the offence carries a life sentence for an adult, he can be sentenced to custody for life in a young offender’s institution. Otherwise, depending on his exact age he can be detained in a young offender’s institution for a shorter period or given a detention and training order.

55. According to the sentencing guidelines, in 2003 72% of sentences in that year for rape were for more than 5 years imprisonment, with 86% being for over 4 years. The average sentence was 7½ years (see <http://www.sentencing-guidelines.gov.uk/docs/advice-sexual-offences.pdf> for further information).

can be given a sentence for public protection which consists of a period of imprisonment followed by an extended period of supervision in the community. If a defendant receives a sentence for public protection he can only be released when a parole board considers that he is no longer a threat to the public.

- A sentence of life imprisonment. This will consist of a period of imprisonment followed by supervision for the rest of the defendant's life. As with a sentence for public protection, a person who is given a life sentence can only be released from prison when a parole board considers he is no longer a threat to the public<sup>56</sup>.

### 14.5 Release from prison

If the defendant received a prison sentence he can be released before the end of his sentence, either unconditionally or on licence. Whether or not a person is released on licence and when this may occur depends on a number of factors, including the type and length of his sentence and his behaviour in prison. A person released on licence may be subject to certain conditions specified in his licence, including supervision by a probation officer. If he is convicted of an offence that can be punished by imprisonment while on licence or breaks the conditions of his licence, he can be returned to prison to finish his sentence. 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<sup>57</sup>.

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56. For further information on sentencing see the sentencing guidelines on the Sexual Offences Act 2003 which are available at [http://www.sentencing-guidelines.gov.uk/docs/0000\\_SexualOffencesAct1.pdf](http://www.sentencing-guidelines.gov.uk/docs/0000_SexualOffencesAct1.pdf).

57. Further information about the National Probation Service and their role is assisting you see their leaflet *An introduction to the National Probation Service Victim Contact Scheme* available to download from <http://www.probation.homeoffice.gov.uk/output/page29.asp>.

## 14.6 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 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.

## 14.7 Appeals

### 14.7.1 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).

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<sup>58</sup>. A notice of appeal should be lodged with the Crown Court within 28 days of conviction. 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:

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58. 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.

- faults in the judge's summing up;
- 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.

### **14.7.2 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.

### **14.7.3 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 Court of Appeal decides whether or not the sentence is unduly lenient and, if it is, whether to increase the sentence.

# 15. Compensation

## for survivors of sexual violence

### 15.1 The Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Scheme 2001 or 2008 (the Scheme) is a statutory scheme approved by Parliament for the purpose of compensating victims of violent crime for the physical or mental injuries they have received. The Scheme is administered by the **Criminal Injuries Compensation Authority (CICA)**. At the time of publication the 2001 Scheme was to be replaced by the 2008 Scheme on the 3rd November 2008. Detailed information on both Schemes will be available to download free from [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

In order to be able to apply for criminal injuries compensation you have to have received a criminal injury on or after 1st August 1961 in England, Scotland or Wales. A criminal injury is one that is received as a result of a crime of violence. A crime of violence could be a rape or a sexual assault. A criminal injury can be a mental and/or physical injury.

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.

It is **not necessary** for a perpetrator to have been charged or convicted of a criminal offence in order for you to be able to claim compensation. However, a claim for compensation may be reduced or refused where the applicant:

- failed to personally report the crime to the police as soon as was possible (taking into account any good reasons for a delay);
- failed to co-operate with the police or Crown Prosecution Service in the investigation or prosecution of the offence (for example, by refusing to give a statement or attend court and give evidence);
- failed to assist the CICA, for example, by giving them important information about the claim or attending medical examinations.

You can make a claim by completing the necessary application forms. These might have been given to you or you can obtain them from the CICA (see Appendix A). The application process is designed for people to be able to complete the forms themselves. You can contact a solicitor for help if you wish but public funding (often referred to as legal aid) is not available so you would have to pay for the advice privately. Victim Support can provide information about the Scheme as well as help completing the form. You can also approach your local Citizens' Advice Bureau or Law Centre.

### 15.2 Suing for damages

It may be possible to sue a perpetrator of sexual violence for damages. This involves bringing a claim in the civil courts (rather than the criminal courts). You may want to sue a perpetrator if he is acquitted of committing any offence or if the CPS decides that there is not sufficient evidence to charge him.

In order to succeed in a civil action you have to show that it is more likely than not that the perpetrator's act caused you damage. This is a lower standard than that that is applied in criminal cases (where a person can only be convicted if the jury or magistrates are sure of their guilt). In the civil courts there are also different rules about what evidence can be heard. This means that you can call evidence in a civil trial that could not be heard in criminal proceedings.

The judgement in a civil case will be about whether or not you should get damages from the defendant for any injuries you have suffered as a result of his actions. He cannot be sent to prison and he would not have a criminal record. The award of damages may be small or large and will be determined by the judge depending on how s/he views all the circumstances in the case, including your behaviour and the seriousness of your injuries. Your injuries may be either physical or psychological but medical evidence would be needed to support them. It is possible to get public funding (legal aid) to pay for bringing a civil action, but whether you would depends on your financial circumstances as well as your chances of success. There are time limits for bringing civil actions and this is also a complex area of law so you should seek specialist legal advice from a solicitor.<sup>59</sup>

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59. To find a solicitor visit the Community Legal Advice website at [www.clsdirect.org.uk](http://www.clsdirect.org.uk).

## 1. Support organisations for survivors of sexual violence

### One in Four

219 Bromley Road  
Bellingham  
London, SE6 2PG  
Helpline: 020 8697 2112  
(Mon 5pm-8pm, Sat 2pm-5pm)  
Fax: 020 8697 6843  
Email: [admin@oneinfour.org.uk](mailto:admin@oneinfour.org.uk)  
[www.oneinfour.org.uk](http://www.oneinfour.org.uk)

### Rape Crisis Federation

[info@rapecrisis.org.uk](mailto:info@rapecrisis.org.uk)  
[www.rapecrisis.org.uk](http://www.rapecrisis.org.uk)

### Rape & Sexual Abuse Support Centre (Croydon)

Helpline: 08451 221 331  
(Mon-Fri 12noon-2.30pm & 7pm-9.30pm, Weekends/Bank Holidays 2.30pm-5pm)  
Admin: 020 8683 3311  
Fax: 020 8683 3366  
Email: [info@rasasc.org.uk](mailto:info@rasasc.org.uk)  
[www.rasasc.org.uk](http://www.rasasc.org.uk)

### Samaritans

Chris  
PO Box 9090  
Stirling, FK8 2SA  
Helpline: 08457 90 90 90  
Email: [jo@samaritans.org](mailto:jo@samaritans.org)  
[www.samaritans.org](http://www.samaritans.org)

### The Survivors Trust

27b William Street, Rugby  
Warwickshire, CV21 3HA  
Tel: 01788 550554  
[www.thesurvivorstrust.org](http://www.thesurvivorstrust.org)

### Victim Support

Helpline: 0845 3030 900  
(Mon-Fri 9am-9pm, Weekends 9am-7pm, Bank Holidays 9am-5pm)  
Email: [supportline@victimsupport.org.uk](mailto:supportline@victimsupport.org.uk)  
[www.victimsupport.org.uk](http://www.victimsupport.org.uk)

### Women and Girls Network

PO Box 13095  
London, W14 0FE  
Helpline: 020 7610 4345  
(Tues 6pm-8.30pm)  
Tel: 020 7610 4678  
Website: [www.wgn.org.uk](http://www.wgn.org.uk)  
Email: [info@wgn.org.uk](mailto:info@wgn.org.uk)  
[www.wgn.org.uk](http://www.wgn.org.uk)

## 2. Sexual Assault Referral Centres (SARCS)

For more information about SARCS, visit [www.homeoffice.gov.uk/crime-victims/reducing-crime/sexual-offences/](http://www.homeoffice.gov.uk/crime-victims/reducing-crime/sexual-offences/)

## ENGLAND

### London

#### Haven – Camberwell

King's College Hospital  
Denmark Hill  
London, SE5 9RS  
Tel: 020 3299 1599  
(Mon-Fri 9am-5pm) or  
020 3299 9000 (at all other times)  
Fax: 020 3299 1598  
[www.thehavens.org.uk](http://www.thehavens.org.uk)

### **Haven – Paddington**

St Mary's Hospital  
Praed Street  
London, W2 1NY  
Tel: 020 7886 1101  
(Mon-Fri 9am-5pm) or  
020 7886 6666 (at all other times)  
[www.thehavens.org.uk](http://www.thehavens.org.uk)

### **Haven – Whitechapel**

The Royal London Hospital  
9 Brady Street  
London, E1 5BD  
Tel: 020 7247 4787  
[www.thehavens.org.uk](http://www.thehavens.org.uk)

### **Southern**

#### **Hampshire and Isle of Wight**

The Treetops Centre  
Northern Road  
Cosham  
Portsmouth, PO6 3EP  
Tel: 023 9221 0352  
[www.treetopscentre.co.uk](http://www.treetopscentre.co.uk)

#### **Swindon**

The New Swindon Sanctuary  
Sexual Assault Referral Centre  
The Gables  
Shrivenham Road  
South Marston  
Swindon, SN3 4RB  
Tel: 017 9350 7843  
Email: [info@swindonsanctuary.co.uk](mailto:info@swindonsanctuary.co.uk)  
[www.swindonpct.nhs.uk](http://www.swindonpct.nhs.uk)

### **South East**

#### **Dartford, Kent**

Renton Clinic  
Darent Valley Hospital  
Dartford

Kent, DA2 8DA  
Tel: 013 2242 8595

### **East Midlands**

#### **Condor, Derbyshire**

Millfield House  
PO Box 6960  
Ripley, DE5 4AF  
Tel: 0845 129 0111 (24 hour  
emergency helpline)

#### **Leicester**

#### **Juniper Lodge Sexual Assault Referral Centre**

Lodge One  
Leicestershire General Hospital  
Gwendolen Road  
Leicester, LE5 4PW  
Helpline: 011 6273 3330 (24 hours)  
Tel: 011 6273 5461  
Email: [juniperlodge@ukonline.co.uk](mailto:juniperlodge@ukonline.co.uk)  
[www.juniperlodge.org.uk](http://www.juniperlodge.org.uk)

#### **Nottingham**

The Topaz Centre  
P.O. Box No. 9262  
Nottingham North  
Nottinghamshire, NG5 0DW  
Helpline: 0845 600 15 88  
Email: [support@topazcentre.org.uk](mailto:support@topazcentre.org.uk)  
[www.topazcentre.org.uk](http://www.topazcentre.org.uk)

### **West Midlands**

#### **Walsall**

The Rowan Centre  
2 Ida Road  
Walsall  
West Midlands, WS2 9SR  
Tel: 01922 439 142  
(Mon-Fri 8.30am-5.30pm)

# Useful organisations

## North East

### Durham

#### The Meadows

John Street (North)  
Meadowfield  
Durham, DH7 8RS  
Tel: 019 1301 8554

### Newcastle

#### REACH – Rhona Cross Centre

18 Jesmond Road West  
Newcastle, NE2 4PQ  
Tel: 019 1212 1551  
Email: [info@reachcentre.org.uk](mailto:info@reachcentre.org.uk)  
[www.reachcentres.org.uk](http://www.reachcentres.org.uk)

### Sunderland

#### REACH – Ellis Fraser Centre

Sunderland Royal Hospital  
Kayll Road  
Sunderland, SR4 7TP  
Tel: 019 1565 3725  
Email: [info@reachcentre.org.uk](mailto:info@reachcentre.org.uk)  
[www.reachcentre.org.uk](http://www.reachcentre.org.uk)

## North West

### Lancashire

#### The SAFE Centre

Royal Preston Hospital  
Sharoe Green Lane  
Fulwood  
Preston, PR2 9HT  
Tel: 017 7252 3344  
Email: [safe@lthtr.nhs.uk](mailto:safe@lthtr.nhs.uk)

### Manchester

#### St. Mary's Sexual Assault Referral Centre

St. Mary's Hospital  
Hathersage Road

Manchester, M13 0JH

Tel: 016 1276 6515 (24 hour  
emergency helpline)

Email: [stmarys.sarc@cmmc.nhs.uk](mailto:stmarys.sarc@cmmc.nhs.uk)  
[www.stmaryscentre.org](http://www.stmaryscentre.org)

### Merseyside

#### SAFE Place – Merseyside

6th Floor, Citrus House  
40-46 Dale Street  
Liverpool, L2 5SF  
Tel: 0151 295 3550  
Fax: 0151 295 3551

## Yorkshire & Humberside

### Tees Valley

#### Helen Britton House

13 Trinity Mews  
North Ormesby Health Village  
Middlesbrough, TS3 6AL  
Tel: 016 4251 6888

## WALES

### Carmarthen, West Wales

#### Elm Tree House

West Wales General Hospital  
Carmarthen  
Dyfed, SA31 2AF  
Tel: 012 6723 5464  
Fax: 012 6723 1349  
Email: [sarc@newpathways.co.uk](mailto:sarc@newpathways.co.uk)  
[www.newpathways.co.uk/elm.htm](http://www.newpathways.co.uk/elm.htm)

### Cardiff, South Wales

#### Safe Island

Cardiff Royal Infirmary  
Glossop Road  
Cardiff, CF24 0SZ  
Tel: 02920 335795

### **Gwent**

Laburnum House  
Tredegar Street  
Risca  
Gwent, NP11 6BU  
Tel: 014 9523 3971

### **Merthyr Tydfil, South Wales**

New Pathways  
Willow House  
57-58 Lower Thomas Street  
Merthyr Tydfil, CF47 ODA  
Tel: 016 8537 9310  
Fax: 016 8538 4640  
Email: [enquiries@newpathways.co.uk](mailto:enquiries@newpathways.co.uk)  
[www.newpathways.co.uk](http://www.newpathways.co.uk)

### **Swansea, South Wales**

Beech Tree Centre  
Emily Phipps House  
Student Village  
Hendrefoelan Student Village  
Killay  
Swansea, SA2 8NB  
Tel: 01792 206885

## **3. Legal advice**

### **Community Legal Advice**

Advice line: 0845 345 4 345  
[www.clsdirect.org.uk](http://www.clsdirect.org.uk)

### **Criminal Justice System for England and Wales**

[www.cjsonline.gov.uk](http://www.cjsonline.gov.uk)

### **Rights of Women**

52-54 Featherstone Street  
London, EC1 8RT

Tel: 020 7251 6575/6  
Fax: 020 7490 5377  
Textphone: 020 7490 2562  
[www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)  
Details of our legal advice lines are given at the front of this book.

## **4. Criminal Injuries Compensation**

### **Criminal Injuries Compensation Authority**

Tay House,  
300 Bath Street,  
Glasgow, G2 4LN  
Tel: 0800 358 3601  
Fax: 014 1331 2287  
[www.cica.gov.uk](http://www.cica.gov.uk)

## **5. Childhood and family sexual abuse**

### **National Association for People Abused in Childhood (NAPAC)**

42 Curtain Road  
London, EC2A 3NH  
Advice line: 0800 085 3330  
(Mon 10.30am-3pm, 6pm-8.30pm,  
Tues 11am-1.30pm, 2.30pm-  
4.30pm, 7pm-9pm, Weds  
11.30am-5pm, 7pm-9pm,  
Thurs 10am-5pm, 6pm-9pm,  
Fri 11am-3pm, 4.30pm-9pm).  
[www.napac.org.uk](http://www.napac.org.uk)

### **NSPCC**

42 Curtain Road  
London, EC2A 3NH

Child Protection Helpline:  
0808 800 5000  
Email: [help@nspcc.org.uk](mailto:help@nspcc.org.uk)  
[www.nspcc.org.uk](http://www.nspcc.org.uk)

### 6. Support for male survivors

#### **Male Rape Support Association (MRSA)**

PO Box 126  
Fleetwood  
Lancashire, FY7 6WN  
Helpline: 07932 898274  
(Mon-Fri 9am-10pm)  
Email: [malerapemrsa2001@yahoo.co.uk](mailto:malerapemrsa2001@yahoo.co.uk)

#### **Survivors UK**

12A Evelyn Court  
Grindstead Road  
London, SE8 5AD  
Helpline: 0845 122 1201  
(Mon, Tues & Thurs, 7pm-10pm)  
Email: [info@survivorsuk.org](mailto:info@survivorsuk.org)  
[www.survivorsuk.org](http://www.survivorsuk.org)

### 7. LGBT survivors

#### **Broken Rainbow**

J414  
Tower Bridge Business Complex  
100 Clements Rd  
London, SE16 4DG  
Helpline: 08452 60 44 60  
(Mon 2pm-8pm, Wed 10am-1pm,  
Thurs 2pm-8pm)  
Email: [mail@broken-rainbow.org.uk](mailto:mail@broken-rainbow.org.uk)  
[www.broken-rainbow.org.uk](http://www.broken-rainbow.org.uk)

#### **GALOP**

2G Leroy House  
London, N1 3QP  
Helpline: 020 7704 2040 (Mon  
5pm-8pm, Wed 2pm-5pm, Fri  
12noon-2pm)  
Tel/Fax: 020 7704 6707  
Typetalk: 18001 020 7704 2040  
Email: [info@galop.org.uk](mailto:info@galop.org.uk)  
[www.galop.org.uk](http://www.galop.org.uk)

#### **London Lesbian & Gay Switchboard**

PO Box 7324  
London, N1 9QS  
Helpline: 020 7837 7324  
Tel: 020 7837 6768  
Textphone: 020 7689 8501  
Fax: 020 7837 7300  
Email: [admin@llgs.org.uk](mailto:admin@llgs.org.uk)  
[www.llgs.org.uk](http://www.llgs.org.uk)

### 8. Support for disabled survivors

#### **Respond**

3rd Floor  
24-32 Stephenson Way  
London, NW1 2HD  
Helpline: 0808 808 0700  
(Mon 2pm-7pm, Tues 12noon-5pm,  
Wed 12noon-5pm, Thurs 2pm-7pm,  
Fri 12noon-5pm)  
Tel: 020 7383 0700  
Fax: 020 7387 1222  
Email: [admin@respond.org.uk](mailto:admin@respond.org.uk)  
[www.respond.org.uk](http://www.respond.org.uk)

### 9. Elder abuse

#### **Action on Elder Abuse**

Astral House  
1268 London Road  
Norbury  
London, SW16 4ER  
Helpline: 0808 808 8141  
Tel: 020 8765 7000  
Fax: 020 8679 4074  
Email: [enquiries@elderabuse.org.uk](mailto:enquiries@elderabuse.org.uk)  
[www.elderabuse.org.uk](http://www.elderabuse.org.uk)

### 10. Human rights

#### **Equality & Human Rights Commission**

England  
Freepost RRL-L-GHUX-CTRX  
Arndale House  
Arndale Centre  
Manchester, M4 3EQ  
Advice line: 0845 604 6610  
(Mon, Tues, Thurs, Fri 9am-8pm)  
Textphone: 0845 604 6620  
Fax: 0845 604 6630  
Email: [info@equalityhumanrights.com](mailto:info@equalityhumanrights.com)  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

#### **Wales**

Freepost RRLR-UEYB-UYZL  
3rd Floor, 3 Callaghan Square  
Cardiff, CF10 5BT  
Advice line: 0845 604 8810 (Mon,  
Tues, Thurs, Fri 9am-5pm, Wed  
9am-8pm)  
Textphone: 0845 604 8820

Fax: 0845 604 8830  
Email: [wales@equalityhumanrights.com](mailto:wales@equalityhumanrights.com)  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### 11. Support for trafficked women and/or women in prostitution

#### **Churches Alert to Sex Trafficking Across Europe (CHASTE)**

PO Box 983,  
Cambridge, CB23 4WY  
Tel: 0845 456 9335  
Email: [admin@chaste.org.uk](mailto:admin@chaste.org.uk)  
[www.chaste.org.uk](http://www.chaste.org.uk)

#### **End Child Prostitution, Child Pornography, and the Trafficking of Children for Sexual Purposes (ECPAT-UK)**

Grosvenor Gardens House,  
35-37 Grosvenor Gardens  
London, SW1W 0BS  
Tel: 020 7233 9887  
Fax: 020 7233 9869  
Website: [www.ecpat.org.uk](http://www.ecpat.org.uk)  
Email: [info@ecpat.org.uk](mailto:info@ecpat.org.uk)  
[www.ecpat.org.uk](http://www.ecpat.org.uk)

#### **Poppy Project**

2nd Floor, Lincoln House  
1-3 Brixton Road  
London, SW9 6DE  
Tel: 020 7840 7129  
Email: [info.poppy@eaveshousing.co.uk](mailto:info.poppy@eaveshousing.co.uk)  
[www.eaves4women.co.uk](http://www.eaves4women.co.uk)

## 12. Immigration and asylum

### **Asylum Aid (including Refugee Women's Resource Project)**

Club Union House  
253-254 Upper Street  
London, N1 1RY  
Advice line: 020 7354 9264  
(Mon 2pm-4.30pm, Thurs 10am-12.30pm)  
Tel: 020 7354 9631  
Fax: 020 7354 5620  
Website: [www.asylumaid.org.uk](http://www.asylumaid.org.uk)  
Email: [info@asylumaid.org.uk](mailto:info@asylumaid.org.uk)  
[www.asylumaid.org.uk](http://www.asylumaid.org.uk)

### **Immigration Advisory Service**

Head Office  
3rd Floor, County House  
190 Great Dover Street  
London, SE1 4YB  
Tel: 020 7967 1200  
Tel: 0844 974 4000 (to make an appointment)  
Drop-in service: Mon 9am, Tues 12.30pm, Thurs 9am  
Fax: 020 7403 5875  
[www.iasuk.org](http://www.iasuk.org)

### **Joint Council for the Welfare of Immigrants**

115 Old Street  
London, EC1V 9RT  
Tel: 020 7251 8708  
Fax: 020 7251 8707  
Email: [info@jcwi.org.uk](mailto:info@jcwi.org.uk)  
[www.jcwi.org.uk](http://www.jcwi.org.uk)

### **Refugee Council**

240-250 Ferndale Road  
London, SW9 8BB  
Tel: 020 7346 6700  
Fax: 020 7346 6701  
London Advice line: 020 7346 6777  
Yorkshire and Humberside Advice line: 011 3386 2210  
East of England Advice line: 014 7329 7900  
West Midlands Advice line: 012 1622 1515  
Children's Panel Advice line: 020 7346 1134  
[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

### **Refugee Legal Centre**

Nelson House  
153-157 Commercial Road  
London, E1 2DA  
Tel: 020 7780 3200  
Detention Line: 0800 592 398/  
0207 780 3333 (Mon, Wed, Fri 10.30am-1pm, & 2pm-4.30pm)  
Emergency Line: 07821 598057  
(daily, 6pm-8am)  
[www.refugee-legal-centre.org.uk](http://www.refugee-legal-centre.org.uk)

## 13. Domestic violence

### **National Domestic Violence Helpline**

Helpline: 0808 2000 247  
(24 hours)  
Email: [helpline@womensaid.org.uk](mailto:helpline@womensaid.org.uk)

### **Refuge**

4th Floor, International House  
1 St Katharine's Way  
London, E1W 1UN  
Tel: 020 7395 7700  
Email: [info@refuge.org.uk](mailto:info@refuge.org.uk)  
[www.refuge.org.uk](http://www.refuge.org.uk)

### **Welsh Women's Aid**

Wales Domestic Abuse Helpline:  
0808 8010 800 (24 hours)  
[www.welshwomensaid.org](http://www.welshwomensaid.org)

### **Women's Aid**

Please visit their website for details of your local women's aid.  
Head Office  
PO Box 391  
Bristol, BS99 7WS  
Tel: 011 7944 4411  
(General enquiries only)  
Fax: 011 7924 1703  
Email: [info@womensaid.org.uk](mailto:info@womensaid.org.uk)  
[www.womensaid.org.uk](http://www.womensaid.org.uk)

## **14. Police complaints**

### **Independent Police Complaints Commission**

5th Floor  
90 High Holborn  
London, WC1V 6BH  
Complaint Call Centre:  
08453 002 002  
Fax: 020 4704 0430  
Email: [enquiries@ipcc.gsi.gov.uk](mailto:enquiries@ipcc.gsi.gov.uk)  
[www.ipcc.gov.uk](http://www.ipcc.gov.uk)

## **15. Sentencing post-release matters**

### **Prison Service Victim Helpline**

National Offender Management  
Service Victim Helpline  
P.O. Box 4278  
Birmingham, B15 1SA  
Helpline: 0845 7585 112  
[www.noms.homeoffice.gov.uk](http://www.noms.homeoffice.gov.uk)  
[www.probation.homeoffice.gov.uk](http://www.probation.homeoffice.gov.uk)

## **16. Other research and campaigning organisations**

### **Child and Women Abuse Studies Unit**

London Metropolitan University  
Ladbroke House  
62-66 Highbury Grove  
London, N5 2AD  
Tel: 020 7133 5014  
Fax: 020 7133 5075  
Email: [cwasu@londonmet.ac.uk](mailto:cwasu@londonmet.ac.uk)  
[www.cwasu.org](http://www.cwasu.org)

### **Truth About Rape**

[www.truthaboutrape.co.uk](http://www.truthaboutrape.co.uk)

Other Rights of Women publications include

From A to Z: A woman's guide to the law

Domestic Violence DIY Injunction Handbook (second edition)

Child Contact Handbook (second edition)

Pathways to Justice: BMER Women, Violence and the Law

Rights of Women also publish information sheets on issues including

- Child contact
- Child residence orders
- Child support
- Civil partnership
- Criminal injuries compensation
- Dissolution of civil partnership
- Divorce
- Domestic violence
- Domestic violence, housing and homelessness
- Financial arrangements after civil partnership breakdown
- Financial arrangements after marriage breakdown
- Lesbian parenting
- Living together and the law
- Parental responsibility
- Reporting an offence to the police
- Rape and assault by penetration
- Sexual assault and causing someone to engage in sexual activity
- When parents separate

For more information about Rights of Women publications and to download free information sheets visit our website at [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

An original publication from Rights of Women.

**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. 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 the different agencies in the criminal justice system have to survivors of 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 without consent.
- The decision to report an offence to the police and an overview of the investigative process.
- The decision to charge, the role of the Crown Prosecution Service, and what happens at trial including giving evidence at court and the verdict.
- The medical, legal and support options available to a survivor of sexual violence.

Rights of Women: helping women through the law