RIGHTS of WOMEN

helping women through the law

From Report to Court

A handbook for adult survivors of sexual violence

(Sixth edition)

Rights of Women's vision is to achieve equality, justice and safety in the law for all women.

Rights of Women's mission is to advise, educate and empower women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs

Rights of Women's areas of expertise include all forms of violence against women, family, criminal, immigration and asylum law and we run regular training courses on these issues.

For free, confidential legal advice on criminal law including sexual offences, domestic violence, harassment, reporting offences to the police, the criminal justice system, the rights of victims and criminal injuries compensation call: **020 7251 8887.** The advice line is open on **Tuesdays 7pm-9pm**.

For free, confidential, legal advice on family law or immigration and asylum law visit **www.rightsofwomen.org.uk/get-advice** for details of our advice lines.

The information in this handbook is correct to September 2018. The law is complex and may have changed since this handbook was produced. This handbook is designed to provide general information only for the law in England and Wales and is not legal advice. If you are affected by any of the issues in this handbook you should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

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Index

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. We use the term sexual violence throughout the handbook to describe a sexual act, or attempt to commit a sexual act, that takes place without the consent (agreement) of the person who has experienced it. This includes, but is not limited to, situations where physical or other violence is also used.

This handbook will explain the different stages of the legal process, from the point of deciding whether to report the incident to the police, through to the trial, the outcome of the trial 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:

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:

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:

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.

Throughout this handbook we have referred to your rights as a complainant going through the criminal justice system. Look out for these boxes which contain more rights-based information such as your entitlements under the Victim's Code or how you can hold the police to account.

1.2 Language

Sexual violence is most commonly perpetrated by men against women. Consequently, in this handbook we refer to the perpetrator of sexual violence throughout as he and the person who has experienced it as she. However, the information in this handbook relates equally to male and non-binary survivors of sexual violence.

Depending on the stage of proceedings we will use the terms perpetrator, suspect and defendant to describe the abuser, 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

In the Crime Survey for England and Wales (year ending March 2017) an estimated 3.1% of women (510,000) and 0.8% of men (138,000) aged 16 to 59 experienced sexual assault in the preceding 12 months. The survey estimated that 20% of women and 4% of men have experienced some type of sexual assault since the age of 16.

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

Sexual violence by an intimate partner

45% of female victims of rape or assault by penetration (including attempts) reported they were assaulted by a partner or ex-partner.[1] You are more likely to be sexually assaulted by a current or ex-partner than by a stranger. Sexual violence can 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.

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

When sexual violence is discussed it is often referred to in terms of who the perpetrator is and what relationship, if any, he has or had with the survivor. In relation to rape, for example, reference is made to marital rape, acquaintance rape, date rape or stranger

[1] *ONS (2017) Sexual offences in England and Wales: year ending March 2017. Available at:* ***www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017***

rape as if these were different offences. None of these phrases have any legal meaning. It is not relevant, in law, what relationship (if any) a perpetrator has or had to a survivor. Nor is it relevant if the act complained of occurred within a relationship or following the breakdown of a relationship. 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. In fact, guidelines that assist judges who sentence perpetrators of sexual violence make it clear that sexual violence within a relationship is a factor that should result in an increased sentence because of the breach of trust involved.

If sexual violence has occurred within a relationship then there are a number of legal options that are available in addition to, or instead of, reporting to the police. For example, you could apply for domestic violence injunctions at the Family Court which forbid your abuser from abusing you or your children or to prevent him returning to the family home. For further information **see: Domestic violence injunctions** which is available on Rights of Women's **website**, or contact us to request a copy.

If you are concerned that your partner or ex-partner may have a history of domestic violence or violent acts (including sexual violence) then you can ask for information from the police. If your partner has a history of violence or abuse the police may disclose this information to you under the Domestic Violence Disclosure Scheme (also known as Clare's Law).

If you have decided that you want to end the relationship you may want to consider divorce proceedings or reconsider who lives in the family home. Further information on these and other issues relating to domestic violence and the law is available from Rights of Women's website.[2] For details of other specialist organisations that may be able to assist you **see Appendix A.**

Sexual violence by a family member

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

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

Sexual violence by someone you know

A study in 2013 showed that around a third of female victims of any form of sexual assault reported that it had been committed by someone known to them such as an acquaintance, work colleague or friend [3]. If the perpetrator has harassed or intimidated you or made you fear that violence may be used against you, you may be able to get an injunction 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 on harassment injunctions **see: Harassment and the law** which is available on Rights of Women's **website**, or contact us to request a copy.

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**.

Black and Minority Ethnic survivors

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

Under the Equality Act 2010, public authorities such as the courts, the police and the Crown Prosecution Service are required to ensure that their practices and procedures do not unlawfully discriminate on the grounds of race. If you feel that you have been discriminated against or treated inappropriately on the grounds of race you can complain about the agency responsible and may also be able to take 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.

Survivors who are non-English speaking or speak English as a second language

During any involvement you have with the justice system, such as with the police or at court, if you do not speak English an interpreter will be provided for you. You can also request an interpreter if you speak some English but not enough to understand the law or legal proceedings.

There is a National Agreement on Use of Interpreters which provides guidance to all those involved in criminal investigations and proceedings on the selection and treatment of interpreters within the criminal justice system. This guidance has been adapted over time. The Crown Prosecution Service (CPS) also has published guidance on interpreters.[4]

[3] Ministry of Justice (2013) An Overview of Sexual Offending in England And Wales. Available at:
www.gov.uk/government/statistics/an-overview-of-sexual-offending-in-england-and-wales

[4]The Crown Prosecution Service lists guidance on the use of interpretations.
www.cps.gov.uk/legal-guidance/interpreters

Interpreters used by the police and courts should be registered by the National Register of Public Service Interpreters (NRPSI) who have a code of conduct and a complaints procedure. If you are concerned about the interpreter that was used or is being used at any stage of the proceedings you can make a formal complaint to NRPSI. A complaint can be about their abilities to interpret (linguistic) or about unprofessional or inappropriate behaviour (non-linguistic). You should also inform the police officer in the case or CPS lawyer if you have any concerns about the interpreter.

Lesbian, gay, bisexual, transgender, queer or intersex (LGBTQI) survivors

As discussed above, LGBTQI 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, transphobia or intersex phobia. Information collected by Stonewall on homophobic hate crime found that 12% of the victims of homophobic hate crimes experienced unwanted sexual contact, compared to 10% who experienced physical violence.[5]

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

Disabled survivors

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

(a) she or he has a physical or mental impairment

and

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

[5] Guasp, A. (2013) Homophobic Hate Crime, The Gay British Crime Survey 2013. Available at: ***www.stonewall.org.uk/documents/hate_crime.pdf***

[6] 28% of victims of homophobic hate incidents did not report them to anyone because they did not think that it would be taken seriously and 10% did not report because they did not want to out themselves (Guasp, A. (2013) Homophobic Hate Crime, The Gay British Crime Survey 2013. Available at: ***www.stonewall.org.uk/documents/hate_crime.pdf)***

Public authorities such as the police and the courts, must make reasonable adjustments to enable disabled people to access them. This means that people who have disabilities affecting their ability to communicate should be provided with intermediaries to enable them to give evidence to the police and in court. Rooms and buildings should be accessible to those with physical disabilities. Breaks in making a statement or giving evidence should be organised for those who have difficulties concentrating for long periods of time. If you need reasonable adjustments to be made to enable you to report an offence to the police, or give evidence in court, you should discuss this with the relevant agency, for example the police or the Witness Care Unit **(see section 11.3)**.

Sections 30 to 41 of the 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 their carers. While these offences are not covered in this book you can contact Rights of Women for advice on these and any other legal issues relating to sexual violence **(see the inside front cover of this book)**.

The police should treat all reports of sexual abuse as serious and not make assumptions about you because you are disabled. If you feel you have been treated unfairly you should contact one of the specialist organisations at **Appendix A** and see the sections in From Report to Court that outline the protections available to survivors of sexual violence. The Equality Act 2010 offers protection against discrimination on the grounds of disability. If you feel that you have been discriminated against or treated inappropriately because of you are disabled 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 are involved in prostitution

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

If you come from outside the UK

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

Many people who come to the UK to claim asylum or human rights protection have experienced sexual violence in their country of origin. Rights of Women has written a book, **Seeking Refuge? A handbook for asylum-seeking women** to assist women in this situation, it is available free of charge. **See our website** for further information about it and other useful Rights of Women publications.

If the abuse happened outside of England and Wales

The SOA 2003 deals with offences that have taken place in England and Wales. Similar (but different) legislation deals with Northern Ireland and Scotland.[7] If you have experienced sexual violence outside of the UK you should seek legal advice on your situation. However, sexual violence that has occurred outside of the UK cannot usually be investigated and prosecuted in the UK. This means you may need to report it to the police or authorities in the country where the violence happened. There are slightly different rules for women who have been trafficked for sexual exploitation.

Trafficking for sexual exploitation

Trafficking is when someone is moved from one place to another using force, deception, the abuse of power, or vulnerability in order to exploit that person (for example, forcing someone to be involved in prostitution). The Modern Slavery Act 2015 criminalises trafficking a person into or out of the UK for the purposes of exploitation, whether the exploitation happens in the UK or anywhere else in the world. This includes sexual exploitation. Trafficking within the UK is also a criminal offence.

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 England and Wales for the purposes of sexual exploitation in the same way as they do to other women who have experienced sexual violence.

A woman who has been trafficked into the UK may have additional issues that she wishes to resolve, for example, her immigration position. 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. For further information **see our legal guide Trafficking and Modern Slavery** which is available on our **website**.

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

Male survivors

The Crime Survey for England and Wales 2016-2017 estimates that 4% of men have experienced some type of sexual assault since the age of 16 and research indicates that over 5% of men have experienced sexual abuse as a child [8]. 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.

1.4 Sexual violence that occurred before 1 May 2004

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 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.

Over time the law on sexual offences has changed, as have the names given to some of the sexual offences. The legal section of this handbook, Part 1, explains the 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. 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). For more information on the law which applied before 1 May 2004 contact Rights of Women's advice line.

The procedures and protections available to survivors of sexual violence are not affected by the date when the offence happened. This means that Parts 2 and 3 of this handbook which describe the police investigation and court process will be relevant to you.

[8] *ONS (2017) Sexual offences in England and Wales: year ending March 2017. Available at:* ***www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017***

Coxell A., King M., Mezey G. and Gordon D. (1999) 'Lifetime prevalence, characteristics, and associated problems of non-consensual sex in men.' British Medical Journal vol. 318, pp.846-850. This is borne out by the British Crime Survey which found that 4% men report having experienced some form of sexual assault (Coleman, K., Jansson, K., Kaiza, P. and Reed, E. (2007) Homicides, Firearm Offences and Intimate Violence 2005/2006. Available at: ***www.webarchive.nationalarchives.gov.uk/20110218141827/http://rds.homeoffice.gov.uk/rds/pdfs07/hosb0207.pdf***

1.5 Myths about sexual offences

- **People are most likely to be raped outside, late at night, by a stranger.** Sexual violence is usually perpetrated by someone known to the survivor and usually takes place within the home or somewhere else familiar to that person (like their place of work or at a friend's house). A person is not to blame if they experience sexual violence and should not be made to feel that they can't be in public spaces alone or at particular times. Such myths reduce freedom and seek to shift the blame away from the one person who is responsible for it, the perpetrator.

- **People who are sexually assaulted are 'asking for it' by the way they dress or behave.** Sexual assaults happen to people of all ages, classes, cultures, sexual orientations, races and faiths. No one is 'asking' to be sexually assaulted and no one is to blame in any way if they experience sexual violence. Sexual assaults are acts of violence for which the perpetrator alone is responsible.

- **When someone says "no" to sexual activity they often mean "yes".** Sexual activity without consent is a sexual assault. No always means no.

- **A person cannot be raped or sexually assaulted by a husband or partner.** Having previously had sex with a person or being in a relationship with them does not mean that consent is given to all or any sexual activity. Consent must be given every time people engage in sexual contact. Legally a person can choose to engage in different forms of sexual activity at different times and change their mind about sexual activity at any point. Their partner must respect that.

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

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

- **If a person is not upset about the sexual assault it probably did not happen.** People respond to sexual violence in different ways. Some people may be upset, others may be angry. Some want to talk to their friends and family and others are embarrassed or too distressed. There is no typical way of behaving following a sexual assault.

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

- **People involved in prostitution cannot be raped or sexually assaulted.** If someone engages in sexual activity without consent an offence has been committed. If someone has paid for sexual activity this does not mean that the person involved in prostitution has consented to it. The law on consent applies equally to people involved in prostitution. No one can assume consent and a person involved in prostitution can choose what sexual activity they want to engage in and with whom, and can change their mind at any time.

1.6 Sharing private sexual images

It is a criminal offence for someone to show a private sexual photograph or film of you to another person or people, without your consent and with the intention of causing you distress. It is an offence whether they show someone the image, or share it with others via social media, email or any other form of communication. It can also be an offence for another person to then re-share or re-post the private sexual image or film with others. Some people refer to the act of sharing private sexual images as **revenge porn**.

A photograph or film is **private** if it shows something of a kind that is not ordinarily seen in public.

A photograph or film is **sexual** if it shows all or part of a person's exposed genitals or pubic area, or if a reasonable person would consider the photograph or video to be sexual because of its nature.

A person who is found guilty of an offence of sharing sexual or private photographs or videos without consent can be sentenced to up to two years in prison or fined, or both.

If someone has shared a private sexual photograph or video of you without your consent you can report this to the police. In an emergency you can contact the police for assistance by dialling 999. In non-emergencies you can contact the police by dialling 101.

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

When is it not a criminal offence?

It is not an offence if someone shares a sexual or private photograph or video of you in order to prevent, detect or investigate a crime. For example, someone might need to show a sexual photograph or video of you to the police to help them investigate a crime. The law states that it is not an offence if the photograph or video is shared for the purposes of journalism. For example, a private photograph of you could be published in a newspaper as part of a news story if the person who shared the photograph reasonably believed it was in the public interest.

The law also states that it is not an offence for someone to share a photograph or video of you if they believed that it had already been shared or published, with your consent and that you had been paid. For example, if there is a photograph of you on a pornographic website, someone might see it and assume you have consented to it being posted and been paid for the photo. They might then share it with someone else. That is not an offence. However, if the person who originally posted the image did so without your consent, they may be guilty of an offence.

1.7 Police, the CPS, lawyers and witnesses

The police are responsible for protecting the public and investigating crimes. They will receive your report or complaint of sexual assault. They should then investigate the crime and collect evidence.

The Crown Prosecution Service (CPS) are lawyers who prepare and present cases at court. They will present your case to the court, but they do not act directly for you. At court, the CPS must prove that the defendant is guilty. **See section 6.1** for further information on the role of the CPS.

Defence lawyers represent the suspect or defendant. They give advice, attend interviews and represent the defendant at court.

If you are the victim of the crime, then you will not have your own lawyer. You will be a witness. There may be other witnesses in the case too. A witness is someone who saw the crime or can give evidence about the crime. **See section 11** for further information on being a witness in criminal proceedings.

PART 1

THE LAW

2. The legal framework

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
- causing someone to engage in sexual activity

2.1 The Sexual Offences Act (SOA) 2003

The SOA 2003 covers over 50 sexual offences; however, for reasons of space we cannot deal with all of them in this handbook. Further information about other offences in the SOA 2003 and other relevant policies and procedures can be found on the Home Office's and Crown Prosecution Service's websites.[10] If you require information about offences not detailed here, you can contact Rights of Women's advice line.

Does the SOA 2003 apply to me?

The SOA 2003 came into force at midnight on 1 May 2004. This means that if the sexual violence you experienced took place after midnight on 1 May 2004 the relevant law is the SOA 2003 and this section of the handbook will apply to you. If the sexual violence you experienced took place before midnight on 1 May 2004 then the relevant law may be the Sexual Offences Act 1956 and not the law covered in this handbook. If you do not know when the offence was committed, and it cannot be proved that it occurred either before or after midnight on 1 May 2004, then the defendant may still be convicted of an offence.[11] **Parts 2 and 3** of this handbook will be relevant to you no matter when the offence happened.

The age of the complainant

Children under 13 years old

Children aged under 13 are 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). The SOA 2003 contains specific offences of rape, sexual assault by penetration, sexual assault, and causing a child to engage in sexual activity which apply to children under 13 years old. There are also a number of additional child sex offences in the SOA 2003. This handbook will not cover offences against children under 13 or child sex offences.

Children between the ages of 13 and 16

A child between the ages of 13 and 16 is considered to have the capacity or ability to consent to sexual activity. However, even if the child consents it is an offence for a person aged 18 or over to engage in sexual activity with a person under the age of 16 (unless that person has a reasonable belief that the person concerned was 16 years old or over). There are also a number of additional child sex offences in the SOA 2003 relevant to children aged

[10] For further information about sexual offences see ***www.homeoffice.gov.uk*** *and* ***www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-1-cps-policy-statement***

[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.

under 16. This handbook will not cover child sex offences.

This handbook focuses on adult survivors of sexual violence. There are additional protections available for survivors of sexual violence who are under 18. For further information please **see our guide Your Rights, Your Body, Your life: Sexual violence and the law, a young person's guide** which is available from our **website**.

2.2 Concepts common to all four offences

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

- what behaviour is **sexual** and
- consent

Sexual

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

- the act is sexual by its nature

  or
- the act may or may not be sexual by its nature but because of the circumstances in which it occurred or the purpose any person (like the defendant) has, or both, it is sexual

Sexual intercourse is an act that is sexual by its very nature. However, some behaviour, such as penetration, or touching is not always sexual by its nature. For example, touching a part of someone's body through clothes may or may not be sexual. This will depend on:

- the circumstances in which the sexual activity occurred (for example, where the touching occurred, what was touched and with what)

  and/or
- any person's, such as the defendant's, purpose

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

Consent

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

Consent can be shown or given in different ways. Consent can be expressed, for example, through a verbal statement that a person wishes to engage in sexual activity. Consent can also be implied, for example, by behaviour. This means that 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.

Consent may 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 withdraw your consent to sexual activity at any time before or during a sexual act.

Consent has to be given for every sexual activity each time it occurs. Just because a person consented to a type of sexual activity in the past this does not mean she consents every time.

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."

This means consent has two parts: 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 several 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 cases state that a person will lack capacity to consent if at the relevant time she has no understanding of what is involved or has such limited knowledge or understanding that she is not able to decide whether or not to agree. Being unconscious or under the influence of drugs or alcohol may remove a person's capacity to consent.[12]

Under the SOA 2003 a child 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) must be considerable before it would result in a person being considered to be unable to choose whether or not to engage in sexual activity.[13]

[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 [2009] UKHL 42

Reasonable belief in consent

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

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

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

Whether the defendant's belief in the complainant's consent is reasonable is decided by looking at all the circumstances of the case. This includes any steps that the defendant took to find out whether the complainant was consenting (such as asking her).

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

Relationships and consent

Many women feel pressured into sexual activity by a husband or partner. A woman who is married or in a relationship does not have to consent to sexual activity of any kind if she does not want to. The fact that a woman is married or in a relationship is no defence to committing a non-consensual sexual offence. This applies whether you are in a 'straight' heterosexual relationship or LGBTQI relationship.

Voluntary intoxication, capacity and sexual activity

To consent to sexual activity a person must have the freedom and capacity to choose. However, there may be some circumstances where a woman's capacity to choose to enter into sexual activity is affected because she has chosen to consume alcohol or another substance (this is often referred to as voluntary intoxication). For involuntary intoxication or spiking **see section 4.1.**

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 Consent and the presumptions**).

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

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

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 Mike had the capacity to consent to sexual activity, and if he did, whether or not he did consent. It is clear that Mike did understand the nature of the act that he engaged in (he was able to discuss condom use) and that he did in fact consent. The fact that Mike's judgement was affected by alcohol does not mean that he did not have the capacity to engage in sexual activity and that he therefore did not consent.

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

While the 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 use of alcohol of drugs made it harder for a complainant to remember the incident.

For this reason, you are likely to be questioned on whether or not you can be sure of what happened if your ability to remember the incident has been affected by drinking alcohol or consuming any other substance.

Consent and the presumptions

The SOA 2003 includes a set of situations which make it harder for the defendant to argue that the complainant consented to the sexual activity concerned. The prosecution must prove the situation existed and that the defendant knew the situation existed. These are called presumptions. There are two sets of presumptions within the SOA 2003:

- Evidential presumptions: these are a set of circumstances which may lead to the presumption that you did not consent to sexual activity. If one of these presumptions apply, the defendant must produce sufficient evidence to persuade the judge that the issue of consent should be given to the jury to decide.
- Conclusive presumptions: these 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. If before or during the relevant sexual act, one or more of the circumstances set out in section 75 existed and the defendant knew that those circumstances existed, the judge will conclude that you did not consent to the sexual activity and the defendant did not believe that you were consenting. The circumstances are that:

- any person was, at the time of the relevant act or immediately before, using violence against you or causing you to fear that immediate violence would be used against you
- any person was, at the time of the relevant act or immediately before, causing you to fear that violence was being used, or that immediate violence would be used, against another person
- you were, and the defendant was not, unlawfully detained
- you were asleep or otherwise unconscious at the time of the relevant act
- because of your physical disability, you would not have been able to communicate to the defendant whether or not you consented to the sexual activity
- any person (the defendant or someone else) had given you or caused you to take a substance without your consent, which made you stupefied or overpowered at the time of the relevant act

In all these situations the defendant can rebut (try to disprove) the evidential presumption. This means that if he can produce enough evidence to persuade the judge that consent is still an issue then the presumption will not apply, and a jury will decide whether there was consent.

When trying to rebut an evidential presumption the defendant will provide evidence. For example, give 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 to rebut the presumption. If it is, the issue of your consent and/or his belief in your consent will to go to the jury to decide.

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. A jury will not be asked to decide whether there was consent.

Evidential presumptions: an example

Jo had been in a relationship with Mark for several 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 just 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, then the presumption that Jo did not consent may apply because violence was used against her before the act and Mark caused her to believe that violence would be used against other people (their children).

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

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

- when the defendant intentionally deceives you into thinking that his actions have another purpose, such as a medical examination[15]

or

- when the defendant intentionally pretends to be someone you know, such as your partner, to engage in sexual activity with you

If either of these situations are proved at trial, then you will be taken not to have consented to the sexual activity concerned and the defendant 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.

At the time of writing the presumptions are not frequently used. Unless one of the above presumptions applies in your case and the prosecution choose to rely on it, it is always for the prosecution to prove that you did not consent, and that the defendant did not reasonably believe that you consented (**see section 12.7** on the burden and standard of proof).

Conclusive presumptions: an example

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

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

[16] This example is based on the case of R v Devonald (Stephen) [2008] EWCA Crim 527. In this case an application to appeal the conviction was made to the Court of Appeal. The Court of Appeal refused, holding that it was open to the jury to conclude that the complainant (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.

Conditional consent

Conditional consent refers to the situation where consent is only granted on particular conditions being fulfilled. Where the conditions were not complied with, or where there was a deception, consent to the sexual activity may then no longer exist. For example, if you agreed to have sexual intercourse with someone only if they used a condom and the person then (intentionally and without your consent) did not use a condom, your consent may have been negated and an offence committed.[17] Conditional consent is an area that has been developed by case law [18], and so whether the deception of the perpetrator is enough and of a type that means consent no longer exists will depend on the circumstances of your case.

2.3 The offences

Rape

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

- A intentionally penetrates the vagina, anus or mouth of B (the complainant) with his penis

  and
- B does not consent to the penetration

  and
- A does not reasonably believe that B consents

The offence of rape in section 1(1) SOA 2003 includes vaginal, anal and oral penetration with a penis. The penetration must be with a penis for the offence of rape. If the penetration is with something other than a penis then the offence is assault by penetration.

Penetration in rape is the act, which starts at entry with the penis and ends with withdrawal. Penetration can be of the vagina, anus or mouth. 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

Therefore, even if you can show you were not consenting, if he reasonably believed you were then he has not committed an offence. The question as to whether his belief was reasonable has to be answered by looking at all the circumstances of the case, including what he did to make sure you were consenting.

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

[18] Case law is decisions made by judges in previous cases that set a precedent for future cases.

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

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

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. Provided there is sufficient evidence to prove the case, the Crown Prosecution Service will usually prosecute rape cases unless there are public interest factors tending against prosecution which outweigh factors in favour of prosecution. Prosecution is almost certainly required in the public interest. **See The decision to charge** at **section 6.2** for further details.[19]

Assault by penetration

This offence covers 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

  and
- the penetration is sexual

  and
- 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 Rape earlier in this section**). 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.

Penetration of the mouth is not included in this offence. However, sexual penetration of a woman's mouth (for example, with the defendant's tongue) would be considered sexual assault (**see Sexual assault later in this section**).

[19] *The Crown Prosecution Service's policy and guidance on offences can be found at* **www.cps.gov.uk**

As with rape, the penetration has to be intentional and without your consent. The penetration must also be sexual and so it is not an offence to perform medical examinations with the patient's consent (for example, a smear test) or, if the patient is unconscious, 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 and the presumptions apply to this offence in the same way as they do to rape.

Criminal proceedings and sentence for assault by penetration

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

Sexual assault

Under section 3(1) SOA 2003 a defendant, A, is guilty of sexual assault if:

- A intentionally touches B (the complainant)

  and
- the touching is sexual

  and
- 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.

The touching concerned can be done with a part of the body, such as a hand, or with an object. Touching can be through clothes, for example, pinching someone's bottom. The touching must also be sexual which means that a person who accidently 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 consent is decided, and the factors considered are the same as for rape and assault by penetration.

Examples of sexual assault

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

Criminal proceedings and sentence for sexual assault

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

Causing a person to engage in sexual activity

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

  and
- the activity is sexual

  and
- 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 for an offence to be 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. This is sometimes called coercion. Tricking someone may also amount to "causing", provided there is some action by the defendant that results in another person 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 can exercise power or influence over you that prevents you from being able to exercise free choice.

The causing must be intentional, and the prosecution must 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 considered, are the same as for rape, assault by penetration and sexual assault. The presumptions about consent also apply to this offence.

Examples of causing someone to engage in sexual activity without consent

- Where a woman forces her partner to touch herself sexually where she does not consent, and the defendant does not reasonably believe she consents.
- Where a man forces his partner to penetrate herself using a vibrator where she does not consent, and he does not reasonably believe she consents.

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

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

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

Where the sexual activity involves penetration with a penis, or penetration with any object of the victim's vagina or anus, the offence can only be tried in the Crown Court and the maximum sentence is life imprisonment.

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

Attempted offences

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

Attempted offences are serious, and the police and courts have a duty to treat them seriously. A person found guilty of an attempted sexual offence will face the same maximum sentence as someone who succeeds in carrying out the offence.

Secondary party and joint enterprise

Anyone who has helped or assisted in a criminal offence can be charged with, and convicted of, the offence as a secondary party or on a joint enterprise basis. A joint enterprise is where two people commit an offence together: both will be equally liable (responsible) for that offence. Secondary parties are people who do not commit the offence themselves, but encourage or assist another to commit the offence. The secondary party can be convicted and punished as if he were the person who committed the offence. For example, a woman may be convicted of rape where she helped a man to rape another person.

PART 2

THE INVESTIGATION

3. The decision to report an offence to the police

The decision to report sexual violence to the police may be difficult and is always very personal. There are organisations that support people who have experienced sexual violence and you may benefit from making contact with one of them (**see the list at Appendix A**).[20] 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.

3.1. Some reasons to report sexual violence

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

- reporting can assist you emotionally as part of the process of recovery
- where the sexual violence occurred in a relationship, reporting may help you to end the relationship and live free from violence
- reporting may be the first step towards a successful prosecution
- reporting may bring the perpetrator and his behaviour to the attention of the police, which may assist the police in solving other cases and prevent him from committing further offences
- reporting may make it possible for you to claim compensation for any harm you have experienced

Some women choose not to report to the police. It is not your duty to report the perpetrator to the police. If you decide not to report you can still seek advice and support from services aimed at survivors of sexual violence (**see Appendix A**).

The decision to report should be a personal decision made by you, based on your needs alone, not the needs of other people. The correct decision is whatever feels right to you. Nobody else should make the decision for you. If you are unsure whether to report, you can get advice and support from services such as Rape Crisis (**see Appendix A**) or contact Rights of Women's advice line. There are also ways for you to preserve evidence if you think you might want to report in the future. **See section 3.3** for further information.

3.2 How to report sexual violence

There are different ways that you can report to the police:

- In an emergency you can contact the police for assistance by dialling 999 or if you are deaf or hard of hearing by text phoning 18000. These calls are free, so it doesn't matter if you have phone credit or not.
- If it is not an emergency, you can report sexual violence by going to your local police station in person, or you can call 101 (or textphone 18000 101) and ask for your local police station. These calls are charged.

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

When you first report a matter to the police this is called an initial complaint, you can ask to speak to a police officer of the same sex as you if you would be more comfortable. You may also be able to contact a Sexual Assault Referral Centre (SARC) for advice and support. One of the benefits of contacting a SARC is that you can obtain a forensic medical examination and any medical treatment that you need without having to decide on whether or not to report an offence to the police. For further information about SARCs **see section 4.3**.

Third party reports to the police

It may be that you want the police to be aware about an incident of sexual violence but do not want to contact them yourself. If this is the case you can ask a third party (such as your GP, a 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 (the third party does not have to give the police your name or contact details). However, there are circumstances when the police may want to contact you. For example, it may be that the information you give links your case to others, or that they are able to identify the person responsible. If this is the case the police would contact the person or organisation that made the third-party report and ask them to contact you.

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

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

3.3 Preserving evidence

Whilst not every survivor feels able or willing to report immediately, the sooner you report sexual violence to the police, the better the chances of the police recovering evidence that may assist in a future prosecution. If you have been sexually assaulted, you can preserve evidence by trying to avoid:

- drinking or eating anything, including any non-essential medication you might be taking
- washing any part of you, including your hair and teeth
- combing or brushing your hair
- cutting your fingernails
- smoking
- going to the toilet or discarding any tampons or sanitary towels
- removing or washing any clothing worn at the time of the incident or afterwards

The place where sexual violence took place is a crime scene. If possible, avoid disturbing, moving, washing or destroying anything that might be a useful source of evidence. This may include clothing, bedding, any glass or cup

that the suspect has drunk from, discarded cigarette stubs, condoms or any other object the suspect touched.

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

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

If you are supporting someone who has just been sexually assaulted you may want to advise her about the above and help her obtain professional advice and support (for example, from a SARC). Even if she does not want to report the incident to the police immediately, she may want to in the future. Safeguarding the evidence and assisting her in getting professional support will help keep her options open so that she can report in the future with as much evidence as possible.

3.4 Sexual violence that occurred in the past

While some incidents of sexual violence are reported to the police immediately after the offence, many incidents are reported days, months or even years later, as it can take time for someone who has experienced sexual violence to feel able to disclose what has happened. There are no time limits for investigating and prosecuting incidents of sexual violence. If you want to report sexual violence that occurred in the past you can do so by contacting the police at any time, by going into your local police station or calling 101. Any delay in reporting should not affect the police's response to you. The police should still take your report seriously and should investigate thoroughly regardless of when the offence occurred. You may feel like there is less evidence available when an offence has occurred in the past, but this should not put you off reporting the offence if you want to. The suspect may still be prosecuted and convicted where the only evidence is your account.

Example of a case: R v Doody [2008][21]

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

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

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

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

4. Medical issues

This section looks at different medical issues that might arise in relation to reporting sexual violence. If you have experienced sexual violence you should seek medical attention as soon as you can. In addition to receiving treatment for any injuries you have received, 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.

4.1 Forensic medical examination

The purpose of a forensic medical examination is to obtain evidence that may be useful in any criminal investigation or trial. This might include gathering traces of skin, hair, or bodily fluids from the perpetrator, and examining any injuries you might have. You will not necessarily be offered a forensic medical examination; this depends on how recently you were assaulted. The longer ago the assault was, the less reason there is for a forensic medical examination to take place because it is less likely that there will be evidence or injuries. A forensic medical examination may take place at a Sexual Assault Referral Centre (SARC). **See section 4.3** for further information on SARCs. If there is no SARC in your area, getting a forensic medical examination will require you to report your assault to the police, who can arrange for you to see a Forensic Medical Examiner (FME). An FME is a doctor who is trained to collect evidence that can go before a court.

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 agreement. If you agree to the forensic medical examination, you will be agreeing to the results and the evidence gathered being given to the police. You can agree to some parts of the examination but refuse others. You can stop the examination at any time. The appointment with the doctor will take around 2-3 hours but only about 20-30 minutes of that time will be the medical examination itself. The rest of the time will be spent talking with the doctor or a support worker to get information from you about what has happened, to find out what other support you might need, and to provide medical treatment if needed. You can ask a friend to be with you during the examination if you wish. If you need an interpreter, you can ask for one to be provided.

A forensic medical examination will involve gathering traces of any bodily fluid, skin or hair that the suspect has left. If you have washed before you have the examination, tell the doctor, as it may still be possible to find physical evidence. You may be asked to give a blood or urine sample, particularly if you had consumed drugs or alcohol, or are concerned that someone had 'spiked' your drink (put drugs or alcohol into your drink without you knowing).

In addition to taking samples you will also be examined for injuries. This may involve an internal examination (of your vagina, anus or mouth) to look for any bruises or cuts and would also include any other injuries on any parts of your body. Any injuries that are found will be noted by the doctor for use in a witness statement. Visible injuries should 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. If you attend the examination wearing the clothes worn during or immediately after the assault, you should take a change of clothes and underwear with you to change into after the examination. If you are attending wearing different clothes, it would be useful to take those worn during or immediately after the incident with you, so that these can be given to the doctor. Because the clothes you were wearing during the incident may be evidence, they may not be returned to you until the criminal proceedings have ended.

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

DNA evidence

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

Physical injuries

You may have been physically injured in the assault, although not all survivors suffer physical injuries. Some injuries are internal and are only found during a medical examination. You do not need to have evidence of injuries in order to prove you were the victim of sexual assault; for example, women who may not physically resist the suspect. The police and others working in the criminal justice system should understand the fear that sexual violence causes and that sexual violence often occurs without physical injuries being sustained.

Alcohol and drugs

Alcohol and drugs that are given to you without your consent
It may be that the suspect gave you a substance without your knowledge or agreement to enable him to commit the offence. There are signs which might make you think you were given a substance without your agreement:

- you felt more drunk than usual for the amount of alcohol you consumed, 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 memories of a sexual experience
- you may feel nauseous, dizzy, sluggish, have been unconscious or find it difficult to wake up
- you may wake up without your underwear or other clothing and you cannot remember getting undressed
- you may feel sore or in pain 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 it is useful to go to a hospital, Sexual Assault Referral Centre (**see section 4.3**) or your GP as an emergency so that they can take a urine sample from you. If you are unable to get medical attention quickly, you can urinate into a clean cup and then hand it to the police as soon as you can. Keep any sample that you take yourself in the fridge until you can hand it to a police officer.

Alcohol and drugs that you chose to consume
If you have consumed alcohol or drugs it is vital you tell the doctor and the police as much as you can about what you have consumed and when. You should not be judged or have your complaint taken less seriously because you have drunk a lot of alcohol or consumed drugs. You should not be investigated for drug use. It is important to be honest about drug or alcohol use because if your case goes to court and it emerges that you had drunk alcohol or used drugs and had not told the doctor or police about this, it could affect your case.

After the examination

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

4.2 Early evidence kits

When you contact the police following an incident of sexual violence, they will want to ensure firstly, that your medical needs are met, and secondly, that forensic evidence is gathered as quickly as possible. They will usually arrange for a forensic medical examination to take place as soon as possible, but may also ask you to gather evidence with an 'early evidence kit.' This allows some limited forensic evidence to be gathered immediately before you then attend for the forensic medical examination.

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 a urine sample to test for any drugs that might have been given to you, and a mouth swab to test for traces of semen, if your mouth was penetrated.[22] 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.

[22] Semen can remain in the mouth for up to two days after the assault, and several days in the vagina.

4.3 Sexual Assault Referral Centres

If you have experienced sexual violence you may be able to get both medical treatment and a forensic medical examination from a Sexual Assault Referral Centre (SARC). SARCs are open 24-hours a day and whilst they are often partially funded by the police, they are usually run in partnership between National Health Services and local voluntary organisations.

If you have contacted the police after an incident of sexual violence they may take you to a SARC. Alternatively, you can go to a SARC on your own, without contacting the police. At the SARC you can receive medical care and treatment, a forensic medical examination (as described above) and you can be referred to other specialist services for any additional support you need. The SARC can store samples taken from you while you decide whether to report the offence to the police. You can also ask for your samples to be tested anonymously and then be informed if the suspect is identified. If you decide that you do want to report the incident, the SARC can put you in touch with a specially trained police officer. The services provided by SARCs are free, confidential and can be accessed entirely independently 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.[23]

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

4.4 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 the Accident and Emergency department at your local hospital or by going to see your GP.

In general doctors must keep anything their patient tells them confidential. There are strict professional guidelines in place which outline when doctors can and cannot share information they receive from patients. However, there are some circumstances when doctors do have to share information with the police. These could include a situation where the doctor thinks the patient has been assaulted but she cannot tell the police (for example because she is unconscious or lacks mental capacity), or where the doctor thinks it is the public interest (for example because there is a serious risk of harm to the public).

In general, medical records are confidential. However, in criminal cases the police or prosecution may seek copies of relevant parts of your medical records. Usually you will be asked to give your permission for the records to be disclosed. These medical records will then form part of the evidence in the case which means they can be shown to the defendant's lawyers.

Sometimes medical records can form part of what is called unused material in a case. Unused material is evidence that the prosecution is not relying on (i.e. they are not using it) to prove the defendant's guilt. However, in certain circumstances this unused

[23] Although this may vary from area to area. You should contact your local SARC to see what services they offer and how they can assist you.

evidence can be disclosed to the defendant's lawyers (defence) if it might help his case. In order to determine whether it can be shown to the defence there are strict rules that must be applied.

You do not have to consent to the prosecution obtaining your medical records, or to the records being disclosed as evidence in the case. You should be told why your medical records are being sought and what might happen to them. If you do not consent to your records being obtained, the prosecution can apply to the court for a witness summons to get these records. You can object to this application. If you consent to the records being obtained, but not disclosed to the defence, the prosecutor can apply to the court for the records to be disclosed. Again, you can object to this application, and explain why the records should not be disclosed. If the defence request copies of the records and you refuse consent, they may ask the court to order the records be disclosed. The judge will decide whether or not the records should be disclosed.

5. The Investigation

The Code of Practice for Victims of Crime (**See Section 10.2** of this guide) outlines your rights as the victim of a crime

It is the police's responsibility to investigate crimes and gather evidence that may later be used in court. In this chapter we will explain how a sexual offence may be investigated and your rights.

5.1 After reporting sexual violence to the police

As discussed in Chapter 4, there are several ways in which you can report an offence to the police. You may have dialled 999, called 101, contacted your local police station, or have been put in touch with a police officer by a Sexual Assault Referral Centre.

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 should be the most important thing. If you are not calling in an emergency they may ask you about how they can contact you again, so, for example, if you are living with the suspect you can make arrangements to speak to an officer without the suspect knowing about it, at a time convenient to you. When you make an initial report to the police you will be asked questions about yourself, the offence and the person responsible. 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)**.

If you have gone into a police station to report sexual violence, you should first speak to the officer on the front desk and briefly tell them that you need to report a sexual assault. After this you should be taken to a private room to make your report to a police officer.

If you have called 999, the police should attend your location and speak to you there. If you have called 101 to report a sexual offence, the police will make arrangements for you to either go to your local police station at an appointed time, or arrange for officers to meet you at an appointed time or place to take an initial statement from you.

You can ask to speak to a male or female officer, and wherever possible your initial account should be taken by a Specially Trained Officer (an STO, **see section 5.2**). The fact that you are reporting by going to a police station or calling 101 rather than calling 999 should not affect how the police respond to you or how they treat your case.

When you give your initial account, you should 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
- whether you have any injuries
- 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 you know of any witnesses to the incident
- whether there are any witnesses to events before or after the incident

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

When you report a matter to the police you will be given a crime reference number and sometimes a CAD or ICAD reference (**see the box at section 3**). Keep these reference numbers safe as they help identify your case within the police system, and if you are able to quote them when contacting the police about your case it can make it quicker and easier for the police to respond.

5.2 Specially Trained Officers (STOs)

Specially Trained Officers (STOs) are also referred to as Sexual Offences Investigative Technique Officers (SOIT Officers), Sexual Offences Investigation Trained Officers (also called SOIT Officers) or other terms depending on the police force concerned. The role of the STO is to provide you with support throughout the investigation. They should meet with you as soon as possible, in person. Where possible the STO should:

- take your initial report
- arrange for a forensic medical examination (where appropriate) and help you get there and back
- take your statement
- keep you updated on developments in your case (as a general rule, they should contact you at least once every 28 days)
- 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.

It is worth asking for the contact details (phone number and email address) of your STO and the Investigating Officer so you can stay in touch with them. This can assist you if you experience any problems with the investigation, for example if they agree to contact you within a certain timeframe but you do not hear from them.

5.3 Making a statement or attending a video interview

Under the Victims Code (**see section 10.2**), if you are being interviewed by the police you are entitled to:

- be accompanied by a person of your choice, unless the police can provide you with good reasons to refuse that person
- have any interviews with you conducted without unjustified delay
- have the number of interviews limited to those that are strictly necessary for the purposes of the investigation
- have the interview, where necessary, conducted in premises designed or adapted for that purpose
- have the same person, where possible, conduct all the interviews (unless to do so would prejudice the proper handling of the investigation)
- be offered the opportunity to have a person of the same sex conduct the interview where you are a victim of sexual violence, gender-based violence, or domestic violence (any request will be met where possible unless to do so would prejudice the proper handling of the investigation).

The initial report that you give the police enables them to start their investigation. The next stage is for the police to take a formal statement from you. This statement can be taken in writing by a police officer or can be made as a video interview.

If you have experienced sexual violence your statement will usually be recorded on video. Giving a video statement involves you attending a special video suite, where you will sit with a police officer and give your statement. The police officer will usually ask you questions about what has happened to help you explain your experiences. The discussion will be recorded by a police officer in a separate room. This video can later be shown to a court if there is a trial, which should limit the amount of time you will have to spend giving evidence in court and can make the experience easier for you.

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. It is important that the statement accurately describes what happened in your words.

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 an interpreter for you.

Interpreters should be registered. If you are unhappy with the service, you have received you can make a complaint to the National Agreement on Use of Interpreters

See Non-English speaking or English as a second language survivor's in section 1.2

If you have a learning disability you can ask for an intermediary to help you understand what is being said and assist you to communicate. It is a good idea to ask the police to arrange the interpreter or intermediary before the interview in case the police do not know that you need one.

The officer who interviews you should be your STO (**see section 5.2**). You can ask to be interviewed by a police officer of the same sex as you if that makes you feel more comfortable. You can also ask to have someone with you to offer you support. The supporter must not be linked to the case and will not be able to answer questions for you. The interview should be carried out at a pace that is suitable for you, and you can take breaks to rest and get refreshments when you need to. The interview will last as long as is necessary to get all of the relevant information.

Achieving Best Evidence in Criminal Proceedings, Guidance on interviewing victims and witnesses, and guidance on using special measures (March 2011) is guidance that has been produced to ensure that victims making statements (and later giving evidence in court) are able to give the best evidence they can.

The Guidance also contains information for those supporting victims at their interview and later in court and explains what special measures (**see Part 3** for more information) are available to victims who are vulnerable or intimidated. The Guidance can be downloaded from here **www.cps.gov.uk/publications/docs/best_evidence_in_criminal_proceedings.pdf**

When making your statement you will need to give the police as much information as possible. At the beginning of your interview, you will be asked for your personal details, such as where you live, your age and occupation. You will then be given the opportunity to describe what happened to you. You may be asked where the assault took place, when and how it happened. You will also be asked about the suspect. The police have no right to ask you questions about previous relationships (with people other than the offender), your sex life or whether you have been raped or assaulted in the past unless you raise these issues first.

Questions like these, which relate to your previous sexual history, are not relevant to the investigation and any answers that you give to such questions are unlikely to be allowed to be used as evidence in any subsequent trial. For further information about what questions you may and may not be asked about your previous sexual history in court **see section 13**. However, it may be necessary to ask when you last had consensual sex; or your relationship with the suspect, if you have one. These questions may be necessary to interpret any DNA results or other forensic evidence.

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

When making your statement it is important to give as accurate an account 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. If something that you said is later found to be untrue or you have missed something from your evidence, it may negatively affect the case and undermine your credibility (whether the jury think you are truthful).

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 make an additional statement to cover the new information and explain why you did not say this in the first statement. Keep a copy of the notes for your own records.

You will not be given a copy of your signed written witness statement after you have completed it and usually will not see it again until the start of the trial, if the case reaches court. The reasons for this are to minimise the risk of any negative impacts on the court case, including discouraging you from trying to memorise it as this may result in your evidence sounding rehearsed in court or the risk of you losing the statement. It can also protect you from arguments from the defence that you needed to see it because your allegations were false. However, victims often have good reasons to want to see their statement shortly before the trial, such as needing the time to emotionally and mentally prepare to give evidence of traumatic events so that they can give a clear, honest and accurate account.

You can request to see the statement (written or video) from the prosecutor before the trial; this request may not be granted but in certain exceptional circumstances it may either be released to you or you may be shown a copy. However, it is a good idea to discuss and understand the benefits and risks of this beforehand with the CPS prosecutor or an appropriate member of your support team.[24]

The police should also advise you about 'special measures' – measures that can be put in place to make it easier for you to give evidence in court. This includes your video statement being played to the jury. These special measures are discussed in **section 13.1**.

[24]*See the guidance on the CPS website about access to witness statements* **www.cps.gov.uk/legal-guidance/witness-statements-and-memory-refreshing**

5.4 The Victim Personal Statement

Once you have made your statement about the incident, you are entitled to make a Victim Personal Statement (VPS). This may be done either straight after making your formal statement, or at any time before the defendant has been sentenced. Making a Victim Personal Statement is optional. The VPS gives you the opportunity to tell the court how the crime has made you feel and what the impact has been on you of the offence, including physical, psychological, emotional and financial consequences. The VPS may also explore your views about giving evidence in court and what can be done to help support you to do this (**see section 13.1**). You can say as much or as little as you wish and in your own way. The court will be given the VPS and this can influence their decision on sentence. However if you directly state what the punishment should be, the court will not use this part of your statement when deciding how to sentence the defendant. Details about your entitlement to make a statement and the use of your statement in criminal proceedings can be found in the Victims' Code. [25]

The court may ask for the whole of your VPS to be read out or only some parts of it, and the sentencing magistrates or judge should also have read a paper version of the statement.

For more information on sentencing **see section 14.4**. The VPS might also be considered by the Parole Board when they are assessing whether it is safe to release an offender from prison or move them to an open prison. In this situation you can update the statement to tell the Parole Board how the offence has continued to affect you.
The police are responsible for taking the statement from you and should act on anything within it, for example in relation to any fears you have about your safety. The Crown Prosecution Service has a duty to pass this statement on to the court. They will also tell the court whether you wish your statement to be read to the court and (if so) whether you want to read this statement yourself or have it read for you by the prosecutor. Ultimately the court will decide whether and what sections of the VPS will be read, and by whom. Even if the statement is not read aloud, the court will still take it into account when passing sentence. The defence will also be given a copy and it is possible you may be asked questions about this at trial.

Once you make a VPS it cannot be changed or withdrawn. You can make a further VPS to add to or clarify your previous VPS.

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

5.5 The police investigation

The Police and the CPS have joint protocols around investigating sexual violence.

There is a joint CPS and Association of Chief Police Officers (ACPO) policy on prosecuting rape.

www.cps.gov.uk/sites/default/files/documents/publications/cps_acpo_rape_protocol_v2-1.pdf

This guidance states that the police should consult the CPS early on in an investigation of Rape. If you do not think the CPS is being consulted ask the STO about this.

The College of Policing also provides lengthy guidance on the investigations of sexual offences which includes the sort of enquiries the police should be making **www.app.college.police.uk/app-content/major-investigation-and-public-protection/rape-and-sexual-offences/**

You can ask your contact at the police to confirm that these protocols are being followed.

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 take photographs, fingerprints and collect any other forensic evidence
- conduct door-to-door enquiries in the area
- seize any evidence that may be relevant, such as from CCTV, a computer or a mobile phone (including your mobile phone)
- send evidence for forensic examination or analysis
- complete identification procedures **(see section 5.6)**
- trace the suspect's movements (for example using CCTV or mobile phone analysis)
- arrest the suspect
- interview the suspect

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

5.6 Identification procedures

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

The most common method of identifying a suspect is the video identity parade. Video identity parades involve you looking at images of at least nine different people on a computer or television and trying to identify the suspect of the offence. When you view the images, the suspect's legal representative may be present. The officer in charge of the parade will then ask you a few procedural questions to see if you can identify the suspect. If you require an interpreter, one will be provided for you. You will be shown the parade of images twice, and you can then ask to see the whole parade or individual images as many times as you wish. You will be asked if you can identify the suspect. You can then give the number of the person you think is the suspect. If you cannot identify the suspect you should say so.

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

5.7 Arrest and interview

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

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

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

Once a suspect has been arrested he will be interviewed by police officers. A suspect can also be interviewed without being arrested. Before a suspect is interviewed he will be cautioned that he does not have to say anything to the police, but that it may disadvantage him at trial if he does not give his account during interview. Furthermore, anything he says in the interview can be used at court. The suspect is entitled to 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.

After the police have collected evidence, including interviewing the suspect, they will usually pass all of the evidence to the Crown Prosecution Service, who will decide whether or not the suspect can be charged with an offence (**see section 6**). Once a suspect is charged with an offence the investigation comes to an end and court proceedings begin. The police investigation can take some time, and may begin before the suspect is interviewed and may continue after he has been interviewed.

After being arrested the suspect may be put on bail: this gives the police the opportunity to continue investigating the offence. There are two types of bail: unconditional and conditional. Both types of bail require the suspect to return to the police station on a given date. If granted conditional bail the suspect will also be given some conditions which he has to comply with. These can include being banned from attending a certain address, not being allowed to contact a specific person directly or indirectly, and being required to live at a certain place. Unconditional bail means that the suspect is released without any conditions. Bail conditions can help to keep you safe especially where the suspect is someone you know or lives with you. Breach of bail conditions is a serious matter and can result in the suspect being arrested. If the suspect breaks any of these bail conditions you should tell the police immediately. If the investigation is finished and a decision has been made to charge the suspect, he can also be granted bail (as above) to attend court on a given date.

Since 3 April 2017 a person cannot be on bail (before being charged) for more than 28 days.[26] As a result of this change in the law, in situations where the police investigation is ongoing it is becoming more common for suspects to be released following interview without being placed on bail. If this happens the person arrested and interviewed **will not** receive any conditions preventing them from contacting you, and will not be given a date to return to the police station. Instead, suspects will be **released under investigation**.

This means that the investigation continues and if the suspect is later charged with an offence, they will usually be sent a letter telling them when to attend court. When the police release the suspect from the police station they will inform him that any unnecessary or inappropriate contact between him and the victim or any other witness may be a criminal offence. Any contact that is reported to the police could result in prosecutions for intimidation of witnesses, harassment or perverting the course of justice. If you are concerned about your safety, you should tell the officer in the case. Where the abuser is your boyfriend, husband or other relative you can apply to the Family Court for a non-molestation order. **See our guide Domestic Violence Injunctions**. You could also ask for the police to consider serving a domestic violence protection notice (DVPN) and applying for a domestic violence protection order (DVPO) (**see section 6.6**).

Where the suspect is known to you and/ or knows where you live but is not a boyfriend, husband or another relative you should outline your safety concerns to the police. The police can put an alert on your phone number and/ or address so that if you contact them in an emergency they can quickly identify you as at risk. You can also consider applying to the civil court for a harassment injunction. **See our guide Harassment and the law**.

Once a suspect is charged he will either be remanded in prison or bailed as the 28-day limit only applies to bail before charge. For post charge bail **see section 7.3**.

For further information about the decision to charge, bail and court proceedings **see Part 3** of this handbook.

[26] It is sometimes possible for a senior police officer to extend this to 3 months if, for example, the case is complex. In exceptional cases, where the police need to keep an individual on bail for longer, they will have to apply to a magistrate for further bail.

PART 3

COURT PROCEEDINGS

6. Criminal charge

To charge someone means to formally accuse him or her of a crime. If your perpetrator is charged, then he will be taken to court.

6.1 The role of the Crown Prosecution Service

The police are responsible for investigating criminal offences and protecting the public. Evidence and other information gathered in an investigation may be passed on to the Crown Prosecution Service (the CPS) who will then decide whether or not the suspect should be charged with a criminal offence. The CPS is also responsible for advising the police during an investigation, preparing the case for trial and either presenting it at court or instructing a barrister to do so. The police and CPS have an agreement which sets out in detail their different responsibilities in rape cases.[27]

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

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

- Take into account what impact a decision to charge (or not to charge) will have on you.
- Inform you if a charge is withdrawn, discontinued or substantially altered.
- When practical, seek your view on the acceptability of any guilty plea offered.
- Address any specific needs you have (for example, to assist you to give the best evidence in court that you can).
- Assist you to refresh your memory from your written or video statement and answer your questions on court procedure.
- Promote and encourage communication between you and the prosecutor at court.
- Protect you from unwarranted or irrelevant attacks on your character and intervene where cross-examination is inappropriate. Cross-examination is when you are questioned by the defendant's lawyer.
- On conviction of the defendant, challenge defence mitigation which attacks your character. This means when the defendant is being sentenced he may make arguments for a lower sentence. If these arguments include something which is negative about you then the CPS should challenge this.
- 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.

[27] *Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of rape available at* **www.cps.gov.uk/sites/default/files/documents/publications/cps_acpo_rape_protocol_v2-1.pdf**
[28] **www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html**

Further information about the role of the CPS and the Prosecutor's Pledge can be found on their website.[28]

6.2 The decision to charge

The decision to charge is usually taken by the CPS for serious crimes. In some cases, the police will make the decision as to whether to charge a suspect with an offence, or to discontinue a case (take 'no further action' – NFA). If the police decide to take no further action in respect of an allegation you have made you can ask for a review and challenge the decision. **See section 6.3** on the **victim's right to review**.

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

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

  and

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

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

Is there sufficient evidence?

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

The test the prosecutor is applying here ('more likely than not') is not the same that is applied in the criminal trial. At a criminal trial the jury (or magistrates) has to be sure of the defendant's guilt to convict him. What the prosecutor is doing when looking at the evidence is deciding whether or not a jury (or magistrates) could have sufficient evidence to reach that decision. If there is not enough evidence to provide a realistic prospect of conviction then the case cannot proceed, no matter how serious or sensitive it may be.

Is it in the public interest?

If there is sufficient evidence the prosecutor will then consider whether it is in the public interest to prosecute the suspect. Deciding whether prosecution is in the public interest involves balancing the factors in favour of prosecution with those against.

The factors that might influence a prosecutor to prosecute include:

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

A decision taken not to prosecute a serious offence would have to be supported by clear reasons. Sexual violence is taken very seriously by the CPS so if there is sufficient evidence available the public interest test will also usually be met unless one of the following factors are present:

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

All these issues should be weighed against the seriousness of the offence.[29] If you need more information about how the CPS makes charging decisions and prosecutes cases that involve rape or domestic violence you can read the relevant guidance which is available at **www.cps.gov.uk/prosecution-guidance**

A CPS rape specialist prosecutor should make charging decisions in rape cases. The prosecutor will work closely with the Investigating Officer to ensure there is enough evidence for a prosecution. In cases that involve sexual violence, but not rape, a CPS rape specialist or another experienced CPS prosecutor may make the decision.

The Victims' Code sets out who is responsible for keeping you informed about whether a decision to charge has been made in your case. The obligations in the Victims' Code are set out in detail in **section 10.2**. You should be told of the decision to charge the suspect with an offence within one working day. If you are not updated about what is happening in the case you should get in touch with your contact at the police who should be able to update you.

[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 **www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html.** *There is also specialist guidance for prosecutors who are dealing with domestic violence and rape cases.*

Under the Victims Code (**see section 10.2**) you are entitled to be informed, within 5 days, of a decision:

- to charge or prosecute the suspect
- to give the suspect an out of court disposal, such as any caution given by the police
- not to charge or prosecute the suspect

If you are a victim of the most serious crime, persistently targeted or vulnerable or intimidated (this would apply to most victims of sexual offences), you are entitled to the above information within 1 working day.

In certain specified cases (these include sexual offences) where the CPS informs you of a decision not to charge, you are also entitled to be offered a meeting with the CPS. The CPS is responsible for holding the meeting and may conclude that in all the circumstances, the meeting should not take place. If the CPS decides that a meeting is not appropriate, the decision will be explained to you.

If a decision is made not to charge a suspect, or to discontinue or reduce any charges, then you should be told about this. The person responsible for telling you depends on how the decision was made:

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

It is important to remember that if the decision is made not to charge the suspect this does not mean that you were not believed. It just means that the evidence or circumstances of your case did not pass the two tests set out above.

6.3 If the suspect is not charged - the Victim's Right to Review

Subject Access Requests

This right, commonly referred to as subject access, is created by section 45 of the Data Protection Act 2018. It is most often used by individuals who want to see a copy of the information an organisation holds about them.

When you have been the victim in a reported crime the police will hold information and data about you and you have a right to see it, if you want to. This could be useful if you want to challenge a police decision not to prosecute or for other court proceedings such as proceedings in the family courts. In order to do this, you can make a subject access request. You can find out more about subject access request on the Information Commissioners Office website **(www.ico.org.uk**)

If the CPS or police decide not to charge the suspect with an offence he will have no further action taken against him. The decision not to charge is also called the decision not to prosecute. To prosecute someone means to take them to court for committing a crime. The case will then be closed but information relating to the investigation should be kept in case further evidence is obtained or he commits further offences.

The Victims' Right to Review Scheme (VRR) makes it easier for victims to obtain a review of a decision not to charge a suspect with an offence or a decision to discontinue proceedings. The scheme applies to CPS decisions made on or after 5th June 2013.[30] The VRR scheme also applies to police decisions made on or after 1st April 2015.

Decision made by the CPS

When the CPS makes certain decisions in your case you can request those decisions be reviewed:

- Not to bring proceedings against the suspect. This is when the police have referred the case to the CPS and they have decided that no further action should be taken against the suspect. The case comes to an end with no court case.
- Discontinue or withdraw all charges against the suspect. This is when the suspect has been charged with an offence and the case is being dealt with by the court. At any point during the court case, the CPS can decide not to take the case further. This is called discontinuing or withdrawing the charges.
- Offer no evidence in all proceedings against the suspect. This sometimes happens when a case gets to trial in the criminal court. The CPS lawyer at court may decide not to go ahead with the trial by offering no evidence. This results in the suspect being found not guilty without the court hearing any of the evidence.

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

- Leave all charges in the proceedings to "lie on file". This is when the CPS formally decide not to prosecute a crime that is already in court. It means the case will not go any further and the suspect will not be found guilty or not guilty. The fact that the suspect was charged with the offence will appear on his criminal record but it is not a conviction.

Sometimes the police do not agree with the CPS decision either. It is worth speaking to the officer in the case where the CPS has made a decision not to charge (take someone to court) as the police can also request a review of the decision. This does not stop you asking for a review as well but it can be helpful and quicker for the police to also make this request. If the police ask the CPS to review the decision and they do not change the decision you can still ask for a review of the decision at this point. You do need to bear in mind that the time limit for review still starts running from when you are informed that a decision not to charge has been made.

You cannot request a review of the following decisions:

- Decisions made before 5 June 2013
- Cases where the police made the decision not to investigate or to discontinue a case
- Cases where some charges are brought in relation to some allegations or against some suspects
- Cases where some charges are discontinued or left to lie on file but other charges continue
- Cases where proceedings against some defendants are stopped, but against other defendants continue
- Where charges are changed but proceedings continue
- Where an 'out of court' disposal is used (**see section 6.5**)

When you are notified of the decision not to prosecute or to discontinue proceedings you should also be notified of the right to request a review of that decision and how to exercise that right.

You have the right to request a review of a decision any time within three months of that decision being made. You can request the review by email, by letter or by telephone. It is best to send your request in writing by email or letter and to keep a copy of this. You can include your reasons why you think the decision was wrong or what other evidence should be considered. You should send your request to the local CPS area that made the decision. If you do not have the contact details, then you can find them on this website: **www.cps.gov.uk/contact**

After you send your request your case will be looked at by a new prosecutor. The prosecutor will decide whether the original decision will be upheld or whether the decision will be changed. You should receive clear and detailed reasons for the outcome of the review. If you are unhappy with the outcome, then you can ask for the case to be independently reviewed. This means the case will be looked at by another prosecutor who was not involved with the case. If the reviewer concludes that the decision not to charge the suspect or to stop

the case was wrong, they will decide whether a charge should now be brought or whether proceedings should be re-started. Victims of sexual offences are entitled to enhanced support under the Victims' Code. This means you should be offered a meeting at the end of the review process to discuss the outcome.

Where possible, the CPS aim to complete the review within six weeks of you requesting the review.

Decision made by the police

When the police make certain decisions in your case you **can** request those decisions be reviewed:

- A decision not to charge (where the police have the authority to charge)
- A decision not to refer the case to the CPS for a charging decision

You **cannot** request a review of the following decisions:

- Decisions made before 1 April 2015
- Cases where no suspect has been identified
- Cases where no suspect has been interviewed
- Cases where charges are brought in relation to some (but not all) offences, or some (but not all) suspects
- Cases where a charge has been brought but it is different from the offence originally recorded
- Cases where an 'out of court' disposal is used (**see section 6.5**)
- Cases where you have retracted your complaint or refused to co-operate with the police investigation

If the decision can be reviewed then you have the right to request the review at any time within three months of the decision being made. You can request the review by email, by letter or by telephone. It is best to send your request in writing by email or letter. You can include your reasons why you think the decision was wrong or what other evidence should be considered. You should send your request to the local police station that made the decision. Most police forces have details of how to request a review on their website. Some of them have forms you can complete and send online.

Your request will be considered by a reviewing police officer who was not involved with the original decision. You should be informed of the outcome of the review with clear reasons. Where possible the police aim to complete the review within six weeks of you requesting the review.

What if I am not happy with the outcome of the review?

You may be able to bring a case in the High Court to challenge the decision made by the police or the CPS. This is called a **judicial review**. Judicial reviews can be complicated. **There is a three-month time limit to lodge a judicial review.** Try to seek legal advice if you are thinking about a judicial review.

If you are unhappy with the way the police officers or CPS prosecutors have behaved, then you can complain. The police and the CPS both have formal complaint procedures.[31]

What if I cannot request a review?

This could happen, for example, if no suspects were identified or interviewed in your case. You can note down the reasons for the decision and seek further advice from a lawyer or support service about complaints, judicial review and other options. **See Appendix A** if you need help finding a support service or lawyer.

6.4 Pre-trial witness interviews

In some cases, the CPS prosecutor responsible for your case may want to meet you at a Pre-trial witness interview (PTWI). PTWIs are very rare. The purpose of PTWIs is to enable the prosecutor to assess your evidence directly. A PTWI may take place at any stage in the proceedings once a witness has given a statement and usually take place before a decision to charge has been made. PTWIs may be used to assist the CPS when they are deciding whether to charge the suspect or, following charge, when they are preparing the case for trial.

You do not have to attend the PTWI if you do not want to. However, if you do not attend it may affect whether the CPS charge the suspect or how they prepare the case for trial. The defence will also usually be told if a witness does not attend a PTWI. If you have any concerns about the PTWI speak to your contact at the police or contact Rights of Women for legal advice. Further information about PTWIs can be found here: **www.cps.gov.uk/publication/pre-trial-witness-interviews**

[31] You can find information on police complaints and how to complain on the Independent Office for Police Conduct (IOPC) website: **www.policeconduct.gov.uk/complaints-and-appeals** *You can find information on CPS complaints on the CPS website:* **www.cps.gov.uk**

6.5 Alternatives to charging a suspect - cautions

A caution is a formal warning. Sometimes the police can give the suspect a caution instead of prosecuting him. This is only appropriate if:

- the case involves a less serious offence
  and
- the suspect has not been cautioned or convicted of the same or similar offences within the last two years
  and
- the suspect admits to the offence

The suspect can refuse to accept a caution before it is given. If this happens then the police may instead charge the suspect. The police should seek your views about the offence and the caution before this is given, although this will not be the deciding factor.

If an offender accepts a caution the case will not go to court. However, it will form part of his criminal record and it may be raised in court if he later appears on other matters. A caution should only be offered in very exceptional circumstances if the offence is a serious sexual offence because it will usually be in the public interest to prosecute such offences. The victim has no right of appeal against the decision to give a caution. However, you may be able to make a complaint against the police or seek a judicial review (**see What if I am not happy with the outcome of the review?** at **section 6.3** for more information on judicial review and complaints against the police).

6.6 Domestic Violence Protection Notice (DVPN) and Domestic Violence Protection Order (DVPO)[32]

If the police are called to a domestic violence incident they can issue a domestic violence protection notice (DVPN). The DVPN lasts 48 hours. Within that time the police must apply to the magistrates' court for a domestic violence protection order (DVPO). You do not have to attend the hearing. The DVPO lasts between 14 to 28 days.

A DVPN or a DVPO can prohibit your abuser from being violent towards you or coming to your home or communicating with you. It is designed to provide you with immediate protection. If your abuser does something to breach (break) the DVPO then you can call the police. Your abuser should be arrested and taken to the magistrates' court. If it can be proved that he breached the DVPO then he can be fined or sent to prison for up to 2 months.

The police usually use DVPNs and DVPOs if they decide not to charge the abuser and there are no other protections in place. The police officers should listen to your views about whether you want a DVPO, but they do not have to follow your wishes.

The purpose of a DVPO is to protect you from violence but it can also give you time and space to think about your options and your safety. You can contact one of the support organisations in **Appendix A** for further information.

[32] As of March 2018 the Government's consultation on proposals for the Domestic Violence and Abuse Bill (Transforming the Response to Domestic Abuse, available at **www.consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/***) includes a new injunction which would replace DVPN/Os.*

Under the Victims' code (**see section 10.2**)

You should be told by police within 1 working day about key stages in your case, including if the suspect or defendant:

- is released on police bail, or if police bail conditions are changed or cancelled
- is charged or not charged (and the reasons for this)
- is given an out of court disposal, such as a caution
- is proceeded with on a substantially different charge

6.7 If the suspect is charged

If the suspect is charged with an offence he can either be released on police bail (**see section 7.3**) to attend court on a set date or be remanded in custody (held in prison) and taken to court the next day. Sometimes a suspect will receive a letter telling him to attend court (this is usual where a suspect has been released under investigation). Once charged, the suspect will be referred to as the defendant. At the first hearing, 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. Section 7 explains more about what will happen at the first hearing in court.

6.8 Keeping the charge under review

Throughout the proceedings the CPS prosecutor must review the evidence and keep applying the two-stage test. If further evidence in the case comes to light, the prosecutor may decide that the charge is no longer justified. In this case he or she should either discontinue the proceedings or charge the defendant with a different relevant offence. The CPS should write to you to explain any decision to drop or alter charges. They should also give you an opportunity to attend a meeting with the prosecutor who took the decision to explain it further and listen to your views. If your case is discontinued, you have the right to request a review of this (**see section 6.3** for further information on the Victim's Right to Review). However, that right does not apply if a charge is altered or if some but not all charges are dropped.

6.9 Private prosecutions

Private prosecutions are those that are brought by the victim and/or their family, rather than by the CPS. This may happen because the CPS has decided that there is insufficient evidence to prosecute.

There is no public funding (legal aid) available to bring a private prosecution and if the case goes 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[33] but otherwise you will have to pay for this yourself and the costs can be high.

The Director of Public Prosecutions (DPP) can take over a private prosecution and stop it, provided she or 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. You can read about private prosecutions on the CPS website here: **www.cps.gov.uk/legal-guidance/private-prosecutions**

[33] Contact Advocate for information about contacting barristers who may be able to act free of charge
www.weareadvocate.org.uk

7. The first hearing or the first appearance

The first hearing is often called the first appearance as this is the first time the defendant appears in court. The victim will not normally attend this hearing although you can attend the court if you would like to (you can attend any court hearings that relate to your case and sit in the public gallery). The only exceptions to this are if the public gallery is closed which only happens in very specific legal circumstances, or during the trial before you have given your evidence, or at a hearing where legal or evidential issues are being discussed that may impact on your evidence.

The defendant will be asked if he is guilty or not guilty of the offence(s). If the defendant denies that he is guilty of 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. This is explained further in the next few sections.

7.1 The differences between a magistrates' court and the Crown Court

Magistrates' court

In the magistrates' court there are normally three magistrates who hear the case and make decisions on the case. Magistrates are non-legally qualified members of the public. Sometimes cases are heard by one judge, called a district judge. District judges are legally qualified. In the magistrates' court the maximum sentence that a person can receive is 6 months imprisonment for one offence and 12 months imprisonment for more than one offence.

Crown Court

The most serious cases are tried in the Crown Court. When a trial takes place in the Crown Court, **a jury** will decide whether the defendant is guilty or not guilty. The jury will be made of 12 randomly selected members of the public. There will also be a judge who oversees the case. The judge will make decisions about the law (such as whether particular evidence can be allowed at the trial). If the jury finds the defendant guilty then the judge will decide the sentence.

Unlike at the magistrates' court where there are limits on the maximum length of sentence, judges can sentence a defendant to any term in prison up to the maximum sentence available in law. This maximum is different for different offences. **Section 14.4** provides more information about sentencing.

7.2 Which court should the defendant be tried in?

One of the decisions that must 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.

The most serious offences are **triable on indictment** only. This means that they can only be tried in the Crown Court. Rape and assault by penetration are triable on indictment only so they will always be tried in the Crown Court.

Some of the less serious cases are **summary only**. This means that they can only be tried in the magistrates' court.

All other cases are **either way** offences. This means that they can be tried in either the magistrates' court or the Crown Court depending on two things: sentencing powers and the defendant's decision. When deciding where the case should be tried, the first issue is whether the magistrates' sentencing powers are sufficient, should the defendant be found guilty. The maximum sentence that a person can receive in the magistrates' court is 6 months imprisonment for one offence and 12 months imprisonment for more than one offence and/or a fine. Cases where the sentence may be more than this must be sent to the Crown Court to be tried. If the magistrates decide that their sentencing powers are sufficient, the defendant can then choose whether to be tried in the magistrates' court or the Crown Court.

Sexual assault and causing someone to engage in sexual activity are **either way** offences. This means the magistrates will look at the nature and seriousness of the offence. If 6 months in prison and/or a fine would not be sufficient for the nature and seriousness of the case, then the case will go to the Crown Court. If 6 months and/or a fine is sufficient then the defendant will be allowed to choose whether to have his trial at the Crown Court or magistrates' court.

7.3 Bail

During a police investigation or before trial a defendant can be given bail. For pre-charge bail **see section 5.7**. A defendant who has been charged with an offence and remanded in custody (kept in prison) has the right to ask the court to grant him bail. His first opportunity to make a bail application will usually be at his first appearance at the magistrates' court.

When deciding whether to grant a defendant bail, the court will consider the:

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

A court can refuse bail where the defendant, if bailed, might commit an offence involving domestic violence. A court can also refuse bail if there are real concerns that if released the defendant may try to contact and intimidate you or other witnesses. The CPS can appeal to the High Court if a Crown Court judge grants a defendant bail.

If the defendant is given bail then the court can impose any conditions it considers necessary on the defendant to ensure that he attends court and does not commit any further offences. These conditions can include:

- Non-contact with the victim or witnesses, either directly (for example by telephoning the victim or messaging her on Facebook) or indirectly (such as passing messages through friends).
- Residence at a certain address.
- A surety (where a third party promises to secure the defendant's attendance at court and to pay a certain amount of money to the court if the defendant does not then attend when required).

- A security (where someone pays the court money which is forfeited if the defendant does not then attend court when required).
- Reporting to a police station at certain times or frequencies (for example, 'twice a day at 10am and 2pm' or 'every Wednesday afternoon').
- Curfew (having to be at his place of residence between certain times such as overnight. This can be monitored by electronic tagging equipment or by the police).
- Staying in or out of certain areas.

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 any bail conditions, you should discuss those concerns with the police officer dealing with your case. The officer should discuss the concerns with you and pass these on to the CPS. The CPS should make arguments on your behalf to the court that reflect your concerns. The court will then decide whether the defendant should be granted bail.

If the defendant breaches any of his bail conditions, you should tell the police immediately. It is not a criminal offence to breach a bail condition but someone who breaches his bail can be arrested and if so must be brought to the court that granted bail within 24 hours. If the defendant is found to have breached his bail the court can then reconsider whether to re-release the defendant on bail. Bail may be taken away or stricter conditions may be added. It is a criminal offence if the defendant does not attend court on the time and date required (also called failing to surrender to custody). If he fails to attend his court hearings, the court may take away his bail, and remand him into custody.

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. If you are being threatened immediately call 999, otherwise make a note of what is said and contact the officer dealing with your case. 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. If you are able to, it can be helpful to keep a record of any behaviour of the defendant, his friends or family which might be a breach of the defendant's bail conditions or an attempt to intimidate you. Alternatively, report this behaviour to police or ask your Independent Sexual Violence Adviser (**see section 10.4**) to help you to keep a record. This will help the police decide whether or not the defendant has breached his bail, or whether or not another offence has been committed. It may be used as evidence against him in court.

8. Preparation for trial

Many months may pass between the defendant being charged with an offence and the trial. During this time the prosecution and defence will be preparing their case; for example, by typing up statements and getting the results of forensic tests that were done. The defendant will use this time to instruct his solicitor and prepare his case. Although the defendant will usually be represented by a solicitor or barrister (especially in the Crown Court), due to changes in legal aid it is not always the case that a defendant will have a solicitor or barrister for a trial. In this situation the defendant will represent himself, present his own case to the court, and question witnesses. However, in cases involving sexual violence, the defendant will not be allowed question you himself. The court will appoint a lawyer who will do this.

8.1 Preparing for magistrates' court trial

Under the Victim's Code (**see section 10.2**) the witness care unit (**see section 11.3**) should notify you of the time, date, location and outcome of any criminal court hearing no later than 1 working day after receiving this information from the court

If the trial is heard in the magistrates' court, the defendant will be asked to enter a plea at his first appearance in court. Entering a plea means he will tell the court whether he admits to the offence (pleads guilty) or he denies the offence (pleads not guilty). You can attend this hearing if you would like to and watch from the public gallery (**see section 7**).

If he pleads guilty, the court will either sentence him immediately or arrange a further hearing on another date to decide what sentence he should receive (**see section 14.4**). If he pleads not guilty, a trial date will be set. There may be other hearings between the first hearing and the trial to make sure that the case is ready for trial.

8.2 Preparing for Crown Court trial

If a case is being tried in the Crown Court, there will be a Plea and Trial Preparation Hearing (or PTPH). At this hearing the defendant will be asked to formally enter a plea of guilty or not guilty. Entering a plea means he will tell the court whether he admits to the offence (plead guilty) or he denies the offence (plead not guilty).

If the defendant pleads guilty the court will arrange a hearing on another date to decide what sentence he should receive (**see section 14.4**).

If he pleads not guilty the judge will set a trial date and give directions to the parties about things that need to be done before the trial. At the PTPH the prosecution can make an application for special measures (**see section 13.1**) if this application has not already been made.

There may be additional hearings, called mentions, between the PTPH and the trial. At these mention hearings the court can deal with any matters which have arisen – for example, hearing legal arguments about what evidence will be allowed. During this process the Witness Care Unit (**see section 11.3**) or your contact at the police should keep you informed of any developments in your case. As in the magistrates' court you can attend these hearings and sit in the public gallery, although it is possible for the defence to object to your attendance. If you would like to attend, it would be a good idea to discuss this with the Witness Care Unit or your contact at the police, so that they can make arrangements to ensure you do not come into contact with the defendant. For cases involving serious sexual offences, the prosecutor at all Crown Court hearings should be a specially trained sexual offences prosecutor.

8.3 Young defendants

Even though the criminal justice system tries to divert young offenders from prosecution by dealing with them in other ways, they can still be prosecuted, particularly if an offence is serious.

A young defendant would usually be tried in a youth court (a part of the magistrates' court that deals with young people aged under 18). However, very serious or **grave** offences, including sexual violence, are usually tried in the Crown Court.

If the trial is in the youth court, it will not be open to the public. The press can report the case, but they cannot report the name or address, or publish photographs or anything else that may identify the youth without the permission of the court. They also cannot report details about the victim if the case is one involving sexual violence (**see section 10.3** for further information).

One reason the youth court might lift the reporting restrictions on a young defendant is if it decides it is in the public interest to do so. The court will then allow the youth's details to be published (but any victims of any sexual offences should still remain anonymous). Similar reporting restrictions are likely to be ordered when young defendants are tried in the Crown Court.

8.4 Disclosure

Whichever court the defendant is tried in, one of the key issues that will be dealt with in pre-trial hearings is disclosure. Everyone has the right to a fair trial. This means that the CPS must show (disclose to) the defence the evidence they have against him and any evidence that may undermine (weaken) the prosecution's case or assist the defence case. 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. This could include information retrieved from your phone and social media sites.

There is usually a timetable imposed for the police and prosecution to provide disclosure to the defence team. Different time limits apply depending on the type of offence and the court. You can ask your contact at the police for more information.

9. Withdrawing a complaint

9.1 Withdrawal statements

You may decide that you do not want the criminal proceedings against the defendant to continue. If this is the case, you can contact the police officer dealing with your case and ask to make a withdrawal statement. You can ask an ISVA (**see section 10.4**) to support you through this process.

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

If you make a withdrawal statement the police will want to discuss with you why you want the proceedings to be stopped, particularly if you have been put under pressure, or fear, by the defendant or another person. If the defendant (or one of his friends or family members) has contacted you or threatened you, he may have breached his bail conditions. He (and his friends or family members if they contacted you) may also have committed further offences, such as interfering with a witness or perverting the course of justice. These serious criminal offences are designed to protect witnesses, and any contact or threats should be reported to the police. There are also a number of measures to support complainants through the criminal justice process which will be discussed further in **section 10**.

The police may ask you whether the original statement that you made when you reported the offence was true. A person who gives incorrect or misleading information to the police can be charged with wasting police time or perverting the course of justice. If you are concerned that you may be investigated for an offence after withdrawing your support of a prosecution, you should seek legal advice, either from our advice line or a solicitor (details of our advice lines are **in the inside front cover of this handbook**). Further information and guidance on this can be found on the CPS website.[34]

Withdrawing your statement does not necessarily mean that the case against the defendant will be stopped. The police and CPS can continue the case even if you do not support it. Whether or not the investigation or court proceedings are stopped after you have made a withdrawal statement will depend on what stage your case is at and how much evidence there is against the suspect/defendant.

[34] *CPS guidance for prosecutors includes a section on retraction at 19.* **www.cps.gov.uk/legal-guidance/false-allegations-rape-andor-domestic-abuse-see-guidance-charging-perverting-course**

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

If the CPS decide not to continue with a prosecution it is very unlikely that they will be able to re-start proceedings, so when making a withdrawal statement you need to be sure you do not want a prosecution to continue.

9.2 Witness summonses

A witness summons is a court order that forces someone to attend court and give evidence. A court will make the order following a request by either the CPS or defence. A witness summons must be served on you - delivered to your home or given to you personally.

A magistrates' court or Crown Court will issue a witness summons if: [35]

- the person against whom the summons is sought is a person likely to be able to give important 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 secure the attendance of that person.

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.

If you receive a witness summons and want support you can contact your ISVA, Rape Crisis, Citizens Advice Witness Service (**see section 11.4**) or Victim Support. **See Useful organisations** at **Appendix A** for contact details.

[35] Section 169 of the Serious Organised Crime and Police Act 2005 amended section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965 (issue of witness summons on application to Crown Court) and section 97 of the Magistrates' Courts Act 1980 (summons to witness).

10. Support for people who have experienced sexual violence

10.1 Your human rights

Everyone in the UK has certain fundamental rights that are protected by law. The Human Rights Act 1998 incorporated rights in the European Convention on Human Rights 1950 (ECHR) into British law. These rights include the right to life (Article 2 ECHR), the right not to be subject to torture or other inhuman or degrading treatment (Article 3 ECHR), the right to a fair trial (Article 6) 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 individuals' human rights. This includes protecting your human rights and the defendant's human rights. If a public body, such as the police or CPS, makes a decision which is incompatible with your human rights then you can contact a lawyer that specialises in public law for advice on how to challenge that decision. You may be able to get legal aid to help pay for your legal fees.

10.2 The Code of Practice for Victims of Crime

The Code of Practice for Victims of Crime (the Victims' Code)[36] is part of a strategy to put victims first within the criminal justice system. Agencies covered by the Victims' Code include all police forces in England and Wales, the Crown Prosecution Service, Her Majesty's Court Service, Witness Care Units, the Criminal Injuries Compensation Authority and Her Majesty's Prison and Probation Service (formerly known as the National Offender Management Service).

We have referred to your rights under the code in boxes throughout this handbook.

Under the Victims' Code, survivors of sexual violence are entitled to receive an enhanced service from the different agencies involved in the criminal justice system. This is because sexual offences are categorised as serious crimes and victims of sexual offences are automatically considered as an intimidated witness. An intimated witness is a witness who may feel fear or distress about giving evidence in court. Victims of sexual offences may also be considered as vulnerable depending on their circumstances.

[36] *The Code was issued by the Home Secretary and is governed by sections 32-34 of the Domestic Violence Crime and Victims Act 2004. The most recent edition is dated October 2015:* **www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime**

As a survivor of sexual violence entitled to enhanced services you can expect the following under the Victim's Code:

- To be given information about the criminal justice system and your role in it.
- To be given a needs assessment to work out what support you need.
- To be referred to specialist organisations who may provide support and other services.
- To be informed, within 1 working day, about key events in your case, including if the suspect / defendant:
  - is arrested
  - is interviewed under caution
  - is released with no further action taken
  - is released on police bail, and any bail conditions, or if police bail conditions are changed or cancelled
  - is charged or not charged (and the reasons for this)
  - is given an out of court disposal, such as a caution
  - is proceeded with on a different charge or if proceedings against him are stopped (for example, if proceedings are discontinued or if the CPS decide to offer no evidence)
  - pleads guilty
- To be informed of other key information, such as the date, time, location and outcome of any court hearings that relate to your case, usually within 1 working day.
- To be given information about giving evidence and what help the Witness Care Unit (**see section 11.3**) can offer.
- To ask for special measures to be used during the trial to help you give evidence. This is explained further in section 13.1.
- To make a Victim Personal Statement and to have this taken into consideration if the defendant is found guilty. You can make this at any time prior to sentence even if you do not provide a witness statement.
- To meet with the CPS prosecutor and be given the opportunity to ask questions about the court process.
- To be offered a visit to the court to familiarise yourself with it and to be offered options which will allow you to enter the court and wait in a different area from the defendant (where possible).
- To be informed of any appeal lodged by the offender against conviction or sentence.
- To opt into the Victim Contact Scheme (**see section 14.6**) and, if you wish, make a Victim Personal Statement or representations to the Parole Board about the offender's release from prison and any conditions attached to that release.
- To be given information on applying to the Criminal Injuries Compensation Scheme for compensation.

The Code of Practice for Victims of Crime can be read here **www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime**

10.3 Anonymity

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

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

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

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

Independent Sexual Violence Advisers (ISVAs) and Independent Domestic Violence Advisers (IDVAs) were introduced to provide specialist support to victims of sexual and domestic violence. ISVAs may be able to support you by providing information, and practical and emotional support throughout your involvement with the criminal justice system, including:

- Supporting you when you give your statement to the police. Although they cannot be in the room when you are interviewed, they can be there for you during breaks and after the interview.
- Helping you access healthcare and other specialist support services, such as counselling.
- Supporting you throughout the criminal justice process by keeping you informed of developments in your case and accompanying you to court.
- Challenging agencies in the criminal justice system on your behalf if you do not get the service that you are entitled to.

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

[37] For example, 10 people were prosecuted after naming a rape victim on Twitter. All were fined: 'Ched Evans rape case: Tenth person fined for naming victim.' Available at **www.bbc.co.uk/news/uk-wales-north-east-wales-21123465**

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. As people who experience domestic violence often have many criminal offences committed against them (this is sometimes referred to as re-victimisation), specialist services may be 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 regular meetings of those local agencies that come into contact with people who experience domestic violence, such as the police, social services and local domestic violence support services. When a domestic violence case is referred to a MARAC for consideration, those attending the meeting are able to develop a safety plan and a multi-agency response to ensure the safety of the person referred and other family members (including children) who may be at risk. The cases that are referred to the MARAC are those that are considered to be at high risk.

10.6 Pre-trial therapy

Some people who have experienced sexual violence need support in the form of therapy or counselling. The decision as to whether or not you would benefit from therapy is one that only you can make with the support of relevant health professionals (e.g. your doctor or a counsellor). However, if you have therapy before you give evidence in a criminal trial you need to make the CPS aware of this by telling your contact at the police. This is because what you say in court about what has happened and how you answer questions is extremely important in enabling a jury (or magistrates or a district judge) to reach a decision about whether or not the defendant is guilty of the offence. Pre-trial discussions about your evidence may affect whether or not it is considered to be reliable; it may be argued that you have been coached (told what to say).

If you are undertaking pre-trial therapy this may have to be disclosed to the defence. This could lead to the defence applying to the court for information about what is said during the therapy. This cannot be done simply to find out what you are doing or thinking; only where the information could be important for the defence. For example, the defence may want to show that a witness has told the police one thing about what happened to them and their therapist another.

CPS guidance on these issues has been given in the Provision of Therapy for Vulnerable or Intimidated Adult Witness Prior to a Criminal Trial which is available here: **www.cps.gov.uk/legal-guidance/therapy-provision-therapy-vulnerable-or-intimidated-adult-witnesses** You can discuss the consequences of having therapy with one of the organisations listed at **Appendix A** or in confidence on Rights of Women's legal advice line. If you attend a SARC, they may have counsellors available who you can talk to.

11. Being a witness in criminal proceedings

11.1 The role of witnesses in criminal proceedings

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

The Witness Charter sets out the standards of care you can expect if you are a witness to a crime or incident in England and Wales. Here a few examples of key standards taken from the Witness Charter:

- You will be treated with dignity and respect at all times by each of the service providers you have contact with in the criminal justice system.
- Applications for special measures should be made on your behalf to the court in good time and, if approved, should be available when you give your evidence in court.
- The date that you are due to give evidence should be arranged with your availability in mind. Your waiting time to give evidence in court should be kept to a minimum and, where possible, not exceed two hours.
- Measures will be taken in court to ensure that it is a safe environment for all and to ensure that prosecution witnesses, defence witnesses and their family and friends wait in separate areas.
- You will be given information (or the details of where information can be found) about the court and court process in advance of giving evidence so that you know what to expect.
- You can refresh your memory of what you said in your statement or in video-recorded evidence in advance of giving evidence in court.
- You can claim expenses for travel to and from the court and compensation for loss of earnings incurred as a result of attending court.

A full copy of the Witness Charter is available to read here: **www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/264627/witness-charter-nov13.pdf**

11.2 Being a witness

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

If you have given the police a witness statement you will be told when you have to attend court, usually by letter. It is therefore important to keep the police informed if you change your address. The CPS, usually through the Witness Care Unit (**see section 11.3)**, will try to arrange a court date that is as convenient for you as possible, although the decision as to when a date is set for trial is ultimately up to the court. If you have any concerns about this or if you think it may be difficult for you to attend, you should tell the person who asked you to go to court 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 immediately, to ensure that those who need to know are aware of your situation.

It may be that you attend court expecting to give evidence but that the case is delayed, and you must return at a later date, which can be very frustrating. The court will do everything it can to ensure that cases are not delayed. It is 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 going to be giving evidence for the prosecution you will not be allowed into court until after you have given your evidence. This is to ensure that your evidence is not influenced by anything that happens in the courtroom during the trial. If you are the victim of the criminal offence you are likely to be one of the first prosecution witnesses to give evidence in court. Once you have given evidence you can stay for the rest of the trial if you wish. You are entitled to take a friend or other supporter with you. Usually (except in the youth court) any members of the public can sit in the public gallery and watch the trial. Remember though that if you are sitting in the public gallery to watch the trial there will be no screens or other special measures in place to prevent you from seeing the defendant, or to prevent him from seeing you.

11.3 Witness Care Units

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

Witness Care Units should:

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

In some areas you may have little or no contact with the Witness Care Unit. If this is the case then the above actions will normally be carried out by your main contact at the police.

11.4 The Witness Service

The Witness Service provides free, independent and confidential support for both prosecution and defence witnesses in every criminal court in England and Wales. The Witness Service can:

- Arrange a pre-court visit for you so that you can see the court and courtroom 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 available, at 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

If you have an ISVA (**see section 10.4**) then they can also provide the support listed above.

To contact your local Witness Service contact Citizens Advice (**see Appendix A** for their details).

11.5 Preparing for court

You may have to attend court over several days. It is therefore very important that when you attend court you wear clothes that make you feel comfortable. When you attend court for the trial, the lawyer who is prosecuting the case should come and meet you. They will explain what is going to happen in court, including that your account of the sexual violence is going to be challenged by the defendant's lawyers. The prosecutor should also tell you what the defendant's account is – what he is saying happened. 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. You will be asked about his version of events.

Whilst you cannot practice or rehearse your evidence with anyone, you can think about the questions that you might be asked, what your answer may be and how you want to answer. You can also think about the support that you want at court. For example, do you want someone from the Witness Service to come into court and sit near you while you give evidence? If you are receiving support from an ISVA or another specialist service, such as a local Rape Crisis, do you want them to attend court with you? As most criminal trials occur in public you might also want to think about whether you want your friends or family to attend. It is for you to decide what you feel you need at court, nobody else.

11.6 Publicity

Trials are usually heard in open court, which means that the public has access to the courtroom and the press can report on the proceedings as they take place. This is because of the important principle in democratic societies that justice can be seen to be done. A judge can order that some or all of a trial be heard in private (with one named person present to represent the press as well as the defendant, legal representatives and any interpreters).[38] However, this is unusual and the main concern of the court is to see that justice is done. The fact that you might find giving evidence in open court difficult or uncomfortable may not be enough to persuade the court to hear your evidence in private. If you think the trial in your case should be heard in private then speak to the CPS prosecutor or your contact at the police. Whether or not the court sits in private, if you have experienced sexual violence your identity should not be revealed by the press. It would be a criminal offence for anyone to publish any details about you that might identify you (**see section 10.3**).

11.7 Accepting pleas

The defendant will usually be expected to enter pleas of guilty or not guilty to the offences he has been charged with. However, sometimes 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
- new evidence has come to light

[38] *Section 25 Youth Justice and Criminal Evidence Act 1999*

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

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

11.8 Newton hearings – when the facts are disputed

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

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

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

12. Trial

A criminal trial involves the prosecution presenting their case supported by evidence, and the defence challenging that case and evidence. The order of events at a trial differs slightly depending on whether your case is heard in the magistrates' court or at the Crown Court.

In this chapter we explain what happens in criminal trials, while in the next we focus entirely on your evidence at court and the protections you are entitled to.

12.1 Outline of a Crown Court trial

Preliminary matters

Any legal arguments relating to evidence may be argued now or at any point during the trial.

The jury is sworn

Jurors are chosen at random from the electoral roll for the local area. Most people between 18-70 who have lived in the UK for at least 5 years are eligible, unless they have particular types of criminal convictions or mental disorders. Others may be excused if they have language difficulties or for reasons such as work obligations. When a juror recognises the name of one of the witnesses involved in the trial or recognises the defendant, the judge may excuse them from sitting on the jury to avoid any suggestion that the juror might be biased. The prosecution and the defence cannot exclude jurors unless they have a good reason.

Prosecution opening speech

The CPS prosecutor will start the case with a speech.

The speech may include:

- What charges the defendant faces.
- Who will be giving evidence and why.
- 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).

Defence opening speech

The defence are allowed to make an opening speech to help the jury understand the issues in dispute in the case. If the defence decide not to do this, the jury may be shown the defendant's statement.

Prosecution evidence

- The prosecution's evidence may include witnesses giving evidence in court or having their statements read to the jury by the prosecutor. The victim of the crime is usually the first person to give evidence. The court may play your statement if the statement was video recorded.
- When a defendant does not dispute a witness statement, he may consent to this being read to the jury. In certain limited circumstances a statement can be read to the jury where the defendant does not consent (e.g. with the permission of the judge where the witness does not testify because of fear).
- Each witness will be questioned by the prosecution (examination-in-chief) and then questioned by the defence (cross-examination). The witness may then be asked some further questions prosecution (re-examination) and the judge may also ask some questions.
- Witnesses may show exhibits to the jury, such as photographs or CCTV.
- The police officer in charge of the investigation may read out the defendant's interview and answer questions about the investigation.

Submission of no case to answer

This is an argument that can be made by the defence where they think that the prosecution have not provided the jury with enough evidence to convict the defendant (**see section 12.4**).

Defence case summary

If the defendant intends to call a witness other than himself, his representative can then summarise the defence case.

Defence evidence

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

Prosecution closing speech

The prosecution will be allowed to make a closing speech if the defendant is represented, if he has called witnesses other than himself to give evidence, or otherwise if the court allows.

Defence closing speech

The defence always has the right to make a closing speech, and will almost always do so.

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

Appeal against conviction

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

12.2 Outline of a magistrates' court trial

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

Before the trial begins

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

Opening speeches

- In the magistrates' court the prosecution can give either an opening or a closing speech, they will usually make an opening speech.
- The court can invite the defence to make a short speech identifying the issues in the case.

Prosecution evidence

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

Submission of no case to answer

This is an argument that can be made by the defence where they think that the prosecution have not provided enough evidence to convict the defendant (**see section 12.4**).

Defence evidence

- Defence witnesses will be called (including the defendant if he is giving evidence) and will be examined-in-chief by their lawyer.
- Defence witnesses will then be cross-examined by the prosecution and re-examined by the defence lawyer.

Prosecution closing speech

The prosecution may make a closing speech if:

- The defendant is represented by a legal representative, or
- The defendant has introduced evidence other than his own evidence

Defence closing speech

The defence is entitled to make a closing speech, summarising their case.

The magistrates or District Judge will retire to consider their verdict.

Magistrates will be given any advice on the law they need from the legal adviser. Legal advisers sit next to the magistrates and advise them on points of law to help them come to a decision.

Verdict

As in the Crown Court, the magistrates or District Judge will find the defendant either guilty or not guilty.

Sentence

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

Appeal

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

12.3 The prosecution case

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

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

12.4 No case to answer

A submission of no case to answer is an argument made by the defence, at the end of the prosecution's case. In a criminal trial the burden is on the prosecution to prove that an offence took place, not on the defendant to prove that it did not (**see section 12.7**). If the judge considers that the prosecution has not produced sufficient evidence during their case for the jury to convict the defendant, the judge will direct the jury to find the defendant not guilty and the case will end. This may happen if the evidence produced by the prosecution is shown to be unreliable in cross-examination - for example, if key witnesses contradict themselves or change their account of events. If the judge rejects the submission and decides that there is a strong enough case against the defendant, it will be the defendant's turn to call evidence.

There are other (unusual) circumstances where a case may end at this point in a trial. This includes situations where the defendant was charged with the wrong offence.

12.5 The defence case

The defence case starts as soon as the prosecution case ends. The defence case must begin with the defendant's evidence if he is choosing to give evidence followed by any witnesses he has.[39] A defendant can only be asked about any previous convictions he has in certain circumstances, such as when a judge has decided that they are relevant to the case or when the defendant has attacked another person's character.

12.6 Closing speeches and summing up

At the end of the defence case the prosecution and then the defence address the jury in closing speeches. The prosecutor and defence barristers will both summarise their side of the case to the jury, emphasising the evidence that is important and helpful to their case, and explaining to the jury why they should convict (prosecution) or acquit (defence). The lawyers are allowed to be biased in favour of their own case in these closing speeches.

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

Following this, if the case is heard in the Crown Court, the judge will summarise the case for the jury. The judge's summing up consists of two parts – directions in relation to the law, and a summary of the evidence.

When the judge gives directions to the jury, they are obliged to follow those directions. The most important direction is about the burden and standard of proof (below). The Crown Court Bench Book provides a very comprehensive guide to the directions that judges should give at trial, and the particular words that they should use in those directions.[40]

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

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

The judge will also give a summary of the evidence. The judge must be fair to both the prosecution and defence when summarising the evidence. The judge is entitled to keep the summary brief and not mention every point raised at trial as long no bias is shown to one particular side, any particular witnesses, or particular pieces of evidence.

12.7 The burden and standard of proof

In a criminal trial the burden is on the prosecution to prove that an offence took place, not on the defendant to prove that it did not. This is called the burden of proof.

Whoever makes the decision about whether or not the defendant is guilty of the offence, they have to be sure that the defendant is guilty before they can convict him. If they are not sure they must acquit him. This is called the standard of proof. It is the prosecution's responsibility to present enough evidence so that the jury or magistrates are sure.

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

[40] *The Crown Court Bench Book can be found at* **www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/eLetters/CCBB_first_supplement_071211.pdf** *. Chapter 17 in particular deals with trials of sexual offences.*

13. Giving evidence at trial

13.1 Special measures

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

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

- who is under 18

  or
- whose evidence would be diminished because of a mental or physical illness or disability.

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

- who is a victim of a sexual offence (unless the victim does not want to be treated as an intimidated witness)

  or
- who is experiencing fear and distress about testifying. When deciding whether someone's evidence is weakened because of their fear and distress, the court will consider factors including the witness's age, social, cultural, religious and ethnic origins, the nature of the offence and the defendant's behaviour towards the witness either directly or indirectly.

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

- Placing a screen in the court room so the defendant and witness cannot see each other.
- Giving evidence by a live link (this means you will give evidence from outside the court room and appear on screen for the judge, jury, prosecution and defence to see).
- Giving evidence in private, which means without members of the public watching. Anyone in the public gallery, including the defendant's friends and family, will be asked to leave (this special measure is limited to cases that involve sexual offences and those involving intimidation).
- The judge and lawyers can remove their wigs and gowns to make the witness feel more comfortable.
- Video-recorded evidence-in-chief (**see section 5.3**).
- Examination of a witness through an intermediary (someone appointed by the court to assist a witness because, for example, they have a disability that affects their ability to communicate).
- Examination using communication aids (such as a symbol book or alphabet boards).

The guidance Achieving Best Evidence covers the use of supporters in the live link room at page 209.

The guidance can be accessed here: **www.cps.gov.uk/publications/docs/best_evidence_in_criminal_proceedings.pdf**

Giving evidence by a live link means you will give evidence from outside the courtroom. You will appear on a screen for the judge, jury, prosecution and defence lawyers to see. The court can provide for you to have a supporter with you in the live link room. They do not have to be a court official, but they must comply with National Standards that relate to witness supporters. Organisations like Citizens Advice may provide this service. Your Independent Sexual Violence Adviser (ISVA), if you have one, may be able to take on this role, but it must be with the court's prior approval.

If you provided a video recorded statement, then this will be automatically admitted as your evidence at the trial unless this would not be in the interests of justice. You may still be required to give further evidence if the defence want to question you or if you have further evidence to provide.

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

- preventing victims of sexual offences from being cross-examined by the defendant himself (this means he cannot ask you questions himself, it has to happen through a lawyer)
- restriction on evidence and questions about the complainant's sexual history (**see section 13.6** for further information)
- restrictions on media reporting of information likely to lead to the identification of certain adult witnesses in criminal proceedings (**see also the section 10.3** on anonymity)

Changes to legal aid mean that more defendants are likely to be representing themselves at trial. However, defendants charged with sexual offences are not allowed to directly cross-examine witnesses who are the complainants of these crimes. In these cases, the judge or magistrates will appoint a lawyer to represent the defendant only for the purpose of cross-examining the victim and other vulnerable or intimidated witnesses.

If you have experienced sexual violence you are automatically entitled to receive special measures (although you can decide not to receive them if you wish). The type of special measures that you will be given 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 5.4**).

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 the magistrates/district judge or the Crown Court judge (depending on whether the trial occurs in the magistrates' or Crown Court).

13.2 If English is not your first language

The Victims' Code (**see section 10.2**) states that if you do not understand or speak English you are entitled to request interpretation into a language you understand:

- when reporting a criminal offence
- when being interviewed by the police
- when giving evidence as a witness

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

You can also request a translation of:

- the written acknowledgment of the reported crime
- where it is essential for the purposes of the interview or court hearing for you to see a particular document, a copy of the relevant parts of the document
- the document informing you of the date, time and place of trial
- the outcome of criminal proceedings and at least brief reasons for the decision where available

If you are unhappy with a decision not to provide interpretation or translation services, you are entitled to make a complaint to the service provider (usually the police or CPS).

13.3 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 of trial, or day before you are due to attend court. If your video statement is going to be played during the trial it may have been edited since you gave it to the police. This could be to remove information that would affect your or another witness' confidentiality or to ensure that evidence that is inadmissible (not allowed for a legal reason) does not go before a jury. Where the video has been substantially edited you should have been notified in advance of the trial. 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 an Independent Sexual Violence Adviser, someone from Witness Services, or another support organisation while you wait. They can also accompany you into court and support you while you give evidence. Friends and family can come to court and should be allowed to wait with you. They will have to sit in the public gallery during the trial. If your friends or family are witnesses in the case, they will have to wait until after they have given evidence before they can sit in court.

The prosecutor should introduce her or himself to you and answer any questions that you have about the trial, although they will not be able to discuss your evidence with you. The prosecutor will have prepared the case and should know if you have any particular fears or concerns. As the prosecutor is responsible for the trial, they will be quite busy, and so the amount of time that she or 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 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 you attend court to give evidence and the case is discontinued, you should be invited into the courtroom where the judge should give you an explanation of what has happened.

13.4 Examination-in-chief

Your evidence is what you say in court (or the video interview which has been recorded and is then played in court). When a person gives evidence, they are asked questions by the prosecution and defence to enable them to present their evidence. 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 asked to take an oath (on your religious book if you have a religion) or to affirm (if you prefer not to make a religious oath) 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 usually not allowed to ask you leading questions when you give your evidence. This means the prosecutor cannot ask you a question that suggests a particular 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, how much alcohol you consumed or how you knew the defendant. If you do not answer questions fully, the defence may draw attention to your answers and use this to suggest that your evidence cannot be relied upon to convict the defendant.

13.5 Cross-examination

At trial your account of the offence will be challenged in court by the defence. It is the responsibility of the defendant's legal representative to put the defence case (the defendant's explanation or version of events) to you. This process is called cross-examination. The defendant is not allowed to ask you any questions himself or speak to you directly.[41]

The defence barrister (or solicitor) may state that you consented to sexual activity or that the defendant reasonably believed you were consenting. Alternatively, she or 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 may be questioned. This means 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. Responsibility lies with the judge (or magistrates) for making sure that the questions put to you in cross-examination are asked politely and are relevant to the issues in the case. The prosecution barrister may also intervene if she or he feels that particular questions are unfair. Whatever you are asked, listen carefully to the questions and take your time in answering. You should not feel rushed or pressured into giving an answer.

[41] Section 34 and section 35 Youth Justice and Criminal Evidence Act 1999 bars a defendant from cross-examining a witness who is a complainant of a sexual offence. Part 23 of the Criminal Procedure Rules enables the court to appoint an advocate to cross-examine the victim. ***www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/crim-proc-rules-2015-part-23.pdf***

13.6 Questions about your previous sexual history

Section 41 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999) placed limits on the defence's ability to cross-examine a victim on her previous sexual history (including her sexual orientation). This means a defence barrister (or solicitor) is not allowed to question you about any previous sexual experience you have had with anyone, including the defendant, without the judge's permission.

The judge should not give permission for such questioning unless certain conditions are met. These conditions are explained further below and are designed to ensure that the defendant has a fair trial and that any conviction obtained is safe (cannot be challenged at any appeal). Any questions asked, or evidence obtained as a result of such questioning must relate to a specific example of your behaviour. This may include being asked questions about previous reports you gave to the police or others about other experiences of sexual violence, whether involving the defendant or someone else. You cannot be asked wide-ranging questions to produce general evidence about your sexual habits or to undermine your credibility.

The rule does not apply to the prosecution and so the prosecutor can refer to your past relationship with the defendant (if you had one). For example, in making the opening speech the prosecutor 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 can speak to the prosecutor before you give evidence. The prosecutor will make the decision about how best to run the prosecution case, and will not be able to talk to you about what to say in evidence, but she or he should listen to you and consider your views.

It may be helpful to have an idea of 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 the question has to an issue in the case). It is not possible to say precisely what questions may or may not be asked as it depends on the particular facts of your case and how the judge assesses them.[42] The following is a guide to the kinds of areas in which questions **could** be allowed, if they are relevant:

- Where the defendant claims you consented to the act and establishes a pattern of prior consensual sexual relations between the two of you, questions may be allowed to show that, because of the previous consensual activities, he believed you were consenting to this 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 to the act, and other sexual behaviour (not necessarily with him) took place at about the same time as the alleged assault, questions about the other sexual behaviour may be allowed.
- Where the defendant says you consented to the act, and other sexual behaviour was so similar to the act, questions may be allowed unless the similarity can be explained as a coincidence.

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

Questions are only permitted where your answers to them may be crucial to the defendant's particular defence - for example, if they are relevant to the question of the defendant's belief in your consent. Evidence about your previous sexual relationships with the defendant can only be heard if it fits within certain limited categories and refusal to allow these questions to be asked could make any subsequent conviction unsafe. However, the courts have a duty to ensure that the defendant has a fair trial[43] and different judges interpret the law in different ways. You may, therefore, want to consider how you would respond to questions about your previous sexual history.

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. The application should be made as soon as practicable after becoming aware that they have grounds to make the application. The application will involve the defence arguing why this information is necessary and the prosecution will have an opportunity to argue why it is not. The jury will not hear these arguments. The decision will be taken by a judge. The judge must take adequate account of your rights before making a decision.

If the judge decides to allow questions about your previous sexual behaviour then the CPS prosecutor is responsible for informing you, and the prosecutor must be allowed enough time to do this. The prosecutor will also tell you about any special measures (**see section 13.1**) that will be put in place to help you give evidence.

In the well-publicised case of footballer Ched Evans the allegation of rape was based on the fact that the victim had been highly intoxicated on the evening in question and could not recall what had happened. The CPS case was based on the fact that she could not have consented due to her intoxication. Following the initial trial Evans was convicted of rape. He appealed this conviction and the Court of Appeal quashed his conviction and allowed a re-trial based on new evidence which had come to light about the victim's sexual behaviour in the run up to the alleged rape[44]. During the re-trial defence lawyers were permitted to ask the victim questions about her previous sexual behaviour which, it was alleged, was very similar to her behaviour on the night in question. Following the re-trial Evans was found not guilty. This case has raised some concerns about how courts are applying the strict rules which outline when a victim can be asked questions about her previous sexual behaviour.

A case which came after the Evans retrial demonstrated that judges are still applying these rules carefully, in R. v Guthrie (Germaine)[45] the Court of Appeal upheld the trial judge's decision not to allow the defence to cross examine the victim on previous consensual sexual activity that she had engaged in with her rapist because it was not similar to details of the allegation.

[43] *Section 3 Human Rights Act 1998.*

[44] *R v Evans [2016] EWCA Crim 452.*

[45] *R. v Guthrie (Germaine) [2016] EWCA Crim 1633.*

13.7 Re-examination

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

13.8 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 she or he can. The judge may ask you the question directly or allow the prosecuting or defending barrister to ask you.

13.9 Protecting your evidence

If the court has to break in the middle of your evidence, either over lunch or overnight, 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.

13.10 When you have given evidence

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

14. After the trial

14.1 The verdict

When the trial was in the magistrates' court

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

When the trial was in the Crown Court

Juries are always initially asked to reach a unanimous verdict – a verdict upon which they all agree. After a certain time has passed[46] 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 must discharge them (release them). This means that the there has been no decision on whether the defendant is guilty or not guilty. This is called a hung jury. In this situation, the CPS can decide to hold a retrial of the defendant with a different jury and only in very limited circumstances will it be prevented from doing so.[47] Usually there will only be one re-trial. Where two juries fail to reach a verdict, the presumption is that the prosecution will not seek a third trial unless there are exceptional circumstances. Factors that might justify a third trial include:

- jury interference – this is where someone has been bribing or coercing the jury to give a certain verdict (this is also a criminal offence)
- additional evidence that has recently come to light and was not available at earlier trials

The judge can only question a jury's verdict in very unusual circumstances.[48] The jury are not allowed to discuss their deliberations (discussions) with anyone outside of the jury room.

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

[47] For example, when there has been a long delay and the offence is not considered serious.

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

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

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

14.3 A verdict of guilty

Once a defendant is found guilty[49] (convicted) of any offence he must be sentenced. The court may sentence the defendant right away or may decide to have a separate hearing, so that a pre-sentence report can be prepared. The pre-sentence report may be necessary to look at the defendant's background, previous convictions and mental health, and is prepared by the Probation Service. They usually take at least a month to prepare. The court may order that other reports be prepared, such as medical or psychiatric reports. These 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.

[49]*The same process follows a plea of guilty.*

14.4 Sentencing

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

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

Under the Victims Code (**see section 10.2**) you are entitled not to receive unwanted contact from a prisoner.

Prisoners are not allowed mobile phones and are allowed access to the internet only for educational purposes, employment and resettlement activities. They are not permitted to use social networking sites. If you receive unwanted contact from a prisoner in any form, you can speak to your Victim Liaison Officer (VLO) if you have one, or report this by calling the **National Offender Management Service Victim Helpline** on **0300 060 6699**.

If you receive unwanted contact from an offender who is on licence in the community, you can contact the National Probation Service, the police, or your VLO if you have one. If the offender is under 18 and being supervised by a Youth Offending Team, you can contact that Youth Offending Team to report any unwanted contact.

A **determinate prison sentence** is one that has a fixed end date. Offenders who receive a determinate sentence will usually be released from prison after serving half of the sentence (so if the offender received a sentence of 5 years imprisonment, he would be released after 2 ½ years). The offender will then spend the remaining period (2 ½ years) **on licence**. During this time they will be supervised by the Probation Service and may be required to comply with specific licence conditions, such as not going to a particular area. Failure to comply with the conditions, or reoffending may result in the offender being sent back to prison to serve the rest of his sentence. If the offender received a sentence of under 2 years, they will still be released half way through the sentence, but will also be given 12 months supervision. For example, if the offender received a sentence of 18 months, they will be released at 9 months, but will still be supervised for 12 months.

An **extended sentence** is one in which there is both a prison sentence and an extended period of supervision on licence after release from prison. Such a sentence may be passed when the offender is assessed as being of significant risk to the public because he might commit further offences (when he is considered dangerous under the provisions of the Criminal Justice Act 2003).

When passing this sort of sentence the judge will fix the length of time that the offender should spend in prison (custodial term) and the additional length of time that the offender should be on licence (extended licence period). The offender will usually be released from prison after serving two thirds of the custodial term but may have to apply to the Parole Board to be released. He will spend the remaining one third of the custodial term plus the extended licence period under the supervision of the Probation Service. As above, he may be returned to prison if he reoffends or breaches any conditions attached to the licence in that time.
For example: if the judge passes an extended sentence with a 6 year custodial term and a 4-year extended licence period, the offender will remain in prison for 4 years (two thirds of 6 years) and will then spend 2 years (one third of 6 years) plus 4 years on licence.

A **life sentence** is passed when an offence is particularly serious. Only in very rare cases does a life sentence mean that the offender will spend the rest of his life in prison. In most cases the judge will set a minimum term, which is the minimum number of years that an offender **has** to spend in prison before he can be considered for release. When the offender has spent the minimum term in prison, he can apply to the Parole Board to be released. He may not be released immediately or even for a number of years beyond the minimum term if the Parole Board does not think he is safe for release. Once released the offender is on licence for the rest of his life and may be subject to conditions for some of that time. Any breach of those conditions or reoffending could see him returned to prison until (and only if) he is considered safe for release again.[50]

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

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

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

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

When deciding sentence the judge or magistrates will look at whether there are any sentencing guidelines, which are produced by the Sentencing Guidelines Council (SGC). There are specific guidelines for sentencing sexual offences. The court must follow these guidelines unless it would be contrary to the interests of justice to do so. These can be found at **www.sentencingcouncil.org.uk/publications/item/sexual-offences-definitive-guideline/**[51]

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

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

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

[51] *The previous version of the sentencing guidelines applies to offenders sentenced between 17th May 2007 and 31st March 2014.*

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

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

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

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

14.5 Offending behaviour work

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

Specific courses are available for those who have committed acts of domestic violence, such as the Community Domestic Violence Programme, the Healthy Relationships Programme and the Integrated Domestic Abuse Programme. These programmes are designed to encourage offenders to look at why they have committed domestic abuse offences, to develop new thinking and behavioural skills, and to understand more about the harm their behaviour has caused.

There are also programmes for offenders whose behaviour is linked to sex offending and drug and alcohol misuse.

14.6 Release from prison

The provisions for an offender being released from prison are set out in **section 14.4**. In some cases an offender will be released automatically but in others he will need to persuade the Parole Board that he is safe to be released.[53]

In cases where the defendant is sentenced to 12 months imprisonment (or more) for a sexual or violent offence Her Majesty's Prison and Probation Service should contact you. If you want them to they should:

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

[52] *R v H [2011] EWCA Crim 2753*

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

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

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

Although still fairly unusual, it is possible to successfully challenge a decision by the Parole Board to release a prisoner. The recent challenge against the release of the serial rapist John Worboys is an example of a successful challenge[55] . If you wish to challenge the decision to release a prisoner you will need to obtain urgent legal advice. You can contact our advice line for more information.

If you have received unwanted contact from a prisoner by letter or telephone or are worried about his release contact Her Majesty's Prison and Probation Service Victim Helpline on 0845 7585 112 or write to them at the address given at **Appendix A**.

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

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

The defendant may also be given a Sexual Offences Prevention Order (SOPO) which is an order that forbids him from doing certain things specified in the order, such as going to particular places. The order can be for a fixed term or indefinite but must have a minimum term of five years. A defendant can apply for the SOPO to be varied (changed) or discharged (removed).

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

[55] *An example of news coverage of the successful challenge of the Parole Board decision to release John Worboys* ***www.theguardian.com/uk-news/2018/mar/28/parole-board-must-reconsider-decision-to-release-john-worboys***

14.8 Appeals

If the original trial was heard in the Magistrates Court

You are entitled to be informed of the following information by your Witness Care Unit within 1 working day of them receiving it from the court:

- any notice of appeal that has been made
- the date, time and location of any hearing
- the outcome of that appeal, including any changes to the original sentence

If you are required to attend the appeal, you are also entitled to:

- wait and be seated in court in an area separate from the appellant and their family and friends (the court will ensure this is done wherever possible)
- be provided with a contact point at the Crown Court
- receive information about victim support services where appropriate and available

If the original trial was heard in the Crown Court

You are entitled to:

- be told that the appellant has been given leave to appeal within 1 working days of the Witness Care Unit receiving that information from the court
- receive information about the date, time and location of any hearing from the Witness Care Unit within 1 working day of them receiving the information from the court
- be told by the Witness Care Unit if the appellant is to be released on bail pre- appeal or if the bail conditions have varied within 1 working day of them receiving this information from the court
- receive an update from the Witness Care Unit on any changes to hearing dates within 1 working day of receiving this information from the court
- be provided, by your Witness Care Unit, with a contact point for the Criminal Appeal Office or UK Supreme Court staff
- be told about the result of the appeal within 1 working day of the Witness Care Unit receiving that information from the court (this includes any changes to the original sentence)
- wait and be seated in court in an area separate from the appellant (if he attends) and their family and friends
- request a copy from the Criminal Appeal Office or UK Supreme Court staff of the court's judgment in the case once it has been published

Appeals against conviction

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

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

If the defendant was convicted in the Crown Court he may appeal to the Court of Appeal if the Court of Appeal gives its permission.[56] An application for leave (permission) to appeal against conviction should be lodged with the Crown Court within 28 days of conviction, although this time limit may be extended by the Court of Appeal. If permission to appeal against a conviction is given, the Court of Appeal will examine the case to see whether the conviction is safe or not. The Court of Appeal will not hear the same evidence that the jury heard and reach their own decision; instead they will hear legal arguments about whether something occurred at trial that meant that the defendant's conviction is unsafe. There are a number of things that can make a conviction unsafe including:

- faults in the judge's summing up
- new evidence coming to light which was not available at the time of trial
- mistakes in the legal advice that the defendant was given
- 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.

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.

[56] Unless the Crown Court has granted a certificate to appeal, which is very rare and must be for a specific reason such as where a point of law is unclear.

Criminal Cases Review Commission

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

Unduly lenient sentences

If the judge passes a sentence which the CPS considers is unduly lenient (too soft) and 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 you disagree, you can ask the Attorney General to consider it herself, 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, they must notify you without delay. This will give you the chance to complain directly and urgently to the Attorney General, and give the Attorney General sufficient time, if a complaint is made, to consider the case.

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

For further information about unduly lenient sentences is available here: **www.cps.gov.uk/legal-guidance/unduly-lenient-sentences**

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

15.1 The Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Scheme 2012 (the Scheme)[57] came into force on 27th November 2012 and applies to applications made on or after that date.[58] The purpose of the Scheme is to compensate the victims of violent crime for the physical or mental injuries they have received. This may include, in some cases, compensation for lost earnings or certain other expenses such as for medical treatment or equipment. The compensation that a victim receives comes from the Criminal Injuries Compensation Authority (the CICA), which administers the Scheme. The compensation does not come from the person who committed the offence.

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

It is not necessary for a perpetrator of sexual violence to have been charged or convicted of a criminal offence in order for you to be able to claim compensation, but the offence must have been reported to the police. Compensation can be refused if the police report to the CICA that there is not enough evidence to establish a crime.

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

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

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

[57] *At the time this handbook was written the Government was in the process of reviewing the Scheme, which may result in changes to it. You should seek up to date advice on your entitlement to criminal injuries compensation.*

[58] *Information in relation to applications made prior to 27th November 2012 can be found at* **www.gov.uk/government/publications/criminal-injuries-compensation-scheme-1996-2001-and-2008**

If you want to apply for compensation you need to complete and sign an application form. By signing the application you are giving the CICA permission to seek and obtain information about you and your injury. The CICA may, for example, seek copies of your medical records to confirm the injuries you received or from the police to confirm that you reported the incident and cooperated with them. In the scheme guidance[59] it states that the claims officer must be provided with any information they reasonably require in connection to the claim. As such they should only request medical records that pertain to the injury you have sustained and not your whole medical record. All information received by the CICA is confidential. The CICA aims to make a decision on compensation within 12 months.

Decisions on compensation are made by claims officers who will decide whether compensation should be paid and if so, how much. They may ask you to provide evidence to support your claim. The claims officer should write to you and explain how she or he reached a decision in your case. For a claim to be successful you have to show on the balance of probabilities that you suffered a criminal injury. If you are successful, you must write to accept the award within 56 days of the date of the decision. If you think that a claims officer has made the wrong decision you can ask for it to be reviewed and then, if you think that it is still incorrect, you can appeal against it. There are firms of lawyers who will deal with these appeals for you but you are likely to have to pay costs. You can also deal with them yourself. The CICA can make reductions in the amount of money it awards based on things like previous convictions and a failure to co-operate with the police.

The application process is designed for people to be able to make their own application. You can contact a solicitor for help, but you will usually have to pay for this advice. Victim Support can provide information about the Scheme as well as help you in completing the form. You can also approach your local Citizens' Advice, a Law Centre or Rights of Women's legal advice line. For further information about the Scheme, to obtain an application form, to claim over the telephone, or to claim online you can telephone 0300 003 3601 or visit **www.gov.uk/government/organisations/criminal-injuries-compensation-authority**.

Rights of Women's A Guide to Criminal Injuries Compensation explains the Scheme and application process in more detail. The guide is available to download free of charge from our website and hard copies are available on request.

[59] *Ministry of Justice (2012) The Criminal Injuries Compensation Scheme. Available at* **www.gov.uk/guidance/criminal-injuries-compensation-a-guide**

Reduced or refused claims for compensation

An award for criminal injuries compensation may be reduced if you have already been awarded compensation from a court.

There are also other reasons why the CICA may decide to reduce your compensation or refuse to pay compensation. If this happens to you then you may want to get further advice about challenging the CICA's decision. Here are some examples of cases that were successfully challenged after the CICA reduced or refused to pay compensation:

- A decision to reduce a compensation award by 40% for failure to cooperate with the police. In this case a survivor of rape retracted her allegations to the police after being pressured by her husband.[60]
- A decision applying the so-called "same-roof" rule, which denies compensation to domestic abuse victims who were assaulted before 1979 if the survivor and perpetrator were living together at the time the assault happened. The Court of Appeal decided that this decision is incompatible with the survivor's human rights.[61]

The Scheme has also been criticised for unfairly reducing or refusing to pay compensation in lots of other cases, for example, cases where the survivor has a criminal conviction for very minor offences.

At the time this handbook was written the Government was in the process of reviewing the Scheme, which may result in changes to it. You should seek up to date advice on your entitlement to criminal injuries compensation.

15.2 Suing for damages

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

[60] *RT v (1) The First-tier Tribunal (Social Entitlement Chamber) and (2) Criminal Injuries Compensation Authority (CICA) [2016] UKUT 306 (AAC)*

[61] *JT v First-Tier Tribunal [2018] EWCA Civ 1735*

APPENDIX 1

USEFUL ORGANISATIONS

Useful Organisations

Sexual Assault Referral Centres

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

Organisations for survivors

Rape Crisis
To find your local Rape Crisis Centre visit the website for Rape Crisis England and Wales: www.rapecrisis.org.uk
Or call the helpline: 0808 802 9999 between 12 noon - 2.30pm and 7 - 9.30pm every day

NAPAC National Association for People Abused in Childhood
Herald House
Off Bunhill Row
15 Lambs Passage
London EC1Y 8TQ
Support line: 0808 801 0331(free from mobile or landlines)
Office: 0207 6141 1801
Email: support@napac.org.uk
Web: www.napac.org.uk

NSPCC National Society for the Prevention of Cruelty to Children
Weston House
42 Curtain Road
London EC2A 3NH
Helpline for adults concerned about children: 0808 800 5000 (24 hours)
Helpline for children and young people: 0800 1111
Email: help@nspcc.org.uk
Web: www.nspcc.org.uk

One in Four (for survivors of child sexual abuse)
219 Bromley Road,
Bellingham
London SE6 2PG
Tel: 0208 697 2112
Email: admin@oneinfour.org.uk
Web: www.oneinfour.org.uk

Organisations for survivors

Samaritans
Freepost RSRB KKBY
PO Box 9090
Stirling FK8 2SA
Helpline: 116 123 (UK)
116 123 (ROI)
Email: jo@samaritans.org
Web: www.samaritans.org.uk

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

Victim Support
Hallam House
56 – 60 Hallam Street
London W1W 6JL
Support line: 08 08 16 89 1111
Tel: 0207 268 0200
Email: supportline@victimsupport.org.uk
Web: www.victimsupport.org.uk

Citizen's Advice Witness Service
3rd Floor North
200 Aldersgate Street
London EC1A 4HD
Web: www.citizensadvice.org.uk/about-us/citizens-advice-witness-service/

Black and Minority Ethnic (BME) survivors

You can find a list of specialist by and for BME ending VAWG agencies around the country at Imkaan's website: **www.imkaan.org.uk/get-help**

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

BAWSO
Clarence House
Clarence Road
Cardiff Bay
9 Cathedral Road
Cardiff CF10 5FB
Helpline: 08007318147
Email: Info@bawso.org.uk
Web: www.bawso.org.uk

Disabled survivors

Disability Law Service
The Foundry
17 Oval Way
London
SE11 5RR
Tel: 020 7791 9800 option 8
Email: advice@dls.org.uk
Web: www.dls.org.uk

Respond
3rd Floor
24-32 Stephenson Way
London NW1 2HD
Telephone:0207 383 0700
Email: admin@respond.org.uk
Web: www.respond.org.uk

LGBT survivors

National LGBT Domestic Abuse Helpline (part of GALOP)
Helpline: 0800 999 5428
Email: help@galop.org.uk
Web: www.galop.org.uk/domesticabuse

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

London Lesbian & Gay Switchboard (National Service)
PO Box 7324
London N1 9QS
Helpline: 0300 330 0630
Email: chris@switchboard.lgbt
Web: www.switchboard.lgbt

Male survivors

Male Survivors Trust
Helpline: 0709 222 9264
Email: malesurvivorstrust@gmail.com
Web: www.malesurvivorstrust.org.uk/

Sue Lambert Trust
6 Music House Lane
Norwich NR1 1QL
Telphone:01603622406
Email: info@suelamberttrust.org
Web: www.male-rape.org.uk/

Survivors UK
11 Sovereign Close
London E1W 3HW
Helpline: 02035983898
Email: info@survivorsuk.org
Web: www.survivorsuk.org

Support in relation to domestic violence and abuse

National 24hr Domestic Violence Helpline (England)
Helpline: 0808 2000 247 (24 hour)
Email: helpline@womensaid.org.uk
Web: www.nationaldomesticviolencehelpline.org.uk

Welsh Women's Aid
Violence Against Women Centre of Excellence
Pendragon House
Caxton Place
Pentwyn
Cardiff CF23 8XE
Helpline: 0808 8010 800 (24 hours)
Email: info@welshwomensaid.org.uk
Web: www.welshwomensaid.org

Support in relation to prostitution and trafficking

UK Network of Sex Work Projects
UKNSWP
Tel: 0161 629 9861
Email: uglymugs@uknswp.org.uk
Web: www.uknswp.org

Support on elder abuse

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

Human rights

Equality Advisory and Support Service
Freepost
Equality Advisory Support Service FPN4431
Helpline: 0808 800 0082
Text phone: 0808 800 0084
Web: www.equalityadvisoryservice.com/

Legal advice

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

Rights of Women
52 -54 Featherstone Street
London EC1Y 8RT
Administration: 020 7251 6575
Email: info@row.org.uk
Web: www.rightsofwomen.org.uk

Centre for Women's Justice (CWJ)*
c/o The National Pro Bono Centre
48 Chancery Lane
London
WC2A 1JF
Tel: 020 7092 1807
Web: www.centreforwomensjustice.org.uk

**CWJ works strategically to support women in bringing legal cases relating to state accountability for VAWG. This is done via a legal reference panel. They are unable to provide legal advice over phone, email or post but you can contact them via a contact form or in writing about your case to see if their panel are able to assist.*

Criminal Injuries Compensation

Criminal Injuries Compensation Authority
Alexander Bain House
Atlantic Quay
15 York Street
Glasgow G2 8 JQ
Helpline: 0300 003 3601
Web: www.gov.uk/government/organisations/criminal-injuries-compensation-authority

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

Complaints about the police

Independent Office for Police Conduct (IOPC)*
PO Box 473
Sale M33 0BW
Tel: 0300 020 0096 (press 2 at prompt)
Email: enquiries@policeconduct.gov.uk
Web: www.policeconduct.gov.uk/

**formally the Independent Police Complaints Commission (IPCC)*

Complaints about the police

Her Majesty's Prison & Probation Service
Clive House
70 Petty France
London SW1H 9EX
Main switchboard: 0203 193 5921
Email: public.enquiries@noms.gsi.gov.uk
Web: www.gov.uk/government/organisations/her-majestys-prison-and-probation-service

The Parole Board for England and Wales
52 Queen Anne's Gate
London SW1H 9AG
Tel: 020 3334 4402
Email: info@paroleboard.gsi.gov.uk
Web: www.gov.uk/government/organisations/parole-board

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RIGHTS of WOMEN

helping women through the law

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

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

From Report to Court covers:

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

Rights of Women,
52 – 54 Featherstone Street, London EC1Y 8RT
Office: 020 7251 6575
Email: info@row.org.uk
Website: www.rightsofwomen.org.uk
Charity number: 1147913

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