

# From Report to Court

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*A handbook for adult survivors of  
sexual violence*

*Cathy Halloran*



**Rights of Women** is a well established and expanding not-for-profit organisation committed to informing, educating and empowering women on the law and their legal rights. The organisation runs a free legal advice telephone service for women, and produces publications on women's rights. Rights of Women's areas of expertise include family law, relationship breakdown, domestic violence and sexual violence, and it frequently runs conferences and training on these issues. The organisation is funded by grants from the Association of London Government and the Big Lottery Fund.



The law as represented in this Report is accurate up to the 1st March 2006.

Rights of Women  
52-54 Featherstone Street  
London  
EC1Y 8RT

General Legal Advice Line 020 7251 6577  
(open Tuesday-Thursday 2-4pm and 7-9pm,  
Friday 12-2pm)  
Sexual Violence Legal Advice Line 020 7251 8887  
(open Monday 11am-1pm and  
Tuesday 10am-12noon)  
Admin Line 020 7251 6575/6  
Textphone 020 7490 2562  
Fax 020 7490 5377  
Email [info@row.org.uk](mailto:info@row.org.uk)

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# From Report to Court

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# 1

## I.1 INTRODUCTION

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This handbook is for adult<sup>1</sup> survivors of sexual violence<sup>2</sup> and those who support them. It was commissioned by Rape Crisis,<sup>3</sup> funded by the Victims and Confidence Unit within the Home Office with contributions by Rights of Women and supported by the Child and Women Abuse Studies Unit, the Crown Prosecution Service and Victim Support. Rights of Women edited, reviewed and organised publication. Several individuals from within and outside these organisations provided valuable time reading and reviewing: particular thanks go to Sara Maguire, Justice for Women London; Prof. Liz Kelly, Child and Women Abuse Studies Unit (CWASU); Ranjit Kaur, Nadine Sime, Emma Scott, Sofia Jasani, Sharon Persaud, Saraka Keating, Gita Patel and Sarah Atugonza of Rights of Women; Kate Cook, Manchester Metropolitan University/Truth About Rape Campaign; Dr. Helen Jones, Campaign to End Rape/Truth About Rape; Sandra McNeil, Justice for Women West Yorkshire/Campaign to End Rape; Sheila Coates, South Essex Rape Crisis Centre (SERICC); and Yvonne Traynor, Rape and Sexual Abuse Support Centre Croydon (RASASC).

## I.2 ABOUT RAPE CRISIS

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The Rape Crisis Movement developed from a feminist framework and from a philosophy of dealing with issues that affect women and

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1. People in England and Wales legally reach adulthood at 18. The general age of legal consent to sexual activity remains at 16.

2. In referring to 'sexual violence' and/or 'sexual assault(s)' the handbook is encompassing the following offences against adults: The Sexual Offences Act 2003 Sections (1) Rape; (2) Assault by Penetration; (3) Sexual Assault; and (4) Causing a person to engage in sexual activity without consent. See Part C.

3. The Rape Crisis Federation of England and Wales closed in the autumn of 2003 but the Rape Crisis Movement has survived. Rape Crisis Groups still operate at local level and it is hoped that a new co-ordinating body will soon be established.

## INTRODUCTION

girls from a woman's perspective. Rape Crisis Groups or Centres have been in existence on an independent basis now for over twenty years. There are Centres in many towns and cities across England and Wales. These are run entirely by volunteers specially trained to provide free and confidential support, counselling and information for women and girls<sup>4</sup> who have experienced rape or sexual assault at any time in their lives. Rape Crisis Groups also provide support for the friends and family of rape and sexual assault survivors. Many Groups provide a telephone helpline service and/or face to face support through a model of empowerment.<sup>5</sup>

### 1.3 ABOUT THE HOME OFFICE

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The Home Office is the Government Department responsible for internal affairs in England and Wales. The Home Office works to build a safe, just and tolerant society, to enhance opportunities for all and to ensure that the protection and security of the public are maintained and enhanced. The Office for Criminal Justice Reform (OCJR) is the cross-Departmental team that supports all criminal justice agencies working together to provide an improved service to the public. With effect from July 2004, it is a fully shared resource, reporting on an equal basis to the Home Office, Department for Constitutional Affairs and Law Officers' Departments. The Victims and Confidence Unit's role within the OCJR is to co-ordinate the work of Government Departments (both within the criminal justice system and more widely) in taking forward initiatives to develop services that support victims and witnesses and to improve confidence and satisfaction in the criminal justice system.

### 1.4 ABOUT RIGHTS OF WOMEN

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Rights of Women is a well established and expanding not-for-profit organisation committed to informing, educating and empowering

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4. Some Rape Crisis Groups also offer support to male victims of rape and sexual abuse.

5. The level of support depends on the resources available to a particular Rape Crisis Group.

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women on the law and their legal rights. The organisation runs a free legal advice telephone service for women where qualified lawyers give confidential advice. It also produces publications on women's legal rights. Rights of Women's areas of expertise include family law, relationship breakdown, domestic and sexual violence and it frequently runs conferences and training on these issues making the law accessible to women. The organisation is funded by grants from the Association of London Government and the Big Lottery Fund. **The sexual violence legal advice line number is 020 7251 8887, the general legal advice line number is 020 7251 6577 and the website [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)** contains information concerning current developments in the law and policy.

### 1.5 ABOUT THE CHILD AND WOMEN ABUSE STUDIES UNIT (CWASU)

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The Child and Woman Abuse Studies Unit was founded in 1987 to develop feminist research, theory and practice, especially in relation to connections between forms of sexualised violence. CWASU now has a national and international reputation for its research, training and consultancy work, which involves a creative combination of large and small scale research projects, training, policy development and networking, bridging the worlds of academia, policy, practice and activism; completing three major studies on rape, which involved surveying and interviewing survivors.

### 1.6 ABOUT THE AUTHOR

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Cathy Halloran teaches criminal evidence and advocacy at BPP Law School and is a practising barrister at Toops Chambers in London. She specialises in criminal defence and appeals of women who kill and has represented several survivors of drug-assisted rape in appeals for criminal injuries compensation. She has worked closely with organisations such as the Rape Crisis Federation of Wales and England and Campaign to End Rape, to change the law

## INTRODUCTION

on sexual offences. She is a feminist and member of the campaign group Justice for Women.

### 1.7 THE LAW

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The Sexual Offences Act 2003 came into force in May 2004. This handbook is written for adult survivors of the offences in Sections 1 to 4 of that Act: the non-consensual sexual offences of rape – including oral rape – assault by non-penile penetration, sexual assault and causing a person to engage in sexual activity without consent.

### 1.8 ABOUT THIS HANDBOOK

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This handbook provides information about the process of reporting and prosecuting sexual violence. It is meant first and foremost to be a guide for those who have experienced sexual violence and in the main, addresses the survivor directly throughout. However, it is also intended to be of use to family, friends and supporters of sexual violence survivors.

If you or someone you know has been raped or sexually assaulted this handbook will help you to understand the different stages of the legal processes that are involved from the point of making the decision to inform the police through to going to court. It also aims to help you understand the law.

It is divided into 3 parts: Part A gives details of the medical, legal and support options available to the survivor. It discusses the decision to report; explains how the legal system works once the decision has been made and provides an overview of the medical issues and options involved.

Part B discusses court procedures, including who makes the decision to prosecute, what happens at court and the verdict. The aim is to use simple, clear language to help the reader towards a greater awareness of what a survivor of sexual violence can expect

## INTRODUCTION

from the different agencies likely to have an impact on her experience of sexual violence. This handbook is not a substitute for legal or medical advice or culturally sensitive therapeutic counselling and support but should be treated as an aid to understanding.

Part C of the handbook discusses the law relating to the non-consensual offences of (a) rape, (b) assault by non-penile penetration, (c) sexual assault and (d) causing a person to engage in sexual activity without consent.<sup>6</sup> That law is based on Sections 1 to 4 of the Sexual Offences Act 2003, which came into force in May 2004; it applies to England and Wales and is correct to the date of publication. This handbook does not offer a complete guide to the law of Sexual Offences but is meant to provide an overview of the most serious sex offences against adults.

The writer refers to victims/survivors as 'she' and perpetrators as 'he'. This is in recognition of the fact that most victims of sexual violence are female and most perpetrators male. However, the information in this handbook relates also to male victims/survivors of sexual violence. Throughout the handbook the writer interchanges the term 'victim' and 'survivor' depending on the context; generally 'survivor' is used to mark the process of moving forward.

### *Sexual Violence*

Sexual violence affects women and men<sup>7</sup> from all walks of life, of any age, size or sexual orientation; whether able-bodied or otherwise. Sexual violence is intended to put you in fear and not surprisingly affects your sense of personal safety and bodily integrity. Perpetrators of sexual violence aim to control you – they

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6. Sections 1 to 4 of the Sexual Offences Act 2003. Part C.

7. And of course children, although this handbook is not written with children in mind.

## **INTRODUCTION**

do not assault you because of anything you have or have not done. They do not assault you because you have made yourself sexually attractive to them; sexual violence is not about sex it is about domination, power and control. Most sexual violence happens in a place the victim is familiar with, usually her home or her assailant's home or another place she visits. Many survivors will have known their assailants before the sexual violation.

## 2.

# Reporting

## 2.1 YOU DECIDE

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The decision to report sexual violence is often very difficult and always very personal. If you know someone who has been sexually assaulted, support her right to choose whether to bring a legal case against her assailant; if you are a survivor struggling with the decision, by all means seek advice but do not be pressurised into deciding one way or the other. The information provided here is intended to help you to make an informed choice. At the back of this handbook you will find the contact details for various supporting organisations that you can contact to discuss your options one-to-one.

Keep in mind that whatever may be stopping you from reporting is likely to have affected others in just the same way. Statistics show that rape and sexual assault are the most underreported crimes. There are many reasons why sexual violence is not always reported. These include the survivor's personal circumstances, whether she knows her assailant, shock, disbelief, fear of some retaliation, anticipation of being blamed or disbelieved, shame and embarrassment. Sexual violence can leave you feeling physically insecure, emotionally drained, humiliated, ashamed and more. Reporting may seem just too much to cope with very soon after your ordeal. If this applies to you it should not deter you from reporting the offence if you choose to do so. Simply because you cannot face reporting the assault immediately does not mean you cannot report the offence at a later date. There is no time limit for prosecuting serious offences and there is now a better understanding about the reasons some sexual violence survivors do not report right away.

## PART A POLICE PROCEDURES

Sexual violence is sex for power and control, meaning that perpetrators more often than not offend out of a desire to dominate and control their victim. Unsurprisingly, sexual violence commonly has the effect of reducing the victim's sense of power and control over her life and options. It is understandable that many victims in this situation do not report the crime. Making your own decision about how to proceed afterwards can be a way of regaining a sense of power and taking back some control, both through making decisions and being treated as someone deserving of respect and care. **Rights Of Women will be able to provide you with knowledge of the legal processes involved if you decide to report an offence. You can then make the decision as to whether you wish to proceed with a complaint to the police or to call some other support organisations they could signpost you onto.**

### 2.2 SOMEONE TO SUPPORT YOU

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Most people think that sexual violence happens to someone else, not to them so when it does happen to them, they are shocked and confused. There are a number of advice agencies and support organisations that you can turn to, you do not have to be alone. If you haven't already, consider contacting a trusted friend or relative to talk, but also think about contacting someone trained in dealing with survivors of sexual violence. There are rape and sexual abuse support agencies in many towns and cities, offering free confidential and non-judgemental advice and support. Rape Crisis Centres tend to be women-only whereas Victim Support provides information, practical help and emotional support to all people who have experienced crime. These and similar organisations are there to help and support you overcome feelings of guilt, cope with fear, talk and share your experience. It does not matter how recent the assault was, there should be someone to listen and to advise about the choices available to you without putting you under any pressure to take a particular action. If you choose to report the offence, they

## PART A POLICE PROCEDURES

will help you through the whole process. Talking with someone, being heard and believed (as most people do believe these days) will help you feel less isolated and share the burden of difficult decisions. Do not feel that you have to cope alone.

### 2.3 YOUR RIGHT NOT TO BE IDENTIFIED

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In the vast majority of cases in England and Wales the law gives lifelong anonymity to victims of rape and serious sexual assault.<sup>8</sup> This means that if you decide to report the offence, no identifying personal details or photographs of you can be published in your lifetime. There can be no publicity about the offence or the offender that would lead to you being identified as the victim. This is the case even if later, you withdraw your complaint or there is a 'not guilty' verdict. Your name however, can still be given in court. The law does not give anonymity to defendants in trials for sexual offences, except where revealing their name would identify the victim.

### 2.4 SOME REASONS FOR REPORTING

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There are many good reasons for reporting sexual violence, and you have probably thought of some of them already.

- Reporting can be emotionally beneficial if you take the view that you are fighting back and asserting your rights to have your complaint taken seriously.
- Reporting may prevent the perpetrator from sexually assaulting someone else: many sex offenders are repeat offenders and carry on until they are caught.
- Reporting sexual violence when it is part of a pattern of assaults and abusive behaviour by your intimate partner could break the pattern and save your life.

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8. The anonymity provided by the Sexual Offences (Amendment) Act 1992 now covers the offences under the Sexual Offences Act 2003, which are discussed in this handbook.

## PART A POLICE PROCEDURES

- Reporting will ensure that you get medical attention to check for possible internal injuries, sexually transmitted diseases and pregnancy.<sup>9</sup>
- Reporting may help you resolve concerns about your personal safety and security.
- Reporting, especially when done very soon after the assault, helps preserve evidence, which may later be used if the case comes to court.
- Reporting may be the first step towards a successful prosecution.
- Reporting opens possibilities for considering a claim for compensation.
- Reporting the assault immediately or as soon as possible increases the chances of the case proceeding to court and of a positive outcome in a compensation claim.
- Reporting brings your assailant and his behaviour to the attention of the police – it may help them solve other cases if they have his description and other identifying details of his behaviour.
- Reporting ensures the authorities have accurate figures on the numbers of rapes and sexual assaults that occur – helping to influence the law and prevention plans.

### 2.5 FIRST STEP

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Reporting the assault is the first step to bringing a case against your assailant and the chances of building a strong case are improved by reporting the assault sooner rather than later. The sooner you report, the better the chances of the police recovering

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9. Pregnancy and some sexually transmitted diseases will not be evident immediately so survivors must ensure they get a further medical check up at a later date.

## PART A POLICE PROCEDURES

evidence from the scene of the crime and a forensic examination. If you are advising someone who has just been assaulted who may want to report, advise her against washing, showering or bathing. If possible she should even avoid passing urine until she has had a chance to give a sample. Survivors who intend to report an assault should also avoid disturbing, moving, washing or destroying anything that might be a useful source of evidence. This includes clothing, bedding, any glass or cup that the perpetrator has drunk from, his discarded cigarette stubs, condoms or any object he touched. Remember, the scene of the assault is a crime scene. It is crucial for everyone to know how best to preserve evidence in this kind of emergency situation.

### 2.6 TO PRESERVE EVIDENCE TRY TO AVOID:

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- Bathing, showering or washing
- Brushing teeth or gargling
- Scrubbing fingernails
- Eating, drinking, chewing gum
- Smoking
- Consuming alcohol
- Taking medication
- Changing clothes
- Urinating
- Removing or inserting a tampon
- Wiping or cleaning the genital area

## PART A POLICE PROCEDURES

### 2.7 IF SOMEONE YOU KNOW HAS BEEN SEXUALLY ASSAULTED:

- Be supportive
- Listen
- Tell her she is not responsible/it was not her fault
- Make sure she has somewhere safe to go/stay if she needs it
- Help her make her own decisions
- Offer to go with her to the doctors/hospital/police/ court
- Help her to help herself
- Get support yourself if you feel overburdened, confused or don't know what to do or say

# 3.

## Medical Matters

### 3.1 URGENT MEDICAL ATTENTION

If you have survived sexual violence, even if you are unsure about whether to report the assault, do still consider getting medical attention as soon as possible. There is a general duty upon doctors to respect the confidences of their patients, which means that you can tell the doctor about your assault, get treatment and advice without involving the police if that is your wish.

## PART A POLICE PROCEDURES

### 3.2 WHEN A DOCTOR MAY INFORM THE POLICE

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At the same time, in some exceptional circumstances, a doctor may inform the police about an assault, for example when a doctor believes a patient has been sexually abused and is for whatever reason unable to agree whether or not to tell the police, s/he is under a duty to report the assault. A doctor would also have to report an offence of sexual violence where the patient is unconscious or without the mental capacity to make decisions. Otherwise, a doctor would tell the police about the sexual violence only if it was necessary in the public interest; for example because a failure to tell the police might put you as the survivor, or someone else at risk of serious harm. In this kind of extreme case the doctor is under a duty to tell the police as soon as possible. Ideally, the doctor should first talk to you the patient, about why it is necessary and try to persuade you to have the same opinion. Remember, even if the doctor believes that it is necessary in the public interest to report sexual violence to the police, it does not mean that you have to press charges or even make a decision there and then. What it will mean is that the police will want to talk with you.

### 3.3 RECOVERING PHYSICAL EVIDENCE

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If the assault took place recently, the police will want you to be examined by a Forensic Medical Examiner (FME) to obtain evidence. This is a doctor who is trained to collect evidence: 'forensic' simply means 'legal'. If you are undecided whether you want to prosecute, having the evidence to build a case will make it easier later on, should you decide to go ahead. If in doubt, better to have a medical and if you are near to a Sexual Assault Referral Centre (SARC)<sup>10</sup> you can go direct.

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10. Sexual Assault Referral Centres are discussed on page 22.

## **PART A POLICE PROCEDURES**

### **3.4 WHAT SORT OF EVIDENCE**

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DNA stands for Deoxyribo-Nucleic Acid: it is a chemical found in almost every cell in our bodies. It carries information that determines our physical make-up such as our hair and eye colour. Every person's DNA is unique – we take half our DNA from our mother and half from our father and 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, saliva and hair, it is often successfully relied upon to identify perpetrators of sexual violence. By comparing the DNA found in any bodily fluid or hair strand left behind by a perpetrator of sexual violence, with that of a suspect, the police can either link that suspect to the crime or eliminate him. This is especially important for stranger attacks. There are also ways that evidence of injuries, external and internal, support the account given by the survivor rather than the suspect.

### **3.5 EARLY EVIDENCE KITS**

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All police stations in the UK now have what is known as early evidence kits for use in sexual violence cases. They are used to gather vital evidence from a survivor and designed so that you can use them yourself. You can take your own urine sample, which is necessary to test for any drugs that might have been used to assist the commission of the assault. Some drugs are traceable in the urine for only a short time after they have been taken so it is extremely important if you think you have been drugged, to provide a sample of urine for testing as soon as possible after the assault. If oral penetration has occurred during the assault you can also use the early evidence kit to take a mouth swab to test for traces of semen, which can remain in the mouth for up to two days after the assault. This process does not replace the full medical examination but helps to make sure that important evidence is preserved. The most important reason for these is that it then means you can go to the loo and/or have a drink without destroying evidence.

**PART A POLICE PROCEDURES****3.6 SOME REASONS FOR SEEKING MEDICAL ATTENTION**

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If you attend a hospital as a survivor of sexual violence it should be possible to be seen by a female doctor but it may cause some delay. Do not be put off getting medical help just because you have no visible injuries or do not consider yourself in need of treatment. The sort of advice and medical support available to you as a person who has experienced sexual violence goes beyond treating physical injuries and gathering evidence: there may be concerns about pregnancy and/or infection. Also, the effects of sexual violence may include depression, anxiety, fear, shame, and related stress. These may or may not be serious but either way could have long lasting effects on your well-being and self-esteem. Medical care, advice and reassurance may help you cope and recover sooner even if you do not need or want treatment or medication. If you cannot face or do not feel the need to go to the hospital then consider going to your own GP. At least telling your GP will provide a formal record of the event; it is a good idea to go as soon after the assault as you possibly can and if you do have physical injuries, make sure your GP records them in your notes. It may help to strengthen the case against your assailant if you decide to prosecute in the future and it will assist in any future claim for criminal injuries compensation.<sup>11</sup>

Remember that Doctors have a duty to treat you with care; you deserve and should insist on being treated with respect and kindness. Consider taking a trusted person with you to speak up for you and support you: sexual violence can leave some survivors feeling fragile and less able to stand up for their rights, at least in the period immediately afterwards and sometimes for longer.

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11. Discussed at 10.8.

## **PART A POLICE PROCEDURES**

### **3.7 SEXUAL ASSAULT REFERRAL CENTRES (SARCS)**

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Some cities have Sexual Assault Referral Centres (SARCS), where you can get initial advice and support alongside care and medical attention immediately after a sexual assault. These centres are specially set up to care for victims of sexual violence and access to a female doctor is more or less automatic in most. You can go through the evidence-gathering medical examination without committing yourself to reporting the offence and if you do decide to report you will be put in touch with a specially trained police officer. The service is free and confidential and not dependent at all upon your decision to report the assault. SARCS are usually offered through local partnerships between the police, national health services and voluntary organisations.

At the time of writing (March 2006) there are thirteen operational specialist centres. In March 2004, following a year-long look at how women are treated in the Criminal Justice System, the Commission on Women and the Criminal Justice System called for Sexual Assault Referral Centres to be set up in every police area and for specialist police officers to be made available to all survivors of rape. The Home Secretary announced on the 28th of April 2004 that £4m recovered from the proceeds of crime is to be placed into the new Victims Fund to develop services for victims of sexual offending. Some of this will be used to increase further the number of SARCS (as well as developing non-statutory community-based services which are often provided by voluntary and community sector organisations and have an equally valuable role in supporting victims of sexual crime).

### **3.8 CHANGING ATTITUDES OF POLICE AND DOCTORS**

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There have already been many practical steps taken to improve the investigation of rape cases. These improvements involve better guidance and training for police officers on how to deal with survivors; similar guidance and training for prosecutors dealing with

## PART A POLICE PROCEDURES

rape cases; and better treatment for survivors and witnesses generally, in cases involving allegations of rape and serious sexual assault. That said there are always individuals who prefer to believe myths and stereotypes.

### 3.9 FORENSIC MEDICAL EXAMINATION

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If there is currently no specialist Sexual Assault Referral Centre near you a forensic medical examination will be dependent on you reporting your assault to the police – who will then arrange for you to be examined by a Forensic Medical Examiner (FME), if appropriate. This may mean that you have to travel to the surgery of a doctor on duty or the nearest rape examination suite. The examining doctor should ask you details about the assault but will already have some information from the police. The doctor needs to place your account in the context of what she has learned from the police. She can then take samples appropriate for the offence that has been alleged, whether that is vaginal, anal or oral penetration for example. The medical examination may take place in or near the police station, in the rape examination suite or in the doctor's surgery unless there is a SARC nearby.

The Association of Chief Police Officers has asked all police forces to review their existing facilities for examining survivors of sexual violence. The aim is to improve the standard of care to survivors and maximise the reliability of evidence. Specially designed examination facilities should eventually be available across the country. Only about 18% of Forensic Medical Examiners are female, there are likely to be fewer females on duty so you may therefore have to wait for a female doctor, unless you are examined at a specialist centre. Plans are in place to increase the number of women in these roles. Your forensic medical examination is likely to take place before you are interviewed properly: you may be asked only a few questions about the incident and then taken to see an FME.

## PART A POLICE PROCEDURES

### 3.10 REASONS FOR FORENSIC MEDICAL EXAMINATION

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Whether or not a forensic medical examination is necessary will depend on how recently you were assaulted. Obviously the further away the assault in time, the less reason for a forensic medical examination. If you were recently assaulted the police will suggest that you have the examination both for the purposes of getting any treatment you need and for gathering all traces of any bodily fluid, skin or hair that the perpetrator has left behind, before it is lost or destroyed: in cases of recent assaults, speed is very important. The forensic medical examination cannot take place without your agreement. As a general rule, any medical treatment or care, even of a minor nature, should not take place unless the doctor first has your consent. Good practice is where the FME explains each step and asks your permission to continue. **If you agree to the forensic medical examination you will be agreeing to the results – the evidence gathered – being given to the police.**

If you have washed before you have the examination, tell the doctor – it may still be possible to find traces of physical evidence. You will also be examined for injuries such as internal bruising or cuts and any injuries found will be recorded. The examination is likely to feel unpleasant and embarrassing no matter how much the doctor tries to put you at ease; but it is important that you go through this process if you intend to prosecute your assailant, especially if you have been raped. You can ask for a friend or supporter to be present during the examination, although she or he may be asked to wait just outside if space is limited.

Any samples collected from you, from your clothes or from the scene of the assault will be sent for testing by a Forensic Scientist. It can become valuable evidence if it contains your assailant's DNA as it will link him to the offence and strengthen the case against him. The examiner will have to provide a written report about the

## PART A POLICE PROCEDURES

samples taken from you during your examination. Eventually, if the case goes to court the FME and the Forensic Scientist will have to produce written statements for the court and may have to give evidence in person.

### 3.11 YOUR CONCERNS

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You have a right to be treated with care and respect. If you have any concerns ask the doctor to explain to you what s/he is doing and why. If you have any fears about pregnancy ask the doctor for advice and/or suitable medication – such as the ‘morning after pill’ – if it is not offered. You can also talk to the doctor about the risk of sexually transmitted disease. The doctor should give you all the advice you need about where and when to go for tests if there is any risk that you may have been infected.

You should be prepared for the doctor to ask you intimate questions such as when your last menstrual period was or whether you use contraceptives. These questions will help to determine if there is a risk of pregnancy. You may also be asked intimate details about when you last had consensual sexual intercourse – such questions are asked to discover facts that will help when it comes to testing physical evidence, such as semen. Do not feel that the doctor is judging you by asking such details – s/he will not have a view about you whether you had consensual sex minutes, hours or days before being assaulted: even if with your assailant. Do not omit important details because you are embarrassed or because you feel you will be judged. Many sexual violence survivors blame themselves and experience feelings of guilt and shame: a properly trained doctor will understand how you are likely to be feeling and try to make the examination as easy as possible. S/he should not be asking you for a full medical history but if s/he does you do not have to disclose irrelevant details.

## PART A POLICE PROCEDURES

### 3.12 PHYSICAL INJURIES

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You may or may not have been physically injured in the assault. Some injuries are internal and only noticed when you are medically examined. Some survivors escape without any physical injuries. The presence of injuries is not a necessary factor for proving you were forced into sex or violently attacked sexually. Your experience is no less valid because of the absence of physical injury: it will not be read by the doctor, the police, or the law, as a sign that you were not forcibly sexually assaulted or raped. There is now a better understanding about the fear that sexual violence causes and that it can and often does take place without the victim offering physical resistance and sustaining injuries.<sup>12</sup> Many sexual violence survivors have survived precisely because they did not put up a physical fight. You did whatever you had to do to survive and if you survived by not putting up a physical struggle the absence of physical injury should not work against you.

### 3.13 PHOTOGRAPHIC AND OTHER EVIDENCE

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If you do have physical injuries the doctor may need to treat them and any visible injuries, such as bruising and cuts will need to be photographed. That is the job of the police photographer and will take place after you have seen the doctor; if you prefer, you can ask for a female photographer. The police may require clothing to be left for forensic examination so it is a good idea to take a change of clothes with you. Because the police may treat the clothes you were wearing during the assault as evidence, you may not see them again if the case goes to trial, until after the trial has ended. It may also be necessary for the police to visit the scene of the assault; they may take photographs and they may remove some items – such as sheets or drinking glasses – for evidential purposes. You will have these returned along with your clothing when any proceedings have ended.

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12. The British Crime Survey 2002 found that less than half the assaults recorded using self-completion, involved the use of force; and although almost 3/4's (74%) of rapes involved the use of force or violence physical injuries were sustained by the victim in only 37% of cases.

## 4.

# Police Procedures

## 4.1 THE POLICE

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All police forces have recently been asked to review the way they deal with survivors of sexual violence and at the time of writing are being urged to ensure that they have specially trained officers available to respond to all sexual violence victims. A recent improvement in many police forces is the availability of 'rape victim chaperones' – these are police officers whose role it is to look out for your welfare and ensure you a high quality of service during the investigation. Because there are a number of separate police forces, acting each within its own area, different approaches and different services are common. Also, because police officers are individuals you may find some easier to talk to than others. Remember that all police forces have a responsibility to be fair in their treatment of you.

## 4.2 THE CODE OF PRACTICE FOR VICTIMS OF CRIME

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When you report your assault to the police there are certain things that you can expect to happen automatically. These are set out in a document called the The Code of Practice for Victims of Crime (in force from April 2006),<sup>13</sup> which says among other things that the police will:

- Respond to your report and inform you if they do not intend to investigate the crime further.
- Pass on your details to Victim Support – unless you ask them not to.

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13. See Appendix A, The Code of Practice for Victims of Crime

## PART A POLICE PROCEDURES

- Give you information and contact details of local support groups either by giving you the *Victims of Crime* leaflet or personally providing you with the information.
- Keep you informed of the progress in the investigation.
- Tell you if someone has been arrested, released, cautioned or charged.
- Ask you about your fears about being further assaulted and all about your assault and your injuries.
- Assess whether or not you are a vulnerable or intimidated witness.
- Deal with requests for information from the Criminal Injuries Compensation authority in relation to your application for compensation.

The police will also ask you if you want to be kept informed about the progress of your case and if you do, you should be told about any decision to drop or make major changes to charges. It is also a mandatory requirement for the Crown Prosecution Service (CPS) to offer a victim of a sexual offence a meeting, if a case is dropped or a charge is reduced. You should be kept informed of dates for the trial and you should be told the outcome, even if you do not have to give evidence. As yours is a case involving sexual violence, you should also be told of the date and outcome of any appeal against conviction or sentence.

The police are subject to a code of discipline and you have a right to complain if you feel you are being treated unfairly. Speak to a more senior officer or go to a different police station if you need to make a complaint. If the police force covering your area has a 'rape victim chaperone' you will be able to discuss any concerns or complaints about your case or the investigating officers with that officer. You have a right to be treated with dignity and respect.

## PART A POLICE PROCEDURES

### 4.3 CALLING THE POLICE

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If you call the police out after being sexually assaulted the officers should come equipped with an early evidence kit. At least one of the officers responding to your call should have experience of dealing with sexual violence survivors and ought to be aware of your immediate needs. At the time of writing this is among recommendations for all forces. The officers should sensitively invite you to use the kit to gather important evidence such as urine or mouth swabs; whether you use it will be up to you, but depending on how able you are to do so, it is important to cooperate if you want to prosecute your assailant. The earlier samples are collected for evidence the better.

The police will usually ask you if you want to speak to someone from Victim Support or from a Rape Crisis Centre. Remember, you can talk in confidence to people from such organisations; whatever you say to a supporter/advisor should not be passed on to the police or anyone else outside that organisation without your consent but should be kept private, between you.

### 4.4 A VICTIM PERSONAL STATEMENT

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A victim personal statement is something you can give the police in addition to the information you give in your interview. It is not to be confused with the statement you give to the court, which is for the purposes of prosecuting your assailant. A victim personal statement is optional: you do not have to make one and should not feel pressured into doing so. If you have chosen to make one it gives you a chance to say how the assault has affected you, whether you still fear for your personal safety, whether you are being intimidated or feeling vulnerable, how your health/life/job has been affected and anything at all you feel should be said about your experience. You can say as much or as little as you wish and in your own way.

## PART A POLICE PROCEDURES

The statement will go into a file with the rest of the case papers. If the case goes to court the Police, Crown Prosecution Service, Judge or Magistrate and the Defence will be able to read it. It is not meant to be used as a tool for deciding how to sentence your assailant but could be useful in court because the effects of criminal activity upon victims are relevant to and do have an impact on sentences. **It is important to know that the defence may decide to use the information contained in your Personal Statement, to cross-examine you in court, although to date this has happened very rarely.** The police have to take account of the information in your personal statement and act on any information you give them, for example if you say that you want to be kept informed of the progress of your case or told when your assailant has been arrested.

### 4.5 BEING INTERVIEWED

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If you decide to report the assault you will need to be prepared to give the police as much information in as much detail as possible. You will usually be interviewed in private – this may take place in the police station or it may be in your home or the hospital, depending on your circumstances. These days you should automatically be given the option of dealing with a female officer and you should be told that you can have a friend or supporter with you during your interview. If this is not your experience, ask or get a trusted friend or professional supporter to ask for you.

Because the police will need to gather as much detail as possible from you about the assault they may need to interview you at length, probably more than once, depending how able you are to talk. If you are particularly distressed it should be possible to put off an interview until you are feeling calmer. If English is not your first language or you have hearing difficulties, the police can arrange for an interpreter to be present. If you are reading this for a survivor with learning difficulties, do ensure that she has an

## PART A POLICE PROCEDURES

‘appropriate adult’<sup>14</sup> with her during her interview; someone who is prepared to intervene to make sure she fully understands the questions and procedure.

At the beginning of your interview, you will be asked for your personal details, such as where you live, your age and date of birth, occupation and whether you are married or have children. You will also have to say where the assault took place and when; and give details of how it happened and, if you know your assailant, who he is and how you know him. The police should be aware that the interview is likely to be difficult for you. They should understand that you may need to take things slowly and have breaks when you need to. If you feel you need a break – say so. It is in everybody’s interest that you are as comfortable as possible during the interview. Otherwise your account may suffer by missing important details – the interviewing officer should understand this. One of the purposes of the specialist police training recently recommended is to make sure you are treated tactfully and sensitively during this interview.

Remember, the police have no right to ask you to disclose any personal details about your previous relationships and sexual life or if you have been raped in the past but it may be necessary to ask when you last had consensual sex; or ask about your relationship with your assailant if you have one. A question such as this is not meant to embarrass you or to lessen what you are saying about the assault but it may help to explain different DNA results. It is important that you give a true account to the police because lies that you tell even about a secondary matter such as surrounding events, can be used to attack your trustworthiness if the matter goes to court.

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14. This should be someone over the age of 18, able to help the victim communicate with the police and ensure that any questions are fair and properly understood.

## **PART A POLICE PROCEDURES**

### **4.6 YOUR ACCOUNT**

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The police will record what you tell them in writing, or sometimes initially on tape. You should always be given a chance to read or have read to you, what you have said and allowed to change things before you sign your account of what happened. This signed document becomes your statement and if/when the case goes to court a copy will be given to the defence. The questions are intended to bring out all the points necessary to build a strong case against your assailant and may seem very searching. Sometimes you may feel that the questions are unnecessary or too personal; in that case you should ask what the question is meant to achieve – or why it was asked and how it will help the case against your assailant. This may help you to feel more in control.

Do not hold back from asking the officer to explain something that you do not understand. Make sure that you know the name and number of the officer(s) investigating your case if there is no 'chaperone' service at your police force, so that you can more easily track down the right person if you need to talk about your case. You may find that you remember things afterwards that you did not remember when you were interviewed. Write these things down as and when you remember them and tell the police officer who is dealing with your case, at a convenient time as soon as possible after you remember. It is important that you do not continue simply because you feel pressured to do so, when you are feeling tired and distressed.

### **4.7 WITHDRAWING YOUR COMPLAINT**

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If you ask the police not to proceed further with your case or you withdraw your complaint, what happens next will depend on how far the case has progressed, or what stage of the legal process it has reached. If no one has been charged it is likely that will be the end of the matter. The police could charge you with wasting police time

## PART A POLICE PROCEDURES

but this rarely happens. If there has been a charge and the papers have been sent to the Crown Prosecution Service (CPS) the prosecutor may try to explore why you have withdrawn, especially if there is a chance that it is the result of pressure from or fear of your assailant. The prosecutor will usually ask the police officer in the case to offer you further support and advice but will have to consider the reason for your withdrawal, along with the strength of the evidence and the views of the police officer in the case. When deciding whether or not to continue to prosecute your safety will be a prime consideration.

Some cases may be too serious to discontinue – for example where there is a real and continuing danger (to the victim or to others) the CPS may decide that the public interest in going ahead with a prosecution outweighs the victim's wishes. This means that you may not have the right to withdraw your complaint in some circumstances. Where a decision is taken that the case should go ahead you may have to give evidence even against your wishes. This decision will only be taken by a specialist prosecutor after consultation with the police. In some circumstances it may be possible to use your statement without the need for you to give evidence in court. This is only possible in limited circumstances where the court decides it is in the interests of justice to do so. In reality, it is unlikely to happen if you are the only witness because it will mean that the defence cannot cross-examine you.

### 4.8 IDENTIFYING YOUR ASSAILANT

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Unless your assailant is someone you know, you may be asked to help the police find him by looking through photograph albums of known sex offenders to see if you recognise him. You may be asked to help a police artist to create a look-alike drawing; you could be shown a video and asked if you recognise him from that; or you may be asked to look at an identity parade, or view a video

## **PART A POLICE PROCEDURES**

parade. The most common methods are video identity parades and live identity parades. Video identity parades are relatively new and involve capture of the suspects face on video/disc and the capture of 8 other men who look similar in appearance to the suspect, from a database of images. These are then compiled together to make a 'line-up' of the men. When you come to view the video a legal representative of the suspect may be present. The representative will be asked by the officer completing the procedure to decide which number they want their client to be in the order of the 'line-up'. You will then be asked a number of questions in a very procedural way to determine whether or not you can identify anyone you see as the assailant. Video identification can generally be used all over London.

Live identity procedures are also used. Of this line-up, usually about 8 men, one may be a likely suspect and the others will be picked at random. Wherever possible you will view the line-up through a one-way glass panel that permits you to see without being seen yourself. If you did not get a clear view of your assailant's face during the assault, but heard his voice, line-up members will be asked one by one to repeat whatever words you heard from your assailant and you will be asked if you can identify your assailant in that way.

## 5.

# When you know your assailant

## 5.1 SEXUAL VIOLENCE BY AN INTIMATE PARTNER

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The popular belief that sex attacks are carried out mainly by strangers in dark alleys is completely false. But it has the effect of making survivors feel less able to report sex attacks when someone they know is responsible. This may be because they fear they will not be believed and because when they are sexually violated by someone they know, they find it difficult to see such violation as a criminal offence. But you are much more likely to be sexually assaulted by someone you know; most commonly by a current partner or ex-partner.<sup>15</sup>

Domestic violence often includes sexual assaults as well as name-calling; denying you access to funds; preventing you from going out or seeing friends; jealous rages; shouting at you; pushing, slapping, lashing out and threatening you. When someone you know is responsible for sexually violating you, you are more likely to be assaulted more than once. This type of sexual violence by an intimate partner within or outside marriage can be particularly devastating because of the element of betrayal of trust. You may think you have to accept it as part of married life or living together: you do not! **Remember, no matter who attacks you, sexual violence is a crime – the law does not treat marital rape or acquaintance rape any less seriously than rape by a stranger.**

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15. British Crime Survey 2002, found current partners responsible in 45% of cases and strangers in only 8% of cases.

## PART A POLICE PROCEDURES

It is your body and no one has the right to insist on sex with you without your consent. If your abuse has been going on a long time, now is always a good time to put an end to it. Police training and practice has improved considerably in recent years; for example government guidance says there should be a presumption in favour of arrest and prosecution in all domestic violence cases.

### 5.2 SEXUAL VIOLENCE BY SOMEONE YOU KNOW

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Women are much more likely to be sexually violated by an acquaintance, colleague, boss, friend, or boyfriend of a friend than a stranger. You may feel particularly frightened to report it or to tell anyone inside your circle of friends or colleagues because you fear that they will not believe you; perhaps because you feel that they like or respect your assailant – he may be particularly charming on the surface. Do not let this stop you reporting or getting support. He may be relying on this, hoping that it will stop you complaining. It may have stopped others: you may find you are not the first. You may find others will come forward when they hear your complaint: you may be taking the first step to exposing him as a serial offender. At the very least, you may be stopping him from offending again. That is not to say that you should hold yourself responsible for his future actions if you decide not to make a complaint.

### 5.3 IF YOU ARE A PROSTITUTE /SEX WORKER

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If you are a sex worker (prostitute) you may feel that because of how you earn a living, you will have little chance of being believed. Prostitutes have the same rights as all other women so do not let this stop you from reporting or getting support. Even if you think that he may have believed that you led him on: no one has the right to force you into any sexual activity without your consent – you have to be consenting freely at the time of the sexual activity and remember, you can withdraw your consent at any time.<sup>16</sup>

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16. See 'consent' below.

## PART A POLICE PROCEDURES

### 5.4 DRUG AND/OR ALCOHOL ASSISTED SEXUAL VIOLENCE<sup>17</sup>

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You may have heard of these types of offences or seen them reported as 'date-rape': the use of alcohol and/or drugs by anyone, to overpower you to have sex, sometimes with several perpetrators. Alcohol is probably the most common substance used for this purpose. A common myth is that women who are drunk when raped are partly responsible: this is not true. This is buying into the stereotyping that women who drink alcohol are more available for sex than women who do not drink alcohol. Do not let these fairy tales affect your response to what happened to you. Your assailant may wrongly feel more justified in forcing sex on you because they have bought you several drinks: they may feel and try to make you feel that you 'owe' them: this is unacceptable behaviour. If he bullies or forces you into having sex when you are unwilling or incapable of giving your consent – whether because of alcohol or any other substance consumed – it is rape.

When drugs are used for the same purpose they are usually slipped into a drink, often alcoholic, without your knowing. If you believe this has happened to you get medical help very quickly and follow the guidance in this handbook for reporting to preserve evidence. The signs that should arouse your suspicions include:

- You felt more drunk than usual for the amount of alcohol you had or you felt drunk or woozy despite only drinking soft drinks.
- You have awoken feeling confused, with little or no memory and/or there are blanks 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.

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17. The SOA 2003 Section 76(2)(f) now provides that in cases where someone has administered or caused to be taken a substance capable of stupefying or overpowering the victim of sexual assault, it will be presumed that she did not consent and her assailant did not believe she consented; unless her assailant raises sufficient evidence. This is discussed further in Part C.

## PART A POLICE PROCEDURES

- 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 may have only flashes of recall of a sexual experience.

You may also experience:

- Nausea
- Vomiting
- Dizziness
- Unconsciousness/difficulty waking/sluggishness

You may also be:

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

It is extremely important if you think you have been drugged and sexually assaulted, to get to a safe place and get medical attention as soon as you possibly can. Call the police; contact a trusted friend or a local rape crisis centre and ask for urgent help. Do not waste time: vital evidence – traces of the drug – may remain in your system for only a short time: take a urine sample; get to a hospital, Sexual Assault Referral Centre or your GP as an emergency. Do not be tempted to wash or shower until you have been medically examined.

If you were taking drugs recreationally when this happened do not let this stop you reporting the offence. The police will be interested in gathering evidence against your assailant and they should not be pointing the finger of blame at you. The police have in fact been

## PART A POLICE PROCEDURES

keen to make it clear that anyone who reports rape while under the influence of drugs will not be prosecuted for taking drugs but will be treated as a *victim* of rape: so tell the police what drugs you knowingly took. Remember, you did not invite or cause someone to sexually violate you because you may have taken drugs recreationally; you did not ask to be sexually assaulted; no one has the right to sexually assault you with or without the assistance of any substance – including alcohol.

### 5.5 SEXUAL VIOLENCE BY A FAMILY MEMBER

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You may be an adult who experienced sexual violence as a child in which case you should read the section below on 'If you were sexually violated some time ago'; or you may – even now as an adult – still be being sexually abused by a family member – this may be a brother, mother, father, uncle or anyone. It is important to know that you are not alone and that this type of abuse is sadly quite common. Many feel particularly powerless because of the difficulties involved in bringing it to light; taking action can help you regain a sense of control over your life – even if it is just talking to a supporting organisation that will understand what you are going through.

Sexual abuse is criminal, no matter how closely related you are to the abuser. Family abuse may take several forms including touching, performing masturbation in front of you, exposing genitals to you, intercourse, oral or anal sex. You may feel particularly frightened to say or do anything about it because everything appears 'normal' from the outside and you think you will not be believed; your abusive family member may be a much loved and trusted part of your family and you are afraid of how it will affect others you love if you speak out; you may blame yourself because you have not spoken out before; you may think it is your fault or you are encouraging him because you have allowed it to go on.

## PART A POLICE PROCEDURES

These feelings are common to survivors of family sexual abuse. You need to keep in your mind that s/he was in control; that s/he knew it was wrong; and that you did not ask for it or make it happen. Consider using the strength that you have built up in coping with your abuse to end it once and for all: telling someone could be the turning point in your life. If reporting the abuse seems too much to consider at this moment in time, turn to one of the support agencies listed at the back of this handbook and use a helpline where you can be anonymous.

# 6.

## Different types of survivors

### 6.1 MALE SURVIVORS

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Most of us think of rape as men raping women, and of sexual violence generally, as perpetrated by men against women. This is true in most cases but men are sexually violated by other men as boys and adults. Men find it difficult to report their violation because men are not supposed to be victims, especially not of sexual crimes. Male survivors need to feel supported in the same way female survivors do, so that they can make their own decisions about whether to report or prosecute their assailants. Some heterosexual male survivors are reluctant to come forward in case they are perceived as homosexual and gay men fear homophobic responses.

It does not matter whether you are male or female, you do not deserve to be sexually violated. It usually has little to do with your

## PART A POLICE PROCEDURES

sexuality, sexual preference, masculinity or anything else: it is a crime of violence and power.

### 6.2 LESBIAN, GAY, BISEXUAL OR TRANSGENDERED SURVIVORS

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Because sexual violence is about control and domination it can occur in any relationship: it can and does occur within gay and lesbian communities. If you are experiencing sexual abuse from your partner or from a family member you can get support and help without reporting the offence. You might want to try to end the behaviour by reporting it. The advice in this handbook applies equally to your situation as to that of other survivors.

Whatever your situation as a gay, lesbian, bisexual or transgendered person, it may be more difficult for you to come forward, to disclose your abuse. Perhaps you feel that you will be forced to be 'out' before you are ready or it may be that you have concerns about being met with prejudice or homophobia.

Your sexual violation may itself be a form of homophobic violence. If you think that your assault was motivated by homophobia consider reporting it: you may find it empowering to be making a difference, by refusing to tolerate homophobia and helping to stamp out homophobic crime.

### 6.3 BLACK AND MINORITY ETHNIC SURVIVORS

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Depending on your particular cultural beliefs and expectations you may be affected in a way that other survivors are not. You may have the additional fear of your family finding out; particularly if yours is a culture where even females who have been raped are stigmatised for having brought 'dishonour' upon the family. You may feel that you are less likely to be believed, treated sensitively, understood or supported – especially in a largely white society. You may have additional fears if your assailant is white; and likewise, you may worry about racist responses if reporting the assault because your

## PART A POLICE PROCEDURES

assailant is Black. If these or any other culturally specific issues are present for you it may help you to talk to someone who understands about your culture. Of course you may wish to seek support outside your own community, which is entirely a matter for you. There are some organisations listed at the back of this handbook, which you can contact for a confidential discussion. If your first language is not English, the specialist support groups should have bilingual speakers available.

### 6.4 DISABLED AND ELDERLY SURVIVORS<sup>18</sup>

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If you are a disabled person or elderly and rely upon others to assist you, perhaps with your personal care or with day-to-day matters, you may have been sexually violated by the person responsible for providing that care – this may or may not be a family member. Remember, no one has the right to touch you sexually or bully or frighten or harass you into having sex. A person helping with your personal care has no right to do anything that you do not want them to do or touch you in any way that makes you feel embarrassed or afraid. You may feel that you cannot complain because you did not stop the sexual act from happening to you and therefore may be seen by others to have consented: giving in does not mean you gave your consent. Your circumstances may mean that you are a target for a sex offender: they are taking advantage of your vulnerability.

If the person who has assaulted you is in a caring role, it is important for you to consider reporting the offence – first you will be taking an important step towards safety and towards ending the abuse and secondly because you may be preventing this happening to someone else. Sex offenders usually carry on offending until they are stopped. If you tell the authorities – whether it is the police or a doctor or social services you should be treated with sensitivity and kindness: your special needs should also be taken into consideration

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18. The Sexual Offences Act 2003 sections 30 to 41 create special offences for when the victim has either a mental disorder or severe learning disabilities; these are not discussed in this handbook.

## PART A POLICE PROCEDURES

and you should be offered any assistance necessary; for example, if you are hearing impaired a signer should be made available. You can also take a trusted friend or professional supporter with you.

### 6.5 IF YOU WERE SEXUALLY VIOLATED SOME TIME AGO<sup>19</sup>

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It may be a long time since you were raped or sexually violated and you may have coped by hiding it, for many years, but for some reason now you cannot cope any longer. The enormity of sexual assault does not usually lessen with the passage of time unless and until you have had an opportunity to deal with it. You may be confused as to why you can still get distressed thinking about it; you may think you are silly to still have such intense feelings after all this time. Perhaps you think people will dismiss your experience because it was so long ago. It is normal to still be affected and part of your distress may be a sense of shame and guilt about the assault. No matter how long after your assault, you may feel the need to deal with it by talking to someone. It does not matter how much time has passed, if there comes a time that you no longer want to cope alone you do not have to: there are people out there to listen and to support you.<sup>20</sup>

It may be that it was a trusted family member that assaulted you and you felt that you were unable to tell anyone for fear of breaking up the family and/or hurting other family members. You may blame yourself and you may be still afraid to hurt other family members or just afraid in case you are disbelieved. You may have been too young to understand at the time and then, when you did realise what happened to you was wrong you may have felt it was too late to speak out.

There could be many reasons that have caused you to keep your assault hidden and not report it. Sexual violence can be life-

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19. The old law will continue to be relevant for survivors of sexual offences that took place before the 2003 Act came into force.

20. See Appendix B.

## PART A POLICE PROCEDURES

changing whenever it happens; the feelings it evokes can be extremely destructive especially when you turn them inwards and try to ignore them. That does not mean that as soon as you tell someone you will be rid of the pain; it means that you are taking the first step, by understanding why you feel the way you do and that others feel the same. **Whatever your reason for keeping your sexual violation to yourself, if you are now feeling the need to talk about it or even report it, it is never too late.**

### 6.6 THE DECISION TO CHARGE

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Once a suspect is interviewed the circumstances and the available evidence is assessed and the police make the decision whether or not to charge. The threshold is whether there is a 'realistic prospect of conviction'. Recent changes in the law mean that the Crown Prosecution Service (CPS) will take over responsibility for deciding the nature of the charge in all but the most minor offences. In fact the CPS is increasingly becoming involved in the *decision* to charge. It is hoped greater consultation between the police and CPS will result in fewer charges being dropped or reduced. If the threshold of 'realistic prospect of conviction' is not met, the police may release without charge and continue their investigations. There are rules as to how long the police are allowed to keep a suspect in custody without charge. Once that time limit<sup>21</sup> has been reached he must either be released or charged with an offence. If the police have enough evidence to charge, the suspect will usually be kept in custody overnight if the offence is serious and taken to court the following day or the next day the court sits, to answer the charge. In less serious cases the suspect may be released on bail and told to attend the Magistrates' court at a certain time on the next day the court sits.

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21. Where someone is arrested for a serious offence there is a maximum of 96 hours detention without charge, which must be reviewed and justified regularly.

## 7.

# Prosecuting

## 7.1 THE DECISION TO PROSECUTE

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It is the CPS and not the police who has responsibility for prosecuting. After the suspect is charged, the case-papers are sent to the CPS, where a Lawyer looks again at the evidence and decides whether or not the case should go to court. The CPS has recently agreed that all rape cases should be given to specialist CPS Lawyers – that is prosecutors with specialist training or experience in rape cases. The CPS now has rape specialists in all areas.

If the prosecutor decides that the charge is not justified s/he has either to discontinue the proceedings or change the charge to a lesser offence. The CPS should write to you to inform you of the decision, giving you as much detail as possible as to the reasons for that decision; and inviting you wherever possible to a meeting where you can discuss the decision and the consequences.

There is no obligation for a prosecutor considering discontinuing or reducing a charge to consult the victim before the decision is made. A prosecutor will take into account the views of the victim as known from the file and from the officer in the case but does not consult or meet with the victim before the decision is made.

## 7.2 HOW THE DECISION IS MADE

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Whilst the CPS work closely with the police they are independent of them, making their own decisions about how, or whether to proceed. They work to a code of practice that lays down guidelines for deciding whether or not to prosecute. They have to first be

## PART B COURT PROCEDURES

satisfied that there is enough evidence for a 'realistic prospect of conviction'. This is called the 'evidential test'. Because sexual offences usually take place in private without eyewitnesses there can sometimes be problems proving them in court. There has to be sufficient evidence to show both that the sexual violence took place, and that the accused was responsible. This involves the CPS Lawyer looking at the defence case as well as the prosecution case. The question s/he has to ask is: 'would a jury or bench of magistrates, properly directed in accordance with the law, be more likely than not to convict the defendant of the charge alleged?' Put simply in other words, 'will the evidence stand up in court'? The CPS has to consider the reliability and the type of evidence available: it has to be the right kind of evidence to be used in court so the Lawyer has to decide whether any of it will be discounted for offending against one of the rules. In reality the Lawyer will assess your credibility at this stage and if you have not told the truth during the police investigation, it may go against you here.

If there is enough evidence to prosecute, the CPS Lawyer will then have to consider whether it is 'in the public interest' to proceed. This is because the Crown Prosecution Service prosecute not just on behalf of individual victims of crime, but on behalf of the public in general. Your views are no less important because of that, so if you are not satisfied with a decision to discontinue or reduce a charge you can ask for a meeting with the CPS Lawyer to discuss it. You may take someone along with you if you wish.

Deciding when a prosecution is or is not in the public interest involves first looking at the things in favour of prosecuting and then looking at the things against proceeding. The more serious the sexual violence, the more likely it will be in the public interest to prosecute. The things that might influence a CPS Lawyer in favour of prosecuting serious sexual violence include:

- The likelihood of a lengthy sentence in the event of a conviction

## PART B COURT PROCEDURES

- The use or threat of violence
- The victim being put in fear and suffering personal attack/damage
- The likelihood of the offence being repeated

A decision taken 'in the public interest' *against* prosecuting a serious offence would have to be supported by very clear reasons and powerful arguments. Depending on the seriousness of the offence, it may be decided that a prosecution is not in the public interest if it would have a very bad effect on the physical or mental health of the *victim*. Again, depending on the seriousness of the offence, if the defendant is very old it may be decided that it is not in the public interest to prosecute; or if the alleged perpetrator is or was at the time of the offence, suffering from serious mental or physical ill health, it may be decided that it would not be in the public interest to prosecute – all these issues are meant to be weighed against the seriousness of the offence.

### 7.3 THE DECISION TO DISCONTINUE

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The CPS has recently agreed that all decisions to drop cases of rape, reduce charges to less serious ones, or advise the police to take no further action, will be first discussed between two specialist lawyers before a final decision is taken. If, having considered all the material available, the CPS decides that there is not enough evidence to prosecute, the evidence is not likely to be admissible<sup>22</sup> in court or a prosecution is not in the public interest, proceedings will be formally discontinued. You can expect to:

- Be consulted and your views taken into account
- Be informed directly by the CPS in writing
- Be offered a meeting with the CPS Lawyer *if you ask for one*

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22. For example because it offends against one of the rules of evidence.

## **PART B COURT PROCEDURES**

### **7.4 PRIVATE PROSECUTIONS**

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In some cases victims of serious crime or their families start private prosecutions because they disagree strongly with the decision of the CPS to discontinue proceedings. There is no public funding to bring a private prosecution and if the case gets to court you will probably have to involve solicitors and/or a barrister. You may be able to find one who will act for free but otherwise you risk high costs. The Director of Public Prosecutions (DPP) provided s/he does not act completely unreasonably, can take over the conduct of your private prosecution and stop it. This is likely to happen for reasons of insufficient evidence but only where the DPP finds there is clearly no case for the accused 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 several well known, successful private prosecutions but to be effective you probably need to do this with a support agency and committed legal team.

### **7.5 YOUR ASSAILANT'S FIRST APPEARANCE IN COURT**

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Once charged your assailant becomes 'the accused'. Although only the most minor sexual assaults will be dealt with from start to finish in the Magistrates court, all accused persons make their first appearance in the Magistrate courts. You will not normally be expected to go to this or any early court hearings. The prosecution are likely to need and be given time to prepare the case for trial; for example to ensure that statements have been typed-up, checked and signed and that results of forensic tests (such as for DNA material gathered from the scene or from your medical examination) have been received.

The accused use this time to find a solicitor and prepare his defence. The Magistrates will fix another date to consider the case unless of course, the accused pleads guilty at the first opportunity.

## PART B COURT PROCEDURES

If that happens the case will be put off to another time for sentencing so that the court can obtain more information about your assailant, to help them decide the right sentence. Anyone accused of serious sexual violence will go to the Crown court even if he wants to plead guilty because only a Crown court Judge can sentence him.<sup>23</sup> If the accused is not going to plead guilty the next stage depends whether the offence is one that can be tried only in a Crown court or in either a Crown court or a Magistrates court. Either way, there will be a period of 'adjournment', which could be as short as a week but where the charge is rape, will be months – depending on the case and the stage police enquiries have reached.

### 7.6 WILL HE GET BAIL

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The Magistrates' court will have to consider whether to release the accused on bail or keep him in custody for the period of 'adjournment'. This will involve weighing his right to freedom against other considerations: such as your rights not to be further harmed or intimidated and whether he might offend against others and/or abscond. Where releasing him would for example infringe your rights (perhaps to freedom from 'inhumane and degrading treatment' or freedom to enjoy your private and family life), there will have to be a balance struck.

Anyone charged with rape having previously been convicted of the same offence in the UK, will be granted bail only in very exceptional circumstances. The same applies to anyone charged with rape or attempted rape who has served a prison sentence after a conviction for murder or manslaughter.

The accused will usually have a legal representative (either a solicitor or barrister) to represent him and to make a bail application to the court on his behalf. His representative may say at this stage

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23. Rape and Sexual Assault by penetration have to be tried or sentenced in a Crown court; Sexual Assault and Causing a person to engage in sexual activity can be tried in either a Magistrates' court or the Crown court and the decision is for the Magistrates unless the accused person chooses to be tried in the Crown court.

## PART B COURT PROCEDURES

what the defence is likely to be. Unless he is denying the act altogether, his defence is likely to be that you consented. This is more often than not the defence of known perpetrators, for example current or ex partners, friends-of-friends, colleagues or acquaintances who have possibly targeted their victim by buying her a drink or walking her home.

Complete strangers are more likely to make an outright denial of their involvement<sup>24</sup> when they are caught and in such cases the presence or absence of DNA becomes even more significant. The results of your scientific tests on any evidence gathered in the investigation are unlikely to be available at this early stage.

The Magistrates will have to consider the evidence that is currently available when they decide whether or not to release the accused on bail. Bail can be opposed by the prosecution on several grounds including any criminal record he may have; fear of his running away; risk that he may cause trouble for or bother witnesses; and your safety. If you have fears for your personal safety it is important that you tell the police so that the prosecutor can tell the court: this can then be taken into account when deciding upon bail. Even if the accused is released on bail, conditions can be attached to prevent him contacting or coming within so many miles of his victim's home or place of work. If such a bail condition is broken or ignored and it is reported, he will be re-arrested and the court can withdraw bail and send him into custody.

If you are threatened or bothered in any way by him, his family or friends, either before or after he appears in court you must tell the police. It is a crime in itself for anyone to do anything to stop you from giving evidence in a criminal trial.<sup>25</sup> There may be ways that

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24. This is also the case where perpetrators are family members. Given that their victims are often very young and related to them, consent is not an attractive defence in such cases.

25. You might want to consider keeping a record of behaviour, which might constitute a breach of his bail conditions, including a log of dates of harassing telephone calls and give these to the police for use in court.

## PART B COURT PROCEDURES

the police can protect you so you should give serious thought to telling them.

An accused can only be kept in custody for a maximum of 8 days before his next appearance in court. If the Magistrates do not release him on bail at the first hearing, his next court appearance is therefore likely to be within a week of the first; after that he can agree to a longer period between hearings of up to 28 days. If he does not agree to a longer period his case will keep returning to the Magistrates' court every week until his trial. As a victim you have a right to attend but it is unlikely that you will be asked to attend any of these hearings.

An accused held in custody will usually have only one or possibly two more opportunities to apply to be released on bail before the case comes up for trial unless something new arises that affects the decision to keep him in custody. If you have told the police that you are concerned about his being granted bail and he is later released from custody after a change in circumstances that affects the bail situation, the police should notify you urgently – at least within 24 hours of being told by the court of his release.

If the accused is released on bail after the Crown Prosecution Service has opposed bail it may be possible for the prosecutor to appeal against the decision to release him. This may happen if for example evidence – such as results of scientific tests – becomes available which was not presented at the time of his release.

### 7.7 THE NEXT STAGE

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All cases of sexual violence discussed in this handbook begin in the Magistrates' court. The most serious are known as "indictable only" offences because they can only be tried on indictment (a particular form of charge) in the Crown court.<sup>26</sup> The Magistrate

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26. Part C. Rape – Section 1; Sexual assault by penetration – Section 2; Causing a person to engage in sexual activity without consent – Section 4: if subsection 4 applies.

## PART B COURT PROCEDURES

must therefore send indictable only offences for trial before a Judge and a jury in the Crown court. Only the less serious cases will have more than one hearing in the Magistrates' court.

The CPS gives the accused's representative advanced information including a charge sheet, witness statements (which may still be in handwritten form), a summary of the prosecution case and a list of his previous convictions. The accused must then appear before the Crown court within eight days if he is in custody, or 28 days if he is on bail. From the first hearing in the Crown court the CPS then has six weeks to serve all the papers that will form the case against the accused. This does not mean that the case will be ready for trial by then. Unavoidable delays in obtaining information can lead to one side or the other seeking and being granted extensions of time. In reality, you could be waiting several months for your case to come to trial.

### 7.8 EITHER-WAY OFFENCES

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The less serious sexual offences discussed in this handbook<sup>27</sup> are known as "either-way" cases – cases that may be tried either in the Crown court or the Magistrates' court. In these cases the accused has the right to ask for a Crown court trial. However, if he wants his trial to take place in the Magistrates' Court he may have to persuade the Magistrates that it is suitable. In order to determine in which court the case will be tried, the Magistrates listen to representations from both sides. They have to consider the seriousness of the offence and their own powers of punishment before deciding which court is more suitable for the trial.<sup>28</sup> Whatever the decision, the case will not be heard right away but will be adjourned either to a date for a pre-trial review in the

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27. Part C. Sexual Assault – Section 3 and Causing a person to engage in sexual activity without consent – Section 4 – if subsection 4 does not apply.

28. The maximum sentence of imprisonment a Magistrates court can pass is six months for one offence up to a maximum of 12 months (for two offences), whereas the Crown court can pass any sentence below the maximum for the offence.

## PART B COURT PROCEDURES

Magistrates court or, if the decision is to send the matter to the Crown court, to a date for what is known as ‘committal’ – when the accused is formally sent to the Crown court for trial. He may be on bail or in custody during the intervening period.

All this assumes a not guilty plea. If an accused pleads guilty to an “either-way” offence the Magistrates must still consider their powers of punishment once they have heard all the facts. If their powers are insufficient for the seriousness of the offence, having heard the details, they will send the matter to the Crown court for sentence.

### 7.9 DISCHARGING

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Magistrates sometimes decide to stop (discharge) a case at committal if they consider that the evidence is particularly weak. This is not the same as an acquittal (the name for a not guilty verdict). Unlike an acquittal, after a discharge, the prosecution may bring the same charge against the same perpetrator again, if they obtain further evidence. Magistrates may also discharge an accused charged with an either way offence without hearing any evidence if there has been what is known as an ‘abuse of process’, such as a very serious delay in the proceedings, caused by the CPS. It is not common for Magistrates to discharge people charged with serious sexual offences – it is more usual to fix a date for trial where the evidence can be properly heard and tested.

### 7.10 PLEAS AND CASE MANAGEMENT HEARINGS

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There may be other hearings in the Magistrates’ court before an “either way” matter is ready for trial there or, where the decision is to send it to the Crown court, before it is ready to be sent. Once an “either way” matter reaches the Crown court, the accused enters his plea of either guilty or not guilty at what is known as a Pleas and Case Management Hearing (or PCMH), which is also an opportunity for the Judge to make various orders (give directions) to the parties about things that need to be done before the trial date.

## PART B COURT PROCEDURES

Applications to obtain special measures for a vulnerable witness<sup>29</sup> may be heard in pre-trial hearings and may be the focus of such a direction.

### 7.1.1 INDICTABLE-ONLY OFFENCES

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Magistrates must send indictable only cases directly to the Crown court rather than go through the process of committal. If the accused is in custody, his appearance in the Crown court will be within 8 days of his case being formally sent for trial and within 28 days if he is on bail. At his first appearance (preliminary hearing) in the Crown court for an indictable only offence he may or may not give the court an idea of how he is going to plead. Any issues, such as any mental health issues, likely to arise at trial are flagged up with the court and then a date is fixed for the Pleas and Case Management Hearing (PCMH). In indictable only matters the PCMH usually follows six weeks after the first Crown court appearance. The time between gives the CPS chance to gather all the evidence and give copies to the defence. A not guilty plea will result in the case being listed for trial at some future date. If there are still police enquiries taking place or if the accused has to obtain medical reports, the matter may be listed for a further hearing (sometimes known as a 'mention') before trial.

### 7.1.2 DISMISSING THE CHARGES

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The CPS may discontinue a case either in the Magistrates' court or the Crown court at any time before the charge is put to the accused. Before charges are put in the Crown court, the accused may apply to the Judge to have them dismissed. A Crown court Judge may hear the application if it is in the interests of justice to do so but will only dismiss charges if he takes the view that there is insufficient evidence for a jury to properly convict.

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29. Discussed below under 'Special measures for vulnerable witnesses'.

## PART B COURT PROCEDURES

### 7.13 NO CASE TO ANSWER

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This is not to be confused with an argument that there is 'no case to answer'. This type of argument is often referred to as a 'half-time submission' because it usually takes place half-way through a trial, at the end of the prosecution case. However, the defence may make this submission at committal in the Magistrates court on the basis that the case is insufficiently strong to go to trial. A submission of 'no case to answer', which is successful will result in a not guilty verdict. In the Magistrates' court it may be made on the basis that there is no evidence to prove the offence or on the basis that the evidence is insufficiently reliable. In the Crown court, a Judge, after hearing the case for the prosecution, may conclude that there is no case to answer if s/he takes the view that a jury could not properly convict on the evidence. The Judge can raise the matter her or himself or the defence may raise it at the end of the prosecution case. Either way, the prosecution and defence have their say and the Judge decides. This happens in the absence of the jury. If the Judge decides that there is no case to answer s/he will simply call the jury in and tell them that they have to find the accused not guilty. These are sometimes known as 'Judge-directed acquittals'.

**PART B COURT PROCEDURES**

8.

# Your involvement at the court stage

## 8.1 WAITING

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It is important to be aware that several months or even longer may pass before your sexual assault gets to trial.<sup>30</sup> This is so despite rules about delays aimed at speeding up the process so that events are fresh in witnesses' minds at trial. The likelihood is that in the Crown court orders will be made and dates fixed for the completion of certain tasks and/or reports and if these dates cannot be met the parties will return to court to explain why; usually, if the explanation is reasonable, another date is fixed by when the task or report has to be finished. This process helps to make sure the case progresses as quickly as possible towards trial but in reality there are sometimes delays that cannot be avoided and you may have to wait what seems like a very long time before the case comes up for trial. The CPS should keep you informed of what is happening and when.

## 8.2 ATTENDING COURT

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You will be notified when you have to attend court, usually in a letter, so it is important to keep the police informed if you change your address. It can be very stressful and frustrating for you when the case is repeatedly delayed and if it has involved you going to court unnecessarily in the expectation of giving evidence, you may find it distressing; but it is important to attend court each and every

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30. It is not unusual for rape cases to take longer than a year to reach trial.

## PART B COURT PROCEDURES

time you are asked. As a victim of crime, you have the right to be present during the trial of your assailant but when you are a witness for the prosecution you will not be allowed into court until after you have given your evidence, which, because you are likely to be the main prosecution witness, will be very early in the trial. After you have given evidence you can stay for the rest of the trial if you wish. It is probably a good idea to take a friend with you for support.

### 8.3 BEING A WITNESS

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If you have made a statement you may be asked to go to court. If you have any concerns about this or if you think it may be difficult for you to attend on that date, you must let the person who asked you to go to court know as soon as possible. If something unexpected happens on the day of the trial and you cannot get there you need to contact the police officer dealing with the case or the court. If you are unable to do this yourself ask the person providing you with professional support or a trusted friend. You must make sure that this information is passed through the proper channels to the court – do not be tempted to ask a friend to simply leave a message with the court switchboard.

If you have to go to court but the court does not think you will go voluntarily they may issue a witness summons against you. If you still fail to attend, without good reason, the court could find you in contempt and issue a warrant for your arrest.

If you are being pressured not to attend court you should tell the police – it is an offence for anyone to try to stop you giving evidence; the police may be able to offer you advice and/or extra protection.

As a survivor of sexual violence giving evidence against your assailant, your details will not be read out in court or placed on the court file – this is to protect your anonymity. If you are giving evidence you will be classed as a witness for the prosecution but

## PART B COURT PROCEDURES

not considered a 'party' to the proceedings. **This means that you do not have a right to legal representation in court.** You can get free support in confidence from the Witness Service, which is part of Victim Support, and helps victims, witnesses, their friends and family when attending any criminal court in England and Wales.

The Witness Service offers you:

- Pre-court visits for witnesses, so that they are familiar with the court room and the roles of the various people in court before they give their evidence
- Emotional support in dealing with the impact and experience of attending court
- Information about the court and legal process
- Separate waiting areas where provided by the court
- Practical help, for example with expense forms
- Support in the court room if necessary, on the day of the trial and during and after your assailant is sentenced

The Service will also offer someone to talk to in confidence, but not about the evidence, and who can support you to get information about the outcome of the case.

Please note on attending court as a witness you will be able to claim a certain amount from the court for travel expenses, a capped amount for subsistence and a certain amount for loss of earnings if appropriate (receipts and other information will be needed). There is no provision for direct help with dependant care. However, the expense of paying for a carer will be reimbursed if a receipt is provided when you make a claim as part of your expenses. If a witness is breastfeeding and needs to bring their baby to court in order to do so, they may bring an adult with them to care for the baby whilst they are giving evidence and this person will be entitled to

## PART B COURT PROCEDURES

claim payment for doing so. Please contact Victim Support for further details.

### 8.4 PREPARING FOR COURT

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It is important to prepare yourself for your court appearance. Think about how you want to present yourself, what clothes you want to wear – your assailant will be advised to look clean and smart, perhaps even to wear a suit. Whether or not he has never dressed in such a way before, he is likely to be spruced-up for his appearance in court. It is also a good idea to talk to friends and supporters about how you will react to questions from the defence, which suggest you are not telling the truth. Think about how you will deal with such questions bearing in mind that the jury will be looking not only at what you say but how you say it. Think about the support you want/need in court: will it be enough to have Witness Support? If you are in contact with a specialist support service find out if someone from there can accompany you if you would feel more comfortable about that. Think about whether you want friends and/or relatives in court (your assailant will probably have his there). If you want your friends and family there try to think in advance about what they are likely to hear and prepare them. In particular, if you want to make sure that nothing you say in court will shock or surprise them, consider telling them these things before you get to court.

### 8.5 DISCLOSURE

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The accused has the right to a fair trial, this means that the prosecution have to show (disclose to) the defence not only the evidence they have against him but also any evidence that may assist him. In other words, if (for example) semen from someone other than your alleged assailant, is found during the forensic examination, perhaps because you had consensual sexual intercourse with your boyfriend before the assault, the prosecution

## PART B COURT PROCEDURES

will have to tell the defence. The defence barrister cannot ask you questions about this or anything to do with your previous sexual conduct without permission from the Judge: there are strict rules about when the Judge should allow such questions.<sup>31</sup>

### 8.6 PUBLICITY

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Trials are usually heard in open court, which means that the public have access and the press can report on the proceedings as they take place. It is an important principle in democratic societies that justice can be seen to be done. The courts have the power to forbid this openness and hear the trial in private but this only happens in very specific circumstances where:

- An open court hearing may lead to disorder
- A witness will not give evidence in public
- Openness would put future prosecutions at risk and
- The Official Secrets Act applies to the case

The fact that you are likely to find giving evidence in open court embarrassing is not enough to persuade the court to sit in private; the reason would have to be something that would put the process of justice at risk. However, as a survivor of sexual violence your identity should not be revealed by the press. It would be a criminal offence for anyone to publish any details about you that might identify you including your name, address, photograph or anything that may lead to revealing who you are.

### 8.7 YOUNG SEX OFFENDERS

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Even though the criminal justice system tries to divert young offenders from prosecution for first offences by dealing with them in other ways, they can be prosecuted for very serious or 'grave' first

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31. See the discussions under 'Your Previous Sexual History' below.

## PART B COURT PROCEDURES

offences, which include acts of sexual violence. A young sex offender may be tried in a Youth court, depending on the seriousness of the assault; if he is charged with rape he should always be tried in a Crown court.<sup>32</sup> If the trial is in the Youth court it will not be open to the public but the press can attend. They cannot report the name, address, photograph or anything else that may identify the youth without permission of the court. One reason the Youth court might lift the reporting restrictions on a young sex offender is if it decides it is in the public interest to do so. The court will then allow the youth's details to be published. Similar reporting restrictions are likely to be ordered when young perpetrators are tried in the Magistrates' court and the Crown court.

### 8.8 WHO DECIDES AND HOW

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If your assailant is tried in the Youth court, a District Judge sitting alone or with two Magistrates will try him. In the Magistrates' court either a District Judge or three non-legally qualified (Lay) Magistrates will try him; and in the Crown court he will be tried before a Judge and jury made up of twelve people selected at random from the public.

### 8.9 YOU WILL BE CHALLENGED

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Your account, if challenged by your assailant, will be the subject of a thorough examination in court. In many cases because sexual activity usually takes place in private without eyewitnesses, it comes down to your word against his. No matter how well you are treated in court, and there have been steps recently to make sure that all parties treat you sensitively, at the end of the day the prosecutor will have to prove the case against your assailant. The likelihood is

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32. This was the view taken by the court of Appeal in *R v Billam* [1986] 1 WLR 349. It is likely that this would also apply to SOA 2003 Section 1 – Rape, Section 2 – sexual assault by penetration and Section 4 – Causing a person to engage in sexual activity without consent – where subsection 4 applies. It has not been necessary to comment whether it would also apply to other offences under the Act, since they are not being considered in this handbook.

## PART B COURT PROCEDURES

that your trustworthiness or ‘credibility’ as it is often referred to in court procedures, as well as that of your assailant, will be tested. Your assailant’s barrister has no choice but to put the defence case to you and this may be distressing for you. There is nothing to stop your assailant saying for example, that you consented or that he believed you were consenting even where he has used force and there is evidence of force – although the use of force may go against your assailant in the case.<sup>33</sup> He may also try to use other evidence to imply that you are not someone who should be believed. You should be prepared to meet this calmly and honestly with a firm denial of his account and the advancement of your own.

# 9.

## The Trial

### 9.1 BEFORE THE TRIAL

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Traditionally barristers have been discouraged from talking to witnesses about their evidence so as not to be seen as prompting or coaching. But the CPS is now considering arranging meetings between prosecutors and witnesses before trial so the prosecutor can assess the witness for her or himself rather than relying on written statements and/or the opinions of police officers in the case – which is or was at the time of writing, normal practice. Now that the importance of greater contact between the prosecutor and the witnesses has been recognised by the CPS it is hoped that the

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33. Under the Sexual Offences Act 2003, the use of force will trigger a presumption that the victim did not consent.

## PART B COURT PROCEDURES

practice of prosecutors meeting witnesses before a trial will, in time, become routine.

The CPS should have arranged a trial date as convenient as possible for you. If you are elderly or disabled or for any reason likely to have problems getting to court or travelling, the CPS or the police should be notified so they can arrange assistance to get you to court: usually the police will collect you. When you arrive at court you should be provided somewhere away from defence witnesses to wait while you are called into court. Witness Services can arrange this for you or you can raise it with any professional supporter who goes with you to court; or you can ask the court staff; the police; or the CPS Lawyer if there is no separate waiting room and you are concerned.

If you have not already met the prosecutor s/he should introduce herself or himself to you when you get to court. S/he should try to put you at ease by, as far as s/he is permitted, answering your questions and explaining what will happen at court. S/he will already have read the police file and any information in there about you s/he should know but if there are particular fears or concerns you can raise them face-to-face. It is important to understand that the amount of time the prosecutor will have to give you may be limited because of her or his responsibility for the trial. S/he is likely to be trying to sort out other important issues so that the trial runs smoothly. Even so, s/he should always treat you with consideration; s/he should understand you are likely to be worried about giving evidence and will be prepared to discuss your concerns sympathetically, within the time s/he has available. S/he will not be able to discuss your evidence with you.

The CPS should have made sure as far as possible, that you are not asked to attend court unnecessarily but only when you have to give evidence. Still, you may have to wait to be called into court; the aim is to make sure you do not have to wait longer than two hours

## **PART B COURT PROCEDURES**

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 may be several reasons for the delay, for example there may be legal arguments taking place about the evidence.

### **9.2 ACCEPTING PLEAS**

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Sometimes a decision is taken by the CPS to accept a guilty plea to a different or lesser charge. This might happen when you have indicated that you do not want to give evidence or it might happen because your assailant has pleaded guilty to some but not all of the charges against him, or because some new evidence has come to light. The plea should only be accepted to a less serious charge if the court is able to pass a sentence that meets the seriousness of the offence. Especially where there are aggravating aspects over and above the offence itself, for example when additional violence is used, unnecessary for the commission of the offence. Your views and interests are taken into account when pleas are being considered and if a plea is accepted you will be informed in writing and invited to a meeting with the CPS. It is of course possible that your assailant will change his plea of not guilty to the offence charged at this stage and enter a guilty plea on the advice of his barrister. Some defendants change their plea 'at the door of the court' once they know that the prosecution witnesses have turned up to give evidence. Defendants get credit for pleading guilty in terms of a reduced sentence – the sooner the plea the greater the credit – of up to a third off.

### **9.3 THE TRIAL**

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The trial system in this country works by one side – the prosecution, for which you are likely to be a witness, giving evidence; and the other side – the defence, which will include your assailant, challenging that evidence. The Magistrates, or the jury in

## PART B COURT PROCEDURES

the Crown court, decide between the different witness accounts by listening and watching the witnesses giving evidence.

The CPS looks after your interests during the trial. If you turn up to give evidence but are not called into court for whatever reason, the person who is conducting the trial for the CPS (the prosecutor) should explain. If something causes the case to be put off until another day, the CPS will try to make sure this date is convenient for you. If as sometimes happens you attend court to give evidence and the case is discontinued you should be invited into the courtroom and given an explanation by the Judge.

As a prosecution witness you are likely to be called first; you will be taken through your evidence by the prosecutor and then cross examined by the defence. The prosecutor may then ask you some more questions, this does not always happen and usually only does when the defence barrister has raised issues in cross examination and not given you a proper chance to explain them. There may also be questions from the Magistrates or Judge. Sometimes in Crown court trials, jurors ask questions by sending notes to the Judge. The Judge deals with them by sending the jury out of court and talking to the barristers about how to deal with the jury note. They may need the law clarifying or it may be a fact that they are unsure about which would help them understand things better.

Once there is an agreement about the best way to deal with the question, the Judge will send for the jury and deal with the question as far as s/he can. If it is a question of fact and it is appropriate to obtain it by asking you, the Judge may ask you her or himself or depending what point you are in giving your evidence, allow the prosecuting or defending barrister to ask you.

If the court has to break – either over lunch or overnight – in the middle of your evidence, you will be asked by the Judge not to speak to anyone about it, not even the CPS or the police. This is to

## PART B COURT PROCEDURES

make sure that the evidence you give is not affected by someone else's view. Your evidence is what you say in court on oath. You will have previously made a statement to the police, which the other side (the defence) will have read, well in advance of the trial. You will be given an opportunity to read your statement before you give evidence but will not be allowed to read from it in court.

### 9.4 SPECIAL MEASURES FOR VULNERABLE WITNESSES

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Giving evidence can be a difficult experience for anyone but for a survivor of sexual violence it can be particularly unpleasant if you are intimidated by your assailant (called the 'defendant' in a criminal trial) and anxious that you will feel embarrassed talking about very intimate issues in public. It is now recognised that such fear may prevent or get in the way of survivors of serious sexual violence being able to give their evidence. Special measures are being gradually introduced for particularly vulnerable or intimidated witnesses; these are intended to reduce the stress and make it easier for you to give evidence in court. They include:<sup>34</sup>

- Screens to prevent you having to see the defendant
- Giving evidence from another room through a live-link to the court<sup>35</sup>
- A pre-recorded videotape taken in a less stressful place, of you giving evidence and/or being cross-examined
- Removal of wigs and gowns by the Judge and barristers
- Someone to assist you giving evidence if you have problems understanding or speaking

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34. Not all the special measures mentioned are available in every court at the time of writing; some, such as pre-recorded video-statements, are being gradually introduced and tested for their effectiveness before being generally available.

35. Some barristers believe that video links can lessen the impact of live evidence because it decreases the connection between witnesses and jury members.

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- The Judge clearing the public gallery of people

You can also ask for an interpreter if English is not your first language. The court will take account of your views about giving evidence so it is important to tell the police or the CPS in advance of the trial if and why you feel that your evidence is likely to suffer; particularly if you are being intimidated and are worried about facing the defendant in court. The Judge, after discussion with the police, prosecution and the defence, will decide what if any special measures should be applied:<sup>36</sup> these measures are not available to the defendant.

### 9.5 GIVING EVIDENCE IN COURT<sup>37</sup>

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Most cases of rape will have a screen between you and the defendant. Otherwise, unless one of the other special measures above is applied you will give evidence in court from the witness box in the same way as other witnesses, including the defendant.<sup>38</sup>

Before giving evidence you will be invited to take your oath on the holy book of your choice or to affirm – promise to tell the truth. If you need to give your evidence through an interpreter or need a signer, the court will organise this for you in advance. Your interpreter should be familiar with the court process and any legal terms and be able to translate into your dialect.

Before you go into court you will have been allowed to remind yourself of what you said in your statement to the police – the prosecutor should make sure you are given a copy of your statement when you arrive at court. You will not be allowed to read your statement from the witness box. You may be allowed to use your statement to jog your memory about something when you are

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36. An application for special measures will usually be made at a pre-trial hearing such as the PCMH.

37. Unless stated this applies to both Magistrates and Crown courts.

38. Except in the case of a youth being tried in the Youth court, who is allowed to remain with his parent or guardian and representative when he gives his evidence and throughout the trial.

## PART B COURT PROCEDURES

in the witness box, on the grounds that it was made much nearer to the time of the assault. But the general rule is that all witnesses are judged on the evidence they give and how they give it from the witness box.

The prosecution begins by making an opening speech, summarising the case and the charges to the jury. The defence rarely give an opening speech so you will usually be called to give your evidence after the prosecutor has opened the case. The prosecutor will ask you questions to enable you to give your evidence. This is called “examination in chief”. The purpose is to guide you through your account of what happened in your own words. The prosecutor will be unable to lead you – this means s/he cannot ask you a question that suggests the answer. If for example one of your complaints in the statement you made to the police is that your assailant touched your breast or bottom against your will, the prosecutor is unable to ask “did Mr X then touch your breast/bottom?” S/he will have to confine herself or himself to non-leading questions such as, “What did Mr X do then?” Remember to listen carefully to the questions and take your time – making sure that you understand what is being asked – before you answer.

When you answer speak up so that the Judge and jury can hear what you say. Stick to the point and be as accurate as you possibly can about details. If you do not know something, say so. If you cannot remember a particular detail, say so. Most importantly, be truthful. Jurors recognise truthfulness so if you are giving evidence in the courtroom look directly at the jury and imagine that you are talking to a trusted friend, telling her what happened to you. In particular take care to be open and honest about surrounding events such as what you had to drink or any drugs you used. If you are guarded or try to hide such details the jury will notice your evasiveness and the defence may use it to suggest that you are unreliable. **If you are particularly worried then you could contact a legal organisation such as Rights of Women to get**

## PART B COURT PROCEDURES

**an idea of what you can expect at court. You can contact Rights of Women at any point during your case and receive legal advice/information regarding queries you may have.**

### 9.6 CROSS-EXAMINATION

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Once you have given your account of what happened the defendant's barrister will cross-examine you. The defendant is not allowed to ask you any questions himself or speak to you directly. **You may have heard that defendant's can cross-examine witnesses in sexual trials: it used to be the case but is no longer permitted.** If your assailant is a youth being tried in the Youth court<sup>39</sup> his parent or guardian may be permitted to cross-examine you if the youth does not have a barrister to represent him.

Understand that the job of the defence barrister is to test the evidence against the defendant so cross-examination involves confronting you with the defendant's version or using other evidence, to suggest something different happened, or someone different was responsible. In cross-examination there are no rules preventing leading questions. Defence barristers are bound by certain moral/ethical rules and should never put questions intended to insult, degrade or annoy you. If asked by the defendant to put any question to you about your character or trustworthiness (in other words questions of credibility), s/he must first believe them to be true rather than only intended to attack or hurt you. The Judge or Magistrates should make sure that all questions by the cross-examiner are politely put to you and are relevant to the issues in the case.

That said, you may be asked questions which are intended to make you appear untruthful or mistaken or in some other way unreliable. Inconsistencies in the evidence you have given or in the evidence you

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39. Unlikely in any serious sexual assault involving anal or vaginal penetration with the penis or any other object or penile penetration of the mouth – because in those circumstances the juvenile is likely to be tried in the Crown court.

## PART B COURT PROCEDURES

gave in court and what you said in your statement to the police may be drawn to your attention and you may be asked to explain them.

### 9.7 YOUR PREVIOUS SEXUAL HISTORY

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In 1999 Parliament introduced a change in the law regarding the use of sexual history evidence: the Youth Justice and Criminal Evidence Act 1999 was an attempt to balance the need to present relevant evidence in rape trials against the need to protect vulnerable witnesses from the distress of painful and intrusive questioning by defendants and their barristers. The change in the law placed limits on the defence's ability to cross-examine a survivor by restricting when questions about her sexual history could be asked.

The general rule today is that a defence barrister is not normally allowed to question you about any previous sexual experience you have had with anyone, including the defendant. In fact the law imposes a blanket ban on questions about your sexual behaviour without the Judge's permission. The Judge is not supposed to give permission unless the evidence fulfils certain conditions and where a refusal might mean that the jury's final verdict is unsafe. Any questions asked or evidence obtained as a result must relate to a specific example of your behaviour. In other words you cannot be asked wide-ranging questions to produce general evidence about your sexual habits.

The rule does not apply to the prosecution and so does not stop the prosecutor from referring to your past relations with the defendant; for example in opening the case s/he may want to tell the jury if you and your assailant were once in a relationship or had dated, to set the scene and put the offence in context. The prosecutor should take care to make sure s/he does not ask you questions that stray into your previous sexual relations if it will enable the defence barrister to pick up the issue when you are cross-examined.

## PART B COURT PROCEDURES

If you have concerns about your sexual past being mentioned in the prosecutor's speech or brought out during your evidence it should be possible to raise your concerns in a meeting with the prosecutor. The prosecutor will have to make decisions about how best to run the prosecution case and will not be able to talk to you about what to say in evidence but should be able to listen sensitively to you and consider your views.

The Judge has a responsibility to make sure that the defence stick to the rules and do not go too far by asking you questions of a general nature, which are not related to an issue in the case. The courts have stressed that you must not be treated unfairly when it comes to questions about your past.

It may be helpful to have a feel for when these questions *may* be allowed and when they are *unlikely* to be allowed. The courts have said that it is a test of *relevance* (which simply put means what bearing or significance does it have on an issue in the case); beyond that, it is not possible to say precisely where the dividing line will be drawn. At the end of the day it will depend on the particular facts in your case and how the particular Judge assesses them.<sup>40</sup> The following is a guide:

### *Unlikely to be allowed:*

- It does *not* mean because you consented before you will consent again. If a defendant tried to use a previous consenting sexual experience between the two of you to prove that you consented to his advances this time, he should not be allowed to do so.
- Where there has only been several isolated acts of intercourse, even if fairly recently, without a background of an affectionate relationship, it is *unlikely* that questions will be allowed about them.

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

## PART B COURT PROCEDURES

- Where the sexual behaviour that he wants to question you about did not take place at the same time as the alleged offence and was not so similar to it that it could not be explained as a coincidence, he is *unlikely* to be allowed to question you about them.

### *May be allowed:*

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

The list shows that cross-examination should generally not be allowed on sexual activity with the defendant (or anyone else) not very close in time and/or not very similar to your assault. That said, the courts have a duty to read the law so that it is consistent

## PART B COURT PROCEDURES

with a defendant's right to a fair trial whenever possible.<sup>41</sup> Judges are not agreed about how narrow or widely they should interpret this law. It is best to be prepared that you may have to answer questions that feel intrusive and plan beforehand how you want to respond.

The provisions of the 1999 Act regarding sexual history evidence have not changed as a result of the Sexual Offences Act 2003 but changes in the new Act require a defendant to be 'reasonable' in his belief in consent. This should help to limit the use of this type of evidence. It is hoped that this will further restrict the circumstances in which a judge will permit questions on your previous sexual history.

It is important to remember that the Judge should only allow questions about particular incidents. The defence cannot launch a general fishing expedition into your past; and, the Judge should not allow any questions unless the defence can show that it would be unsafe to proceed without the evidence the questions will bring out.

There will usually be an application by the defence barrister if s/he wants to bring in your sexual history. This will result in a legal argument with the Judge having the final say. The CPS has responsibility for making sure that you are told of the Judge's decision on whether or not to allow cross-examination about previous sexual behaviour. It is important to know that if the Judge allows the cross-examination, it may mean that you are entitled to one or more of any special measures<sup>42</sup> that are available, which you may not have been entitled to before; given that the questioning is likely to be more intimate and possibly more difficult for you to deal with.

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41. Human Rights Act 1998 (HRA), Section 3.

42. See the discussion on special measures.

## **PART B COURT PROCEDURES**

At the time of writing the Home Office are looking at this area of law to see how well it is working in practice and whether or not it is achieving its aim of improving the treatment in court, of vulnerable and intimidated witnesses.

### **9.8 RE-EXAMINATION**

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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 clarify any issues raised during cross-examination. The prosecutor is unable to use leading questions.

### **9.9 QUESTIONS BY THE JUDGE**

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Sometimes the Judge may ask you questions during your evidence to clarify an issue.

### **9.10 WHEN YOU HAVE GIVEN EVIDENCE**

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When you have given your evidence the prosecutor will make an application to the court. If accepted, you are free to leave the court building. If you wish, you can stay in court and watch the trial from the public gallery.

You should have already been given a form to claim travel or other reasonable expenses such as childcare or loss of income, as a result of having to give evidence in court. These expenses should be paid to you within 5 to 10 days of handing in your form properly completed.

The prosecutor should, whenever possible when you have remained in court for the verdict, explain to you the outcome of the case.

### **9.11 OTHER EVIDENCE**

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Other witnesses for the prosecution usually give their evidence after you. If you told someone about the assault soon afterwards

## PART B COURT PROCEDURES

for example, that person may be called to tell the court what you said. This is known as evidence of a recent complaint and it may support your credibility. 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 the witness's account, their written statement may be read to the court. This often happens when scientific evidence (such as the presence of your assailant's DNA) is not disputed by the defence or when medical evidence (for example of the presence of bruising) 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 agreed facts.

At the end of the prosecution's case, when all evidence against the defendant has been heard, the prosecutor will tell the court that s/he has reached the end of the prosecution case. The Judge may at this stage consider whether there is a strong enough case to go to the jury.<sup>43</sup> Otherwise, if there are no submissions from the defence and the Judge is happy for the case to proceed, the defence case starts as soon as prosecution case ends. The defence case usually begins with the defendant's evidence followed by any witnesses in support of his case, unless the defendant decides not to give evidence.<sup>44</sup>

The admissibility of the evidence of a defendant's bad character has changed since the Criminal Justice Act 2003 came into force. The approach is now to include bad character, if certain circumstances apply. The specified circumstances include where the defendant has made an attack on another person's character or

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43. See 'No case to answer' above.

44. A defendant cannot be forced to give evidence (see Criminal Evidence Act 1898, Section 1) and whether or not he gives evidence in person, may rely on others to give evidence about the disputed issues in the case or to speak about his character.

## PART B COURT PROCEDURES

where evidence is relevant to an important matter in issue between the defendant and the prosecution. If the specified circumstances apply and the prosecution gives notice, to the court and the defence, the evidence can be admitted. However, there are circumstances in which the defendant can apply to exclude the bad character evidence, such as when including such evidence would negatively impact the fairness of the trial. The court can only exclude evidence if the defence apply to do so.

At the end of the defence case the prosecution and then the defence address the jury in 'closing speeches', each emphasising the strong points in their case and the other's weak points. There may be some discussion between the Judge, prosecution and defence, about legal issues, before the Judge summarises the case to the jury.

### 9.12 THE VERDICT

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Magistrates do not need to all agree on a verdict. Where there are 3 Magistrates and 2 have one view that majority view will suffice for a verdict. If there are only 2 Magistrates who cannot agree, they would have to adjourn and a rehearing of the case by different Magistrates would have to follow.

In the Crown court on the other hand, juries are first always asked to reach a unanimous verdict – a verdict upon which they all agree. After a certain time has passed<sup>45</sup> without the jury reaching a unanimous verdict they will be told they can return a majority verdict; that is where 11 agree and 1 disagrees or where 10 agree and 2 disagree.

Sometimes jurors are unable to agree on a verdict and the Judge has to discharge them. This is not the same as an acquittal – the CPS can decide to hold a retrial of the defendant with a different

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

## PART B COURT PROCEDURES

jury and only in very limited circumstances will it be prevented from doing so.<sup>46</sup>

There are only a few and unusual circumstances when a Judge can question the jury's verdict;<sup>47</sup> more often than not, the Judge has to accept the jury's verdict even if s/he disagrees with it.

### 9.13 THE EFFECT OF A NOT GUILTY VERDICT

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If the defendant is found not guilty (acquitted) he cannot be tried again for the same offence except where new and compelling evidence is produced which was not available at the time of the original trial regarding a serious offence. If that were to happen the CPS would have to apply to the High Court for an order to cancel the verdict and there would be a retrial. However, this does not happen often and is unusual.

If the defendant is found not guilty this does not mean that you were not sexually assaulted. A not guilty verdict (an acquittal) does not prove your assailant's innocence but means that the prosecution were unable to prove the case to the very high standard required – beyond reasonable doubt. Try not to allow an acquittal to invalidate your experience of sexual violence. Of course you will feel disappointment but even where this happens survivors have said that they have not regretted continuing with the case. It is not useful to translate an acquittal into meaning that you were disbelieved and he was believed. Rather, it means that the prosecution had insufficient evidence to meet the level of proof needed for a conviction.

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

47. 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 squared with each other because they were inconsistent with one another, having regard to the evidence.

## PART B COURT PROCEDURES

### 9.14 A FINDING OF GUILTY

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Once a defendant is found guilty<sup>48</sup> or convicted of any offence he has to be sentenced. The court may sentence the defendant right away or may adjourn to look into his background, previous convictions and psychological history.<sup>49</sup> They would do this by obtaining what is known as a pre sentence report from the probation or youth offending teams. Magistrates usually adjourn to learn more about the defendant before they sentence, Crown court Judges are less predictable. They have a wide discretion to dispense with pre sentence reports in cases involving adult offenders, where they consider a report is unnecessary – for example where custody is inevitable and the report would be a waste of time. Where the offender is under 18 and/or a report is necessary for other reasons the defence may ask the court to adjourn for reports. There may be particular issues the defence wants the Judge to consider, such as the defendant's mental state or medical condition, which would be impossible to assess without a professional opinion. Such reports can have a major impact on the court's decision in sentencing.

Where there is to be a report, the probation service makes the general inquiries and this process usually takes about 4 weeks. Doctors' reports may take considerably longer to prepare if they first have to see the defendant. The defendant may be released on bail during this period, even when the sentence is likely to be one of imprisonment but in those circumstances 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 while any reports are prepared.

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48. The same process follows a plea of guilty.

49. After a plea of guilty they will also need to look into the offence, for example how and why it occurred.

# 10.

## Post Trial

### 10.1 SENTENCE

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The courts have several options about how to deal with your assailant once he has been convicted of your assault. Prison is reserved for the most serious offences. Magistrates are limited to a maximum of 6 months for a single offence or a maximum of 12 months where there are more offences. The Magistrates may send your assailant to the Crown court for sentencing if they feel the offence merits a longer sentence than 6 months. In the Crown court, the trial Judge is responsible for sentencing your assailant. Whichever court is sentencing, you may attend the sentencing hearing if you wish. The Judge in the Crown court, similar to the Magistrates, has a number of alternatives concerning sentencing, other than custody. These are either community sentences<sup>50</sup> or fines. Fines are more usually imposed in Magistrates courts than Crown courts and can be combined with a community sentence.<sup>51</sup>

Rape and serious sexual assaults will have been tried in the Crown court where the sentence imposed can be more severe than in the Magistrates' court. These offences will usually attract a lengthy prison sentence, especially where the maximum is life imprisonment – such as for rape and assault by penetration. Even the maximum sentence of life does not mean that your assailant will necessarily go to prison for his entire life. In some cases life means life because

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50. For example rehabilitation orders, punishment orders, curfews, supervision, attendance centre orders, drug treatment and testing orders.

51. There are other sentencing options including discharges, which because they are unlikely to be used in cases even of minor sexual assault, they are not discussed in this handbook.

## PART B COURT PROCEDURES

the convicted prisoner will be subject to a whole life order and will never become eligible for parole.

The life sentence generally has three parts; the first part is the minimum term (i.e. the period the prisoner must serve before he becomes eligible for consideration by the Parole Board for release on life licence). The second part is the period that the prisoner spends in custody after the expiry of the minimum term because the risk of harm to the public if he should be released is too high. In many cases there will be no second part because the prisoner is assessed as presenting no, or a sufficiently small risk of harm to the public. The third period starts from the date of release to the end of the prisoner's life. He will either be in the community on licence or, if his behaviour causes concern, in custody again for a further period until such time as it is considered safe to release him again on life licence.

Maximum sentences are reserved for the worst examples of the offence. In sentencing the court will take into account what are known as mitigating factors, these are things related to the offence and/or your assailant, which enable the court to pass a shorter sentence. An example may be that your assailant has terminal cancer or the offence was committed at a time when he had a serious drug habit, which he has since quit. These have to be weighed against the aggravating things that make the offence more serious. Rape is always a serious crime that will call for an immediate sentence of imprisonment<sup>52</sup> unless there are extremely exceptional circumstances.

In deciding the length of the sentence the court has a duty to protect the public and will look at any needless violence your assailant used during the assault; any weapon he used to frighten

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

## PART B COURT PROCEDURES

or hurt you; whether this was a repeat or planned attack; whether he has previous convictions for similar offences; whether he put you through other sexual humiliation; your age – if you are elderly or disabled this will aggravate the offence considerably. Finally, your Victim Personal Statement may be considered by the Judge when deciding on the appropriate sentence: in particular the Judge may take account of how the sexual violation made you feel, the physical, mental and financial effects it has had on your life, and the life of your family.

### 10.2 RELEASE FROM PRISON

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Your assailant will be released – usually on licence, which means that he will be subject to certain conditions specified in his licence, including supervision by a probation officer. If he is convicted of an imprisonable offence while on licence or otherwise breaks the conditions of his licence, he can be returned to custody to finish his sentence. The amount of time he will serve before being released, and whether or not his release will be on licence, depends on the length of sentence: if your assailant was sentenced to under 12 months he will only serve half of his sentence and will be released unconditionally. He can still be called back to serve his full sentence if he commits an offence punishable with imprisonment during that time. If your assailant is sentenced to 12 months or more he will be released after serving half his sentence (unless he is still considered dangerous) and will serve the remainder of the sentence on licence.<sup>53</sup>

Sex offenders may be subject to an extended sentence and will receive supervision up to the end of their licence period. Again, this is subject to him not committing an imprisonable offence during that period. If your assailant is sentenced to life, the Home Secretary can release him on licence and under supervision if the Parole

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53. For a person sentenced for offences committed on or after the 4th April 2005.

## PART B COURT PROCEDURES

Board recommends he be released. He has to consult with the Lord Chief Justice and the trial Judge before making the final decision.

### 10.3 NEW SENTENCING GUIDELINES

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The Criminal Justice Act 2003 introduced wide changes to the sentencing powers of the courts, which will have a major impact on sex offenders. The Act created a new approach to public protection and release on parole. Release on parole enables some prisoners to be released from prison, whilst still subject to restriction placed upon their liberty. This allows prisoners to reintegrate back into the community whilst under supervision and helps offenders to secure employment as soon as possible.

Under the new arrangements in the act, for sentences of less than 12 months, the sentence will be split between the time to be served in custody and the time to be served on licence. The maximum time of the custodial part of the sentence will be 13 weeks and the licence period in these circumstances must be at least 6 months. These provisions of the CJA 2003 are not yet in force. Arrangements for sentences of 12 months or more are now in force. Determinate sentence prisoners serving 12 months or more will be released on licence halfway through their sentence, unless they have been assessed as potentially dangerous to the public (as discussed above). If they are assessed as dangerous, they will receive an extended supervision period or sentence of imprisonment for public protection. In either case, their release will not be automatic at the halfway point of their custodial sentence. They may apply to the Parole Board at the half-way point, and the Parole Board will consider whether they present a risk manageable in the community.

The extended sentence and the public protection sentence which are also now in force are aimed specifically at sexual and violent

## PART B COURT PROCEDURES

offenders who have been assessed by the court as dangerous.<sup>54</sup> Offenders who commit sexual and violent offences may receive an extended sentence, where up to eight years of supervision can be added to their custodial sentence; and the custodial sentence may be served in full, if the Parole Board does not judge the offender suitable for early release. In serious cases they may receive a sentence of imprisonment for public protection, which allows for indefinite imprisonment where necessary.

### 10.4 MEASURES DESIGNED TO PROTECT YOU FROM

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#### FURTHER HARM

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With the passing of the 2003 Act the notification requirements for sex offenders have been strengthened. The requirements are sometimes known as the sex offenders' register. These are additional measures designed to protect you and the public generally by informing the police of sex offenders' whereabouts. The police will be able to tell you if the requirements will apply to your assailant. If so, the police will keep a record of your convicted assailant's details and he must notify his local police station of his address and any change of his name; and let the police know if he intends to travel outside the UK. Failure to notify the police of such details, without reasonable excuse, is an offence. Your assailant may also be subject to a sexual offence prevention order (SOPO), prohibiting him doing anything specified in that order. These orders are designed to protect you and the public generally from serious sexual harm from him.

If your assailant is sentenced to over 4 years imprisonment the police should ask you if you want to be notified of his release and give you the chance to express your concerns about what might happen when he gets out.

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54. For a person sentenced for a serious offence committed after the 4th April 2005.

## PART B COURT PROCEDURES

If you have concerns about your personal safety you should always tell the police: you may be able to obtain an injunction in certain circumstances. An injunction is a court order directing someone to stop doing something. It may be temporary – for example until after trial – or it may be permanent. You may be able to obtain an injunction to stop your assailant from hassling or assaulting you or to keep him away from your home. If you are married or were living together at the time of his violence towards you, the court order may have power of arrest. You will need to show that he has used violence against you in the past or has threatened you and is likely to do it again. A power of arrest allows the police to arrest a person who ignores or breaks an injunction. Once the police have arrested someone under this power they have to ensure that s/he attends court within twenty four hours.

When an injunction does not have a power of arrest attached the police will need a warrant before they can arrest someone for breach. You have to attend court to explain how the injunction has been broken and apply for your assailant to be sent to prison. The court will have to issue a warrant so that the police can make the arrest.

It is an offence for someone to do something that he has been ordered not to do under an injunction, without reasonable excuse. The court may impose a sentence of imprisonment<sup>55</sup> and may impose a restraining order, directing that s/he stops certain conduct for a specified period or until further order. It is an offence, which may result in a prison sentence,<sup>56</sup> to ignore or go against a restraining order.

You may be able to get legal aid to obtain an injunction. If you need further information about injunctions contact your local Citizen's Advice Bureau, Rights of Women or a solicitor.

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55. Up to the maximum of 5 years in the Crown Court and 6 months in the Magistrates' Court.

56. Up to the maximum of 5 years in the Crown Court and 6 months in the Magistrates' Court.

**PART B COURT PROCEDURES****10.5 APPEALS AGAINST CONVICTION**

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If your assailant pleaded not guilty and was convicted in a Magistrates' court he may appeal against his conviction to the Crown court; the evidence is given afresh before a Judge and two Magistrates.

If your assailant wishes to appeal from conviction by a jury in the Crown courts he will have to obtain 'leave'<sup>57</sup> – permission of the court of Appeal – which is usually given or withheld by a single Judge. If the single Judge grants leave to appeal, the case will be heard by three Judges sitting in the court of Appeal. The appeal will only be allowed if the court of Appeal decides that the conviction is 'unsafe'. There are a number of things that can make a conviction unsafe; the most common being faults in the Judge's summing up of the law or on barrister's mistakes in conducting the trial, where these have an impact on the safety of the conviction. An example is where a prosecutor failed to disclose some information to the defence and that information would have altered the way the defence approached the case. If the court of Appeal finds the verdict unsafe it will quash the conviction. Unless the court orders a retrial your assailant will be treated as if he had been found not guilty by the jury and will be released. A retrial will be ordered only where the court consider it is in the interests of justice; a number of factors will affect the decision including the time that has passed; how long your assailant has been in custody; and whether there was a lot of publicity during the first trial and the appeal. If a retrial is ordered, your assailant may be remanded into custody or released on bail and 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.

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

## PART B COURT PROCEDURES

Your assailant may also appeal against his sentence in certain circumstances such as where it is overly long or where the Judge took irrelevant factors into account when passing sentence. The court may quash his sentence and replace it with a lesser term of imprisonment or a more appropriate sentence.

### 10.6 UNDULY LENIENT SENTENCES

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The Attorney General, with leave of the court of Appeal, can refer back to that court, sentences for rape,<sup>58</sup> which appear unduly lenient. This has to be done within 28 days of the sentence being imposed. The procedure is for the CPS to consider the sentence at branch level. If the CPS considers that the sentence is *not* unduly lenient, the matter ends there. Where on the other hand, the CPS considers the sentence *could* be unduly lenient it will be referred to the CPS Caseworker Directorate to be reviewed by a different Lawyer. The second Lawyer decides whether or not the sentence can be said to fall outside the range of sentences which the Judge could reasonably consider appropriate, taking into account all relevant factors and sentencing guidelines given by the court of Appeal. If the Lawyer decides that the sentence does not fall into that category, the matter ends there. If the Lawyer decides that the sentence may be unduly lenient, the papers are sent to Treasury Counsel for advice. Once the CPS receives Treasury Counsel's advice, the Caseworker Directorate Lawyer decides whether or not to refer the case to the Attorney General for consideration.

Victims, their families and members of the public sometimes complain to the CPS branch, which may refer the sentence to the Attorney General if it could be unduly lenient according to the appropriate tests. Complaints may also reach the Attorney General through a Member of Parliament or members of the public may write directly to the Attorney General.

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58. And certain sexual offences involving children and pornography involving children.

## PART B COURT PROCEDURES

Where the Attorney General refers the sentence for review, it is for the court of Appeal to decide whether to allow the appeal and quash the sentence. If it does so, it may pass an increased sentence provided that it does not exceed the sentencing powers that the original sentencing court (i.e. the Crown court) would have for that offence. It could not for example, pass a sentence above the maximum sentence for the offence.

### 10.7 POST SENTENCE SERVICES

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The National Probation Service runs a statutory victim contact scheme for victims of sexual and other violent offences where the offender receives a custodial sentence of twelve months or more. The scheme is designed to ensure that victims, if they choose, are kept informed at key stages of the offender's passage through the criminal justice system (for example when consideration is being given to temporary or early release) and provides opportunities for victims to be consulted and to contribute views to the conditions to which the offender will be subject on final release. This includes having additional conditions attached to a release licence. For example excluding the offender from a specified geographical area to protect the victim after he is released, or conditions forbidding the offender from contacting the victim or other named persons on release.<sup>59</sup>

### 10.8 COMPENSATION

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As a survivor of sexual violence you may be able to claim criminal injuries compensation: you do *not* need to prosecute to claim but you do need to report the offence and co-operate with the police; there does *not* need to be a conviction to claim; you do *not* need physical injuries such as cuts or broken bones to claim; the injury can be psychological – such as the stress or trauma related to sexual assault; you can usually claim up to two years after your

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59. See Appendix B.

## PART B COURT PROCEDURES

assault; there are exceptions to the two year time limit if it is 'reasonable' and in the 'interests of justice' to allow your claim – for example because your memory was affected by the sexual violence.

You can make a claim by completing the necessary forms, which should be given to you by the police when you report your assault. But you may want to think about taking some advice in the following situations: if your injuries are severe – such as psychological injury, which needs a doctor's confirmation; if you have had to take time off work or your injuries have affected you for more than 28 days; if it has been longer than 2 years since you were assaulted; if you have had your claim refused and wish to appeal.<sup>60</sup>

You can get advice from any of the support centres or advice agencies listed at the back of this handbook or you can contact the Criminal Injuries Compensation Authority.<sup>61</sup>

### 10.9 SUING FOR DAMAGES

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Suing for damages involves a 'civil action,' which is different to a criminal action. In order to succeed in a civil action you have to show that it is more likely than not that your assailant's act caused you damage: it is not necessary to prove anything beyond reasonable doubt as required in a criminal case. You would be able to call any evidence to prove your case in a civil action, including that used in the criminal trial but also other evidence that may not have been of the right type to be heard in the criminal trial. The judgement in a civil case will be about whether or not you should get damages from your assailant for any injuries you have suffered as a result of his act. The award may be small or large and will be determined by the Judge depending on how s/he views all the

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60. In most cases where there has been no conviction and even in some cases where there has, you may initially be refused compensation. You should not automatically give up but consider seeking advice and appealing the decision.

61. Criminal Injuries Compensation Authority, Tay House, 300 Bath Street, Glasgow G2 4JR. tel: 0141 331 2726.

## **PART B COURT PROCEDURES**

circumstances, including your own conduct and the seriousness of your injuries. Your injuries may be either physical or psychological but medical evidence would be needed to support them. It is possible to get public funding to pay for bringing an action but it is extremely difficult; it will depend among other things on your earnings. If not you will have to pay your legal team privately, which can be very costly. If you are considering suing for damages you should always consult a solicitor first. Remember a civil action is a private matter between you and your assailant, the state and/or the CPS are not involved.

**PART C THE LAW**

# 11.

## The Law

The Sexual Offences Act 2003 came into force in May 2004. This handbook is written for adult survivors of the offences in Sections 1 to 4 of that Act: the non-consensual sexual offences of rape – including oral rape – assault by non-penile penetration, sexual assault and causing a person to engage in sexual activity without consent. These offences are separately explained below:

### 11.1 THE SEXUAL OFFENCES ACT 2003

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This Act of Parliament is the new law covering sexual offences. It brings the most far-reaching changes to this area of law for many years. The previous law derived from a number of different Acts of Parliament written in Victorian times, which were amended in piecemeal fashion over the years to deal with problems arising as times changed. Besides being written in language that was old fashioned and hard to understand, the old laws were outdated, discriminatory, too lenient as far as sentencing was concerned, no real deterrent and all-in-all did not provide adequate protection against sexual offences.

The Act of 2003 is a vast document containing over 50 sexual offences. Some of the old laws are still operational. This handbook covers 4 offences that have been amended by, or are new to, the 2003 Act. The Act is too extensive to cover in its entirety in this handbook. The 4 offences covered are the most serious sexual offences against *adults* and they can be found in Part 1, Sections 1 to 4. These 4 offences are non-consensual offences in that they all require proof of an absence of consent on the part of the victim; each carries the potential of a maximum life sentence.

**PART C THE LAW**

Information and leaflets about the other offences contained in the Sexual Offences Act, including those offering protection to children and vulnerable adults, can be found on the Home Office web site at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

**11.2 SOME LEGAL TERMS EXPLAINED**

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***11.2.1 'Sexual'***

Penetration, touching or any other activity is sexual if a reasonable person would consider it sexual because of its *nature*.<sup>62</sup> There are some obvious examples involving touching or penetrating the genitals that would be clearly sexual just because of their nature. But even in less obvious cases, where a reasonable person would not think the activity was necessarily sexual, for example stroking your hair, leg or arm, it might still be sexual because of the circumstances; or it might be sexual because of the purpose behind it: that is the purpose either of the person doing it or of another person who might have encouraged him to do it. Someone helping an elderly person with personal care for example, may remove her clothes to help her into bed – in ordinary circumstances this would not be a sexual act. On the other hand if it was the middle of the morning when she would not normally be going to bed to rest – the circumstances could make it sexual. Similarly, if the purpose of the person removing her clothes, or someone else's purpose, were to have sex or assault her, that act would be sexual.

***11.2.2 'Consent'***

All the offences considered in this handbook require a lack of consent on the part of the victim. For the purpose of these and other offences in the 2003 Act consent is defined for the first time as

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62. See Section 78 of the SOA 2003.

## PART C THE LAW

*“...a person consents if he agrees by choice, and has the freedom and capacity to make that choice.”*

It means that your assailant cannot successfully argue that you agreed beforehand to have sex with him. You must be in agreement at the time of the act. That does not mean that you have to say anything or write it down. You can imply an agreement by your conduct. Evidence of your consent can be by things you said or did at the time or on a previous occasion or occasions. The law recognises that you can withdraw consent at any time before or during a sexual act.

Your agreement has to be by choice: there may be several factors that affect your freedom to choose but a key one is violence/force or the threat of it. You are unlikely to have freedom to choose if violence is being used against you at the time or just before; you are unlikely to have the freedom to choose if you are being threatened with violence or someone else you care about is being threatened with violence at the time or just before. The threat does not need to be of immediate violence to cancel your free choice nor does it need to be made immediately before the sexual act: it can be a threat made some time before the sexual act provided that it is still playing on your mind at the time. Similarly, it can be a threat that violence will take place some time in the future against you or someone else, which because you had it in your mind at the time, cancelled or undermined your freedom of choice. The closer in time the use of violence, threats or other forms of compulsion are to the sexual act the more likely they will cancel out or override your free choice in the eyes of the law but this will always depend on the particular circumstances of your case.

You must also have the capacity to make your choice: You may lack that capacity for example if you are sick, in a fever and too ill to understand what is involved; or you may have been drugged

so as to be incapable of making a decision about consent; or you may have a mental disorder at the time.<sup>63</sup>

### 11.2.3 Rape<sup>64</sup>

Rape now includes non-consensual vaginal, anal and oral sex; involving penetration with a penis. While only a man can commit the act of rape both men and women can be victims of rape. The offence has been changed by the 2003 Act,<sup>65</sup> and is now made out if:

(read 'A' as accused and 'B' as victim)

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

Non-consensual penetration of a person's mouth with the penis is now rape whereas it was formerly charged as indecent assault. The reason for this change is because forced oral penetration is just as distressing and degrading as other types of forced sex using the penis. The slightest penetration is enough and it need only be momentary to amount to rape, provided it happened without your consent. You may have consented to vaginal penetration but not anal penetration – this could still be rape. Penetration is the act, which starts at entry with the penis and ends with withdrawal. Ejaculation is not necessary. Your assailant must have penetrated you intentionally, which means it must have been his purpose or his aim rather than for example, a mistake. He must have penetrated

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63. If a victim was unable to consent because of a mental disorder the charge would more likely be brought under the specific offence in the SOA 2003 Sections 30 – sexual activity with a person with a mental disorder impeding choice.

64. The offence is triable only on indictment and the maximum punishment is life.

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

## PART C THE LAW

you without your consent or continued to penetrate you after you withdrew your consent. This can be more difficult for you to prove when you knew your assailant before the assault. But remember you must have consented to the particular type of penetration. You do not have to show evidence (such as physical injury or bruising) that you resisted to prove that you did not consent but it may be easier to show absence of consent where there are injuries.

To be found guilty of rape your assailant must *not* have reasonably believed that you were consenting: even if you can show you were not *actually* consenting if he reasonably believed you were, he may be found not guilty of rape.

The reasonableness aspect of his belief is a recent change brought about by the 2003 Act. Under the previous law<sup>66</sup> even his unreasonable belief in consent could secure a not guilty verdict. It was sufficient for his belief in consent to be honest. The law changed because it was felt right to give him the responsibility of establishing the true position regarding consent. It is now up to the man to make sure he has your consent before he proceeds or continues with penetration because he will have to show why he believed you were consenting by telling the jury the steps he took to make sure and the jury are to decide whether his belief was reasonable or not.

The question as to whether his belief was reasonable has to be answered by looking at all the circumstances of the case including any steps he took to make sure you were consenting. It remains to be seen whether the courts will read 'all the circumstances' as including the defendant's characteristics that would have affected his reading or assessment of the situation. Certainly, the law does not state specifically that characteristics should be taken into account.

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66. Dpp v Morgan [1976] AC 182.

### 11.2.4 Absence of consent

The 2003 Act also includes a set of situations where it will be harder for the defendant to argue that his victim consented. These are called “presumptions” in law. There are two kinds of presumptions within the Act. The “conclusive presumptions” make it impossible to use a consent defence and therefore much more likely that a defendant will be found guilty. The “rebuttable presumptions” simply mean that the defendant has to produce more evidence if he wants to argue that there was consent.

The Act sets out a list of circumstances<sup>67</sup> (the *rebuttable presumptions*) which, when they exist, will be taken to mean that you did not consent and your assailant did not believe you were consenting, unless he can counter the existence of the circumstance by raising enough evidence: it will be a matter for the Judge to decide. The list of circumstances cover situations when:

- Violence was being used at the time or immediately before the act and the violence was being used by your assailant or by anyone else against you or anyone else
- Threats were being made at the time or immediately before the act by your assailant or someone else and
- The threats were causing you to fear violence was about to be used against you or
- Was about to be used or was actually being used against someone else (perhaps your child or another family member or friend)
- You were unlawfully detained – in other words your assailant was holding you against your will

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67. Section 75 of the SOA 2003.

## PART C THE LAW

- You were asleep or unconscious
- At the time you were unable to indicate to your assailant whether or not you consented because of your physical disability
- Someone (not necessarily your assailant) had drugged you or given you any substance without your consent which was capable of leaving you stupefied or overpowered at the time of the sexual act

In all these situations your assailant will be required to raise enough evidence to persuade the Judge that he should let the issue of your consent and his belief in consent, go to the jury. If the Judge is not persuaded of that, it will be presumed that you did not consent and your assailant did not reasonably believe that you were consenting. Your assailant will not be expected to prove anything to a high standard to counter the presumption. He may do so by saying for example that although he had taken you hostage and held you against your will, you later formed an intimate relationship with each other that was consensual. The Judge will decide whether that amounts to ‘sufficient evidence’ – if so, the issue of your consent and/or his belief will go to the jury: if not he will be convicted of rape at the Judge’s direction.

A second list of circumstances<sup>68</sup> known as the *conclusive presumptions* cover such situations as when your assailant intentionally deceives you into thinking that his actions have another purpose – such as a medical examination; or intentionally pretends to you, to be someone you know – such as your partner or husband – to persuade you to consent.

If either situation is proved then you will be taken not to have consented and he will be taken not to have reasonably believed in

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68. Section 76 of the SOA 2003.

your consent. As these are 'conclusive' presumptions, once they are proved, your assailant will be guilty of rape. Outside these situations,<sup>69</sup> when consent is in issue, it will always be for the prosecution to prove from the outset that it was not given and that the defendant did not reasonably believe it was.

### *11.2.5 Assault by penetration<sup>70</sup>*

The 2003 Act introduces a new offence of assault by penetration designed to prosecute penetration with objects or parts of the body other than the penis. Both men and women can commit the offence and it can be committed against either a man or a woman. This offence carries the same maximum sentence as rape: life imprisonment. The reason is that it can have the same devastating effect on a victim as penetration with the penis – aside from pregnancy and infectious diseases it carries the same risk of physical and/or psychological injury.

An assault by penetration is made out when:

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

The penetration can be by a body part such as a finger or anything else, animal, vegetable, mineral or any type of object whatsoever. This means that once penetration is proved it is unnecessary to prove by what means it took place: you may not know what was used, only that you were penetrated: particularly if you are visually

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69. In both Ss 75 and 76.

70. Section 2 of the SOA 2003, the offence is triable only on indictment and the maximum sentence is life as for rape.

## PART C THE LAW

impaired or were dazed, confused or blindfolded. The penetration has to be of the vagina or anus, oral penetration is not included in this offence.<sup>71</sup> As with rape, it has to be intentionally done without your consent. The penetration must be 'sexual' which excludes medical examinations carried out with the patient's consent or in an unconscious patient, in her best interests for medical reasons. As with rape, the prosecution must prove that you did not give consent and that your assailant did not reasonably believe you did. Your assailant's reasonable belief will be decided in the same way as in the offence of rape and the presumptions about consent apply to this offence in the same way.

### *11.2.6 Sexual Assault*<sup>72</sup>

This replaces the old offences of indecent assault. Both men and women can commit sexual assault and it can be committed against either a male or female.

The offence is made out if:

- A intentionally touches B
- The touching is sexual
- B does not consent to the touching and
- A does not reasonably believe that B consents

Sexual assault carries a maximum of 10 years imprisonment. It is therefore a less serious offence than the previous 2 offences but nevertheless the high sentence shows that it can be a terrifying offence and very distressing for the victim. Touching has to be sexual<sup>73</sup> can be with any item or any body part (whether your

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71. Forcing a tongue in the mouth without consent may be sexual assault; an offence under Section 3.

72. Section 3 of the SOA 2003, it is triable either way and is punishable with a maximum of 10 years.

73. Defined above.

**PART C THE LAW**

assailant's or anyone else's) and it can be through your clothes (for example even bottom-pinching could be a sexual assault); and it can be either slight or severe (including penetration). The touching must be without your consent and your assailant must not reasonably believe that you consented. The way this is decided and the factors taken into account are the same as for rape and sexual assault by penetration. The presumptions about consent also apply to this offence.

### *11.2.7 Causing a person to engage in sexual activity<sup>74</sup>*

This is a completely new offence; either a man or a woman can commit the offence and it can be committed against either a man or a woman.

The offence is made out when:

- A intentionally causes B to engage in sexual activity
- The activity is sexual
- B does not consent to engaging in the activity and
- A does not reasonably believe that B consents

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

Where the sexual activity involves:

- Penetration of B's anus or vagina (with anything including a penis)
- Penetration of B's mouth with a person's penis (not necessarily your assailant's)

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74. Section 4 of the SOA 2003.

## PART C THE LAW

- Penetration of a person's anus or vagina with B's body or by B with any thing else or
- Penetration of a person's mouth with B's penis

The offence carries a maximum of life imprisonment and like rape and sexual assault by penetration, must be tried in the Crown court.<sup>75</sup> In any other situation, where there is no suggestion of penetrative sex, the offence carries a maximum of 10 years and can be tried in a Magistrates court or a Crown court.<sup>76</sup> One person forcing or bullying another into the sexual activity without consent may commit the offence of 'causing'; but force and bullying are not necessary to make out the offence. Tricking someone may amount to causing, provided there is some action by a person that results in another engaging in sexual activity. The causing has to be intentional and the prosecution have to prove that you did not engage in the sexual activity consensually and that your assailant did not reasonably believe that you consented. The way this is decided and the factors taken into account is the same as for rape, sexual assault by penetration and sexual assault. The presumptions about consent also apply to this offence.

This offence covers conduct that was not previously dealt with specifically in the law; for example where your assailant makes you perform a sexual act on yourself such as masturbating yourself. If your assailant causes you to perform such acts without your consent he may be committing this offence of causing a person to engage in sexual activity. If in committing this offence, he causes you to insert any object into your anus or vagina without your consent he will be liable to the maximum sentence of life imprisonment. If he causes anyone to place their penis in your

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75. Section 4(4) of the SOA 2003.

76. Section 4(5) of the SOA 2003.

**PART C THE LAW**

mouth he will be liable to life imprisonment. If he causes you to penetrate anyone else's anus or vagina he will be liable to imprisonment for life. And, if you are male and he causes you to place your penis in anyone's mouth, he will be liable to life imprisonment.

APPENDIX A GLOSSARY

# 12.1

## Glossary of terms

### *Accused*

References to 'the accused' refer to a person charged with a criminal offence.

### *Acquittal*

A discharge from prosecution upon a not guilty verdict.

### *Adjournment*

Putting off the hearing until a future time or date.

### *Anonymity*

To remain nameless, anonymous, your name will not be put forward.

### *Appeal*

An application to a court superior to the one which has decided an issue, to reconsider that decision and if thought fit, to alter it.

### *Assailant*

Attacker

### *Bail*

An accused person is admitted to bail when released from the custody of officers of the law. In criminal proceedings bail is governed by The Bail Act 1976.

### *Barrister*

A Barrister is a type of lawyer who is a member of one of the four Inns of Court and has been called to the Bar by her/his Inn. Barristers speak in court and may specialise in particular areas of law. Criminal barristers work mainly in the criminal courts.

### *Charge*

In criminal law a charge is an accusation.

### *Civil Action*

Non-criminal proceedings which are by way of an 'action'. There are two parties to an action a complainant and a respondent.

### *Custody*

Imprisonment

### *Committal*

Committal for sentence is the sending of a person to a higher court for sentence. Committal for trial is the determination of examining justices (Magistrates) who have heard the evidence and decided that there is sufficient evidence to justify putting a defendant on trial by jury for an indictable offence. Committal will be in custody or on bail. Committal may take place in some circumstances without consideration of the evidence.

## APPENDIX A GLOSSARY

***Community Sentence***

A non-custodial sentence which restricts an offender's liberty. Examples of such could be a Community Rehabilitation Order or a Community Punishment Order.

***Complaint***

A statement made to a third party by a victim of a sexual offence. To be admissible in evidence in support of the victim's account, a complaint must have been voluntary and not obtained by leading questions, and it must have been made at the first reasonable opportunity (known as 'recent complaint').

***Conviction***

The finding of a person guilty of an offence after trial. Summary conviction is conviction by a Magistrates' Court. A person is also said to have a conviction, after being found guilty of or pleading guilty to an offence: here conviction refers to the record of the offence. Previous convictions (sometimes referred to as 'previous') are past conviction(s).

***Criminal Injuries Compensation***

A person, who suffers personal injuries as a direct result of a criminal offence or of trying to arrest an offender or prevent a crime, may apply to the

Criminal Injuries Compensation Board for an award of compensation.

***Cross-examination***

When a witness has been intentionally called by either party in a trial, the opposing party has a right, after s/he has given her evidence (called evidence in chief), to cross-examine her/him. Cross-examination is not confined to matters proved in examination in chief. Leading questions are permitted. Failure to cross-examine a witness generally amounts to acceptance of her/his account.

***Crown Prosecution Service (CPS)***

The CPS is the independent public authority responsible for prosecuting people in England and Wales who have been charged by the police with a criminal offence. The CPS is responsible for how the case should be conducted, which includes deciding whether the prosecution should continue. The CPS prosecutes on behalf of the public at large and not just in the interests of one person. The prosecutor will read the papers in the file and consider the two tests laid down in the Code for Crown Prosecutors, which sets out the basic principles that Crown Prosecutors must follow when making a decision.

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### *Crown Court*

A trial in the Crown Court takes place in front of a Judge and jury. The Judge is there to run the trial and make decisions on the law. The jury of 12 men and women who are ordinary members of the public decide whether the defendant is guilty or not guilty. In the Crown Court there will also be a barrister or a solicitor who speaks for the prosecution and a different one who speaks for the defendant. They may wear wigs and gowns.

### *Damages*

Compensation or indemnity for a loss suffered by a person, following a breach of some statutory duty.

### *Defendant*

The person being prosecuted in a criminal trial.

### *Director of Public Prosecutions (DPP)*

Head of the Crown Prosecution Service, which conducts all public prosecutions.

### *Forensic Medical Examiner (FME)*

A Doctor who is specifically trained in clinical forensic medicine. In the police station these Doctors spend time examining people who have been arrested or the victims who have been

assaulted. They must be experts in examining wounds/ evidential matters and know the effects that drink and drugs have on a detainee.

### *Injunction*

An order by which a party to an action is required to do, or refrain from doing a particular thing. This can be a restrictive order or a mandatory order; it can also be made in the interim while the case is ongoing or as a final order. Once granted it is enforced by committal for contempt of court for any breach.

### *Licence*

Having been in prison a prisoner is released after serving his minimum term to serve the remainder of his sentence on Licence; either to the prison (if still a risk) or in the community. If on licence in the community it may be subject to certain conditions, for example: reporting to probation, living at an approved address etc. There are different types of licence and some are automatic or conditional depending on the type of sentence one has received.

### *Life Imprisonment*

This can be mandatory where a specific length of sentence will need to be served before release on licence. It

## APPENDIX A GLOSSARY

can also be discretionary where the length of the sentence will be undetermined depending on the risk identified.

### *Magistrates' Court*

Most cases that reach court are dealt with by the Magistrates' Courts. Magistrates will listen to all the evidence and decide whether the defendant is guilty or not. If the defendant is found guilty, or he admits that he is guilty, the Magistrates usually decide on the sentence. There will be either three lay Magistrates – in other words, citizens who have volunteered their time to act as Magistrates – or one professional District Judge. Sitting in front of the Magistrates or District Judge is the clerk who provides them with legal and procedural advice as well as dealing with administrative work. There will also be a barrister/ solicitor who speaks for the prosecution and another barrister/ solicitor, who speaks for the defendant. Wigs and gowns are not worn.

### *Marital Rape*

When a husband rapes his wife. The law does not distinguish between rape by a husband or any other person. In this circumstance the only difference

is that the woman's husband commits the act of rape.

### *Parole*

The release on licence of a prisoner serving his sentence. Such a licence may be revoked. The Home Secretary can grant or refuse an application for parole or may refer the prisoner to the parole board.

### *Perpetrator*

The person responsible for an act, in this context the person responsible for sexual assaulting someone.

### *Pre Sentence Report*

This is a report completed by a Probation Officer in the case of adults or a Youth Offending Team Worker in the case of youths. It is prepared before the convicted person is sentenced and can be ordered by a Judge or Lay Magistrates before they will pass sentence. A report may be ordered to help the Judge/ Magistrates decide on the most suitable way of dealing with the convicted person. It gives detailed information about the individual, indicates previous offences if any and gives recommendations as to the most suitable options the writer believes are available for sentence.

## APPENDIX A GLOSSARY

### *Prosecutor*

A person who takes proceedings against another in the name of the Crown – a legally qualified person.

### *Quash*

To discharge or set aside, to reject as not valid and the accused will no longer be prosecuted against at that time.

### *Rape Crisis Centres*

Local Rape Crisis Centres offer counselling, advice and support in local groups and by telephone around the United Kingdom. For your nearest Centre, see Appendix B.

### *Rape Victim Chaperone*

A police officer who has received special training to deal with sexual assault matters to support you through the court process. They are there to keep you informed, give you support, put you in contact with relevant support agencies, help you arrange hospital appointments and help arrange protection for you if necessary.

### *Remand*

On the adjournment of a hearing to a future date the order that the defendant be admitted to bail or kept in custody in the meantime. Should not

normally exceed 8 days, time served in prison whilst on remand shall be taken into account on sentence.

### *Sentence*

The judgement of a court on sentence, in this sense with reference to the Criminal Courts.

### *Sex Offences Act 2003*

The Sex Offences Act was implemented on the 1st of May 2004. The Act introduces new measures that will help the public have confidence in the criminal justice system and enable us to put the victim first.

**Part 1** of the Act modernises nineteenth century offences and plugs loopholes in the law.

**Part 2** deals with sex offenders. It strengthens the sex offenders register and introduces new civil orders to help prevent further offences from being committed.

### *Sex Offences Prevention Order*

The Sex Offences Act 2003 introduces sexual offences prevention orders, which combine the existing sex offender orders and restraining orders and will allow for whatever prohibitions on an offender are necessary to protect the public. Breach of these orders will be punishable by a

## APPENDIX A GLOSSARY

maximum penalty of five years' imprisonment.

### *Sex Worker*

A person who engages in sexual acts for money.

### *Sexual Assault Referral Centres*

Sexual Assault Referral Centres are a 'one stop shop' for a range of services including medical and police services with specially trained staff. More of these centres are now being set up across the UK visit <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/sexual-offences/referral-centres> for a full list.

### *Sexual Intercourse*

The act of having sex, either vaginal or anal intercourse.

### *Sexually Transmitted Disease (STD)*

A disease that people become infected with during sexual activity.

### *Solicitor*

A lawyer, who advises clients on matters of law, draws up legal documents and prepares cases for

conduct in court, from the start to conclusion of the case. Solicitors may also conduct cases and represent their clients in the Magistrate and Crown Courts. They generally specialise in one area of law, in relation to sexual offences this would be criminal law.

### *Verdict*

The answer of a jury on a question of fact in Criminal or Civil proceedings. In Criminal courts a majority verdict may be accepted. For a Criminal case a verdict may be guilty or not guilty.

### *The Code of Practice for Victims of Crime*

This code represents a minimum level of service that you can expect from the agencies involved in prosecution (such as the police forces and the CPS), once you have reported your offence.

### *Young Offender*

10 years old is the age of legal responsibility, over 10 years old and under 18 years old are the young offender age limits.

## APPENDIX B RESOURCES

# 12.2

## Resources – where to go for help

### *A. Rape Crisis Centres/Groups*

#### **Rape Crisis Centres**

[www.rapecrisis.org.uk](http://www.rapecrisis.org.uk), the most up to date list of rape crisis groups

#### **Women and Girls Network:**

020 7610 4345

Tues 6-8:30pm, Thurs 12-2:30pm

Helpline and counselling centre for women and girls overcoming

experiences of violence (physical/sexual/emotional) recent or in the past.

#### **The Truth about Rape including the Campaign to End Rape:**

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

#### **Rape and Sexual Abuse Support Centre (Croydon):**

08451 221 331

Mon – Fri 12-2:30pm, 7-9:30pm

Sat/Sun/Bank Hols 2:30-5pm

Administration: 020 8683 3311

Mon – Fri 10-4pm

Fax: 020 8683 3366

[www.rasasc.org.uk](http://www.rasasc.org.uk)

#### **One in Four:**

Helpline: 020 8697 2112

Mon 5-8pm, Sat 1-4pm

Administration: 020 8697 2112

Mon – Fri 10am-5pm

Fax: 020 8697 6843

[www.oneinfour.org.uk](http://www.oneinfour.org.uk)

#### **Child and Women Abuse Studies Unit (CWASU):**

020 7133 5014 9:30am – 5pm

Fax: 020 7133 5026

Based at the London Metropolitan University, Ladbroke House

### *B. Victim Support*

#### **Victim Support line:**

0845 3030 900 Mon – Fri 9am-9pm

weekends 9am-7pm

bank hols 9am-5pm

Gives emotional and practical help/support to victims of crime (including sexual violence). Also advice on criminal compensation and help in attending court.

### *C. Sexual Assault Referral Centres (SARCS) in the UK, by region*

#### **North East**

**Reach:** 0191 212 1551

The Rhona Cross Centre

18 Jesmond Road West

Newcastle Upon Tyne NE2 4PQ

**Reach:** 0191 565 3725

The Ellis Fraser Centre

Sunderland Royal Hospital

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Kayll Road, Sunderland SR4 7TP

### **Lancashire**

**SAFE:** 01772 523 344

Royal Preston Hospital

Sharoe Green Lane, Fulwood

Preston PR2 9HT

### **East Midlands**

**Juniper Lodge:** 0116 273 3330

Lodge 1, Leicester General Hospital,

Gweldolen Road

Leicester LE5 4PW

### **South East**

**The Sanctuary:** 01793 709 500

Taw Hill Medical Practice,

Queen Elizabeth Drive, Swindon

Wiltshire SN25 1WL

### **London/South East**

**The Haven – Camberwell:**

020 7346 1599

(Mon – Fri 9am-5pm),

020 7737 4000 (all other times)

Kings College Hospital

Denmark Hill, London SE5 9RS

[www.thehavens.org.uk](http://www.thehavens.org.uk)

**The Haven – Paddington:**

020 7886 1101 Mon – Fri 9-5pm

020 7886 6666 all other times

St Mary's Hospital, Praed Street

London W2 1NY

**The Haven – Whitechapel:**

020 7247 4787 at any time

The Royal London Hospital

9 Brady Street London E1 5BD

### **Greater Manchester**

**St. Mary's Sexual Assault Referral**

**Centre:** 0161 276 6515

St. Mary's Hospital, Hathersage Road

Manchester M13 0JH

### **Bristol**

**The Milne Centre** and

**The Cabot Suite:** 0117 928 3010,

0117 928 2580

Bristol Royal Infirmary, Lower Maudlin

Street, Bristol BS2 8HW

### **Derbyshire**

**Millfield House:** 01773 573840/1

PO Box 142, Derby DE1 2HF

### **Dartford, Kent**

**Renton Clinic:** 01322 428 595

Darent Valley Hospital, Dartford, Kent

DA2 8DA

### **West Midlands**

**The Walsall Rowan Centre:**

01922 644 329

Office hours 8.30am-5.30pm

24 hour emergency line

0800 73 111 62

2 Ida Road, Walsall, West Midlands

WS2 9SR

### **D. Legal Advice**

**Rights of Women:** Confidential

General Legal Advice line

020 7251 6577

Tues – Thurs 2-4pm and 7-9pm

Fri 12-2 pm

## APPENDIX B RESOURCES

Sexual Violence Legal Advice Line  
020 7251 8887 Mon 11am-1pm  
Tues 10am-12noon  
Administration Line: 020 72516575/6  
Textphone: 020 7490 2562  
Fax: 020 7490 5377  
www.rightsofwomen.org.uk  
Free confidential legal advice for all women regarding domestic and sexual violence, family law, divorce, child contact issues and lesbian parenting.

### *E. Criminal Injuries Compensation*

#### **Criminal Injuries Compensation**

##### **Authority**

0141 331 2726  
Tay House, 300 Bath Street  
Glasgow G2 4JR

### *F. Incest / Family Abuse Support*

**Reachout:** 020 8905 4501, 24 hours  
For adult survivors of child sexual abuse

### *G. Support for Male Survivors*

#### **Male Rape Support Association**

**(MRSA):** 07932 898274,  
07932 967461  
Mon – Fri 8am-10pm  
Helpline and other support services for male survivors of rape and childhood sexual abuse, their families and friends. Advice and counselling.

**Survivors UK:** 0845 122 1201  
Tues, Thurs 7-10pm  
Helpline, face to face counselling and support groups for men who have been raped or sexually abused.

### *H. LGBT Survivors*

#### **GALOP (Shoutline):**

020 7704 2040  
Textphone: 020 7704 3111  
Mon 5-8pm, Wed 2-5pm, Fri 12-2pm  
Support for LGBT people in dealing with homophobic violence and/or policing issues; includes dedicated service for Black and Minority Ethnic LGBTs.

#### **London Lesbian and Gay**

##### **Switchboard (National Service)**

020 7837 7324 (&TXT) 24 hours  
General advice/support and signposting to local projects and lesbian/gay-friendly lawyers.

### *I. Black & Minority Ethnic (BME) Survivors*

#### **Latin American Women's Rights**

##### **Service (LAWRS):** 020 7336 0888

Mon – Fri 10am-5pm  
Mission: To carry out and develop initiatives to alleviate and address the isolation and social exclusion facing vulnerable groups of women in the Latin American Community – Spanish, Portuguese, English spoken.

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### **Southall Black Sisters (SBS):**

020 8571 9595 10am-5pm

Information, advice, advocacy and counselling to Black and Asian women and children experiencing domestic and sexual violence.

### **Asian Women's Resource Centre (London)**

020 8961 6549 Admin line (English speaking)

020 8838 3462 Advice line (Multilingual line)

### *J. Religiously affiliated support*

#### **Miyad – National Jewish Crisis**

##### **Helpline:**

Freephone 0800 652 9249

Helpline for anyone from the Jewish community who is in need or distress.

Mon – Thurs, Sun 24 hours

Fri 12 noon to 1 hour before Sabbath

Sat 6pm to midnight (winter)

Access to interpreters

#### **Muslim Women's Helpline:**

020 8904 8193, 020 8908 6715

Mon – Fri 10am-4pm

Telephone listening and information services providing emotional and culturally appropriate support for Muslim women. Arabic, Bengali, Urdu, Punjabi, Gujarati, Farsi spoken, access to interpreters.

### *K. Support for Disabled Survivors*

#### **Respond:**

Freephone 0808 808 0700

Mon – Fri 1.30-5pm

Helpline and other support services for people with learning difficulties who are either victims or perpetrators of sexual abuse and other trauma, and for their carers. Individual and group counselling and psychotherapy. Risk assessments, investigative services, parents project, training, consultation, and supervision.

Bengali and Welsh spoken

**Disability Rights Commission:** 08457 622 633

Textphone: 08457 622 644

### *L. Support for Sex workers*

#### **English Collective of Prostitutes:**

020 7482 2496

Tues, Wed 12-4pm

Network of prostitute women of different races working at different levels of the sex industry. Campaigning since 1975 for abolition of all prostitution laws, for human, legal and civil rights for prostitute women; and for financial alternatives – higher benefits, grants and wages. Offer support/help and information on the laws and a wide range of other issues.

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### *M. Elder Abuse*

#### **Elder Abuse Response:**

Freephone 080 8808 8141

Mon – Fri 10am-4.30pm

### *N. Police Complaints*

#### **Independent Police Complaints**

#### **Commission:**

0845 3002 002 9am-5pm

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

### *Others*

**Justice for Women:** 020 8374 2948

[www.jfw.org.uk](http://www.jfw.org.uk)

#### **National Probation Service ('victim scheme'):**

This law enforcement agency offers an information service regarding sentenced offenders, for victims of serious sexual or other violent offences.

Please see the National Probation

Service website link for full details

<http://www.probation.homeoffice.gov.uk/output/page29.asp>

**Rights of Women works to attain justice and equality by informing, educating and empowering women to access their legal rights.**

**Membership is open to any individual woman or women's organisation.**

Benefits of Rights of Women membership include: discount on training courses and publications, Focus on Women Policy Newsletter, Annual Reports and opportunities to network at conferences and events.

**Please complete:**

Name

Organisation/Occupation

Address

Telephone  Email

**Please tick:**

National Organisation £50  Local Group £30

Individual (waged) £20  Individual (low waged) £10

Student/unwaged £6

**Please complete:**

I enclose a cheque for: £

To be paid by standing order (tick)

I wish to make a donation of: £

**Standing Order Payments:**

To (Your Bank's Address)

Postcode  Sort Code  Account No.

Please pay to the account of Rights of Women, Lloyds Bank plc, 31 Holloway Road, London N7 8JU, sort code 30-94-21, account no. 0610210, the sum of:

£  (numbers) or  pounds (words)

on the  (day) of  (Month) of each year starting on

the  (date) until further notice.

Signed:  Date:

If my application to become a member is accepted, I will agree to adhere to the rules, aims and objectives of Rights of Women.

Signed:

Date

Please return your completed form to Rights of Women, 52 – 54 Featherstone Street, London, EC1Y 8RT.

For more information about ROW, please contact us on 020 7251 6575/6 (tel), 020 7490 5377 (fax), 020 7490 2562 (textphone), or email: [info@row.org.uk](mailto:info@row.org.uk).

Industrial and Provident Society No. 23221R

## Sexual violence is unfortunately a reality for thousands of women.

Being a victim of sexual violence can be a traumatic experience. The process of reporting and prosecuting a sexual violence case can also be very complex. This handbook therefore provides a guide to survivors of sexual violence, family, friends and supporters of these individuals.

If you or someone you know has been sexually violated in any way this guide will make you aware of the stages you will have to go through if you decide to report your case to the police. It will give you an overview of the different stages of the legal processes involved from your reporting the offence to the final court hearing and the aftermath. It will also give you a basic understanding of the law in this area.

This extensive, detailed and accessible handbook includes:

- The reporting process
- Medical issues involved
- Police procedures
- Your involvement at the court stage
- Post trial issues
- Overview of sections 1-4 of the Sexual Offences Act 2003
- Details of other support agencies

Rights of Women's handbook for Adult Survivors of Sexual Violence is essential reading for all women who have experienced any form of sexual violence, for the professionals who advise them and for everyone working in the field of sexual violence.

Cathy Halloran is a practising barrister at Toops Chambers in London. She also teaches criminal evidence and advocacy at BPP Law School. She specialises in criminal defence and appeals of women who kill and has represented several survivors of drug-assisted rape in appeals for criminal injuries compensation.

**Rights of Women works to attain justice and equality by informing, educating and empowering women on their legal rights.**

