

FROM CHARGE TO TRIAL: A GUIDE TO CRIMINAL PROCEEDINGS



It is estimated that domestic violence affects one in four women and that sexual violence affects one in six women. It is also known that there is a significant link between domestic violence and sexual violence, for example, over half of all adult rapes are committed by the complainant's current or former partner. If you are experiencing or have experienced domestic violence and/or sexual violence there are a number of ways the law can protect you. This information sheet is designed to give information about criminal proceedings once the defendant has been charged with a criminal offence. If you are considering reporting an offence to the police or if the suspect has not yet been charged with a criminal offence see Rights of Women's information sheet **Reporting an Offence to the Police: A Guide to Criminal Investigations**.

Rights of Women also publishes a number of other information sheets and publications that may be useful (on domestic violence injunctions and sexual offences). For further information about these and other Rights of Women publications contact us or visit our website at www.rightsofwomen.org.uk.

Language

Almost all domestic violence and sexual violence is directed by men against women, but it can and does occur in same-sex relationships and in a small minority of cases, by women against men. Consequently, although we refer to the abuser as 'he' throughout, we

recognise that this is not always the case.

In this information sheet we will use the terms "suspect" or "defendant" to describe the abuser or perpetrator of violence and "complainant" to describe the survivor of domestic and/or sexual violence as these are the terms most commonly used in the law.

What is domestic violence?

There is no legal definition of domestic violence. However, the Government defines domestic violence as “...any incident of **threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality.**” This definition includes violence from family members other than a woman’s partner.

Some criminal offences that may be committed by a perpetrator of domestic violence include breaching a non-molestation order, assault such as common assault, harassment, or making a threat to kill.

What is sexual violence?

The **Sexual Offences Act 2003** sets out the law in relation to a number of sexual offences such as rape, assault by penetration, sexual assault and causing someone to engage in sexual activity. For information about sexual offences see Rights of Women’s information sheets **Understanding Sexual Assault and Causing Someone to Engage in Sexual Activity and Rape and Assault by Penetration: information for survivors of sexual violence** as well as our book **From Report to Court: A handbook for adult survivors of sexual violence**.

Different complainants

Domestic and sexual violence affects women from all ages and backgrounds, regardless of economic or social status, race, religion or immigration status. The criminal law of England and Wales that deals with domestic and sexual violence should protect all

women from violence (Scotland and Northern Ireland have different arrangements). This means that the police have the same obligation to assist and protect you whether you are a British citizen, an overstayer, an asylum applicant or someone with leave to remain in the UK as a spouse, student or worker. For detailed legal advice on your situation, contact our legal advice line(s). Further information about Rights of Women’s advice lines and their opening times can be found at the end of this information sheet.

Criminal proceedings

Criminal offences are investigated by the police and prosecuted (prepared and presented to the court) by the **Crown Prosecution Service** (the CPS). When the police have completed their investigation they will pass the evidence on to the CPS who will decide whether the suspect should be charged with a criminal offence. When deciding whether or not to charge a suspect, Crown Prosecutors (the lawyers who make decisions in the CPS), must first consider whether there is **sufficient evidence** available that is reliable and able to go before a court for there to be a realistic chance that the defendant will be convicted. If there is sufficient evidence the Crown Prosecutor must go on to consider whether or not a prosecution is in the public interest. The policy of the CPS is that in domestic violence and sexual violence cases it is almost always in the public interest to proceed with a prosecution. When considering whether or not to charge a suspect the CPS must consider alternatives to a prosecution (such as giving a caution). Further information on the decision to charge is available on the CPS website (see **Other useful telephone numbers**).

In addition to, or as an alternative to supporting the prosecution of someone who has been violent towards you, you may want to seek protection from the civil courts by getting an injunction (court order) such as a non-molestation order or occupation order. For further information about civil remedies see our information sheet **A Guide to Domestic Violence Injunctions**.

If the suspect is charged

Once the suspect has been charged with an offence he can either be released on police bail to attend the **magistrates' court** on a set date within a week or be **remanded in custody** (held in prison) and taken to court within 24 hours. Following charge the suspect is referred to as the **defendant**. The defendant's first appearance in court will be at the local magistrates' court. At the first appearance decisions will be taken as to where the defendant should be tried (either the magistrates' court or the Crown Court) and whether he should be on bail or held on remand until his trial.

Bail

A defendant who has been charged with an offence and remanded in custody has the right to have a bail application considered by the court. When deciding whether or not to grant a defendant bail the court will consider a number of factors including the seriousness of the offence, the defendant's character and the strength of the case against him.

If the court decides to release the defendant on bail, it can impose **any condition** on the defendant considered necessary to ensure that he attends court and does not commit any further offences including:

- Residence at a certain address.
- Payment of a surety (where a third party promises to secure his attendance at court and pays the court money which is forfeited if the defendant does not then attend court).
- Reporting to a police station at certain times (for example, "twice a day at 10am and 2pm").
- Complying with a curfew (having to be at his place of residence between certain times).
- Staying in or out of certain areas.

If you are concerned about whether or not the suspect or defendant will be granted bail, or, if he is granted bail, under what conditions, you can discuss those concerns with the police officer dealing with your case. The officer should pass on your views to the CPS. The CPS should then take your views into consideration when making legal arguments to the court as to whether or not the defendant should be granted bail or if so, what conditions are necessary.

Withdrawing a complaint

It may be that you decide that you do not want your case to go to court. If this is the case you can withdraw your statement at any time by contacting the police officer dealing with your case and asking to make a **withdrawal statement**. In the withdrawal statement you will have to explain why you no longer want the prosecution to continue. If a complainant states that information given in her previous statement was false she could be prosecuted for wasting police time or other offences designed to protect the criminal justice process.

In some cases the CPS will continue with a prosecution where a complainant has indicated that she does not want it to. When

deciding whether or not to proceed with a prosecution without the complainant's cooperation the CPS will consider her safety, the safety of any children and a number of other factors such as the seriousness of the offence and the defendant's criminal record. The CPS can continue with the prosecution without the complainant's evidence in some cases (for example, by relying on the evidence of other witnesses). Alternatively, they can apply to the court for a **witness summons** which is a court order that orders the complainant to attend court and give evidence. Anyone who fails to attend court when ordered to can be arrested and, depending on the circumstances, punished by a fine or even imprisonment.

Support for survivors of domestic and sexual violence

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

- Give you a single point of contact, with a named officer, who will assist you through the process and be responsible for co-ordinating support and other services.
- Assess and meet your needs, for example, by arranging child care, an interpreter or transport to court. They will also be available to discuss any concerns you have about giving evidence.
- Inform you about developments in your case.

If you have not been contacted by a Witness Care Unit after the defendant has been charged, talk to the police officer dealing with your case and ask them to put you in touch with your nearest Unit.

The Code of Practice for Victims of Crime (the "Victims' Code") sets certain standards that the police, the CPS and other agencies involved in the criminal justice system should meet. The Victims' Code states that survivors of domestic and/or sexual violence should receive an **enhanced service**. Those who are receiving the enhanced service should be:

- Told by the CPS within one day if a decision is made to drop or alter charges after someone has been charged.
- Told by the Witness Care Unit about the outcome of a case within one day, including explaining any sentence received.

The Victims' Code can be enforced by complaining about the agency involved. Information about the Victims' Code and how to complain is given in a booklet called **The Code of Practice for Victims of Crime, A Guide for Victims** which can be obtained from the Office for Criminal Justice Reform (see **Other useful telephone numbers**).

In some areas of England and Wales survivors of domestic or sexual violence may be offered specialist support from an **Independent Sexual Violence Advisor** (ISVA) or an **Independent Domestic Violence Advisor** (IDVA). ISVAs and IDVAs can assist you to access services and support you through the investigation and any subsequent criminal proceedings. ISVAs and IDVAs are usually only involved in cases where the complainant of the crime is considered to be at high-risk of further violence or abuse.

Which court?

All criminal proceedings start in the magistrates' court. However, some cases are

transferred to the Crown Court for trial or sentence. Domestic violence cases may also be dealt with in a Specialist Domestic Violence Court (a type of magistrates' court that specialises in domestic violence cases).

Whatever court a case is heard in, you can visit the court before the trial to look around. At court there should be separate waiting areas for prosecution and defence witnesses. You will also be able to read your statement through (or watch your video-statement) before you give evidence (attend court and say what happened to you).

Special measures

Survivors of domestic and sexual violence may be entitled to **special measures** to assist them in giving evidence at court. Special measures are practical things, for example, giving evidence from behind a screen so that the defendant cannot see you. Many survivors of sexual violence are entitled to **anonymity** so that your name or other information that could identify you cannot be made public. For information about support at court contact Victim Support (see **Other useful telephone numbers**).

Conviction and sentence

The defendant can only be convicted if the magistrates or jury are **sure** that he is guilty of the offence. If the defendant is found not guilty it does not mean that the court did not believe you or that the crime did not

happen. It means that the prosecution were not able to prove the defendant's guilt to the required standard. If a defendant is found guilty he will be sentenced. The sentence a defendant receives will depend on a number of factors including the offence committed, its seriousness and the defendant's personal circumstances and previous convictions. The defendant may be sentenced straight away or sentencing could be arranged for a later date to enable the court to get information about the defendant. The sentencing powers of the court depend on the type of court and the type of crime the defendant is convicted of.

Criminal injuries compensation

If you received an injury as a result of a crime of violence (whether or not anyone was charged or convicted of an offence) you may be entitled to receive compensation through the Criminal Injuries Compensation Scheme. For further information about the Scheme see Rights of Women's information sheet **A Guide to Criminal Injuries Compensation** or visit the Criminal Injuries Compensation Authority's website (see **Other useful telephone numbers**).

The law relating to domestic and sexual violence is complex and we have provided a basic overview of the law and terminology. We would strongly advise you to seek legal advice by telephoning our free, confidential legal advice line.

Please note that the law and procedure referred to in this information sheet is as it stood at the date of publication. The relevant law and procedure may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general information only.

For free, confidential legal advice on family law including domestic violence, divorce and relationship breakdown, children and contact issues call 020 7251 6577 (telephone) or 020 7490 2562 (textphone) on Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm and Friday 12 noon – 2pm.

For free, confidential legal advice on sexual violence, criminal, immigration and asylum law please call 020 7251 8887 (telephone) or 020 7490 2562 (textphone) on Monday 11am – 1pm and Tuesday 10am – 12 noon.

Other useful telephone numbers

Crimestoppers	0800 555 111	www.crimestoppers-uk.org
Criminal Injuries Compensation Authority	0800 358 3601	www.cica.gov.uk
Crown Prosecution Service (for information about the CPS and the decision to charge)		www.cps.gov.uk/yourcps.html
National Domestic Violence Helpline (Women's Aid and Refuge)	0808 2000 247	www.womensaid.org.uk
Office for Criminal Justice Reform and the Criminal Justice System for England and Wales (includes the Victims' Code and other useful information)		www.cjsonline.gov.uk
Rape Crisis Federation (for details of local services)		www.rapecrisis.org.uk
Rape & Sexual Abuse Support Centre (RASASC)	0845 122 1331	www.rasasc.org.uk
Samaritans	08457 909090	www.samaritans.org.uk
Victim Support Line	0845 3030900	www.victimsupport.org

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

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