RIGHTS OF WOMEN
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supporting non-abusing parents and carers of sexually abused children

YOUR CHILDREN, YOUR RIGHTS
a series of legal guides for parents of children who have been sexually abused

CHILDREN AND THE LAW

the criminal justice system and child sex offences

Experiencing and reporting a criminal offence to the police is often an anxious time, but when the crime is committed against your child, and the perpetrator is an ex-partner and the parent of that child, the criminal justice process can become very stressful indeed. From your child giving a witness statement to the police to giving evidence at a court trial, this legal guide aims to give clear and concise information to non-abusing parents of sexually abused children regarding criminal offences and the criminal justice process as it relates specifically to child victims. It can also apply to any adult caring for, and supporting, a child who is a victim in criminal proceedings. A child or young person is considered by the criminal justice system to be anyone under the age of 18 years old.

LANGUAGE

In this guide the word 'perpetrator' is used to describe the person who has abused a child, and 'defendant' is used when they have been charged with an offence and are facing court proceedings. The word 'victim' is used to describe the child who has been abused because this is the term that is used in the criminal justice process. Whilst this guide will refer to the perpetrator as 'he', we recognise that this is not always the case and that women as well as men abuse children.

THE CRIMINAL JUSTICE PROCESS an overview

Understanding the criminal justice process, and what you and your child can expect from it, is very important. The process encompasses everything from the moment your child tells the police what happened to the defendant possibly receiving a conviction and sentence for an offence.

The criminal justice process can be divided into two basic stages: the **police station stage** and the **court stage**. The police station stage covers when you first contact the police, the taking of a witness statement from your child, the police investigation including the potential arrest and interview of the perpetrator and the decision the Crown Prosecution Service (CPS) lawyers make about whether to charge the perpetrator or not. The police station stage can take a few days or many months, depending on factors such as how much evidence the police have to gather. For example, the forensic analysis of computer or mobile phone equipment can take many months.

If the perpetrator is charged with an offence he will then attend court, and this is the beginning of the second 'court' stage of the process, during which time the perpetrator (or 'defendant') will attend court to plead guilty or not guilty, and have a trial if he pleads not guilty. If a trial is held it is very likely your child (and possibly you) will have to give evidence at court to help the court decide whether the perpetrator is guilty of an offence. The average amount of time from when the perpetrator pleads not guilty to a trial is 6 months, depending in which

court it is decided to hold the trial and how busy the court is. At the end of the court process if he is found guilty or pleads guilty, the perpetrator will be sentenced for the offence committed and will receive a conviction (i.e. have a criminal record).

REPORTING TO THE POLICE

If you and/or your child decide to tell the police of sexual abuse, this is called making an **initial report**. There are various ways you can contact the police to make an initial report of a crime:

Option 1: If it is an **emergency** then you can **call 999** and the police will come to you. This option may not be suitable if your child is not in immediate danger.

Option 2: You can visit a **Sexual Assault Referral Centre** (**SARC**), if there is one in your area. A SARC is a centre, usually attached to a hospital, which offers medical examinations for victims who have been recently sexually assaulted but also offers to contact police for those who attend and/or refers attendees to counselling services or other further support. Contact details of SARCs can be found on the rape crisis website (see the end of this legal guide for further details). Phone the centre to make an appointment and to check that they accept children. You will also need to check if the SARC will accept you and your child if the sexual abuse occurred more than a year ago. Appointments can be made quickly – for example within the hour. Once there, the police will attend if you and your child wish. It is important to note that SARC staff may be required professionally to alert social services and/or the police if you or your child informs them of child abuse.

Option 3: You can go to your **local police station** and tell the staff at the **front desk reception** that you want to report a crime. There are no time limits for reporting sexual abuse of your child to the police. You can ask to be taken to a separate room whilst you do this, but you may have to give some basic information over the counter. You may also have to wait in a queue.

Option 4: You could find the **central telephone number** for your **local police force** (usually on the internet, or you could ring directory enquiries), or call 101, and ask to **report a crime over the telephone**. You should then be invited to the police station to speak with a police officer, or a police officer will attend your home. It is sometimes difficult to get through to your local police station. If this is the case it may be better to attend in person.

You could also tell the police what has happened anonymously, using someone else telling the police on behalf of your child, or by telephoning **Crimestoppers**. The perpetrator will not be arrested if you do this, but it will help the police in general to know a crime has occurred. However, the police may try and contact you and your child, especially if there are other reports of a similar nature. **Furthermore, if you disclose child abuse to a professional or the police, even anonymously, they may be required professionally to make further investigations and to inform social services and/or the police.**

Your child can make an initial report themselves, but the police may contact you to accompany them for further appointments before the investigation proceeds. Similarly, if you make the initial report on your child's behalf it is very likely the police at some stage will wish to speak to your child about what has happened.

What if I or my child do not wish to involve the police?

Complications can arise if you do not want to contact the police, or your child does not want to. If there is continued risk of harm to your child then you should report the abuse to social services and/or the police, who can take steps to protect your child from further abuse. Other people who hold certain professional roles (e.g. teachers, doctors, police officers, solicitors) will almost certainly be under an obligation to disclose reports of child sex abuse to social services if the child is still at risk from the abuse. Social services may investigate and may well decide to report the allegation to the police. There is no way to prevent them from doing this. This is when action can be taken even if you do not wish to report to the police.

Without your child's co-operation in making a witness statement (see below) a police investigation may not be able to proceed. However, once the police have received reports of a crime they can proceed in certain circumstances with an

investigation even without the support of a victim, if they think they can gather enough evidence without a statement from the victim. If your child has made reports to another professional e.g. a teacher, social worker, or has spoken to the police at school or at hospital, then the police can attempt to proceed using this report, even if you have not given permission for your child to be spoken to.

WHAT ROLE DO SOCIAL SERVICES HAVE?

Like other professionals, the police have a responsibility to consider informing local social services departments if a child discloses sexual abuse to them. Similarly, social services staff may report their findings, or make a referral, to the police if they think a crime has potentially been committed that needs to be investigated. However, social services will not control the police investigation, in that they do not work alongside the police and help gather evidence, take a witness statement from a child (except at the request of the police) or interview the perpetrator under arrest. They have **no official influence** on police decisions to proceed with or discontinue an investigation. A social worker may be asked, though, to assist an investigation and provide a statement to the police about any investigations they have conducted in relation to your child's safety or anything you, your child, the perpetrator or anyone else relevant has told them in relation to the child abuse. They may be required to give evidence on this basis at court if the perpetrator is charged.

The investigation social services may do in relation to your child concerns the harm your child may be, or be at risk of, suffering. It is separate from the police investigation to decide whether the perpetrator should be charged with committing a criminal offence. It can happen whether or not police are investigating. For more information on this process, please see the legal guide in this series **Children and the law – when social services are involved**.

MEDICAL EXAMINATIONS

On the same day as making an initial report the police may want your child to be medically examined, either at the police station by a doctor, called a Forensic Medical Examiner (FME) or Forensic Physician (FP) or at a Sexual Assault Referral Centre (SARC). This examination is unlikely to occur if it has been more than 7 days since your child was assaulted (unless your child has injuries). Any doctor or nurse who examines your child at a police station or SARC should have been trained to record medical evidence in a way that the police and the courts require evidence to be presented. The age of your child will also have to be taken into account when considering whether or not they see a paediatrician.

An FME will attend the police station to examine your child. A SARC is a centre, usually attached to a hospital, which provides medical assistance and examination if someone has been sexually assaulted as well as referring on to other services, such as counselling (see section **REPORTING TO THE POLICE** above). If you have made an appointment at a SARC first before contacting the police, then your child can be medically examined either before or after you report to the police.

You have to consent to a medical examination of your child for it to occur, or your child can consent themselves if the doctor assesses them as competent to make the decision – this is an assessment based on whether the child understands how to make the decision including the risks and benefits, potential complications and alternative options. If you or your child do not consent then an examination cannot be done, and you should be advised as to what impact this would have on a subsequent police investigation. Any findings from the medical examination can be used as evidence in criminal proceedings. You and your child should also be advised as to pregnancy and sexually transmitted infection (STI) tests, if relevant.

MAKING A WITNESS STATEMENT

When will it be made?

After you have made an initial report an **appointment** will be made for your child to give a **witness statement** to the police about what happened. The appointment can be either on the same day (in an emergency or when the police want to arrest the perpetrator quickly) or another time, usually a few days or weeks after. If your child is tired or distressed and does not want to make a

witness statement immediately, you should tell the police officer and ask to come to the police station another time. Sometimes the police will ask that your child make a witness statement immediately, but they should explain to you why they need this done quickly.

Government guidelines for the police (*Achieving Best Evidence in Criminal Proceedings* [2011] Ministry of Justice) suggest that planning needs to occur before a witness statement is taken from a child, and that a separate appointment may be needed in order to establish a 'rapport' with your child. These guidelines suggest that in most cases the police should consult with you regarding the suggested timetable for taking a witness statement and explain what will happen so that you can tell your child.

If you are not provided with any information as to when and how a witness statement will be taken, you can ask the police to give you a proposed outline for the taking of the witness statement, what this involves, and your role within it. It is likely that the police will ask you not to discuss the incidents of sexual abuse with your child before the witness statement has been taken. This is to prevent allegations of 'coaching' at trial i.e. to prevent the perpetrator accusing you or anyone else of telling your child what to say.

What happens when a witness statement is taken?

A **witness statement** is **what your child says happened**. They will be asked to provide as much detail as they can. There are two ways of giving a witness statement.

1. A police officer **writes down everything your child says**. You/your child read what they have written and then you and /or your child sign it to say that you agree with what is written down. This is then your child's **witness statement**. It is very unlikely a witness statement will be taken from a child in this way. It is much more likely that they will be recorded speaking on a DVD.
2. In cases where a child or vulnerable adult is the victim it is likely they will be **videoed** speaking to a police officer and answering questions (this is called an Achieving Best Evidence, or ABE, video). The **DVD itself** will then be the **witness statement**. This could be played at court if the case goes to court, and means your child will probably not have to go through what happened again in court (although they will still be asked questions). Any police officers with your child when they are being videoed should be specially trained to take a statement in this way, and should have prepared properly for it.

Your child should have breaks on a regular basis when making a witness statement. By making a witness statement your child has formally told the police that a crime has happened to them, and so the police investigate that crime. The police and CPS also now know what your child would say if the case went to court. It should also be confirmed at this stage who will keep you informed about developments in the case and be your child's main point of contact (this could be someone from the Witness Care Unit or a police officer on the team responsible for investigating the case).

What if my child is too young to make a witness statement?

There is nothing in the law which prevents a child **of any age** giving a witness statement (and therefore potentially giving evidence in a criminal court). The method of how evidence in a witness statement is gathered will obviously differ according to a child's age. Police should make an assessment of your child's **competence** to give evidence (and therefore make a witness statement). The general basis on which competence is assessed is whether a child can understand questions put to them, and whether they are able to give answers that can be understood. As a child may be asked to give evidence at court (and if a child is 14 years or above then this can be under oath i.e. confirming what they are saying is the truth) it is usual for the police to also ask your child questions about truth and lies, and whether they know the difference. This will often be asked at the start of a witness statement being made.

It is the police role to assess your child's competence as to giving evidence and making a witness statement. If you think your child is not competent to give evidence then you should discuss this with the police. However, the assessment and final decision rests ultimately with the police.

What if I do not want my child to, or my child does not want to, make a witness statement?

If both you and your child do not want to make a witness statement the police cannot force your child to make one (see above regarding reporting to the police initially). The police may be able to continue the investigation using other evidence, but this is not usual. Whether or not the police are investigating has no impact on a social services investigation (see **WHAT ROLE DO SOCIAL SERVICES HAVE?** above). If your child wants to make a statement and they are deemed competent by the police, but you object, you cannot force the police to stop investigations.

Can I be present when my child makes a witness statement?

It is possible for you or another adult to sit in with your child whilst they are giving their witness statement. If you ask to do this, and are permitted, you should be told of your role as a support person. However, police can, and often do, refuse you being present in the room where the witness statement is taken if they think that it would not lead to your child's best evidence being given, and will almost certainly refuse if you are a witness, or a potential witness, in the case.

If the police do refuse your entry, ask them to state their reasons to you clearly and, if possible, in writing. Take a few minutes to consider these, even if time is pressured and the police want to get on with the appointment. You could perhaps suggest other adults to the police who might be able to act as a supporter, or you could ask if you could be present for just some of the taking of the statement. The government guidelines referred to above suggest that your child's viewpoint should be taken into consideration when the police decide about the presence of an adult supporter in the room. Therefore, if your child does not feel comfortable without you there, it may be possible to re-arrange a witness statement appointment whilst you discuss the issue with the police. After discussion, though, it is difficult to force the police to admit you if they maintain objections to doing so.

Victim Personal Statement

When your child has finished making their witness statement, the police may ask them to make a **Victim Personal Statement** (also called a VPS or a **victim impact statement**). This is **not** about what happened to them, but what **effect** it had on them. For example, they can describe the impact of any physical injuries, or explain that they feel more anxious now. Their victim personal statement will be given to the judge to read/watch if the perpetrator goes to court and is found guilty (a copy will also be given to the perpetrator and his lawyers). A VPS can also help the police to decide what **special measures** they may need. If your child is very young or has learning disabilities, you may be asked to give a victim personal statement on their behalf (or provide an additional one). You should ask the police if, when and how they intend to take a victim personal statement.

A victim personal statement can be made at any stage until the perpetrator is sentenced by a judge (and more than one can be given if your situation changes). If your child has not made a victim personal statement then you should talk to the police officer or member of the Witness Care Unit who is your child's named contact and ask them if a statement can be made.

Special measures – protections to help your child

After your child gives their witness statement, or perhaps before, the police should talk to you and your child about protections available for them that, should their case go to court, make them feel more comfortable about giving evidence.

These protections are called **special measures**. It is common for child victims to have their ABE video statement played at court, so they do not have to go through everything again, and to answer other questions from the defendant's lawyer via video link (i.e. not be in the courtroom, but in another room in the area or in the court, and they will be seen by those in the court room on a screen). Your child can have an adult (possibly you if you are not a witness in the case) to sit with them in the video link room when they are answering questions. Other examples of special measures are:

- The Judge can ask all the people in the public gallery (i.e. watching) to go out of court when your child gives evidence.
- If the case is in the crown court then the lawyers and the Judge can remove their wigs and gowns.
- If your child needs someone to help them give evidence, for example if they do not speak English well and need someone to interpret, or if they are deaf and need a sign language interpreter, then they can have one. If your child needs someone to help them understand questions, this can also be arranged. These people are called intermediaries, and are used most often where there are child victims or witnesses giving evidence. You can ask your police officer or Witness Care Unit contact if you think your child should have use of an intermediary when giving evidence.
- If the perpetrator has chosen to represent himself rather than have a lawyer, he will not be able to ask your child questions. A lawyer will be appointed by the court to ask your child the questions instead.

The police will probably discuss these measures with you and ask you at the beginning what you would want. Although a Judge will have to decide what special measures your child can get and whether your child can get them, you and your child's views are very important.

THE POLICE INVESTIGATION

After a witness statement is made, and sometimes in an emergency before a witness statement is made, the police will start to investigate what your child has told them. The police aim to find evidence to support what your child has said but they will also use evidence even if it does not support what your child said, this is their public duty. The police can investigate in lots of different ways; they can speak to witnesses (and may wish to take a witness statement from you), look at CCTV cameras, at medical evidence and/or medical records (see **PRE-TRIAL THERAPY** below), at computers and mobile phone records. The police investigation may take only a few days or many months, depending on how much evidence there is and whether it is an emergency.

Official guidance called the **Code of Practice for Victims of Crime** says that the police should tell you what is happening with your case on an agreed basis (this is usually once a month) and when something important happens, for example, they arrest someone, then you should be told within 24 hours. The Code of Practice also says that you and/or your child should be given the contact details of a named contact from the police or the Witness Care Unit (staffed by the police and the Crown Prosecution Service) for you to contact if you have any enquiries. If you are not getting this contact from the police you can ask for this to happen and quote the Code of Practice (available to download from the Home Office website). If you/your child are still not being contacted you cannot sue the police but you can complain to the head of the police unit that is investigating your child's case and/or the duty inspector of the police station where the unit is based, who is required to deal with any complaints, or you can make a formal complaint to the Independent Police Complaints Commission (IPCC), details for which are below.

Arresting the perpetrator

As part of the investigation the police are likely to want to arrest the perpetrator. In certain circumstances (usually if it is decided that there is no risk of the perpetrator running away, alerting or interfering with witnesses or tampering with evidence) the police can invite the perpetrator to attend the police station voluntarily. When he arrives it is likely he will be **arrested**, which means he is **not** free to go.

If the police need to arrest the perpetrator quickly, because it is thought he, for example, is a risk to the public or will run away, tamper with evidence or interfere with witnesses, then he may be arrested at his house or work and taken to a police station.

Once at the police station the perpetrator will be interviewed about what happened. He will not usually be given your child's witness statement, but will be told facts about when and where the offence took place. He may be told your child's name. He can have a solicitor with him in the interview. The interview will be tape recorded (not videoed) and the perpetrator can say what happened, or can stay silent.

The perpetrator can be held at the police station for many hours, even days. Once he has been interviewed the police have a number of options:

- They can release him on bail whilst they do more investigations. This means he is free to go but he must attend the police station on another date. If this happens, it is likely that he will have **bail conditions** not to contact your child. Therefore, if he does try and contact you or your child, or any of his friends or family contact you or your child, you should tell the police. You and/or your child should be told when he is arrested and interviewed, and also if he has been released, and with what bail conditions. If you want a particular bail condition to be imposed e.g. that he stay a certain distance away from your property or a non-contact condition, you can suggest this to the police. If the police refuse, ask for them to give clear reasons in writing for their refusal. If you do not agree with their reasons, you can complain.
- The police can immediately pass all the information to the **CPS** who will make a decision whether to take the case to court i.e. charge him. If he is charged then he can be **kept in the police station overnight** and taken to court the next morning, or he can be let out on bail on the condition that he has to attend his first court hearing in a few weeks. He should also have a bail condition not to contact your child.
- The police could decide to either give the perpetrator a caution (or warning) and let him go, or not proceed with the case against him. Cautions do not happen often in cases of child abuse. If the police do not proceed with the case you can ask your police contact the reasons why. You can ask for a review and/or complain if you are not satisfied with the decision, but you cannot force the police to revise the decision (see below).

THE DECISION TO CHARGE

When the police think they have gathered all the evidence they will give it to the **Crown Prosecution Service** (**CPS**) who will then make the decision about whether or not to charge the perpetrator. The CPS are lawyers who prosecute criminal cases on behalf of the victim and on behalf of the general public. The CPS is paid for by the Government and have a similar status to the police and the NHS.

Sometimes the police will make a decision not to proceed with the case and not to pass the evidence to the CPS for a charging decision. This can happen when a supervising police officer has assessed the evidence in the case and has come to the conclusion that it will not pass the evidential stage of the CPS charging test (see below). You cannot force the police to change their minds if this has happened in your child's case, but you can ask the police (in person or in writing or both) to review their decision and/or pass the evidence to the CPS for a charging decision in the usual way. You may also wish to consider the judicial review procedure (see below).

In all other cases evidence should be passed to the CPS by the police in the usual way. The CPS lawyers decide whether to charge a case using a two stage test.

The two stage charging test:

1. **Is there sufficient evidence to provide a realistic prospect of conviction?** In other words, based on the evidence gathered, is it more likely than not that the court will think the perpetrator is guilty of the criminal offence? The CPS lawyers do not have to think that the perpetrator will definitely be found guilty at court. They will look at all evidence, including your child's witness statement and what the perpetrator says in his interview.
   AND
2. **Is it in the public interest to charge?** If there is enough evidence to charge, the CPS then have to look at whether it is in the public interest to take the case to court. To do this they will have to 'weigh up' a number of factors. They have to balance the need to charge someone with a serious offence with other circumstances such as the age of the perpetrator-if he is very old or very young – or if going to court would put your child under so much stress that it would make them ill.

It is **very important** to know that you and your child **do not** decide whether the perpetrator gets charged or not. Your views can be taken into account by the CPS, **but they do not have to be**. So if your child does not want the case to go to court and tells the police this, it does not mean that the CPS will not charge the perpetrator. This is because they act for your child but also for the public as a whole. If you and your child do want the perpetrator to be

charged a decision could still be made by the CPS not to charge him if, for example, it was thought there was not enough evidence.

You should be told of the CPS (or any police) decision **within 24 hours**. You can be told of the decision by the police on the phone or by letter. Sometimes the CPS will write and inform you of their decision.

Whatever the decision, you can ask for reasons (usually in writing) as to **why** it was made. If the decision is not to charge, you can also ask your police contact to set up a meeting with the CPS where you and your child can talk to the CPS lawyer about the decision and anything you disagree with. You can ask for the CPS to review the case and potentially re-open it, and you can complain to the CPS Chief (or District) Crown Prosecutor for the area or to the Director of Public Prosecutions (the DPP) but you cannot force them to review or re-open a case. Cases where an accurately reasoned decision has been made not to charge tend to be re-opened only if there is new evidence, for example if someone else reports that they have also been sexually assaulted by the same person.

Judicial Review of a charging decision

It may also be possible to apply to the High Court for a judicial review of a decision of the police or CPS. A judicial review is not an appeal, in that the High Court Judge's role in judicial review is **not to make a new decision**, but to look at whether the police or CPS followed correct procedures, and followed their own policies, and examine whether the decision was made in a correct and fair way. If the Judge thinks that the decision has not been made correctly or fairly, or is irrational (so unreasonable that no reasonable CPS staff or police officer could have made that decision) then the court can direct the CPS or police to make a new decision following the correct procedure and policies. This does not guarantee that any subsequent decision will be in your favour, but that it will have been made lawfully. In cases where a clearly unlawful decision has been made, the starting of judicial review proceedings may encourage the police or CPS to make a different decision without waiting for the court to look at the case.

Applicants have to be granted leave (the permission of the court) to apply for judicial review by the court, and the review process will only be of use in limited circumstances (and applicant's may have to pay costs if they are not successful), so it is advisable that you contact a lawyer if you are considering this option (see end of this guide for help finding a lawyer). If you are not able to receive legal aid, you may need to pay privately for a lawyer to represent you and your child. The time limit for applying for judicial review is within 3 months of the decision being made.

WHAT CAN THE PERPETRATOR BE CHARGED WITH?

Most sexual behaviour that is illegal in England and Wales is found in the Sexual Offences Act 2003. The SOA 2003 broadened extensively the scope of criminal offences in relation to sexual acts and behaviour with children. The offences are detailed and many, so this guide aims to only provide an overview of what offences the perpetrator can be charged with in relation to sexual activity with a child. In addition, someone can also be charged with inciting (encouraging) or aiding and abetting (assisting) an offence.

Sexual activity with children is divided into different types of offences with different maximum sentences according to the age of the child.

If a child or young person is under 13 then they cannot be deemed in law to consent to any sexual activity, so very serious offences will be committed even if the child 'agrees' to the sexual activity. Therefore:

- If someone penetrates a child's mouth, vagina or anus with a penis and the child is under 13 it is rape and the maximum sentence they can receive is life imprisonment.
- If someone penetrates a child's mouth, vagina or anus with an object other than a penis (e.g. a finger) and the child is under 13 it is assault by penetration and the maximum sentence they can receive is life imprisonment.
- If someone touches a child under 13 in a sexual way then this is sexual assault and the maximum sentence they can receive is 14 years in prison.
- If someone makes a child touch themselves in a sexual way then this is causing someone to

engage in sexual activity and the maximum sentence they can receive is life imprisonment (if involving penetration) or 14 years in prison (if not).

If the child is between 13 and 15 years old then the child can be deemed in law to consent to sexual activity, but it is still against the law. Therefore, if a 30 year old man had sex with a 15 year old girl knowing she was 15 and she wanted to have sex, then he would be committing the offence of sexual activity with a child (i.e. someone under 16 years old), but he would not have committed rape. If she did not want to have sex and he knew this, but continued to have sex with her, then this would be rape **and** sexual activity with a child. If the girl was 12 and agreed he would still be committing rape by having sex with her (see above).

The four main sex offences in relation to children under 16 are:

- **Sexual activity with a child** – any intentional sexual touching where the perpetrator is 18 or over and the child is under 16. Maximum sentence is 14 years in prison.
- **Causing or inciting a child to engage in sexual activity** – any involvement in or encouraging of the sexual activity of a child. The sexual activity can be with the perpetrator or with another child or adult. Maximum sentence is 14 years in prison.
- **Engaging in sexual activity in the presence of a child** – sexual activity when the child is present and perpetrator knows or believes the child is aware of the activity or intends child to be aware of the activity, and this must be for the purposes of the perpetrator obtaining sexual gratification. Maximum sentence is 10 years in prison.
- **Causing a child to watch a sexual act** –the perpetrator must intentionally cause a child to watch a third person engaging in sexual activity or look at an image of such. This covers the watching of, or looking at, any pornographic image. It must be done for the sexual gratification of the perpetrator, so, for example, a teacher showing pupils a couple having sex as part of a sex education video would not be guilty of the offence. Maximum sentence is 10 years in prison.

For all of the above offences, consent of the child to any activity is not relevant, and there is a defence as to the age of the child. If the child is aged between 13 and 15 and the perpetrator reasonably believed that the child was 16 or over at the time (reasonable belief would be decided by a court) then they would not be guilty of the offence.

If a person under 18 commits any of the above offences then they would still be guilty of an offence, but the maximum sentence they can receive is reduced to 5 years in prison.

There are other sexual offences in relation to children concerning the planning of a child sex offence. These ensure that even if no sexual activity occurred a perpetrator is still criminally liable:

- **Arranging or facilitating the commission of a child sex offence.** This is committed by anyone planning (either with others or by themselves) to commit a child sex offence whether or not it is committed, or assisting anyone else to commit a child sex offence whether or not it is committed. The offence carries a maximum sentence of 14 years. There are exceptions for those giving, for example, family planning advice.
- **Meeting a child following sexual grooming.** A person 18 or over commits this offence if they travel with the intention of meeting a child to commit a sexual offence and they have met or communicated with the child on at least 2 or more occasions. The child must be under 16 years old and there is a defence if the perpetrator reasonably believed the victim to be 16 or over at the time of the offence. The offence carries maximum sentence of 10 years.

Finally, there are offences in relation to sexual activity with a child family member and sexual activity with a young person under the age of 18 when the perpetrator is in a position of trust in relation to the young person.

- **Abuse of a position of trust.** These are offences that can be committed by someone who engages in sexual activity with a **person under 18** and who is in a position of trust in relation to the victim, essentially a **teacher**, **guardian** or **carer**. There is a defence if the perpetrator reasonably believes the victim to be 18 or over at the time of the offence. The maximum sentence for this offence is 5 years imprisonment.
- **Sexual activity with a child family member aged under 18** and inciting a **child family**

member aged under 18 to engage in sexual activity. There has to be a **prohibited relationship** which includes all close family members whether by blood or adoption, and also expands to step parents, first cousins and lodgers or au pairs if certain tests are met, such as if the perpetrator is living with and is responsible for the care of the child. If the perpetrator is 18 years old and over then the maximum sentence is 14 years imprisonment, and if perpetrator is under 18 years old the maximum sentence is 5 years.

PRE-TRIAL THERAPY

Your child may well have been referred for counselling or other types of therapy before or after you reported to the police. Once the perpetrator has been charged and goes to court, what your child has said in therapy may become of interest to his lawyers. Counselling and therapy notes are confidential unless and until a court order is obtained to disclose them. This is something that the police and CPS are aware of, and why it is possible the police will ask for your child's medical records or therapy notes as part of the investigation. The CPS may refer to medical records and notes in their charging decision. However, the fact that this occurs does not mean your child should not access therapy or counselling if needed. The guidance for this (*Provision of Therapy for a Child Witness Prior to a Criminal Trial* [2001] Department of Health) states that if the relevant professionals responsible for your child's welfare (i.e. medical professionals, social services) assess your child as in need of therapy and court proceedings are a possibility, then therapy can begin or continue, even if this has an impact on evidence at the trial (although the emphasis is on carefully managed communication to ensure that this does not happen). What matters is the best interests of your child. What you should do is alert the police of the fact that your child is receiving, or about to begin, therapy. The relevant professionals concerned with ensuring your child receives therapy should communicate with the police and CPS in any case.

THE COURT PROCESS

If the perpetrator is charged he will be called 'the defendant' in court. He can be held in prison to await his court hearings, or he can be released on bail to go to court within two or three weeks. If he is released on bail then there can be bail conditions imposed e.g. a non-contact condition with you and your child. If you are contacted by him, you would need to contact the police immediately because breach of conditions at this stage could affect whether or not he gets bail or goes to prison.

Your child will not usually be expected to go to court unless there is a trial. But the defendant will be expected to go to court several times before any trial, to decide what court should hear the case and for the defendant to plead guilty or not guilty. If he pleads guilty he will be sentenced and it is unlikely your child will have to attend court at all. If he pleads not guilty then the Judge will decide when the trial will take place, at which your child will probably have to attend to give evidence. Your police officer or Witness Care Unit contact should ask your child (or you) for your dates to avoid when the court is setting a trial date. If you are not asked about this and you know that the perpetrator has been charged, speak to your police officer or Witness Care Unit contact.

There are complicated factors which determine whether or not the defendant will have a trial in the magistrates court, the crown court or the youth court. Most of the time cases involving child abuse are deemed so serious that they can only be heard in the crown court, with a trial in front of a Judge and jury. However, if the defendant is a young person (under the age of 18) then his trial may be heard in the youth court, with no jury but specially trained Judges. The youth court is also closed to the public, unlike the crown court. It may be though, that an application can be made to clear the public from a crown court courtroom when your child is giving evidence. As the youth court is a closed court, permission will be needed from the Judges for you to be allowed into court when your child is giving evidence. This is a decision for the Judges to make, but if they decide that you cannot, you can ask for their reasons and if necessary, suggest another adult who can sit in court to support your child.

If a trial takes place it always follows the same basic format of selection of the jury (if in the crown court) followed by legal arguments first (for example bad character or special measures applications, see below for more details). The prosecution will

then make an opening speech and present all their evidence, followed by the defence. This means that your child, as primary prosecution witness, will be giving evidence at the beginning of the trial. At the end of the trial speeches can be made by the prosecutor (sometimes) and defence lawyers (always) to persuade the court to make a finding of guilty or not guilty.

GIVING EVIDENCE

When the defendant pleads not guilty and has a trial it is likely your child will have to go to court and give evidence about what they say happened.

It is likely that your child's video statement (called an ABE) will be played in court. It is likely that your child will be given a chance to watch their ABE video before court to refresh their memory. Usually the ABE video is edited. If you disagree with the edits, you can ask the prosecutor the reasons why the video has been edited in a particular way. If your child's video statement is played in court they may still be asked questions by the prosecutor. Very occasionally a Judge may decide that the playing of your child's video statement should not be allowed, in which case your child may be required to answer more questions from the prosecutor. Your child in these cases may be able to give evidence behind a screen or by video link. You should be told if possible in advance if the video will not be played.

Irrespective of whether the video is played or not, your child will be asked more questions by the defendant's lawyer. This is called being **cross-examined**. Again, your child can answer these questions behind a screen or via a video link, or with the benefit of any other special measure (see below). The defendant's lawyer will ask your child questions about what they say happened, but should be stopped by the Judge if they ask questions in an inappropriate manner. The defendant's lawyer will have to ask the Judge's permission before they can ask any questions of your child relating to sexual history. The Judge will only allow such questioning if it is relevant e.g. if there were other incidents with the same perpetrator. If you are concerned about questions your child is being asked you should speak to your police contact or the prosecutor and raise your concerns. It may be that the prosecutor can object to the Judge.

What happens if my child doesn't want to give evidence?

By giving a witness statement to the police someone agrees that they will go to court and tell the court what has happened to them. If they don't want to go to court then they can go to the police and say this in a statement – called a **withdrawal statement**.

If your child makes a withdrawal statement the police should ask them why they want to make it. The police may want to know if having special measures would help your child and if they are under pressure from the perpetrator or other people. It is a criminal offence for the perpetrator (or anyone else) to frighten or induce (put pressure on or persuade) your child into saying they do not want to go to court.

If your child states that they lied about what happened then it is possible (if your child is older) that the police **may want to investigate** the criminal offence of perverting the course of justice or wasting police time. If your child states that they told the truth then a withdrawal statement should not trigger an investigation.

The CPS can consider your child's withdrawal statement when they decide whether to charge the perpetrator, or if he has already been charged then they may reconsider the case.

Making a withdrawal statement does not mean that the police and the CPS will automatically stop the case. They may decide to continue because, for example, they believe that the case against the perpetrator is a strong one and is so serious that it should be prosecuted in the public interest. Your child can only be forced to go to court if they don't want to if they are given a **witness summons**. If they do not go to court when they have been given a witness summons then they (or potentially you as their carer) can be punished for disobeying the court. If they change what they say happened from their witness statement then they can be questioned about this in court.

How does the Judge decide if my child should get special measures?

When your child is giving evidence in court they may be able to have special measures, which are protections to make them feel more comfortable

about giving evidence, like giving evidence behind a screen or by a video link so they are not in court. Special measures should have been discussed with you and your child at the investigation stage before the perpetrator has been charged (see above). In order for your child to get special measures the prosecutor needs to apply to the Judge for them. The Judge needs to decide whether the witness is **vulnerable or intimidated** and if the evidence of the witness will be better if they have special measures in place. If granted, the Judge will decide what measures are most appropriate for your child.

As a young person, and someone who has experienced sexual violence, your child will **automatically** be thought of as a vulnerable or intimidated witness.

If you want special measures, or want to know about them, then you should ask your police officer or Witness Care Unit contact.

As a victim of sexual violence, and a child, **the media** (newspapers, radio, TV) are **not** allowed to name or identify your child. They can name the defendant unless by naming him it will be easy to work out who your child is.

BAD CHARACTER EVIDENCE

The prosecution can apply at trial for the Judge to allow the court to hear about the defendant's previous convictions or other relevant previous disreputable behaviour. There are rules regarding the admission of bad character evidence but, generally, to be presented to the court the Judge must think that the bad character evidence will not make the trial unfair and is relevant to the trial issues. For example, it would be relevant if the defendant has been convicted before, or even arrested but not charged, for child sex offences. If you want bad character evidence to be admitted you should discuss this with your police officer contact or the prosecutor, although it is the Judge's decision whether or not to allow bad character evidence to be presented in the trial.

AFTER COURT

At the end of the trial it will be decided if the defendant is guilty or not guilty. If you and your child are not in court, then you should be told what happened by your police officer or Witness Care Unit contact within 24 hours.

To find a defendant guilty of an offence the Judges or jury have to be satisfied so they are **sure** that he committed the offence. Therefore, if the defendant is found not guilty it does not mean that the court thought your child was lying. If he is found not guilty, the defendant will not get a criminal record and will be free to leave court. If a jury cannot decide whether or not the defendant is guilty (called a 'hung jury'), then another trial date may be set. This does not occur often and will be explained to you if it happens. If it is decided that the defendant is guilty then he will get a criminal record and he will be sentenced by the Judge. He will either be sentenced straight away or his case will be put off for a few weeks so that reports can be prepared about him for the Judge to read.

Sentencing

The Judge decides what sentence the defendant receives after he has pleaded guilty or been found guilty at trial. What the defendant gets as punishment depends on lots of different factors:

- What has happened to your child.
- What your child says in a **victim personal statement**.
- Whether there was anything that made the offence more or less serious e.g. multiple incidents.
- What the defendant says about himself and what is in the pre-sentence report.
- Legal guidelines for sentencing.

What sentence will he get?

For most child sex offences the defendant will receive a length of time in prison. Usually the defendant will spend half of whatever prison time they get in prison and the other half out of prison but being monitored by the **probation service**. If this does not occur then you can ask your police officer or Witness Care Unit contact, or any probation staff you have been given contact details for, why this is the case. There are other types of sentence available as well as prison. If the defendant does not get a prison sentence you can ask your police or Witness Care Unit contact to explain why not.

If the defendant has received a prison sentence of over 12 months then your child and you may

be contacted by the probation service when he is about to be released. You can discuss any special conditions you want him to have when he leaves prison, for example, that he must not go within a certain area. If he breaks any conditions given to him or commits another offence during the remainder of his sentence then he can be returned to prison.

If the perpetrator is under 18 years old he will be sentenced differently. If he is sent to prison he will go to a young offender's institution rather than a prison.

If the perpetrator does go to prison, or receives another type of sentence, then what he may be asking for in terms of the type and level of contact with your child is likely to have to change (if he is asking for contact). See another legal guide in this series **Children and the law: Contact, residence and parental responsibility** for more information on contact proceedings where there is an issue of sexual abuse.

Will he be put on the 'sex offender's register'?

Some defendants convicted of an offence under the Sexual Offences Act 2003 are subject to 'notification requirements'. This is sometimes called being put on 'the sex offender's register' and means where the defendant lives and travels will be monitored. Whether a convicted defendant is subject to notification requirements, and for how long, is complicated but usually depends on what offence they are convicted for, and what type of sentence they receive. Most child sex offences automatically make a defendant liable for notification requirements, but conviction for some offences e.g. sexual assault on a child under 13 years old or arranging or facilitating a child sex offence, will only make the defendant subject to notification requirements if they are over 18 **or** if they receive a prison sentence of 12 months or more.

Once found to be liable, the length of time someone will be subject to notification requirements (or 'on the register') depends on what sentence the defendant receives. For example, if the defendant receives a prison sentence of more than 6 months but less than 30 months, they will be subject to notification requirements for ten years from the date of the conviction (or 5 years if they are under 18 years old). If sentenced to more than 30 months imprisonment the defendant will be subject to notification requirements indefinitely. Unreasonable failure to adhere to the notification requirements (or giving false information) for the specified period of time is a separate criminal offence with a maximum sentence of 5 years in prison.

Other orders

In addition to notification requirements (i.e. being put on the 'sex offender's register'), there are other orders that a Judge can impose as part of sentencing, or separately, upon defendants in relation to child sex offences. These can order someone not to have contact with children, for example, or to stay away from a certain area. Again, the making of such orders mainly depends on what offence has been committed and/or what sentence has been received.

Sexual Offences Prevention Orders (SOPO's) (most commonly imposed by a Judge and containing restrictions on the defendant) must only be made when it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm. Recent cases considering whether the courts should impose such an order stress that the Judge should carefully balance the necessity of making an order and the risk the defendant poses. They must last for a minimum of 5 years. Other orders can include barring offenders from regulated activity relating to children and vulnerable adults (under the Safeguarding Vulnerable Groups Act 2006).

It is outside the remit of this legal guide to discuss in detail other types of orders restricting a defendant's activity. If the defendant has received an order that you and your child do not understand, you can ask your police or Witness Care Unit contact, or the prosecutor in your case, to explain, or contact Rights of Women's criminal law advice line (see end of this guide for contact details). If you would like such orders to be considered by the Judge at sentencing, and you do not think this has already been considered, ask your police or Witness Care Unit contact to raise the issue with the prosecutor before the sentencing hearing.

Appeals

The defendant can ask another Judge to examine his sentence if he thinks it is too severe, or he can ask for another Judge to reconsider the fact he was found guilty. This is called an **appeal**. You and your child should be told if the defendant is appealing, and if they are, whether your child may be required to give evidence again (this is unlikely if the trial was in a crown court).

In a few cases the CPS can decide to appeal if the defendant was given a very 'light' sentence. To appeal, the CPS will ask the Attorney-General to refer the case to the Court of Appeal and this must be done within 28 days of the sentencing decision. This is up to the CPS to do, but you can ask the prosecutor about it if you want. If you think the prosecutor should appeal and does not, you and your child can ask the Attorney-General to consider referring the case to the Court of Appeal yourself. If you want to do this, the 28 day time limit still applies so you would need to find out quickly from the CPS whether they intend to appeal the sentence or not. However, an Attorney-General's reference to the Court of Appeal rarely occurs without the support of the CPS. If you want to know more about this then ask your police or Witness Care Unit contact or support worker, or contact Rights of Women's criminal law advice line (details at the end of this guide).

CRIMINAL INJURIES COMPENSATION

If your child has experienced sexual abuse and has reported it to the police then your child may be able to get some money in compensation for what happened from the **Criminal Injuries Compensation Authority** (**CICA**). For further information please see Rights of Women's Guide to Criminal Injuries Compensation, available on the website www.rightsofwomen.org.uk.

SUPPORT

There are a number of organisations and individuals who may be able to offer help and support for you and your child when going through the criminal justice system. You/ your child should be given the details of victim support or other local support agencies by the police when you make a witness statement (or even before then). In some cases, your child may be entitled to the support of an ISVA (an Independent Sexual Violence Adviser) who will help them (and probably you) understand the procedure, challenge authorities if needed and correspond with the police and CPS. Ask the police, or a local SARC or rape crisis centre if they know of an ISVA who assists children. Rape crisis organisations can offer support, counselling and assistance to your child (many organisations work with teenagers, but do check with them). MOSAC is an organisation that specifically supports you as the non-abusing parent of a sexually abused child.

Where there is a crime of violence (including sexual abuse) and the perpetrator is sentenced to more than a year, you should be entitled to the services of the victim liaison probation services as part of the victim's charter. You will be allocated your own victim liaison probation worker who will work with you to assess and inform you of various issues such as the offender's risk and probation requirements. The referral to these services should be automatic after conviction and sentencing of the defendant. If this has not happened, referrals can also be made through support groups and charities e.g. Mosac.

The issues relating to children and the law are very complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would also strongly urge you to seek legal advice by telephoning our advice line or a solicitor.

RIGHTS for WOMEN

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children: **women living and working in London** call **020 7608 1137** on **Mondays 11am-1pm, Tuesdays** and **Wednesdays 2-4pm. All women** call **020 7251 6577** on **Tuesdays** to **Thursdays 7-9pm** and **Fridays 12-2pm**.

For free, confidential, legal advice on criminal law issues including domestic and sexual violence: **women living and working in London** call **020 7608 1137** on **Thursdays 2-4pm All women** call **020 7251 8887** on **Tuesdays 11am-1pm**.

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on **020 7490 7689** on **Mondays 2-4pm** and **Wednesdays 11am-1pm**.

All our lines can be reached by textphone on **020 7490 2562**.

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mosac

supporting non-abusing parents and carers of sexually abused children

MOSAC is a charity that provides a range of support and information to non-abusing parents and carers of sexually abused children. These services include Advocacy, Child-centred Play Therapy, Counselling, National Helpline, Parent Workshops, Specialist Advice & Information and Support Groups.

Our free helpline can be reached on 0800 980 1958 (also 020 8293 9990) weekdays except bank holidays.

Mosac is at 20 Egerton Drive, London SE10 8JS

info@mosac.org,uk

020 8293 8582

www.facebook.com/mosac.uk

Supporting non-abusive parents and carers of children who have been sexually abused

www.mosac.org.uk

USEFUL CONTACTS

Counselling and support for victims of sexual violence

- **Rape Crisis Federation** Helpline: 0808 802 9999, Email: info@rapecrisis.org.uk
  www.rapecrisis.org
- **The Survivors Trust** Telephone: 01788 550554
  www.thesurvivorstrust.org
- **Victim Support** Helpline: 0845 3030 900
  www.victimsupport.org.uk
- **Survivors UK** (support for men and boys) Helpline: 0845 122 1201
  www.survivorsuk.org
- **British Association for Counselling and Psychotherapy** Telephone: 01455 883300
  www.bacp.co.uk
- **NAPAC** Helpline: 0800 085 3330/0808 801 0331
  www.napac.org.uk
- **One in Four UK**
  www.oneinfour.org.uk
- **Respond**
  www.respond.org.uk
- **In to the light** (sexual abuse – support info and resources)
  www.intothelight.org.uk
- **Family Matters UK** Helpline: 01474 537 392
  www.familymattersuk.org

Legal advice

- **Community Legal Advice** Advice line: 0845 345 4 345. Search for a solicitor online at:
  www.legaladviserfinder.justice.gov.uk/AdviserSearch.do
- **Rights of Women** (see above for details)
  www.rightsofwomen.org.uk

Criminal Injuries Compensation

- **Criminal Injuries Compensation Authority** Telephone: 0800 358 3601
  www.cica.gov.uk

Complaints

- **CPS** – Visit CPS website at www.cps.gov.uk/contact/feedback_and_complaints/ for how to complain or provide other feedback to the CPS.
- **Police** – **Independent Police Complaints Commission**
  Customer Services: 08453 002 002, Email: enquiries@ipcc.gsi.gov.uk
  www.ipcc.gov.uk

Sentencing and defendant release after prison

- **Prison Service Victim Helpline & National Offender Management Service Victim Helpline**
  Telephone: 0845 7585 112
  www.hmprisonservice.gov.uk

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT
Office: 020 7251 6575 Textphone: 020 7490 2562
Fax: 020 7490 5377 Email:info@row.org.uk
Website: www.rightsofwomen.org.uk

Charity number: 1147913

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