

# FROM CHARGE TO TRIAL: A GUIDE TO CRIMINAL PROCEEDINGS



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 includes criminal proceedings against the perpetrator. This legal guide sets out information about what happens once the perpetrator has been charged with a criminal offence. If you are considering reporting an offence to the police, or if the perpetrator has not yet been charged with a criminal offence, see Rights of Women's legal guide **Reporting an offence to the police: a guide to criminal investigations**.

## Language

Domestic and sexual violence is most commonly perpetrated by men against women, but it can and does occur in same-sex relationships and occasionally by women against men.

Consequently, although we refer to the perpetrator of domestic or sexual violence as 'he' throughout this legal guide we recognise that this is not always the case.

Depending on the stage of proceedings we use the terms 'suspect' or 'defendant' to describe the perpetrator and 'complainant' or 'victim' 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?

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”**. In March 2013 the definition will change and include patterns of incidents and controlling and coercive behaviour. The definition will also apply to 16-18 year olds.

'Domestic violence' is not of itself a criminal offence. However, specific behaviours within domestic violence are criminal offences and these commonly include the crimes of assault, harassment, stalking, rape and other sex offences, false imprisonment, criminal damage or making a threat to kill.

Verbal abuse within the home and forms of emotional, psychological or financial abuse are not generally criminal offences (although theft and fraud committed as part of financial abuse would be). You can protect yourself from these types of abuse, as well as all types of abuse that are criminal offences, by applying for a protective injunction such as a non-molestation order, or an injunction under the Protection from Harassment Act 1997. For more information on applying for

these orders, see our legal guide **A guide to domestic violence injunctions**.

## What is sexual violence?

The **Sexual Offences Act 2003** sets out the law in relation to a number of sexual offences such as rape and sexual assault. For information about sexual offences see Rights of Women's legal guides **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 handbook **From Report to Court: A handbook for adult survivors of sexual violence**. Sexual violence can often form part of domestic violence.

## Different complainants

The criminal law of England and Wales that deals with domestic and sexual violence should protect **all women** from violence. This means the police have an obligation to assist and protect you irrespective of your personal circumstances or immigration status.

## Support for survivors of domestic and sexual violence when a case goes to court

If someone is charged with a criminal offence they have to go to court, where they will be called the defendant. Police investigate criminal offences and then pass evidence to the Crown Prosecution Service (CPS) for a charging decision. The CPS also prosecute (prepare and present) the case at court. When deciding whether to charge a suspect CPS lawyers (prosecutors) must consider an evidential and public interest test, see our legal guide **Reporting an offence to the police: a guide to criminal investigations** for details.

When a perpetrator is charged with a criminal offence and the case goes to court, the complainant should be given a single point of

contact for updates and information on the court proceedings. This can either be a police officer assisting on the investigation or a staff member of the **Witness Care Unit**. Witness Care Units are joint units staffed by representatives from the police and CPS. Witness Care Units are responsible for managing and supporting anyone who gives evidence for the prosecution in criminal proceedings. If you have not been contacted by the 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 of service that the police, the CPS and other agencies involved in the criminal justice system should offer victims. All victims of sexual violence and most victims of domestic violence will be entitled to an **enhanced service**, which means that they should be told of major developments in the case (e.g. the decision to charge) **within 24 hours**. The Victims' Code can be enforced by complaining about the police or other agency involved. For more information visit the Victim Support website (see Other useful contacts).

The Victim's Code is likely to be revised by the Government in 2013, so obligations of the police and CPS may change. If you are concerned about your treatment by the police or CPS or any other agency mentioned in the Victim's Code, you can contact Rights of Women's criminal law advice line (details at the end of this legal guide).

You 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.

You can also access advice and support from Victim Support or other victims' support groups in your area, and from organisations supporting

victims of sexual violence e.g. Rape Crisis, or domestic violence e.g. Women's Aid, Refuge (see Other useful contacts).

## Bail

When a defendant has been charged with an offence he can either be released on bail to attend his first court hearing or be remanded in custody overnight at the police station and taken to court the next morning, where he can apply to be released on bail. 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.

Bail conditions are any requirements the court considers necessary to ensure that the defendant attends court and does not commit any further offences or interfere with (approach/threaten) witnesses. For example, he can be ordered to stay at a certain address, not to contact the victim or witnesses directly or indirectly and comply with a curfew.

If you are concerned about whether or not the defendant will be granted bail, or what the conditions of bail will be, you can discuss concerns with your police officer or Witness Care Unit contact. Your views should be passed to the CPS who should then take them into consideration when making bail arguments to the court.

## 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). If the defendant is 17 and under then the case will be heard in a Youth Court, with specially trained judges or magistrates.

## Court proceedings

If the case is to stay in the Magistrates' Court the defendant will be asked at the first hearing if he pleads guilty or not guilty. If the case is sent to the Crown Court at the first hearing then the defendant will plead guilty or not guilty at a separate Crown Court hearing at a later date (called a Plea and Case Management Hearing or PCMH).

If the defendant pleads guilty he will receive a criminal conviction and be sentenced either on the same day, or in a few weeks if the case is adjourned (postponed) for pre-sentence reports to be prepared about him. You will not usually need to attend court at all if the defendant pleads guilty.

If the defendant pleads not guilty a trial date will be set. This can be 2-3 months from the date he pleads not guilty if the trial is in the Magistrates' Court or Youth Court. If the case is heard in the Crown Court the average time from PCMH to trial is 6 months, but can be longer. In most cases you will be required to come to court to give evidence at the trial.

## Giving evidence

If you are required to attend court and answer questions about what happened to you, and your witness statement was videoed (called an ABE video), then it will probably be played at court and you will not have to go over your evidence again (for more information about witness statements see our legal guide **Reporting an offence to the police: a guide to criminal investigations**).

If the judge decides the video ought not to be played in court, or you have made a written witness statement, the prosecutor will ask you to tell the court what happened to you. Whether a video is played or not, you will then be asked some questions by the defendant's lawyer. This is called cross-examination. The defendant's lawyer has to put forward what the defendant says (his 'defence') but they should not be aggressive or intimidating. The judge or prosecutor should

intervene if they are. If you are worried about this, you can discuss this issue with your police officer or Witness Care Unit contact prior to giving evidence.

## Help when giving evidence

Prior to the trial you can visit the court to look around. This is organised by the court Witness Service – if you would like to do this contact your police officer or Witness Care Unit contact. At court there should be a separate waiting area for you. You will also be able to read your statement through or watch your ABE video to refresh your memory before you go into court. Very often an ABE video will have been edited. This is a decision dictated by the judge and edits are negotiated and agreed between the prosecutor and defence lawyer. If you have concerns about editing, you can raise this with the prosecutor and ask them to explain the edits.

## Special measures

Victims of domestic and sexual violence may be entitled to **special measures** to assist them in giving evidence at court. Special measures are practical things to help you give your best evidence, for example, by giving evidence from behind a screen so that the defendant cannot see you, or giving evidence by video link so you do not have to go into court. Special measures need to be applied for by the prosecution on your behalf before the start of the trial and a judge or magistrates then decide whether to grant the application. If special measures have not been discussed with you, contact your police officer or Witness Care Unit contact. Alternatively, you can contact our criminal law advice line (details at the end of this guide) or speak to your support worker.

Many victims of sexual violence are also entitled to **anonymity** so that their name or other information that could identify them cannot be made public in the media. This is automatically in place and does not need to be applied for.

## What if I don't want to give evidence?

You can contact the police and make a **withdrawal statement** to say that you don't want to go to court. The police may want to know if having special measures would help you give evidence or if you are under pressure from the perpetrator or other people to withdraw your support from the prosecution. It is a criminal offence for the perpetrator (or anyone else acting for him) to frighten or put pressure on you to say that you do not want to give evidence.

If you state that you lied about what happened to you then the police may choose to investigate the criminal offence of perverting the course of justice or wasting police time. If you have told the truth and maintain this then a withdrawal statement should not lead to an investigation of this nature.

Making a withdrawal statement does not mean that the police and the CPS will automatically reconsider and stop proceedings. They may decide to continue because, for example, they believe that the case against the perpetrator is a strong one. You can only be forced to go to court if you don't want to if you are served (given) a **witness summons**. This is a court order requiring you to attend court on the date specified.

## After the trial

After you have given evidence the CPS prosecutor will present any other evidence they have. The defence then get a chance to present their evidence. The prosecutor and defence lawyer then may make speeches to the court and a decision will follow as to whether the defendant is found guilty or not guilty. In the Crown Court this decision is made by a jury, who are guided on the law by a judge. In the Magistrates' Court and Youth Court, the decision is made by a judge or a panel of magistrates. If the defendant is found guilty he will receive a criminal conviction and will be sentenced – either straight away or after pre-sentence

reports are prepared by a probation officer (this usually takes 2-3 weeks). If he is found not guilty then he will be free to leave the court and will not have a criminal conviction.

The defendant can only be convicted if the magistrates, judge 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, it means that the prosecution were not able to prove the defendant's guilt to the required standard.

## Conviction and sentence

The judge or magistrates decide what sentence the defendant receives after he has pleaded guilty or been found guilty at trial. What the defendant gets as his sentence depends on different factors including legal guidelines and what the presentence report recommends. Your **victim personal statement (VPS)** should also be read and taken into account by the court at sentence. A VPS is a statement taken from you after you give a witness statement to the police, or at any stage in the proceedings up to sentence, and is your chance to indicate the impact the abuse has had on you and your daily life. If you have not made a VPS and want to make one, you could contact your police officer or Witness Care Unit contact.

The defendant may get a length of time in prison as his sentence. If this happens, he will usually serve half of this sentence in prison and then half out of prison ('on licence') but monitored by probation services. There are other types of sentence available as well as prison, for example a fine or an order to do unpaid work which you can ask your police officer or Witness Care Unit contact to explain.

If the defendant has received a prison sentence of over 12 months then you may be contacted by the probation service when he is about to be released

to 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 defendant has committed a sex offence he may be subject to orders limiting his movements or requiring him to report to the authorities at certain times.

## Restraining orders

As well as imposing a sentence, a judge or magistrates can order the perpetrator not to further abuse or harass you if, on the evidence, they deem it necessary to protect you from harassment. This is called a restraining order. It is usually applied for by the prosecution and any breach of the order is a separate criminal offence.

Importantly, a restraining order can be imposed for any offence and can be imposed on a defendant **even if he was found not guilty**. For more information about restraining orders please contact Rights of Women's criminal law advice line or read our legal guide **A guide to domestic violence injunctions**.

## Criminal injuries compensation

If you received an injury as a result of a crime of violence you may be entitled to receive compensation through the Criminal Injuries Compensation Scheme, see Rights of Women's legal guide **A guide to criminal injuries compensation**.

**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 legal advice line.**

For free, confidential, legal advice on family law issues including divorce and relationship breakdown, children, domestic violence and lesbian parenting call our Family Law Advice Line on **020 7251 6577 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm and 7–9pm, Thursdays 7–9pm and Fridays 12noon–2pm.**

For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on **020 7251 8887 (telephone)** or **020 7490 2562 (textphone)** on **Tuesdays 11am–1pm and Thursdays 2–4pm.**

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 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 2–4pm and Wednesdays 11am–1pm.**

## Other useful contacts

Criminal Injuries Compensation Authority 0300 003 3601 [www.justice.gov.uk/victims-and-witnesses/cica](http://www.justice.gov.uk/victims-and-witnesses/cica)

Crown Prosecution Service  
(for information about the CPS) [www.cps.gov.uk](http://www.cps.gov.uk)

National Domestic Violence Helpline 0808 2000 247 [www.womensaid.org.uk](http://www.womensaid.org.uk)  
(for information and advice from Women's Aid and Refuge)

Rape Crisis Federation [www.rapecrisis.org.uk](http://www.rapecrisis.org.uk)  
(for details of local services)

Victim Support 0845 303 0900 [www.victimsupport.org.uk](http://www.victimsupport.org.uk)

**Rights of Women, 52 – 54 Featherstone Street, London EC1Y 8RT**

**Office: 020 7251 6575**

**Email: [info@row.org.uk](mailto:info@row.org.uk)**

**Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**

**Charity number: 1147913**

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**Please note that the law and procedure referred to in this legal guide 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 guide. This legal guide is designed to give general information only.**

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