



How the CPS charges and prosecutes rape cases

1. INTRODUCTION

Rape is among the most appalling acts one human being can inflict on another and can lead to life-changing and devastating trauma. We know how important a conviction can be to giving victims some level of closure and redress; however, too few victims of rape are seeing justice. All parts of the criminal justice system must give real and ongoing focus to their response to this crime.

The Crown Prosecution Service (CPS) has a very clear purpose – to make sure the right person is prosecuted for the right offence. The information on these pages sets out how we charge and prosecute rape cases. We hope that this information will build confidence that we make fair decisions and that victims will be supported if they come forward to report a rape and their case is passed on to us by the police.

While this Policy Statement focuses on our work in the CPS, we have tried to provide more information about the criminal justice process, which you might also find helpful. Some words or phrases used may not be familiar to everybody. We have therefore set out a glossary (see section 9 below) to provide an explanation.

When reading this information, 'victim' is used to describe someone against whom an offence has been committed. It is important to note that when a victim is involved in a case they are the 'complainant' or 'witness' and this is how we refer to them in our work; the term 'survivor' might also be used – but within this document, for ease, we refer to them as the victim. A 'suspect' is someone who the CPS is considering charging. A 'defendant' is someone who has been charged by the CPS. An 'offender' is someone who has carried out a crime or has admitted it or been found guilty.

This information replaces our CPS Policy for Prosecuting Cases of Rape published in 2012. The information provided here applies to rape and attempted rape, but we will apply best practices and procedures to all other types of sexual offending and make sure all cases of sexual abuse are treated seriously and sensitively.



2. ABOUT THE CPS

The CPS is a non-ministerial department responsible for making sure the right person is prosecuted for the right offence. We are part of the criminal justice system and work in partnership with other agencies and people within it, including the police, the courts, defence lawyers, the Witness Service and prisons services. Although we work closely with the police, we are independent of each other. We are answerable to Parliament through the Attorney General. The Government has published further information about the Attorney General, available at: [gov.uk/government/ministers/attorney-general](https://www.gov.uk/government/ministers/attorney-general).

We are the public prosecution service for England and Wales. We are headed by the Director of Public Prosecutions and have 14 regional teams prosecuting cases locally. Each of these 14 CPS Areas is headed by a Chief Crown Prosecutor who works closely with local police forces and other criminal justice organisations. In addition, we have three Central Casework Divisions including one which houses our Appeals and Review Unit who are involved in the formal review stage of our Victims' Right to Review Scheme (see section 4.3 below).

The CPS:

- Decides which cases are prosecuted
- Determines the appropriate charges
- Advises the police in the early stages of investigations in more serious cases such as rape
- Prepares cases and presents them at court
- Provides information, assistance and support to victims and prosecution witnesses

We work closely with the police to build the best possible cases as quickly as possible. The police are responsible for investigating reports of rape and for gathering evidence. The police do not send every complaint of a criminal offence to us. Where the police think there is enough evidence to support an allegation, they should refer the rape case to one of our specially trained prosecutors who will make the decision whether to charge a case. The police can also consult and seek 'early advice' from us from the beginning of an investigation to build and strengthen a case.



More information about local CPS Areas can be found on the CPS website by selecting 'your area' in the drop down box at the top right of our homepage: www.cps.gov.uk

3. HOW WE REVIEW EVIDENCE AND MAKE DECISIONS

3.1 THE CODE FOR CROWN PROSECUTORS

When deciding whether to charge a criminal case, our prosecutors must follow the Code for Crown Prosecutors in applying the law which is available on the CPS website at: cps.gov.uk/publication/code-crown-prosecutors.

The Code for Crown Prosecutors is the starting point for every decision we make. We look at all cases that are sent to us, and every decision we make is based on the following two stage test included within this Code:

Stage 1 – The evidential stage

Does the evidence provide a 'realistic prospect of conviction'? That means that, having looked at all the evidence, we think that a court is more likely than not to find the defendant guilty.

All decisions we make should be fair, objective and independent, based on the facts and merits of each individual case. When assessing whether there is a realistic prospect of conviction, we must assume that the jury hearing the case will be objective, impartial, reasonable, properly directed and acting in accordance with the law.

The standard that we use to decide whether to charge is different from the standard the criminal courts must themselves apply. A court may convict only if it is sure that the defendant is guilty. If the court decides that a defendant is not guilty of rape (or acquitted), that does not mean the CPS was wrong to prosecute nor does it mean that the victim was not believed or that their trauma was not real. It simply means that a jury could not be sure that the defendant was guilty.



If a case that has been fully investigated does not pass the evidential stage of our test, it cannot be charged, no matter how serious it may be.

Stage 2 – The public interest stage

If the case passes the evidential stage, we must decide whether it is in the ‘public interest’ to charge. That means asking questions including how serious the offence was, the harm caused, the impact on communities and whether a prosecution is the right response.

Rape is so serious that it will almost always be in the public interest to prosecute where there is enough evidence to do so. Any decision not to prosecute because of public interest reasons is rare and would have to be supported by clear reasons.

While it is for us to make the decision whether to prosecute, we will take into account the victim’s views on the impact the offence has had. In appropriate cases, this may also include the views of their family. Victims also have the right to request a review of the decisions we make through our Victims’ Right to Review scheme (see section 4.3 below).

3.2 LEGAL AND EVIDENTIAL REQUIREMENTS IN PROSECUTING RAPE

An investigator will try to gather evidence to help prove that a crime was committed and that a particular person committed that crime. We need to make careful and balanced decisions in rape cases after looking at all the relevant evidence gathered by an investigator.

The evidence in a case might be the accounts given by the people involved as well as evidence from forensic and medical examination. Our prosecutors are trained to look closely at the suspect’s activity before, during and after the alleged offence. This helps to build a full picture of the circumstances of the event and can often strengthen the case.

Depending on the facts and circumstances of the offence, additional (also called third-party) material might also be obtained as evidence. This can include information from local authority records, medical records, educational records or private CCTV.

Material should be obtained only if it is needed as part of an investigation, which will depend on the context of the case. There is a legal obligation to pursue reasonable lines of



enquiry that point towards or away from the suspect. It is important that speculative enquiries (based on a guess rather than information) are not carried out.

The rise in the use of digital technology in our day-to-day lives means that evidence from digital communications is often required. It might be necessary to look at information, which may be sensitive, from a smartphone or computer, such as text messages, emails, digital records or social media posts. The decision to obtain and review material on a digital device should not be taken lightly. We will give advice to our police colleagues about whether there is a need to look at devices to ensure that it is only done when it is legally necessary.¹

3.3 DISCLOSURE AND THE RIGHT TO PRIVACY

What is disclosure?

After a suspect is charged with an offence, the CPS has a legal duty to show (disclose) certain types of material to the defence. The CPS must show the defence any material which might undermine the prosecution case and any material that might assist the defence case. We will decide what material meets this test and, as every matter is different, the decision will depend on the unique facts in the case.

Failing to meet disclosure duties can have very serious consequences for public justice and the rights of both victims and defendants. Potential consequences can include evidence being ruled out of a trial or that a defendant may be able to make a legal argument for the case to be stopped. We cannot carry on with a case if we cannot fulfil our disclosure obligations.

The role of the CPS

The CPS recommends that the police obtain early advice from us in all rape cases. During early advice, the police and CPS will discuss whether it is necessary to look at digital devices and/or to obtain any third-party material. If it is considered necessary to look at devices, an agreement will be reached about what will be looked at.

Whilst early advice is strongly recommended, it is not a requirement. Even when it is provided, the CPS cannot direct the police but can only provide advice. The police are responsible for the investigation and they make the final decision about what investigative actions are

¹ For more information, see guidelines on communication evidence available on our website at cps.gov.uk/legal-guidance/disclosure-guidelines-communications-evidence



completed. If a victim has any questions about the investigation, they should direct them to the officer in charge of the case.

Using digital evidence from devices

If relevant information is found on a device, it will be treated like all the other material in the case. If any personal information not relevant to the investigation is contained within the material – digital or otherwise – this will be redacted (edited to hide or remove information) if possible before it is provided to the defence. If a victim has any concerns about how their digital data might be used, they should speak to the police officer in charge of the case.

Why do the police need to view third-party material?

Third parties may hold material that can help strengthen the case against a suspect, for example private CCTV footage may help identify a suspect or prove what occurred. Third parties may also hold relevant material where the incident is discussed and they retain records, for example medical records if a victim has spoken to their doctor.

These records can be used to strengthen the evidence and help build a case against a suspect. Third parties may also hold records that undermine the prosecution case or that may assist the defence case and there is a legal duty to review and potentially disclose this material.

Third-party material will not be needed in every case. Enquiries with those holding third-party material will be made only if it is a reasonable line of enquiry. There should never be speculative trawls through third-party material.

Third parties and the police must be mindful of their obligations under the Data Protection Act 2018 and personal information which is not relevant to an investigation will be removed by the police. Only material that meets the disclosure test will be shown to the defence.

Therapy or counselling before trial

A victim may be having, or thinking about having, therapy or counselling to help them recover from their experiences. We are clear that a victim should receive, as soon as possible, effective treatment and therapeutic support to assist their recovery. Therapy should not be delayed for any reason connected with a criminal investigation or prosecution.



If a victim receives therapy before a trial the police must only collect notes from a victim's therapist or therapy provider if it is a reasonable line of enquiry. It will only be a reasonable line of enquiry if there is some reason to believe that the notes will contain material relevant to the case. This approach is important in making sure that the privacy of a victim is protected whilst ensuring that there is a fair trial process. It might also help us to build the case or be in a better position to respond to issues raised by the defence. For example, it might be that the police have information that someone first shared their experience about abuse to a therapist a number of years before a report was made to the police.

The police must only collect material from therapists or therapy providers – and therefore this information may form part of the case – only if:

- it is strictly necessary as part of a reasonable line of enquiry that points towards or away from a suspect;
- they are able to explain to the therapy provider why the information is required, and can be specific about what is required; and
- the request is for the minimum amount of information that is enough to cover the line of enquiry.

Therapy or counselling notes cannot be accessed on a speculative basis (based on guess work).

- The Code for Crown Prosecutors is also available for download in a number of languages from the CPS website at cps.gov.uk/publication/code-crown-prosecutors-2018-downloadable-version-and-translations.
- For detailed information about how our prosecutors apply the Code for Crown Prosecutors test or use of forensic evidence in rape cases, we have published the guidance we provide to our prosecutors on our website at cps.gov.uk/legal-guidance/rape-and-sexual-offences-overview-and-index-2021-updated-guidance.
- Handling complaints is an important part of the public service that we provide. We want to know when our service falls short of what is expected so that we can put things right, make improvements and learn from experiences. Further information



on feedback and complaints is available on our website at cps.gov.uk/feedback-and-complaints.

- All victims of crime should be offered an opportunity by the police to make a Victim Personal Statement. In this statement, the victim may explain the effect that the crime has had on them, as well as including information about their wishes and needs during the case. We use Victim Personal Statements to help make decisions about cases and bring them to the attention of the court.

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4. KEEPING VICTIMS INFORMED OF DECISIONS

It can take many months between the moment a report is made to the police and a decision on whether to charge is made. During this time, the police will be investigating, and the CPS will be building the case. In some cases, however, a quicker decision to charge may be made (under the Threshold Test²), with the defendant held in police custody to appear in the magistrates' court within days.

4.1 IF THE SUSPECT IS CHARGED

A victim should be told by the police within one working day of our decision to charge the suspect with rape. Once someone has been charged with rape, a decision will be made whether to release the defendant on bail, to attend a court hearing or to keep them in custody (held in prison) so that they can appear at the next available court hearing.

If the defendant is 18 years or older, the first hearing will be in the magistrates' court; more serious cases, including rape, will then move to the Crown Court. If the defendant is under 18 years old the hearing will be in the youth court. See the section 'Going to court' for further information.

4.2 IF THE SUSPECT IS NOT CHARGED

A decision not to charge a suspect, or stop a case after charge, means that the evidence or circumstances of the case did not pass the two stages of the Code for Crown Prosecutors test. Victims should be told about this within one working day.

We know that a decision not to charge a suspect, or to discontinue (stop) a case, can be very hard on the victim. Such a decision does not mean that the victim was not believed.

The person responsible for telling the victim about this decision will depend on who makes it. If a decision is made by the police, the police will be responsible; if it is made by the CPS, the CPS is responsible.

² More information about the Threshold Test is available on the CPS website at: [cps.gov.uk/publication/code-crown-prosecutors#section5](https://www.cps.gov.uk/publication/code-crown-prosecutors#section5).



When the CPS tells a victim of a decision (either in writing or in person) not to charge a case of rape, we will provide an explanation of the decision, offer a meeting to explain the decision and give information about our Victims' Right to Review Scheme. Where a meeting is not appropriate, this will also be explained to the victim.

If the police or CPS decide not to charge someone with an offence, no further action will be taken against them. The case will be closed but information relating to the investigation will be kept in case further evidence is gathered or the suspect is accused of other offences in future.

In rare cases, including those in which children or young people are involved, a caution or conditional caution may be offered. This would be done only after views are sought from the victim, their family and other agencies involved in the case.

4.3 VICTIMS' RIGHT TO REVIEW

Victims have the right for a decision by us not to start a prosecution or to stop a prosecution to be reviewed.

Our Victims' Right to Review scheme applies only to CPS decisions made on or after 5 June 2013. A request for a review should normally be made within 10 working days of the date of the decision letter. There is no requirement for a victim to seek legal advice or representation, or to provide reasons for requesting a review. The only action a victim need take is to notify the CPS of their request for review within the agreed time frame.

For more information on our Victims' Right to Review scheme, including information on qualifying decisions and time frames, visit the following page on our website:

cps.gov.uk/legal-guidance/victims-right-review-scheme.

If the police decide not to investigate or not to investigate a case further and we have not been asked to make a charging decision, requests to review such a decision should be sent to the relevant police force.



4.4 WHAT HAPPENS IF A VICTIM NO LONGER SUPPORTS A PROSECUTION, WANTS TO WITHDRAW THEIR COMPLAINT, OR DOES NOT WANT TO GIVE EVIDENCE?

The impact of an investigation, or other personal circumstances, may mean the victim chooses not to support a prosecution. If the victim chooses to withdraw support, it might mean we do not have enough evidence to continue with the case against the defendant and it needs to stop. The decision on whether a case can go ahead will depend on its own unique facts.

Victims can contact the police officer dealing with the case to discuss this and an Independent Sexual Violence Adviser can also help. We will ask the police to take a written statement to understand the reasons the victim wishes to withdraw support, including whether they have been put under any pressure to make this decision. The police will also ask the victim to confirm whether the original complaint was true.

- If the victim says the original statement was true, then we will look at the possibility of carrying on with the prosecution without their evidence. If they have been pressured into withdrawing support, we may ask the police to investigate further, which may show new offences, such as witness intimidation;
- If it is stated by the victim that the original complaint was not true, we expect that the police may ask for an explanation as to why the account has changed. That will help us to understand the circumstances of what happened, whether an investigation should follow into why someone changed their complaint and whether the original prosecution should proceed.

We will also ask the police to give their views about the evidence in the case and explain to the victim the implications of being 'summonsed' (ordered) to attend court. A witness summons is a court order that places a legal requirement on someone to attend court and give evidence. Failing to do so may end up in arrest. We would call, or summons, a victim to give evidence against their wishes in exceptional circumstances and only after speaking with the police.

The safety of the victim is one of our primary considerations. It is important to us that victims and witnesses give evidence willingly and we will take whatever steps we can to help them overcome their fears and give their best evidence, including through applications for special measures.



CPS Victim Liaison Units (VLUs) are responsible for informing victims of decisions to stop a case or substantially change charges. They are a dedicated point of contact for further information about our decisions. The VLU can also advise a victim on how to seek a review of a decision, make a complaint or provide feedback.

5. GOING TO COURT

It can take many months for a case to be heard at court and go to trial. During this time, the police and CPS will be building and preparing the case so that it is ready. The courts are responsible for deciding when cases are heard.

All cases begin in the magistrates' court – this will be the first time the defendant appears in court (the victim will not normally attend) and they will be asked if they are guilty or not guilty of the offence or offences. If the defendant states that they are not guilty (or does not enter a plea), then the court will transfer the case to the higher Crown Court for a trial. If the defendant states that they are guilty, then the case will not go to trial and the victim will most likely not be called to give evidence.

The court will arrange another hearing at the Crown Court on another date to decide what sentence should be given. If the defendant is under 18, cases will first be considered by the youth court.

5.1 BAIL ISSUES

If a suspect who has been released on bail or released under investigation is charged they can be kept in in detention or, more likely, be released on bail to appear at court at a future date.

We will form a view about bail and may make representations to the court based on information provided by the police. Depending on the case, this might include information about safety concerns relating to victims or witnesses, the number and ages of children, location and closeness of addresses of the victim and defendant, any civil orders made (for



example, from the family court) and any other relevant information such as the Victim Personal Statement (where there is one). If there is a substantial risk of danger, threats or pressure, we may ask that the defendant is kept in custody.

The court will consider this information and can refuse bail if, for example, there are substantial grounds to believe that the defendant will commit further offences or interfere with the victim or any witnesses by trying to contact or intimidate them. There is also an exception to the right to bail for some serious repeat offenders including those previously convicted of rape. For more information, please see our guidance to prosecutors on Bail available on our website at: cps.gov.uk/legal-guidance/bail.

If the defendant is given bail, the court can attach conditions it decides are necessary. These conditions will vary depending on the case, but can include:

- Non-contact with named people – directly (in person, on the phone or via social media) or indirectly (through friends)
- Staying in or out of certain areas
- A curfew
- Reporting to the police station at certain times or frequencies

If the victim is worried that a defendant might be granted bail, they should speak to the police so that this can be passed onto the CPS so that we can make representations to the court.

The victim will be informed of the outcome of the hearing, including any bail conditions, by the Witness Care Unit or the police within one working day of the hearing. If the defendant breaches (or breaks) any bail conditions, or the victim is threatened or harassed in any way, the police should be told immediately. It could be helpful to keep a record of any such behaviour to tell the police. This will help to decide whether the defendant breached their bail and whether another criminal offence was committed. It may also be used as evidence against them in court.³

5.2 THE FIRST HEARING IN THE CROWN COURT

³ For more information, please see our guidance to prosecutors on Bail available on our website at: cps.gov.uk/legal-guidance/bail.



The first hearing at the Crown Court is usually the 'Plea and Trial Preparation Hearing' (PTPH). A list of charges (the 'indictment') is first read out to the defendant and they will be asked formally to plead 'guilty' or 'not guilty'. If the defendant pleads guilty, they may be sentenced immediately or a date will be arranged to decide what sentence should be given. If the defendant pleads not guilty to all offences or pleads guilty to only some of the offences (also called a 'mixed plea'), the Judge will set a date for a trial.

The Judge will make orders setting out what needs to be done before the trial and by when. At this hearing, we can make applications for 'special measures'.

In some cases, we may consider accepting a defendant's guilty plea to some of the charges but not guilty plea to others, including the charge of rape. This might happen if the victim does not wish to proceed or because new evidence or information comes to light. In making this decision, we will refer to the Attorney General's Guidance on the Acceptance of Pleas⁴ and our two-stage test contained within the Code for Crown Prosecutors.

We will always take proper account of the victim's interests, and we will not accept pleas based on a set of facts not supported by the evidence. We will also make sure that this situation is discussed with the victim or their family whenever possible to explain the decision, any implications and to get views to help us make the right decision. We will keep victims informed and explain our decisions once they are made at court.

The court may decide to hold a 'Newton hearing', in which the defendant pleads guilty, but the defence and prosecution dispute important facts upon which the court is going to sentence the defendant. The purpose of the hearing is to hear the prosecution and defence views to establish the factual basis for the sentence to be passed. A victim may be required to give evidence at a Newton hearing and, if this situation arises, it will be discussed and explained to the victim.

5.3 CROWN COURT TRIAL

⁴ The Attorney General's guidance on the acceptance of pleas published by the Attorney General's Office and available at: [gov.uk/guidance/the-acceptance-of-pleas-and-the-prosecutors-role-in-the-sentencing-exercise](https://www.gov.uk/guidance/the-acceptance-of-pleas-and-the-prosecutors-role-in-the-sentencing-exercise)



Between the first hearing and the trial, we may be involved in further hearings to deal with legal issues and other matters. This might include hearing arguments about what evidence is allowed at trial.

Those called upon to go to court will be told the location, date and time of the trial and when they need to attend. At court, the lawyer who is prosecuting the case (the prosecution advocate) will introduce themselves to the victim and any other witnesses before they give evidence.

We recognise that the trial process can be daunting and confusing. We have provided an explanation in the table below of some of the steps in a trial at the Crown Court which might be helpful.

Jury sworn in	<ul style="list-style-type: none"> • Jurors are asked to take the jurors' oath. Jurors must be objective, impartial and reasonable when assessing the evidence. • The role of the Judge is to advise the jury on the law. For example, there are a number of legal directions which the Judge may share with the jury to make clear that there is no typical rape, rapist, victim, or response to rape.
Opening speeches	<ul style="list-style-type: none"> • The prosecution advocate starts the case with a speech, which will cover the charges faced by the defendant; who will be giving evidence and why; the 'burden' and 'standard' of proof – that it is for the prosecution to prove the case so that the jury is sure of the defendant's guilt against the charges. • The defence may make an opening speech too, to help the court understand the issues in dispute.
Prosecution evidence	<ul style="list-style-type: none"> • The prosecution presents its evidence. This might include witnesses giving evidence in court or having their video-recorded interview played or statements read to the jury. The victim is usually the first witness to give evidence. • Each witness will be questioned by the prosecution (examined-in-chief) and then the defence (cross-examined). The witness may be asked further questions by the prosecution advocate (called re-examination). The Judge can also ask questions. If there is more than one defendant in a case, then each defence representative can ask questions. • In rape cases, the defendant cannot personally cross-examine a victim (ask them questions).
Defence case	<ul style="list-style-type: none"> • The defence presents its evidence. If the defendant gives evidence, they will first be questioned by the defence (examined-in-chief) and then the prosecution advocate (cross-examined). The defendant's legal representatives may then ask further questions (re-examined). The Judge can also ask questions. • The defence's case may then include other evidence such as witnesses who support the defence case.
Closing speeches	<ul style="list-style-type: none"> • The prosecution may make a closing speech after all the evidence has been presented. The defence can also make a closing speech and will usually do so.

Summing up	<ul style="list-style-type: none"> The Judge sums up the relevant facts of the case to the jury and provides any further information they might need to reach a decision such as legal directions.
Jury retires and returns with its verdict	<ul style="list-style-type: none"> The Judge asks the jury to reach a verdict on which they all agree. Jurors go to a private room to consider and discuss the evidence presented to them by the prosecution and defence. They then return a verdict to decide whether the defendant is guilty or not guilty of each charge they face. The time they take to return a verdict can vary. The jury may find the defendant guilty of all charges and they will be sentenced. The jury may find that the defendant is guilty of some charges and not guilty of others; this is called a ‘mixed verdict’. The jury may find that the defendant is not guilty. The prosecution has to prove that an offence took place and the jury has to be sure, based on all the evidence presented, that the defendant is guilty before they can be convicted. A not guilty verdict (or a decision to acquit) does not mean that the victim was not believed or that the jury thought they were lying – it means that the standard of proof needed to find someone guilty could not be met in the case. After some time, a Judge may accept a decision from the majority.⁵ If the jury cannot reach a verdict on a particular charge, this leads to a ‘hung jury’. The prosecution may decide to have a second trial, also called a ‘re-trial’.
Sentence	<ul style="list-style-type: none"> If a jury finds the defendant guilty, the Judge decides on a sentence. The defendant may be sentenced immediately or after pre-sentence reports. There are guidelines for Judges when sentencing defendants convicted of rape. The prosecution has no power to ask for a particular sentence. We will, however, make sure that the court has all the information it needs to sentence appropriately including by giving details of a Victim Personal Statement (where there is one) to help the court understand the impact of a crime. The victim has the right to read out their Victim Personal Statement in court, ask the Judge to read it out or ask that someone else – the prosecution advocate for example - read it for them. The victim also has the right to ask the Judge to read the statement in private. If the victim chooses to read out the statement in court, they can be questioned on it by the prosecution and potentially the defence.
After sentence and appeals	<ul style="list-style-type: none"> If the defendant is found guilty, they may in certain circumstances appeal the decision. If this happens, the victim should be kept informed of any developments by the Witness Care Unit, the police or an Independent Sexual Violence Adviser. The prosecution can appeal against the defendant’s sentence if they believe, according to guidelines laid out by the Attorney General, that the sentence is too low (‘unduly lenient’).⁶ The decision to grant an appeal against the defendant’s sentence lies with the Attorney General.

⁵ For a full jury of 12 people this will mean that at least 10 of them will need to agree.

⁶ More information on the unduly lenient sentence scheme can be found on our website at: cps.gov.uk/legal-guidance/unduly-lenient-sentences.

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| | <ul style="list-style-type: none">• If the victim or another member of the public feels the sentence was too low or 'unduly lenient', they can also ask the Attorney General to consider it; such a request has to be made within 28 days.• The prosecution cannot appeal against a 'not guilty' verdict. |
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5.4 ANONYMITY

Victims of rape have the right to life-long anonymity in the media. This means that if they decide to report an offence, no identifying personal details or photographs can be published in their lifetime, even if their name is given in court. If identifiable personal details are published – for example, in the media or online – the person publishing it can be investigated and prosecuted. This is still the case even if a victim withdraws support for a prosecution or if the defendant is found not guilty.

A victim can waive or cancel their right to anonymity without permission from the court so long as they are over 16 years old. Victims under the age of 16 cannot waive their right to anonymity.

Defendants in rape cases do not have a legal right to anonymity but there are rules against reporting a defendant's details if they are under 18 or if it could lead to the victim being identified.

5.5 QUESTIONS ABOUT SEXUAL HISTORY

The law prevents the indiscriminate use by the defence of sexual history evidence to discredit complainants in sexual offence cases and places specific limits on the defence's ability to ask questions on the subject. The defence is not allowed to question a victim about any previous sexual experience they have had with the defendant or anyone else without the Judge's permission.

Where the defence wish to ask questions about a victim's sexual history, they must apply in writing to the court before the trial to give reasons why they say the behaviour is relevant, and they must give specific details of the evidence or questions they want to ask. We will always challenge applications where it is appropriate under the law to do so. The final decision lies with the Judge, who can give permission only if strict legal conditions are met.⁷

⁷ For more information including when these questions might be allowed, see the relevant section in our legal guidance to prosecutors, available on our website at: cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-10-sexual-history-complainants-section-41-yjcea.



The law is designed to protect victims whilst also ensuring that the defendant receives a fair trial. The hearing to decide whether the evidence can be allowed at trial takes place in private (the victim cannot attend), but the Judge must give reasons for their decision in an open court. If permission is granted by the court to allow sexual history evidence, the Judge will state the extent to which questions can be asked. When a defence application has been granted by the court, we will inform the victim as soon as reasonably possible.

5.6 BAD CHARACTER EVIDENCE

If we want to use evidence that the defendant has a history of relevant behaviour (bad character), and it is directly related and relevant to the case, we need to ask the court for permission to do this.

The victim has the right to be told the time, date and location of any hearing and the outcome of those hearings in a timely way if their case goes to court. If required to give evidence, victims have the right to be offered appropriate help before the trial and, where possible if the court allows, to meet the prosecutor before giving evidence.

The victim has the right to be told the outcome of the case and, if the defendant is convicted, to have the sentence explained. If there is an appeal against the conviction or sentence, the victim has the right to be told about the appeal and the outcome.

If the defendant was convicted for rape and sentenced to 12 months or more in prison, the victim has the right to be automatically referred to the Victim Contact Scheme and assigned a Victim Liaison Officer. They will get information about the offender and their progress in prison and if/when they become eligible for parole or release. They might also be able to make a new Victim Personal Statement, in which they can say how the crime continues to affect them. The Victim Liaison Officer can give more information on this.

Where eligible, the victim has the right to be told about how to claim compensation for any loss, damage or injury caused because of a crime.

The Ministry of Justice has provided more information about victims' rights under the 'Victims' Code' available at [gov.uk/government/publications/the-code-of-practice-for-victims-of-crime](https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime).

6. HELPING VICTIMS AND WITNESSES TO GIVE EVIDENCE



6.1 SPECIAL MEASURES

Giving evidence in court can be a particularly traumatic experience for victims of rape. Some victims may find it difficult to give evidence in the sight of the defendant. We can apply to the court for other ways for victims to give evidence, known as 'special measures'. These special measures will be fully explained, and a victim's preferences sought – it is a victim's right to decide whether special measures could help them give evidence. Detailed guidance on special measures can be found on our website at: cps.gov.uk/legal-guidance/special-measures.

Examples of special measures we can apply for include:

- Giving evidence through a live TV link in a room outside of the courtroom
- Video-recorded evidence which is then played to the court
- Screens around the witness box to prevent the victim or witnesses seeing and being seen by the defendant
- Judges and lawyers removing wigs and gowns so that the court feels less formal (usually for young people)
- Clearing the public gallery so that members of the public are not allowed in the courtroom during the victim's evidence
- Use of communication aids. Depending on the victim's circumstances and needs, this could include for example anything from computers, voice synthesizers or symbol boards to toys, books or an alphabet board
- Use of an intermediary who are approved by the court to provide a service that enables victims / witnesses and the court to communicate clearly to one another

A further special measure available in Crown Courts to children under the age of 18, or for some adults with a mental or physical disability, is having the cross-examination recorded before the trial. This means that both the victim's video-recorded interview by the police and the recording of the cross-examination are played to the court. The victim would not need to attend the trial itself. This special measure is often called 'section 28'.⁸

Section 28 is also available in some regions to victims of rape where the court is satisfied that the quality of their evidence is likely to be diminished due to fear or distress if they were to provide in real time. Currently there is availability in the following Crown Courts:

⁸ Section 28 of the Youth Justice and Criminal Evidence Act 1999.



Kingston upon Thames, Leeds, Liverpool, Wood Green, Harrow, Isleworth and Durham. The pilot may be extended further, and more information can be found on our website at:

cps.gov.uk/support-give-your-evidence-special-measures.

We are responsible for applying to the court for any special measures on behalf of a victim following a discussion with the police. In cases of rape, there is an 'automatic presumption' that victims of sexual offences can ask for any of the special measures which are applicable and which will help them to give their best evidence; but it is for the court to decide whether to grant or refuse this application. We will ask the victim whether they would like to meet us to discuss any special measures application.

In some cases, a victim might initially state that they do not want special measures but change their mind later. This is understandable and perfectly normal. A victim who changes their mind on special measures should let the officer in the case or their support worker know as soon as possible so that this information can be relayed to us to make the necessary applications to the court.

6.2 INTERPRETERS

If someone engaging with the criminal justice system – either as a victim, witness or defendant - does not speak English, an interpreter will be provided. They can also ask for an interpreter if they speak some English but not enough to fully understand the law or legal proceedings. A signing interpreter can also be provided. It is our responsibility to arrange interpreters for prosecution witnesses at court; similarly, it is for the court to make such arrangements for their witnesses.

If someone has concerns about the interpreter who was used, they can make a formal complaint to the National Register of Public Service Interpreters. A complaint can be about their abilities to interpret or about unprofessional or inappropriate behaviour. A victim should also let the police officer in the case, or our prosecutor know if they have concerns about the interpreter.

6.3 THE PROSECUTION ADVOCATE



The lawyer who is prosecuting the case is called the prosecution advocate. They are legally qualified and have received dedicated training to develop their specialist skills to handle rape cases. They will meet the victim at court and can give them:

- Information about the questioning process in court and what special measures are in place
- Information about the cross-examination by the defence
- Information about the case, including the defence
- Information about the legal processes

They cannot, however, say anything which may be considered as ‘coaching’ the victim - that is to influence what they might say about the facts in court.

6.4 WITNESS EXPENSES AND ALLOWANCES

We are responsible for paying allowances and expenses to victims and witnesses who are called to attend court in our prosecutions, even if they were not required to give evidence. We aim to pay all witness expense claims which are correctly completed within 10 working days of receiving them.

Victims and witnesses may also receive reimbursement towards travelling expenses; money spent for refreshments and meals; overnight subsistence; loss of earnings and childcare costs. There are, however, limits to this. For further information about our witness expenses and allowances policy visit our website at: cps.gov.uk/legal-guidance/witness-expenses-and-allowances.

The Code of Practice for Victims of Crime (the Victims’ Code) is the statutory code that sets out the minimum level of service that victims should receive from the criminal justice system. It is published by the Ministry of Justice and is available at: gov.uk/government/publications/the-code-of-practice-for-victims-of-crime.

Giving evidence in court may feel like a daunting prospect, particularly because for many people it will be a totally unfamiliar experience. To help prepare victims and witnesses for giving evidence, the CPS has produced an ‘advice for witnesses’ leaflet available at: cps.gov.uk/sites/default/files/documents/publications/CPS-advice-for-witnesses-leaflet.pdf

The Witness Service provides free and independent support for both prosecution and defence witnesses in every criminal court in England and Wales. For more information about their work, visit: citizensadvice.org.uk/witness/.



Witness Care Units are run by the police and support anyone who gives evidence for the prosecution in criminal proceedings. They are involved from the point a defendant has pleaded 'not guilty' through to the end of criminal proceedings.

7. THE LEGAL FRAMEWORK ON RAPE

In law, since 1 May 2004, rape is defined as 'penetration with a penis of the vagina, anus or mouth of another person, without their consent and without reasonable belief in consent'.⁹

Penetration of another person's vagina or anus with any part of the body other than the penis, or with any object, without their consent and without reasonable belief in consent, is 'sexual assault by penetration'. Other intentional sexual touching that is without consent and without reasonable belief in consent is 'sexual assault'.

Children under 13 years old cannot give legal consent. Penetration with a penis of the vagina, anus or mouth of a person under 13 is rape of a child. Children aged over 13 and under 16 also cannot give legal consent and penetration with any body part of the vagina or anus or penetration of the mouth with a penis this is defined as sexual activity with a child. In addition, the prosecution must also prove that the defendant did not reasonably believe that the victim was 16 or over.

For more information about key legislation and offences related to rape and sexual offences you can access further information on our website at: cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-7-key-legislation-and-offences.

7.1 WHAT IS CONSENT?

A person consents to sexual activity only if they agree by choice and:

- Have the freedom to make that choice – this means that they were in a position to make that choice freely and were not pressured or forced.
- Have the capacity to make a choice about whether to take part in the sexual activity at the time in question, for example thinking about their age or understanding of a situation.

⁹ Sexual Offences Act 2003.



Each occasion is specific, and consent needs to be given for each sexual act. Consent can be given under certain conditions (for example with the condition that a condom is worn) or withdrawn entirely during an act which started as consensual.

This means that consenting to one form of sexual activity does not mean consent to other or all forms of sexual activity. This also means that consent for sex in the future cannot be implied just because people had consensual sex in the past. In addition, consent cannot be assumed by the number of people someone has slept with before, or after, the specific sexual activity in question.¹⁰

Consent to sexual activity cannot be assumed by:

- The way people meet – for example via a dating / hook-up app or on a night out.
- What they are wearing.
- Flirtatious behaviour, whether in person or through text messages or sending of sexual images.
- Agreeing to go back to someone's house.

Situations where someone may not have the freedom to make a choice on sexual activity might include:

- If violence was used or threatened immediately before or during the act.
- Where the other person is in a position of power and able to abuse the trust placed in them, for example, a teacher, employer, gang member, family member or religious leader.
- If they are vulnerable and have been groomed and exploited, for example as seen in cases of child sexual exploitation.

Situations where someone may not have the capacity to make a choice on sexual activity might include:

- Where the person was very drunk or heavily under the influence of drugs.
- Where the person suffered from a disability or medical condition which limited their ability to consent or communicate consent.
- Where the person was asleep or unconscious.

¹⁰ For more information about the legal framework around sexual history of complainants, please see you legal guidance to prosecutors available on our website at: cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-10-sexual-history-complainants-section-41-yjcea.



In law, we must also prove that the defendant did not have 'reasonable belief' that the victim was consenting to the sexual activity. To deal with this issue a prosecutor will ask two questions:

- First, did the defendant believe the victim consented?
- Second, if they did, was this belief reasonable?

When a case goes to court, we must prove that the belief was not reasonable in the circumstances, including consideration of any steps taken by the defendant to make sure that the other person was consenting at the time.

In some situations, there is a legal assumption that a person did not consent to sexual activity and the defendant did not 'reasonably believe' that they consented, unless the defendant can show otherwise. Examples of situations where this applies include where the person was unconscious, drugged, abducted or subject to threats of violence.

One of the hardest parts of a rape prosecution can often be proving that the defendant did not have a reasonable belief in consent. This requires us to prove what a defendant was thinking when the incident happened and whether the belief formed was reasonable.

Our prosecutors are trained to look closely at the actions of the suspect before, during and after the alleged assault. By looking closely at a defendant's actions, we can fully understand the circumstances and context of the activity. We will work with investigators to build cases and will charge cases that pass the test within the Code for Crown Prosecutors.

7.2 RAPE WHICH OCCURRED BEFORE 1 MAY 2004

Victims can choose when they report their experiences. For some, it can take many years. No matter when it happened, there is no time limit for investigating and prosecuting cases of rape, which means that victims can make a report to the police at any time. There may be challenges in terms of gathering evidence, and victims may want to seek support from an Independent Sexual Violence Adviser or other service during this process, but we have prosecuted and secured convictions for rape and sexual offences that happened decades before they were reported.

The Sexual Offences Act 1956 is the main piece of legislation covering sexual offending that took place before 1 May 2004. The law on rape evolved significantly between 1956 and 2004 and deciding on the offence that can be charged will depend on the circumstances and



date of the incident(s). For example, the definition of rape under the 1956 Act did not include oral penetration and therefore these allegations are likely to be charged as an 'indecent assault'.

The 1956 Act did not include the requirement that the defendant's belief in consent was reasonable. Therefore, if the offence occurred before 1 May 2004 it is a defence if the defendant believed the person was consenting, even if this belief was unreasonable. This is a matter of fact for the jury to decide. Whilst this is a defence, a jury will be directed that the more unreasonable the belief, the more likely it is that it wasn't genuine. We can try to build the case by looking at the actions of the defendant before, during and after the incident to try and prove that the defendant did not believe the person was consenting.

For more information about how we apply the Sexual Offences Act 2003, please see Chapter 6 of our legal guidance for prosecutors on rape and sexual offences available on our website at: cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent.

For more information about how we approach non-recent cases, please see the section 'Sexual Offence Act 1956' in Chapter 7 of our legal guidance for prosecutors on rape and sexual offences available on our website at: cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-7-key-legislation-and-offences#a34.

8. ISSUES RELATED TO RAPE PROSECUTIONS

We often have to make finely balanced decisions in rape cases, and they are rightly managed by specially trained prosecutors who work in our dedicated Rape and Serious Sexual Offence Units.

8.1 ONE PERSON'S WORD AGAINST ANOTHER'S

Many rape cases may have little or no corroborative or supporting evidence (that is any other evidence to support the victim's complaint), particularly as many rapes are committed where there is no one present other than the victim and the offender. Often, the prosecution and defence cases in these circumstances are based on one person's word against another's.

One person's word against another's can be and often is enough to prosecute and secure a conviction in a case – there is no requirement for corroboration. Our prosecutors look to build cases based on the actions and behaviour of the suspect, and they should disregard factors that are irrelevant or based on myths or stereotypes.

The evidential stage of the test in the Code for Crown Prosecutors can be met in cases of one person's word against another's depending on the facts and circumstances of the case.

8.2 THE IMPACT OF TRAUMA

At the CPS, we have an understanding that the traumatic experience of rape can affect the way a victim behaves and that that behaviour might seem unexpected. The impact of trauma on the brain means that a victim may, for example, freeze rather than act.



Submission or being passive when an offender is carrying out sexually violent acts is not the same as consent. We also recognise that trauma can affect the way a victim remembers the details of the assault and that memory recall may change over time. The impact of this, together with feelings of shame, guilt, disbelief and helplessness, can make it difficult for a victim to talk about the assault.

Our prosecutors receive training and advice to understand these issues, and also how offenders may exploit vulnerabilities to avoid detection. This expertise helps us to build and present cases.

8.3 THERE IS NO TYPICAL RAPE, NO TYPICAL RAPIST, NO TYPICAL VICTIM AND NO TYPICAL RESPONSE TO RAPE

Rape can happen to anyone. People who are raped react in different ways.

A decision by the CPS not to charge, stop a case or change the charge – or if a jury decides that someone is not guilty – does not mean that the victim was lying about being raped. These outcomes mean that tests within our Code or the standard of proof needed by the court were not met.

Our specially trained prosecutors will challenge any misconceptions about rape to make fair and impartial decisions on a case-by-case basis. We have provided comprehensive guidance and support for our prosecutors to tackle myths and stereotypes related to rape. For further information, please see our legal guidance to prosecutors available on our website at: cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-4-tackling-rape-myths-and-stereotypes.

We will also look at the actions and behaviours of a suspect to consider whether, for example, there was any element of planning, or targeting or exploiting the victim at a time when they were vulnerable.

8.4 ISSUES RELEVANT TO PARTICULAR GROUPS OF PEOPLE

We bring offenders of rape to justice wherever possible. Most, although not all, rapes are committed by men against women. We therefore identify rape and sexual abuse as a form



of 'violence against women and girls', along with other crimes related to domestic abuse, so-called honour-based abuse, forced marriage and female genital mutilation. We recognise that men, boys, transgender and non-binary people are also raped. All victims have the same access to protection and support from us. The sex of the victim or suspect does not make any difference to our approach.

As part of their specialism, our prosecutors receive guidance and support to understand the impact of sexual abuse on people from a range of communities and groups. Our legal guidance provides further information about issues relevant to particular groups.

Although it is not an exhaustive list, our guidance sets out the following issues relevant to particular victims and suspects: rape by a partner; issues relevant to minoritised ethnic communities; teenagers in abusive peer relationships; victims of child sexual abuse and exploitation; immigrants, refugees and asylum seekers; those with disabilities; same-sex sexual violence; LGBT+, trans and non-binary victims of sexual violence; older victims and individuals involved in prostitution.

For detailed information about the work of our prosecutors, we have published our legal guidance on rape and serious sexual offences to support their work. This includes further information about the topics covered in this section and is available on our website at: cps.gov.uk/legal-guidance/rape-and-sexual-offences-overview-and-index-2021-updated-guidance.



9. GLOSSARY

Appeal

A request for a higher court to change a decision made by a lower court.

Bail

The release of a person held in custody while awaiting trial or appealing against a criminal conviction.

Charge

When a suspect is formally accused of committing a crime.

Code for Crown Prosecutors

The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions, that sets out the general principles Crown Prosecutors should follow when making decisions. This is available on the CPS website at: cps.gov.uk/publication/code-crown-prosecutors.

Code of Practice for Victims of Crime (also called the Victims' Code)

The Victims' Code focuses on victims' rights and sets out the minimum standard that organisations must provide to victims of crime. This is available on the Ministry of Justice's website at: gov.uk/government/publications/the-code-of-practice-for-victims-of-crime.

**Conviction**

A decision by magistrates or a jury that the defendant is guilty.

Cross-examination

To ask detailed questions of a witness in court to test the credibility and detail of their evidence.

Crown Court

A court where criminal cases are dealt with by a Judge and a jury of twelve members of the public. The cases heard in the Crown Court are those likely to attract higher sentences (for example, rape, grievous bodily harm and murder). The Crown Court also deals with appeals for cases dealt with by the magistrates' and youth courts.

Defendant

A person who is accused of committing a crime and is charged with a criminal offence.

Intermediary

An intermediary is a person specifically trained to help children and adults who are considered vulnerable to be able to communicate at the police station and at court.

Indictment

The document that lists the charges against a defendant for trial in the Crown Court.

Magistrates' court

A court where criminal cases are dealt with by magistrates or district judges. Magistrates' courts tend to deal with less serious cases that attract a lower sentence; they are also where a first hearing of a rape case takes place before moving to the Crown Court.

Newton hearing

The court may decide to hold a 'Newton hearing' where the defendant pleads guilty, but the defence and prosecution dispute the facts upon which the court is going to sentence the defendant. The purpose of the hearing is to establish the factual basis for the sentence to be passed.

Offence

A crime or illegal act.

Offender

Someone who has carried out a crime, has admitted it or been found guilty.

Plea

When a defendant says they are guilty or not guilty.

**Prosecutor**

The person who presents the case against one or more defendants. Prosecutors present cases on behalf of the Crown (in other words, the state).

Re-examination

This involves the questioning of a witness in court by the person who originally called him or her to give evidence. It follows cross-examination.

Sentence

A punishment given to the defendant by a Judge in a court.

Special measures

Special measures are measures that can be put in place to help victims of serious crimes, and victims and witnesses who are vulnerable and intimidated, to give their best possible evidence in court.

Suspect

Someone who the CPS is considering charging.

Trial

This occurs after a defendant has entered a not guilty plea or refuses to enter a plea. The magistrates or jury hear what happened from the prosecution and defence, so that they can make up their minds about whether or not the defendant is guilty.

Victim (or Survivor)

A person who has had a crime committed against them. The victim is referred to as the 'complainant' or the 'witness' when involved in a case.

Victim Liaison Units

CPS Victim Liaison Units, or VLUs, are responsible for informing victims of decisions to stop a case or significantly change charges. They are a dedicated point of contact for victims who want further information about our decisions. The VLUs can also advise victims on how they can seek a review.

Witness

A person who can give relevant evidence in a criminal case. This will usually include the victim of a crime.

Witness Care Unit

Witness care units are run by the police and support anyone who gives evidence for the prosecution in criminal proceedings.

Witness Service



If a case goes to court, the police will pass the victim's details to the Witness Service. The service is run by Citizens Advice and they are based at the court to help victims by giving them information and support throughout the trial.

10. WHERE TO GET HELP

If you, or someone you know, has suffered sexual abuse at any time and wish to seek help, there are services that offer free, independent and confidential support. You do not have to make a report to the police to receive help.

See the following page for information:

[gov.uk/government/publications/coronavirus-covid-19-support-for-victims-of-sexual-violence-and-abuse/coronavirus-covid-19-support-for-victims-of-sexual-violence-and-abuse#where-to-get-help](https://www.gov.uk/government/publications/coronavirus-covid-19-support-for-victims-of-sexual-violence-and-abuse/coronavirus-covid-19-support-for-victims-of-sexual-violence-and-abuse#where-to-get-help)

If you have been a victim of rape or sexual assault or know someone who has been a victim and wants to report it, there are different ways you can get in touch with the police.



- If you are in immediate danger, or you see someone in immediate danger, you should call 999.
- If you are deaf or hard of hearing, you can use the police's textphone service 18000. These calls are free, so it does not matter if you have credit on your phone or not.
- If you are in danger but you cannot talk on the phone, you can still make a 'silent 999' call and follow the instructions, which will depend on whether you are calling from a mobile or a landline.
- You can also call 101 for non-emergency enquiries. If you are deaf or hard of hearing, you can use the police's textphone service 18001 101. Calls to both numbers are charged.
- If you think that someone you know – such as a neighbour or a family member – has been a victim of sexual abuse, you can report that to the police.

Victims may be supported by an Independent Sexual Violence Adviser (also called an ISVA), who provides professional support, advice and help for victims of sexual violence – whether they report to the police or not. Some ISVA services provide tailored support for children as well as minoritised communities. We recognise the tremendous contribution of ISVAs, and we will work alongside them to support victims going through the prosecution process.

Under the Code of Practice for Victims of Crime, also called the Victims' Code, victims of sexual offences including rape are eligible for 'enhanced rights' because of the seriousness of the crime. Victims of rape have the right to:

- Be given information in a way that is easy to understand and to be provided with help to be understood including, where needed, access to interpretation and translation services.
- Have details of the crime recorded by the police as soon as possible after the incident.
- Support to help victims through the process if they are asked to provide a witness statement or be interviewed. They have the right that the officer taking their interview is of a gender of their choice.
- Receive written confirmation when reporting a crime.
- Be provided with information about the criminal justice process and to be told about programmes or services for victims.



- Be referred to specialist support services and told about additional support available at court, for example special measures.

The Ministry of Justice has published more information about victims' rights under the Victims' Code which is available at: [gov.uk/government/publications/the-code-of-practice-for-victims-of-crime](https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime).

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