

## Legal definitions and procedures

Anyone can experience or perpetrate sexual and domestic violence, harassment and stalking. Statistically it is men who are predominantly the perpetrators. Consequently, in this information sheet the abuser is referred to throughout as “he.” Similarly, the legal terms “defendant” to describe the abuser and “complainant” to describe the survivor of sexual violence are also used.

Within the Rape Crisis movement sexual violence encompasses a range of experience and is conceptualised as a continuum of systemic male sexualised violence against women. This continuum includes rape jokes, derogatory name-calling, victim blaming, and rape mythology, as well as behaviours by known or unknown men, such as rape, sexual assault, and childhood sexual abuse, abuse in pornography and prostitution, ‘forced marriage, sexual harassment and stalking, trafficking and sexual exploitation, crimes of honour and female genital mutilation’ (Coy et al 2007: 4). This is based on comprehensive and established data.

In determining what constitutes sexual violence, the woman’s experience, and her naming of it, is prioritised. For example, sexual violence,

*includes any physical, visual, verbal, or sexual act that is experienced by the woman or girl, at the time or later, as a threat, invasion or assault, that has the effect of hurting her, or degrading her and/or takes away her ability to control intimate contact. (Kelly 1988: 41)*

The law has been slow to tackle these issues, not only in terms of defining specific, criminal behaviours, but also in the application of measures to protect women. Detailed below is a summary of the relevant laws and the associated guidelines that define, or specify, criminal acts of sexualised violence at the moment. These can help to clarify and name the individual’s experience. Then outlined are the criminal and civil remedies that are available to prevent further violence and abuse. Although there is legislation, protocol and an increasing focus on the needs of the ‘victim,’ in practice women involved in the criminal or civil justice systems, experience further stress, harm and discrimination. Justice is elusive.

It is worth noting then, that some women are not only reluctant, but do not under any circumstance want, to report their experiences to the police. Listening, believing and offering support, are essential, as is signposting to other agencies for counselling, mental health services, secure housing etc. Decisions to report to the police have to be taken in full consideration of the woman’s wishes, and of safeguarding issues. At no time is the woman responsible for the perpetrators’ actions or decisions. A list of relevant agencies is also included at the end.

## **Legal definitions**

The Serious Sexual Offences Act 2003 (which came into effect on 1<sup>st</sup> May 2004) overhauled previous legislation and included a definition of consent. Part 1 is considered here as it defines the sexual offences listed in law. For those concerned with the management of offenders, part 2 focuses on the notification requirements (sometimes referred to as the sex offenders register) and the range of civil preventative orders.

To view the Act in its entirety: <http://www.legislation.gov.uk/ukpga/2003/42/contents>

To view the Crown Prosecution Service guidelines:

[http://www.cps.gov.uk/legal/p\\_to\\_r/rape\\_and\\_sexual\\_offences/soa\\_2003\\_and\\_soa\\_1956/](http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/soa_2003_and_soa_1956/)

For independent interpretation: <http://rightsofwomen.org.uk/wp-content/uploads/2014/10/PDF-guide-to-rape-and-assault-by-penetration-information-for-survivors-of-sexual-violence.pdf>

### **Section 1: Rape**

Rape is the intentional penetration by the defendant's penis of the complainant's vagina, anus or mouth to which she did not consent and the defendant did not reasonably believe that she consented. If a man penetrates a woman with her consent, but then she withdraws her consent and he continues to penetrate her, it will be rape. The slightest amount of penetration is enough for an offence to have been committed.

### **Section 2: Assault by penetration**

Assault by penetration is specified as the intentional and non consensual penetration by a part of the defendant's body (for example, finger or tongue) or object (such as a bottle or vibrator) of the complainant's vagina or anus. The defendant has to reasonably believe she did not consent and the penetration has to be considered sexual. (Penetration of the mouth is not included in this offence as it could either be rape or sexual assault depending on what is penetrating the mouth.)

### **Section 3: Sexual assault**

Sexual assault is the sexual touching for example with the defendant's hand or object, of the complainant without her consent and when he did not reasonably believe that she consented. This touching can occur through clothing. Sexual touching is determined by the circumstances of the touching (for example, where the touching occurred, what was touched and with what, and or the defendant's intention). Here the non consensual penetration of a woman's mouth in a sexual manner (for example, with the defendant's tongue) is sexual assault.

### **Section 4: Causing someone to engage in sexual activity without consent**

This covers offences where the defendant causes a woman to engage in sexual activity alone (for example, by forcing her to remove her clothes or masturbate), or with a third person. The defendant does not have to touch the woman in order for an offence to have been committed.

### **Consent:**

The legal age of consent to sexual activity is 16.

If a child is under 13 in law she is not able to consent (even if she expressed consent or believes she is able to decide whether or not to consent to sexual activity).

A person between the ages of 13 and 16 has the capacity to consent to sexual activity but it is against the law for him or her to do so.

For example, 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.

Consent can be expressed verbally or implicitly in her behaviour. Consent is having the freedom and capacity to choose to engage in sexual activities. So if a woman is, for example, threatened, detained against her will, under the age of 16, she is not free to make the decision to consent. If a woman is drunk or stoned, asleep, has mental ill health or learning difficulties, she does not have the capacity to make the decision to consent.

In order for the offence to have been committed, the defendant must not have reasonably believed that the complainant consented to the sexual activity. This is determined by consideration of all the circumstances of the case including any steps he took to find out whether she was consenting.

There are certain situations in law where it is harder or impossible for the defendant to argue she consented. For example, where the defendant deceives her as to his identity or gives her a substance without her knowledge or consent.

### **Sexual Offences Against Children**

The scope of sexual offences against children has been extended in the 2003 Serious Sexual Offences Act. For example, sections 5 - 9 defines rape, sexual assault by penetration and sexual assault against children under 13; sections 10 – 15 details child sex offences including for example, causing and inciting a child to engage in sexual activity, and meeting a child following grooming; sections 45 and 46 deal with indecent photographs of children and sections 47 – 51 outlines abuse of children through pornography or prostitution.

Positions of trust and prohibited relationships are defined in sections 16 – 22 and 25 – 26 respectively. Positions of trust include those who are responsible for the care, training and supervision of the young person or child. Prohibited relationships include all close family members whether by blood or adoption, and also extends to step parents, first cousins and lodgers or au pairs if the perpetrator is living with, and is responsible for, the care of the child.

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.

For more details see particular sections of the Act at:

<http://www.legislation.gov.uk/ukpga/2003/42/contents>.

For interpretation and an outline of criminal justice process for children see:

<http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Children-and-the-law-the-criminal-justice-system-and-child-sex-offences.pdf>

Women who access support with recent sexual violence may have previous experiences of abuse. Or women may come forward because they want to report to the police, or seek support for, their experiences of the sexual violence that occurred in their childhood or in their more recent past. The definitions relating to sexual offences against children, contained in the 2003 Act can be useful to name experiences and to have them recognised as criminal. Whilst the media and general presumptions obscure issues of consent and suggest teenagers and younger children can be 'provocative,' this legislation clarifies the situation. It is clear that children under 13 are in law unable to consent; and if the child is aged between 13 and 15 it is still unlawful for sexual activities to occur. However, in situations where the perpetrator reasonably believed (as it is decided in court) that the child was 16 or over at the time then they would not be guilty of the offence.

**NB:** if the offences took place before the 2003 Act, previous legislation is applied. Access to support, and the criminal justice process, are the same for women who report recent sexual violence, but the terminology used to arrest, charge, and sentence the defendant will relate to the laws at the time of the abuse.

## **Harassment**

[http://www.cps.gov.uk/legal/s\\_to\\_u/stalking\\_and\\_harassment/](http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/)

The Protection From Harassment Act 1997

Section 2 (causing alarm or distress):

Harassment includes a 'course of conduct' i.e. repeated attempts to impose unwanted communications and contact upon a victim in a manner that could be expected to cause alarm or distress and which the defendant knows, or ought to know, amounts to harassment of another.

Section 4 (putting people in fear of violence)

Harassment also includes a course of conduct which causes another to fear that violence will be used against her, and which the defendant knows, or ought to know, will cause her to fear that violence will be used against her.

Section 125(2) of the Serious Organised Crime and Police Act 2005

Harassment can involve two or more defendants or more than one victim, where the defendant(s) intends to persuade the victim not to do something that she is entitled or required to do, or to do something that she is not under any obligation to do.

The complaint has to be made within 6 months from the last incident. Proof of harassment relies on evidence that demonstrates the conduct was targeted at an individual and was calculated to alarm or cause him/her distress, was oppressive and unreasonable.

## **Stalking**

Protection of Freedoms Act 2012

In this legislation, stalking is identified as a separate and different form of harassment behavior. There are 2 specific stalking offences:

1) Stalking as harassment: a course of conduct that amounts to stalking. Behaviours' include but are not limited to:

- (a) following a person,
- (b) contacting, or attempting to contact, a person by any means,
- (c) publishing any statement or other material relating or purporting to relate to a person, or purporting to originate from a person,
- (d) monitoring the use by a person of the internet, email or any other form of electronic communication,
- (e) loitering in any place (whether public or private),
- (f) interfering with any property in the possession of a person,
- (g) watching or spying on a person.

2) Section 4A: Stalking involves a course of conduct that amounts to stalking and which causes another to fear, on at least two occasions, that violence will be used against her, or causes her serious alarm or distress which has a substantial adverse effect on her usual day-to-day activities.

The effect of such behaviour is to curtail a victim's freedom, leaving her feeling that they constantly have to be careful. In many cases, the conduct might appear innocent (if it were to be taken in isolation), but when carried out repeatedly so as to amount to a course of conduct, it may then cause significant alarm or distress to the victim.

The guidelines (<http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/018-2012/>) issued by the Home Office suggest that evidence of a substantial adverse effect may include the following:

- (a) the victim changing their routes to work, work patterns, or employment;
- (b) the victim arranging for friends or family to pick up children from school (to avoid contact with the stalker);
- (c) the victim putting in place additional security measures in their home;
- (d) the victim moving home;
- (e) physical or mental ill-health;
- (f) the deterioration in the victim's performance at work due to stress;
- (g) the victim stopping /or changing the way they socialise.

it is the cumulative effect of the stalking which is important and it does not require any particular incident in the stalking to be especially alarming or serious.

The Crown Prosecution Service advise those experiencing harassment and stalking to maintain a record or diary of events that are documented as soon as possible after each event, with all entries timed and dated. They advise where possible, notes should include details of witnesses at the time of the incident, and a description of what the defendant was wearing or vehicle he was driving if applicable. CPS advise the storage of messages or taped calls from the defendant and a record of times and telephone numbers of all unanswered calls. CPS also suggest that, if it is safe, neighbours are alerted so they can also keep records.

## Domestic Violence

Domestic Violence is included here as it involves elements of sexual violence, stalking and harassment. There is no legal definition of domestic violence. However, the Government defines domestic violence as:

*“Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse:*

- *Psychological abuse*
- *Physical abuse*
- *Sexual abuse*
- *Financial abuse*
- *Emotional abuse*

*Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.*

*Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.*

*This definition, which is not a legal definition, includes so called ‘honour’ based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group.”*

Although domestic violence is not itself a crime, there are very specific behaviours within domestic violence that are criminal offences such as assault, rape, harassment, threats to kill etc. As such women can invoke criminal justice proceedings. However, for other elements of domestic violence such as verbal abuse or financial and emotional abuse, women can protect themselves through civil remedies. Whatever the experience, women can choose which route they want to pursue, criminal or civil proceedings and sometimes both might be necessary.

In emergencies police should be contacted on 999, in which case, criminal proceedings begin.

It can take on average 7 times before a woman leaves the domestic violence situation for good. Leaving is statistically the most dangerous time for women living with domestic violence. There are many reasons why women remain. For suggestions on how to support someone through this time, see <https://www.womensaid.org.uk/the-survivors-handbook/im-worried-about-someone-else/#1447862812063-726e746a-2107> and for safety planning advice see: <https://www.womensaid.org.uk/the-survivors-handbook/making-a-safety-plan/>

## **Criminal Proceedings**

The following guidelines produced by the Rights of Women outline the criminal justice process.

<http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Reporting-an-offence-to-the-police-a-guide-to-criminal-investigations.pdf>

<http://rightsofwomen.org.uk/wp-content/uploads/2014/10/From-charge-to-trial-a-guide-to-criminal-proceedings.pdf>

The first port of call in emergencies is for her to ring 999 for immediate police response. However, she can also report incidents in non emergency situations via 101. Both begin a criminal investigation. The police and courts have a range of orders that can be applied:

### **1) Police Information Notices**

PIN's are a verbal warning given to the perpetrator. The police explain that his current behaviour, if continued, will be seen as a criminal offence, for which he can be arrested. The aim is to prevent the perpetrator from continuing with his behaviour without the need for any further criminal proceedings. However, if it does not prevent further abuse or harassment, a PIN can be used as evidence that he was aware that his behaviour is unacceptable.

### **2) Domestic Violence Protection Notices and Orders (DVPNs and DVPOs)**

Each police service will have their own guidelines which outline these orders:

<http://www.kent.police.uk/advice/victims/attachments/dvpn-dvpo-partner-news.pdf>

<http://www.gmp.police.uk/live/Nhoodv3.nsf/section.html?readform&s=2236FE24FA7B33CB80257A5B002FCF31>

These two measures are applied in situations immediately following the report of domestic violence before the perpetrator is charged and in cases where police believe the woman may be at risk from violence or are worried about violent behaviour within a household, but do not have enough evidence to bring a criminal charge.

These new temporary measures give police the power to prevent the perpetrator from molesting or harassing the woman and to ban him from the family home for a length of time decided through the magistrates' court (between 14 and 28 days), avoiding the need for her to go into refuge or stay with friends. This gives her space to consider her options such as securing longer term injunctions with the help of a caseworker. Before these orders, only those arrested and charged with an offence could be barred from their home, either through bail conditions or through a civil court order.

Abusers are given the chance to attend a voluntary offenders' programme. If abusers breach the Order, however, it could then lead to a prison sentence.

DVPNs and DVPOs which are in force or made within the last two years can also be used as evidence of domestic violence for access to family law legal aid.

### **3) Police Powers**

In situations of harassment, police have powers to direct a person to leave the vicinity and not to return within a period of up to 3 months. If he does return within the time specified, to cause harassment, alarm or distress, or for the purposes of making someone do something against their will, it is an offence.

### **4) Restraining orders**

The views of the woman are required when establishing the remit and use of a restraining order. A restraining order can be time specific or until a request for it to be varied or discharged. It is up to the defendant to make this request and the onus is on him to satisfy the court that he is no longer a risk to the woman.

- a) Restraining orders are imposed at the time of sentencing to protect the victim (or other named person) from any future harassment or fear of violence. Restraining orders should also be considered where the defendant receives a custodial penalty, as it is possible to harass or cause fear of violence from prison through the use of telephones, letters or third parties. The prison can be informed of the existence of an order by the police. The order can and sometimes should exceed the custodial period.

Sometimes, a defendant may seek to make repeated applications for variation of the restraining order so as to continue harassing the victim.

- b) Restraining orders post acquittal. If the perpetrator is acquitted, and the court believes the woman still needs protection, a restraining order can be made immediately to prevent harassment. This avoids delay in seeking protection from a non-molestation order.

### **5) Bail conditions**

Bail conditions are considered here as they afford the woman protection from further violence and harassment during the criminal process before conviction. The woman should be notified of bail conditions and any changes to them.

[http://www.cps.gov.uk/legal/a\\_to\\_c/bail/index.html](http://www.cps.gov.uk/legal/a_to_c/bail/index.html)

- a) Pre-charge police bail: The perpetrator may be arrested, but if at the time there is insufficient evidence to charge, he may be released, until the CPS make a charging decision or evidence has been gathered, with conditions of bail. These conditions will prevent him from failing to surrender to custody, offending on bail, interfering with prosecution witnesses or otherwise 'obstructing the course of justice' or for his own protection. If bail is breached, he may be charged.
- b) Post charge bail: Once charged the perpetrator can either be detained or released on bail to attend court. In the case of sexual violence, the decision to remand instead of bail is made if he has been charged with rape and has previous convictions of rape, and if he has breached bail previously or not surrendered himself to custody. If he is bailed and he breaches his bail

conditions, he will be arrested and brought before the court within 24 hours where he could be remanded or bailed under the same or different conditions. He can apply to have his bail conditions changed.

## **6) Register of sexual offenders and Sex Offender Preventative Orders**

Anyone convicted of sexual offences must attend a local police station within 3 days of leaving prison to register their details with the police. The sexual offenders register allows a certain level of monitoring as it requires annual registration; notification of address and if he moves or changes his name; notification if he is away from home for more than 7 days.

Sex Offender Preventative Orders can be imposed if there is evidence that he poses a serious risk of causing serious sexual harm. Police can apply for a Risk of Sexual Harm Order against any person thought to pose a risk to children under 16.

Sex offenders released early from prison on license will have to uphold certain conditions which prevent them from contacting the woman.

### **Civil remedies**

There are two types of civil injunction. For more information, see:

[http://rightsofwomen.org.uk/get-information/violence-against-women-and-international-law/domestic-violence-injunctions/#What%20is domestic violence](http://rightsofwomen.org.uk/get-information/violence-against-women-and-international-law/domestic-violence-injunctions/#What%20is%20domestic%20violence)

Anyone can apply for either injunction if they are associated with the abuser. This association can be through: marriage, civil partnership, engagement, living or have lived in the same household, as a relative (whether by blood, marriage, civil partnership or cohabitation), having a child together or sharing parental responsibility, or through a significant relationship of some duration.

#### **1) A non-molestation order**

A non-molestation order can protect a woman and her child/ren from violence or harassment, even in situations where she still wishes (or has to) live with her abuser. A non-molestation order might include instructing the abuser not to threaten, harass, intimidate or be violent towards a woman and her child/ren, not to contact her in any way, and/or to keep away from her within a specified distance of her workplace or home. The courts make their decision to grant a non-molestation order based on the impact his behavior has on her health and safety and that of her children. The orders must be reasonable and relevant to the harassment the woman has experienced.

Breach of a non-molestation order is now punishable either as a criminal offence with a maximum penalty of 5 years imprisonment, or as a civil contempt of court. The woman can choose the mechanism by which to have the breach dealt with, by either calling the police and it be dealt with as a criminal proceeding, or she can make an application to the civil courts to have the person committed to custody for contempt.

#### **2) An occupation order**

If the woman is married to the abuser, the tenancy is in both names and he has an entitlement to the home, an occupation order can be considered. An occupation order can: require him to move

out of, or stay away from, and keep a certain distance away from, the family home. It could order him to stay in certain parts of the house at certain times; to continue to pay the mortgage, rent or bills; or enable her to get back into the home if he has locked her out.

The decision to grant an occupation order depends on the needs and resources of the woman, the abuser and any children; access to financial resources, the behaviour to each other and the harm that the woman and her child/ren might suffer if the order is, or is not, granted. How long the order will last and the factors the court will consider depend on the woman's and the abuser's legal entitlement to the home.

The court can make both a non-molestation order and an occupation order if it is appropriate.

Legal advice should be sought from a solicitor who can be recommended by the local refuge, Rape Crisis Centre, IDVA (Independent Domestic Violence Advisor) or ISVA (Independent Sexual Violence Advisor).

Help to get an injunction can also be sought from the National Centre for Domestic Violence 0844 8044 999 [www.ncdv.org.uk](http://www.ncdv.org.uk)

### **Harassment injunctions**

If there is no association as described above between the abuser and the woman, or there has been harassment and stalking, there are harassment injunctions available. This civil action can be taken within 6 years of when the harassment happened and even if the person hasn't been convicted of a criminal offence. The injunction can prevent further harassment. If it is breached it is a criminal offence that can be prosecuted in the criminal courts. Seek legal advice.

The woman can also ask the civil courts for compensation for financial or emotional loss.

