

Criminal Prosecution of the Abuser (General guidance only)

Criminal cases:

Reporting the incident/s to the Police:

The most common deterrents to reporting abuse and sexual violence are shock, which can be paralysing at the time, and feelings of humiliation and shame. Fear of not being believed can also be a barrier.

To counter this, Police training and practice has improved dramatically over recent years. You can now expect to be treated with respect and taken seriously. You will be given the opportunity to talk about the incident to specially trained staff and at some time a written statement is likely to be taken. You are entitled to have someone with you for support and to be kept informed of progress in the case. All formal interviews are recorded for evidence.

Recent incidents

You should report an act of sexual violence against you as soon after the incident as possible and if you can, avoid washing yourself or changing any clothing. You are likely to feel afraid and vulnerable, but a specially trained police officer will be assigned to give you support and advice throughout. You will be examined by a doctor who will have been specifically trained to carry out their work with care and sensitivity and you are entitled to choose whether male or female. Examinations and most interviews will take place at a Sexual Assault Referral Centre (SARC).

These premises are designed and furnished to help you feel more comfortable and safe.

Personal clothing will be taken and if known, the crime scene will also be examined for evidence. A detailed interview will take place after the examination and further interviews may be necessary for clarification.

Historical cases

Due to the duration between the incident and reporting, forensic evidence may not be available unless you received medical attention at the time or there is other proof. Historical cases are more difficult to prove but not impossible and even if the complaint you make does not lead to a prosecution; the information you give to the police can be valuable and they will certainly appreciate your report. Like any other case, whether it goes to court or not will depend on the quality of the evidence.

From Police to Court and afterwards

Police procedure

The Police will endeavour to trace the suspect and if found arrange for them to be interviewed. If appropriate, the suspect will be subject of a forensic examination and clothing and other items are likely to be seized. If there are relevant witnesses, they will be interviewed and statements taken. As the enquiry progresses the Police will gather any other evidence which they believe has a bearing on the case.

Identification Parades

If the suspect denies being responsible and identification is an issue it is possible that an ID parade will be conducted. This can be a frightening time. You will be protected by a one-way screen and

will not be seen by anyone from the line-up. Police officers will be there to protect you; they will explain how the identification procedure works and guide you through the process.

Court prosecution

Once the evidence has been obtained, the police pass the evidence to the Crown Prosecution Service (CPS). Based on the evidence the CPS determine whether the case can proceed to court or not. The rules of proof are heavily weighted in favour of the accused and the CPS are legally obliged not to proceed with a case they have little or no chance of winning. Because of these circumstances, if the decision is made not to prosecute it does not mean that you are not believed. There is usually a 6 month wait between the decision to go to court and the actual trial, however it can be longer.

Special Measures

Under the Youth Justice & Criminal Evidence Act 1999, all victims of sexual offences will be considered eligible for special measures during the trial. These are:

1. Screens to shield you from seeing the defendant.
2. Privacy. The courtroom can be cleared of people who do not need to be present.
3. Live link. The use of closed circuit television so you do not have to be in the courtroom (usually only available for children and other vulnerable people).

Be aware that it is the duty of defence lawyers to test all the evidence vigorously. Not to do so could lead to claims of a miscarriage of justice if the accused is eventually convicted. This could lead to retrials and appeals. Be prepared for tough questioning and attempts to discredit your account of events.

Anonymity

Your anonymity is guaranteed outside the courtroom – it is a criminal offence for personal details to be published. Inside the court you can choose to be anonymous and be addressed by a fictitious name throughout the trial. Make the police and prosecutors aware of your wishes beforehand. Your addresses should not be read out in court, except when it is relevant to the charge.

Previous sexual behaviour

Reference to your behaviour will only be permitted as evidence where the behaviour happened at, or about the same time as the alleged offence. The court can allow this if it is to contradict claims made by you or a witness.

Court case outcome

Sexual crimes are very hard to prove and the outcome can be disappointing. It is best to have low expectations and supportive friends/family available. If the verdict is guilty, sentencing is unlikely to be made that day. It is more likely that reports from other agencies will be called for and another date set for sentencing. If you want to be present at sentencing, make your wishes known otherwise the police officer in charge of your case is responsible for informing you of the outcome.

Support in and from the Court

During the court case victims/witnesses can wait in the witness suite, which is away from the general court areas. You and all witnesses will have access to their written statements to read before they give evidence. Court staff and/or the witness service will be there to guide and inform you.

Surviving the Court Procedure

It can be very traumatic to have to relive the incidents in court and be questioned on intimate sexual acts. It may leave you more upset or angry than you were before the court case and a case can go on for many days.

You may need support afterwards to help you cope with the outcome whatever that may be. Even if the case goes in your favour, it is seldom satisfactory in every respect and you may face some very distressing emotions.

Civil Claims & Criminal Compensation Claims

The aim of this article is to provide sufficient information to people who have been abused so they can take the first step.

Instructing a solicitor can be a bewildering and stressful process and may lead to triggering unpleasant and traumatic memories. Support from friends, family and medical professionals is essential for any person considering a claim. It is also essential to seek a solicitor who is experienced and has knowledge of dealing with claims on behalf of survivors of abuse.

The type of claim

In general, the claimant may have the right to bring one or more of the following types of claims:

1. A claim to the Criminal Injuries Compensation Authority for statutory compensation. This is a Government scheme paying out compensation to victims of violent crime. Any claim must be submitted within two years of the date of the incident, although the authority has a general discretion to waive this limitation.
2. A claim against the abuser for trespass/assault. The limitation period is six years from the date of the assault, (or if the incident occurred in childhood, the claim must be brought by the claimant's 24th birthday).
3. A claim in negligence against the local authority or care home that had responsibility for looking after the child. The claim must be brought within three years of the date of negligence, (or by the age of 21 if the incident occurred to a child). However, the court has a general discretion to allow claims to be brought outside of the limitation period.

The law can be complex and often difficult to understand. Many claims are brought which relate to incidents occurring in the 1960's and 1970's so it is may be worthwhile instructing a specialist solicitor to investigate the possibility of a claim.

What are the claims for?

Primarily all of the above claims are for a sum of money to compensate for pain and suffering.

What is required of the claimant?

Even for the most straightforward claims, the legal process is likely to last for several months and the solicitor will require the full co-operation of their client as follows:

- It is necessary to take a detailed witness statement setting out the events.
- It will be necessary for the claimant to see medical experts such as psychiatrists and psychologists so that reports can be obtained to support the claim.
- Ultimately it may be necessary to give evidence at court and be cross-examined.

Funding

This is an issue that should be carefully discussed with the solicitors at the first meeting. Many solicitors offer an initial free interview to discuss the case.

There are a number of possible ways to fund claims such as:

- Legal Aid.
- The solicitor may be able to offer funding on a 'no win no fee' basis.
- With regard to CICA claims - these can be funded under the Legal Aid Green Form scheme.

The basic message is that you should contact a solicitor with expertise in this area in order to find out what your rights are and to establish whether you have a viable claim.

Useful contacts for finding help:

Association of Child Abuse Lawyers
Suite 5, 22-24 Claremont Road, Surbiton, KT6 4QU
0208 390 4701 www.childabuselawyers.com

Rights Of Women
52-54 Featherstone Street, London, EC1Y 8RT
0207 251 6577 www.rightsofwomen.org.uk

Rights Of Women publish a detailed and comprehensive handbook for adult survivors of sexual violence; both male and female. The Title is 'From Report to Court' and the information is mainly for survivors involved in criminal cases.

With special thanks to:

Abney Garsden MacDonald Solicitors
37 Station Road, Cheadle Hulme, SK8 5AF
0161 482 8822 www.abuse|aw.co.uk

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