

Understand, Identify, Intervene: Supporting young people in relation to peer-on-peer abuse, domestic and sexual violence



Introduction

This legal guide is for anyone who wants to know about the **legal options** available to young people experiencing particular forms of violence, including **domestic violence, sexual violence** and specifically, **peer-on-peer abuse**.

It is unfortunately the case that young people may experience abuse from a variety of people with whom they come into contact at different points in their lives. This legal guide focuses on the law and legal remedies available to respond to violence and abuse young people may experience from their peers (people of their own or similar ages), particularly in intimate relationships and including sexual exploitation. This is often referred to as **peer-on-peer abuse**.

The legal options set out in this guide are one option available to young people and those that support them. Other options that you might want to explore alongside of, or instead of those set out here, include accessing counselling or other medical treatment or by implementing interventions at school. This guide focuses on the law to enable you to support a young person with legal proceedings and know where to signpost them.

Age and peer-on-peer abuse

The law generally treats anyone under the age of 18 (17 in some circumstances) as a child. This guide does the same. If you are supporting someone older than 18 this guide does not necessarily apply and you should seek information relevant to adults (see the organisations listed at the end of this legal guide for sources of support).

Although peer-on-peer abuse can occur when children are young, it usually occurs when they start to form significant friendships and intimate relationships, whether sexual or not, in their teens. The criminal law also treats teenage victims differently from child victims. For these reasons, this guide will focus on the rights and options of **13-18 year olds**. This is what is meant when this guide uses the term **young people**.

The age at which a person can be held criminally responsible for their actions in England, Wales and Northern Ireland is **10 years old** (different laws apply in Scotland). Different legal processes apply when the perpetrator of abuse is under 18 to those that apply to adult perpetrators.

Language

In exploring legal remedies relevant to peer-on-peer abuse this guide discusses the law on domestic and sexual violence relevant to young people. Domestic and sexual violence is most commonly perpetrated by men against women, but it can and does occur in same-sex relationships and occasionally is perpetrated by women against other women or men.

Consequently, although we refer to the perpetrator of violence as 'he' throughout this legal guide we recognise that this is not always the case. The law applies equally, regardless of the sex, gender identity or sexual orientation of the people involved.

Depending on the type and stage of proceedings we use the term **suspect, defendant or respondent** to describe the person responsible for the abuse and **complainant, victim or applicant** to describe the young person experiencing it as these are the terms most commonly used in the law and relevant legal processes.

Abuse

A young person may experience different kinds of abuse, for example, verbal or sexual abuse. Abuse may be perpetrated by a parent, friend or acquaintance.

Child abuse refers to the abuse of children by adults and includes physical, emotional, sexual and psychological abuse. There are a variety of legal remedies that have been developed to respond to child abuse, including action by the local authority and criminal proceedings against those responsible. Further information about these can be obtained by contacting some of the organisations whose details are given at the end of this guide.

This guide is focussing on **peer-on-peer** abuse. Peer-on-peer abuse can take many different forms, including sexual, physical, verbal, emotional and psychological abuse. Any and all of these forms of abuse may be damaging for the person experiencing it and should be taken seriously. Different types of abuse may receive different legal responses. Verbal and physical abuse such as name-calling and pushing may be dealt with by disciplining the person responsible at home or at school. More serious physical violence and sexual violence may well be reported to the police and/or the Local Authority.

Peer-on-peer abuse may also be **domestic violence** when the person responsible for it and the person experiencing it are in an intimate (not necessarily sexual) relationship. The law has developed particular remedies to respond to domestic violence, to protect those who are experiencing it and punish those responsible.

What is domestic violence?

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; physical; sexual; financial; emotional.

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.”

This definition applies to people **aged 16 and above**. This means that it applies to violence or abuse that takes place in intimate relationships between teenagers aged 16 and over. It also applies to violence and abuse that is experienced by someone aged 16 or over where the person responsible is a family member (such as a brother or parent). Violence and abuse that takes place within the family and which is experienced by someone who is under 16 is child abuse and should be responded to by the Local Authority and police where appropriate.

Domestic violence is not itself a criminal offence. However, some of the actions or behaviours of perpetrators of domestic violence are criminal offences, including assault, harassment, stalking, rape, false imprisonment, criminal damage or making a threat to kill. These offences can be

reported to the police whatever the age of the victim (see below for information on reporting to the police).

Verbal abuse in a private place and forms of emotional, psychological and financial abuse are not generally criminal offences. However, a perpetrator can be ordered to stop these types of abuse in a **non-molestation order** or **restraining order** (see below). These orders can also be used to deal with more serious violence if a person does not want to report that violence to the police. These orders are obtained from the family courts (see further below).

What is sexual violence?

Sexual violence is any sexual act, or attempt to carry out a sexual act, that takes place without the consent (agreement) of the person who has experienced it. This includes, but is not limited to, situations where physical or other violence is used.

The **Sexual Offences Act 2003** (SOA 2003) sets out the law on sexual violence, including in relation to **consent**, **rape** and **sexual assault**. The SOA 2003 contains specific provisions that relate to children and young people.

As with the different forms of domestic violence discussed above, a person who does not want to report sexual violence to the police can get a non-molestation order or restraining order against the person responsible.

The difference between civil and criminal law remedies

Criminal offences are investigated by the police and prosecuted (presented) by the Crown Prosecution Service in either the magistrates’ or Crown Court. Reporting abusive behaviour to the police is sometimes the easiest and safest way of protecting a young person from further abuse and taking steps to punish the perpetrator for their actions. However, if the abuse experienced is not a criminal offence, the young person does not wish to involve the police, or the police have been involved but have not pursued a report, it may be useful to consider other non-criminal options like protective orders. Such orders come from the **civil courts**, like the family court.

In civil law the young person would have to apply to the court themselves (with the assistance of a solicitor representing them) rather than be a witness in criminal proceedings. This has the disadvantage of the young person having to

organise an application and instruct a solicitor, but has the advantage of giving the young person more control over the proceedings. For example, a young person can choose when to make an application and how to enforce it, while in the criminal justice process important decisions are taken by the police or prosecutor.

Civil courts can make protective orders and can award damages to the young person that in certain circumstances the respondent would be liable to pay. However, civil law remedies do not punish the perpetrator in the same way that criminal proceedings do. A respondent in a civil case will not receive a criminal conviction or criminal record if a protective order is made against them. It is only if certain protective orders are breached (and therefore a criminal offence committed) that this would happen. So whilst the criminal and civil justice systems are different, there are some links between them, see further below.

The remainder of this legal guide will provide further information on:

- criminal offences and procedures;
- civil remedies; and
- Local Authority intervention.

It is important that a young person try and get legal advice before taking any particular legal action, see the organisations listed at the end of this guide.

Criminal Offences and Procedures

Criminal offences relevant to domestic and sexual violence

Domestic violence

As explained above, a perpetrator of domestic violence may commit a number of possible criminal offences. A perpetrator who uses physical violence including spitting, punching, slapping, pushing, kicking, head butting, or hair pulling may commit common assault, battery, assault occasioning actual or grievous bodily harm, wounding or attempted murder (depending on the circumstances of the case and the injuries received). Using threatening or abusive words or behaviour intending to cause a person

harassment, alarm or distress may in some cases also be a criminal offence.

Criminal offences may be committed by a perpetrator who does not use physical violence. Isolating someone, preventing them from seeing their friends or family may be false imprisonment. Threatening to 'out' someone (make their sexual orientation, gender identity or other status known publicly) might be harassment or blackmail. Making threats to harm someone may be common assault. All of these offences are relevant to young people experiencing peer-on-peer abuse, domestic and/or sexual violence. These offences do not differ depending on the age of the victim or person responsible (although the processes that apply to them will differ, see below. Age is also relevant to sentencing). We do not have the capacity to discuss these offences in detail, so it is necessary to seek legal advice or to contact one of the organisations listed at the end of this legal guide for further information. Alternatively you could call our advice line and speak to one of our legal advisers who may be able to provide further information.

Sexual Violence

The SOA 2003 contains specific provisions relevant to young people experiencing peer-on-peer abuse, domestic and/or sexual violence. Sexual activity with children is divided into different types of offences with different maximum sentences according to the age of the child; under 13, between 13 and 16, between 16 and 18 and over 18 (adult).

If a child or young person is **under 13** then they are not considered in law to be able to **consent** (agree) to any sexual activity. This means that a person will be guilty of a serious sexual offence if they engage in any form of sexual activity with someone under 13, regardless of whether or not that child says he or she 'agrees' to it.

If the young person is **between 13 and 15 years old** then they are generally considered to be able in law to consent to sexual activity, but it is still against the law for someone to engage in sexual activity with them. 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 (see below), but he would not have committed **rape** (which is a non-consensual sexual offence, see further below). 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.

The four main sexual offences in relation to young people aged 13-15 are:

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

For all of the above offences, consent of the child to any activity is not relevant. This means that these behaviours are criminal offences even if the young person concerned agreed to them.

There is a defence as to the age of the child (to cover situations where the perpetrator believes the young person to be 16 or over). If the child is aged between 13 and 15 and the perpetrator reasonably believed that the child was 16 or over at the time (reasonable belief would be decided by a court) then they would not be guilty of the offence.

If a person under 18 commits any of the above acts they will be guilty of the relevant offence but the maximum sentence they can receive is reduced to 5 years in prison. If young people under 16 are engaging in consenting sexual activity together technically both are committing offences. However in these cases it is unlikely that the young people will be investigated or

prosecuted unless one of them is particularly vulnerable and/or the relationship appears to be exploitative or abusive.

If a young person is 16 years old or over then it is not an offence to engage in sexual activity with them unless:

- they do not consent to the activity (the non-consensual sexual offences) or,
- they are between the ages of 16-18 and the person engaging in sexual activity with them is in a position of trust (e.g. is their teacher) or a family member.

The main non-consensual sexual offences are:

- **Rape** – this offence is committed when a man intentionally penetrates someone's vagina, anus or mouth with his penis, the person does not consent and the man does not have a reasonable belief that the person is consenting. Only a boy or man can commit the offence of rape because the penetration has to be with a penis. However, women and girls can be guilty of assisting a man commit rape. The maximum sentence for rape is life imprisonment.
- **Assault by penetration** – this offence is committed when the perpetrator intentionally penetrates the victim's vagina or anus (but not mouth) using anything other than a penis, the victim does not consent and the perpetrator does not reasonably believe that the victim consents. The maximum sentence for assault by penetration is also life imprisonment.
- **Sexual assault** – this offence is committed when the perpetrator intentionally touches the victim in a 'sexual' way, the victim does not consent and the perpetrator does not reasonably believe that the victim consents. Some activities are considered to be inherently 'sexual', like sexual intercourse. Other situations may be considered sexual by the court. The maximum sentence for sexual assault is 10 years imprisonment.
- **Causing someone to engage in sexual activity** – this offence is committed when the perpetrator makes someone do anything which may be sexual (e.g. masturbation of the victim or making the victim masturbate someone else) if the act is sexual, the victim does not consent and the perpetrator does not reasonably believe the victim consents. If the sexual activity includes penetration the maximum sentence for this offence is life imprisonment, if it does not then the maximum sentence is 10 years.

Consent

As described above, some sexual activity with young people is a criminal offence because they do not consent to it (the non-consensual sexual offences) whilst other forms of sexual activity are criminal offences even if the young person (or young people) is consenting.

In law a person consents if s/he **“agrees by choice and has the freedom and capacity to make that choice”**. Consent can be withdrawn at any time and is given for each sexual act, so it is possible in law to consent to kissing and sexual touching, but not to sexual intercourse. Consent may be conditional (for example, on using a condom or not recording the activity). If in all the circumstances the court thinks the defendant did have a reasonable belief in consent then they will be not guilty of the offence, even if the victim was not actually consenting. Belief in consent must be reasonable. A person could not be thought to be consenting to sexual activity solely because they are wearing particular clothes.

There are some situations which, if proved to have taken place, make it more difficult for the defendant to argue that he had a reasonable belief in consent. These include if the victim was asleep or unconscious, given drink or drugs without their knowledge (‘date rape’ drugs), imprisoned or if they had been threatened with or had experienced violence.

If the victim is intoxicated (drunk) through drink or drugs that they have chosen to take themselves then in law they still may have the ability to consent to sexual activity. The issue is the person’s **capacity** (ability) to make a decision. If a person is intoxicated but still has the capacity to consent to sexual activity then no offence has been committed, even if that person would not have consented if they had been sober. If a person has lost the capacity to consent to sexual activity because of intoxication then sexual activity with them will be an offence because they cannot consent to it. Perpetrators usually remain criminally responsible for their actions when they are intoxicated. This means that the fact that someone is drunk does not mean that they cannot be guilty of a sexual (or other) offence.

A person may be ‘groomed’ or manipulated into agreeing to sexual activity. A perpetrator might take advantage of a young person’s vulnerability or buy them drink or drugs in order to convince them to agree to sexual activity. Grooming does not necessarily negate consent. The issue in each

and every case is whether or not the young person has the freedom and capacity to choose. Therefore, if a young person over the age of 16 has been groomed or manipulated into a relationship and they ‘consent’ to sexual activity then there is no offence, even though as an adult, reflecting back, they may feel that they were manipulated into consenting. Similarly, if a young person 16 or over agrees to engage in sexual activity because, for example, it is part of being in a gang, there is unlikely to be an offence. Even under the age of 16 if a young person has been groomed or manipulated into ‘consenting’ to sexual activity the more serious offences of rape cannot be charged and the offence of sexual activity with a child (with a lesser sentence) would be charged instead.

Texting or posting explicit images

It is a criminal offence, under the **Protection of Children Act 1978** (as amended) to take, permit to be taken or to make any indecent photograph or pseudo-photograph of a child (someone under 18), to distribute or show any such photograph and to have in possession any such photograph with a view to their being distributed or shown. In addition the **Criminal Justice Act 1988** (as amended) makes it an offence to simply possess any such photograph.

This means that any young person under 18 who takes and sends an indecent picture of someone (including themselves) and/or anyone who distributes this to others is committing a criminal offence. The same is true if such an image is shared through social media (like twitter or snapchat).

There are defences to these offences (although the fact that the image is one the young person has taken of themselves is not one). These include where the suspect or defendant received the image but did not know or suspect it was indecent or where it was received without having been asked for and was not kept for an unreasonable amount of time. Significantly, there may be a defence where the child was 16 or 17 and consented to the image being made, shown, distributed or possessed **and** the defendant and the child were married or lived together as partners in an enduring family relationship.

Investigating and prosecuting criminal offences

It is the responsibility of the police to investigate criminal offences and, if the case goes to trial, for

the Crown Prosecution Service to prosecute them. The starting point for all criminal cases is therefore a report to the police.

Reporting to the police

Depending on whether or not it is an emergency and the nature of the case there are four ways a young person can report abuse to the police:

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

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

Option 3: The young person can go to their **local police station** and tell the staff at the **front desk reception** that they want to report a crime. There are no time limits for reporting criminal offences to the police. Someone reporting a crime can ask to speak to a police officer in a private room. However, they may have to wait to be seen and give basic information over the police counter.

Option 4: A young person can report non-urgent crime over the phone by calling 101. The young person may then be invited to a police station or a police officer may come to their home.

Who can make the report?

The young person who has experienced violence may wish to contact the police themselves or this process may have been started by a family

member or professional. If a young person does not want to involve the police they do not have to, there is no legal obligation on a victim or their family to report criminal offences to the police or co-operate with an investigation (for example, by providing a statement) once it has started. However, people who hold certain professional roles (e.g. teachers, doctors, police officers, solicitors) will almost certainly be under an obligation to disclose reports of child abuse to social services if the child is still at risk from the abuse. Social services may investigate and may well decide to report the allegation to the police. The police may also seek to investigate a case without the cooperation of the victim.

Medical examinations

Young people reporting sexual violence may be asked to agree to be medically examined, either at the police station by a doctor, called a Forensic Medical Examiner (FME) or Forensic Physician (FP) or at a Sexual Assault Referral Centre (SARC). This examination is unlikely to occur if it has been more than 7 days since the assault. A young person who is assessed as competent to make the decision can consent to the medical examination, children who are not considered competent need the consent of someone with [parental responsibility](#) for them. When considering whether or not a young person is competent, the doctor will consider whether they understand how to make the decision including the risks and benefits, potential complications and alternative options. If the young person or person with parental responsibility for them does not consent to the examination it cannot be done. Any findings from the medical examination can be used as evidence in criminal proceedings.

Making a witness statement

Once the police have received an initial report, an appointment should be made for the young person to give a witness statement to the police about what happened. The appointment can be either on the same day (in an emergency or when the police want to arrest the perpetrator quickly) or another time, usually a few days or weeks after. Government guidelines for the police [Achieving Best Evidence in Criminal Proceedings](#) suggest that planning needs to occur before a witness statement is taken from a child or young person and that a separate appointment may be needed in order to establish a 'rapport' with them. The guidelines also provide information about how interviews should be structured and how children

and young people with additional needs (such as disabilities or mental health problems) should be catered for.

There are two ways of giving a witness statement:

- A police officer **writes down everything the young person says**. The young person reads what has been written and signs it to agree with what has been written down.
- In cases where a child, young person or vulnerable adult is a victim it is likely they will be **filmed** speaking to a police officer and answering questions (this is called an Achieving Best Evidence, or ABE, video). The **DVD itself** will then be the **witness statement**. This could be played at court if the case goes to court.

A young person giving a statement should be given breaks when they need them, should be interviewed in the language of their choice (with an interpreter being present if necessary) and should be questioned sensitively and appropriately. The young person can ask to have a parent or professional supporter present when they give their statement. However, the police can refuse such a request if they think that it would not lead to the best evidence being given or if that person is a witness, or a potential witness, in the case. The government guidelines referred to above suggest that the young person's viewpoint should be taken into consideration when the police decide about the presence of an adult supporter in the room. If the young person does not feel comfortable without someone there it may be suitable to rearrange the appointment to discuss the issues and/or arrange for another adult to be present.

Victim Personal Statement

When the young person has made their witness statement, the police may ask them to make a **Victim Personal Statement** (also called a VPS or a **Victim Impact Statement**). This is **not** about what happened to them, but what **effect** it had on them. For example, they can describe the impact of any physical injuries, or explain that they feel more anxious now. Their victim personal statement will be given to the judge to read/watch if the perpetrator goes to court and is found guilty (a copy will also be given to the perpetrator and his lawyers). A VPS can also help the police to decide what **special measures** they may need (see further below).

A victim personal statement can be made at any stage until the perpetrator is sentenced by a judge (and can be updated if the situation changes).

Special measures

Special measures are measures that assist young people and other vulnerable and intimidated witnesses give their best evidence in court. It is usual for child victims to have their ABE video statement played at court, so they do not have to go through everything again, and to answer other questions from the defendant's lawyer via video link (i.e. not be in the courtroom, but in another room in the area or in the court, and they will be seen by those in the court room on a screen). The child or young person can have an adult sit with them in the video link room when they are answering questions.

Other examples of special measures are:

- The Judge can ask all the people in the public gallery (i.e. watching) to go out of court when the young person gives evidence.
- If the case is in the Crown Court then the lawyers and the Judge can remove their wigs and gowns.
- Interpreters or intermediaries can be arranged if the young person does not speak English, is deaf or needs assistance being asked or answering questions.

Although a Judge will ultimately decide what special measures a young person should receive, the young person's views are very important and should be shared with the police officer dealing with the case.

The police investigation

After a witness statement is made, and sometimes in an emergency before a witness statement is made, the police will start to investigate the offence(s). The police can investigate in lots of different ways; they can speak to witnesses (and may wish to take a witness statement from you), look at CCTV cameras, at medical evidence and/or medical records, at computers and mobile phone records. The police investigation may take only a few days or many months, depending on how much evidence there is and whether it is an emergency.

The [*Code of Practice for Victims of Crime*](#) says that the police should tell the young person what is happening with their case on an agreed basis

(this is usually once a month) and when something important happens, for example, they arrest someone, within 24 hours. [Young victims of crime: Understanding the support you should get](#) sets out the key rights of young people who report criminal offences to the police.

Arresting the perpetrator

As part of the investigation the police are likely to want to arrest the perpetrator. In certain circumstances (usually if it is decided that there is no risk of the perpetrator running away, alerting or interfering with witnesses or tampering with evidence) the police can invite the perpetrator to attend the police station voluntarily. When he arrives it is likely he will be **arrested**, which means he is **not** free to go. If the police need to arrest the perpetrator quickly, because it is thought he, for example, is a risk to the public or will run away, tamper with evidence or interfere with witnesses, then he may be arrested at his house or work and taken to a police station.

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

Once he has been interviewed the police have a number of options:

- They can release him on bail whilst they investigate further. This means he is free to go but he must attend the police station on another date. If this happens, it is likely that he will have **bail conditions** not to contact the young person. If he does so the police should be informed.
- The police can immediately pass all the information to the **Crown Prosecution Service** who will make a decision whether to take the case to court. If he is charged then he can be kept in the police station overnight and taken to court the next morning, or he can be let out on bail on the condition that he has to attend his first court hearing in a few weeks. He should also have a bail condition not to contact the young person.

- The police could decide to give the perpetrator a caution (or warning) and let him go or not proceed with the case against him. If the police do not proceed with the case the victim can ask their police contact the reasons why. A victim can ask for a review and/or complain if they are not satisfied with the decision, but they cannot force the police to revise the decision (see below).

The decision to charge

When the police think they have gathered all the evidence, they will give it to the CPS who will then make the decision about whether or not to charge the perpetrator. The CPS are lawyers who prosecute criminal cases on behalf of the victim and on behalf of the general public.

Sometimes the police will make a decision not to proceed with the case and not to pass the evidence to the CPS for a charging decision. This can happen when a supervising police officer has assessed the evidence and has come to the conclusion that it will not pass the evidential stage of the CPS charging test (see below). A young person (or their supporter) cannot force the police to change their minds if they decide not to charge a suspect. However, the police can be asked to review their decision and/or pass the evidence to the CPS for a charging decision in the usual way. The judicial review procedure (see below) might also be relevant.

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

The two stage charging test:

- 1. Is there sufficient evidence to provide a realistic prospect of conviction?** In other words, based on the evidence gathered, is it more likely than not that the court will think the perpetrator is guilty of the criminal offence? The CPS lawyers do not have to think that the perpetrator will definitely be found guilty at court. They will look at all evidence, including the witness statement and what the perpetrator says in his interview. AND
- 2. Is it in the public interest to charge?** If there is enough evidence to charge, the CPS then have to look at whether it is in the public interest to take the case to court. To do this they will have to 'weigh up' a number of factors. They have to balance the need to charge someone with a serious offence with

other circumstances such as the age of the perpetrator (if he is very young for example) and the needs and wishes of the victim (if going to court would put so much pressure on the young person that their health was affected).

The decision to charge is not therefore made by the young person themselves, although their views should be taken into account. The young person should be told of the CPS (or any police) decision within 24 hours either by phone or letter. If the young person disagrees with a decision not to charge a suspect they can request that it be reviewed. Further information about the victim's right to review can be found in the Victim's Code or [here](#).

Judicial Review of a charging decision

It may also be possible to apply to the High Court for a judicial review of a decision of the police or CPS. This process involves a judge looking at whether or not the police or CPS followed correct procedures and their own policies, and examine whether the decision was made in a correct and fair way. The time limit for applying for judicial review is within 3 months of the decision being made. Legal aid may be available so it is important that any young person considering this gets legal advice as soon as possible.

Pre-trial therapy

A young person who has experienced violence might have been referred for counselling or other types of therapy before or after they reported to the police. Counselling and therapy notes are confidential unless and until a court order is obtained to disclose them. This is something that the police and CPS are aware of, and why it is possible the police will ask for a young person's medical or therapy notes as part of the investigation. Guidance has been produced to clarify some of the issues raised by this. [Provision of Therapy for a Child Witness Prior to a Criminal Trial](#) ([2001] Department of Health) states that if relevant professionals responsible for a young person (e.g. medical professionals or social services) assess them as in need of therapy and court proceedings are a possibility, then therapy can begin or continue, even if this has an impact on evidence at the trial (although the emphasis is on carefully managed communication to ensure that this does not happen). What matters is the best interests of the young person.

At trial

If the perpetrator is charged he will be called 'the defendant' in court. He can be held in prison to await his court hearings, or he can be released on bail to attend court. If he is released on bail then there can be bail conditions imposed e.g. a non-contact condition with the young person. The young person will not usually be expected to go to court unless the defendant pleads 'not guilty' and there is a trial. Depending on a number of factors, including the nature and seriousness of the case and the age of the defendant the case could be heard in the magistrates' court, the Crown Court or the youth court. Wherever the trial takes place the overall process is the same with the prosecution arguing that the defendant is responsible for the offence (with the young person giving evidence about what happened to them) and the defence arguing that this is not the case. In the Crown Court a jury decide whether or not a defendant is guilty, in the magistrates or youth court this decision is taken by the magistrates or a District Judge.

To find a defendant guilty of an offence the Judges or jury have to be satisfied so they are **sure** that the defendant committed the offence.

Giving evidence

Young people giving evidence in court are entitled to receive special measures to assist them give their best evidence (see above). It is likely that the young person's video statement (called an ABE) will be played in court. The young person will usually be given a chance to watch their ABE video, or read their statement, before court, to refresh their memory. If an interview is not played then the young person will be asked questions by the prosecutor. Once the young person has given evidence they will be cross-examined by the defendant's lawyer. It is their responsibility to test the young person's evidence and argue their client's case.

What if a young person doesn't want to give evidence?

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

If a young person makes a withdrawal statement the police should ask them why they want to

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

If the young person says that they lied about what happened then it is possible that the police may want to investigate the criminal offence of **perverting the course of justice** or **wasting police time**. If the young person states that they told the truth then a withdrawal statement should not trigger an investigation. Making a withdrawal statement does not mean that the police and the CPS will stop the case. A young person can be ordered to attend court and give evidence using a **witness summons**.

After trial

At the end of the trial it will be decided if the defendant is guilty or not guilty. If the young person is not in court they should be told what happened by their police officer or Witness Care Unit contact within 24 hours.

To find a defendant guilty of an offence the Judges or jury have to be satisfied so they are **sure** that he committed the offence. Therefore, if the defendant is found not guilty it does not mean that the court thought that the young person was untruthful. If he is found not guilty, the defendant will not get a criminal record and will be free to leave court. If it is decided that the defendant is guilty then he will get a criminal record and he will be sentenced by the Judge. He will either be sentenced straight away or his case will be put off for a few weeks so that reports can be prepared about him for the Judge to read. The young person's victim personal statement will be considered at this point as well as what the defendant says and the relevant law.

Appeals

The defendant can ask another Judge to examine his sentence if he thinks it is too severe, or he can ask for another Judge to reconsider the fact he was found guilty. This is called an **appeal**. The young person should be told if the defendant is appealing, and if they are, whether they will be required to give evidence again (this is unlikely if the trial was in a Crown Court). The CPS also have the power to appeal a defendant's sentence if it is considered to be too light or 'unduly lenient'.

There is a process that must be followed for this and time limits apply so if a young person wants to know more about this they should speak to the officer dealing with their case or the Witness Care Unit.

Compensation

Victims of crime may be entitled to compensation through the criminal injuries compensation scheme, further information about the scheme can be found [here](#) and in Rights of Women's [Guide to Criminal Injuries Compensation](#).

For more information on sexual offences, children and young people please see Rights of Women's:

- [Children and the law: the criminal justice system and child sex offences](#).
- [Your body, your rights, your life. Sexual violence and the law: a young person's guide](#).

Civil Remedies

Non-molestation orders and young people

Someone who is suffering peer-on-peer abuse, domestic or sexual violence can also apply to the Court for an injunction to protect them. An injunction is a type of court order which forbids an abuser from doing certain things, such as being violent, or orders him to do certain things, such as leave the home.

Under the **Family Law Act 1997** there are two types of domestic violence injunctions: **non-molestation orders** and **occupation orders**.

A non-molestation order protects the person applying for the injunction from further abuse and an occupation order protects the applicant's home (by evicting the abuser). Children can benefit from the non-molestation and occupation orders secured by a non-abusive parent against a perpetrator of violence and can be named on the order. Non-molestation orders may also be useful to a young person who wants to stop certain forms of abuse happening, such as violence or verbal abuse where the perpetrator is a family member or intimate partner. They can prevent a perpetrator doing certain things like texting or waiting outside the young person's home. Occupation orders are less relevant for young people because if they are being abused at home protecting them will usually involve proceedings

brought on their behalf (by either a non-abusive parent or the Local Authority, see below).

You can only apply for a non-molestation or occupation order if you are **associated** to your abuser. You are associated to your abuser if you:

- are or were married or in a civil partnership (it does not matter how long ago the marriage or civil partnership ended);
- are or were engaged to be married or had agreed to form a civil partnership;
- are or were living together (this includes same-sex and opposite-sex couples);
- live or have lived in the same household, for example as a flat share (but not as a tenant, border, lodger or employee);
- are relatives, including: parents, children, grandparents, grandchildren, siblings, uncles, aunts, nieces, nephews or first cousins (whether by full-blood, half-blood, marriage, civil partnership or cohabitation);
- are parents of the same child;
- have or have had parental responsibility for the same child;
- are parties to the same family proceedings for the same child; or,
- **are or were in an intimate personal relationship of significant duration.**

A non-molestation order is likely to be most relevant to a young person if they fit into the last category: they had an intimate personal relationship of significant duration with their abuser. There is no definition of what an **intimate relationship** means but it has been indicated that it does not necessarily have to include a sexual relationship. Judges should assess whether the applicant is associated to the respondent on a case-by-case basis. Furthermore, there is no definition as to what **significant duration** means in this context. Applicants have fallen into this category with intense 6 month relationships, so even if a young person has not had a lengthy relationship it may be still be possible to be defined as an intimate relationship of significant duration.

Young people interested in obtaining protection should seek advice from a family lawyer as the process for applying for an order involves completing an application form and witness statement and attending court. The process is different depending on whether or not the

applicant is under or over 18 and it may not always be appropriate to seek an order against a perpetrator who is themselves under 18 years old. It is possible to obtain an injunction without the perpetrator being aware of it initially (called a **without notice** order). There is now no court fee for domestic violence injunctions and legal aid (free legal advice and assistance) may be available for the advice and representation required by the young person.

Young people who are not associated to their abuser may be able to obtain protection under the **Protection from Harassment Act 1997** (PFHA 1997).

The PFHA 1997 makes it a criminal offence to harass someone or make them fear that violence will be used against them. The PFHA 1997 enables a young person who is being harassed or put in fear of violence obtain a **restraining order** against the person responsible and claim **damages** (financial compensation) from them.

Harassment is a course of conduct that is deliberately intended to cause a person distress or alarm. The test for whether any particular course of conduct amounts to harassment is whether a reasonable person, looking at the behaviour from outside the situation, would think that it amounts to harassment. A **course of conduct is two or more incidents of harassment**. An incident of harassment could be a text, an answer-phone message, a letter or email; a comment or threat; or it could involve standing outside someone's house or driving past it or an act of violence.

Putting someone in fear of violence is a course of conduct (see above) that causes another person to fear that violence will be used against them. As with harassment, the person whose behaviour is in question ought to know that it will cause another to fear violence if a reasonable person, in possession of the same information, would think that it would cause her to have that fear.

How can a young person get protection from harassment?

If a young person is experiencing harassment they can report it to the police who may be able to take action against the person responsible, for example, by warning him of the consequences of his behaviour (sometimes referred to as a **harassment warning**) or arresting him for the criminal offences of harassment or putting someone in fear of violence. The criminal

processes and protections described above would apply here.

The criminal courts can make a **restraining order** following conviction or, in some cases, acquittal, of the person responsible for harassment or putting someone in fear of violence. A restraining order can prohibit the harasser from doing anything specified in the order including using or threatening violence, communicating with a person (by phone or email) or going to certain places (a young person's home or college). A young person who wants a restraining order should discuss this with the **Police Liaison Officer** (PLO) dealing with her case before trial.

In addition to or instead of contacting the police a young person experiencing harassment can apply for a **restraining order** from the civil courts. A person under the age of 18 can apply for a restraining order but they will need to have a **litigation friend** to represent them unless the court decides otherwise. An adult (such as a support worker) can apply to be a litigation friend on behalf of a child, or the court will appoint one. As with domestic violence injunctions, anyone considering applying for a restraining order should seek legal advice.

Enforcement

Breaching a non-molestation order or restraining order is a **criminal offence** that can be tried in the magistrates' court or Crown Court. The criminal courts have a range of sentencing options available to them; however, the maximum sentence is 5 years imprisonment. Again, the criminal procedures and protections described above should apply to someone who reports a breach of an order to the police. These orders may also be enforced in the civil courts.

A breach of an occupation order can only be dealt with by the civil courts. If there is a power of arrest attached to the occupation order then the police will arrest the perpetrator and take him to the court that made the order. If there is no power of arrest attached to the occupation order then the young person can still apply to the court to have the perpetrator arrested and/or punished. A person who is found by the court to have breached the occupation order may be committed to prison, fined or be given a suspended sentence of imprisonment.

Child Protection Procedures

The Local Authority has a duty to protect children and young people up to the age of 18 years old who are **in need** in its area.

The Local Authority can protect children by removing them from their home if it considers that the child is suffering or is likely to suffer **significant harm** and the harm is caused by the fact that the standard of care that is being given to the child by their parents is not satisfactory and/or the child is beyond parental control (usually this latter provision is for older children). The process of removing a child is a legal process that will involve an application to the court and court hearings.

A Local Authority has to make an application to the family court if they want to remove a young person into care from the family home for **more than 72 hours**. If a child needs protection in an emergency then they can be removed from their home for up to 72 hours using a **Police Protection Order**. When considering a Local Authority application to remove a child or for any other permanent order in relation to that child the judge has to first consider whether or not the significant harm test (as above) is met and then go on to look at what is in the **child's best interests**. The court is unlikely to make an order for a young person between the ages of 16 and 18 – intervention here will in most cases be based on what the young person agrees to do, for example, move into supervised accommodation for older teenagers.

These protections are in place to protect children from sexual and domestic violence, for example, where abuse is directed at a child by a carer or where children are harmed by witnessing abuse between adults and the non-abusing carer does not seek protection for themselves and their children. Action by the Local Authority is not so useful where the child or young person is experiencing abuse outside of the home, for example, where there is peer-on-peer abuse and/or sexual exploitation because in these cases the perpetrators of abuse are often not family members or living with the young person.

Children and young people can be recognised as **in need** by the Local Authority and they and their carer(s) can be offered support while the young person continues to live in the family home. This is likely to be the most effective intervention in cases of peer-on-peer abuse, but this relies on cases

being identified and appropriate support given. Where a young person is at risk of, or experiencing serious harm and her carers are failing to take action to protect her, for example, if a girl is being sexually abused by her peers, then the Local Authority could place the young person in care or in other accommodation for their own safety. The Local Authority are unlikely to intervene in 'low level' 'bullying' situations, either between groups of young people or in intimate relationships.

For further information see Rights of Women's [Children and the law: when social services are involved.](#)

Useful Organisations

Sexual Assault Referral Centres

To find your local SARC as well as other services for survivors of sexual violence visit www.nhs.uk/livewell/sexualhealth/pages/sexualassault.aspx

Organisations for survivors

NSPCC

Weston House
42 Curtain Road
London EC2A 3NH
Helpline: 0808 800 5000 (24 hours)
Email: help@nspcc.org.uk
Web: www.nspcc.org.uk

Rape Crisis South London

PO BOX 383
Croydon CR9 2AW
National helpline: 0808 802 9999
Email: info@rasasc.org.uk
Web: www.rasasc.org.uk

Rape Crisis Federation, England and Wales

BCM Box 4444
London WC1N 3XX
Helpline: 0808 802 9999
Email: rcewinfo@rapecrisis.org.uk
Web: www.rapecrisis.org.uk

Samaritans

Freepost RSRB KKBY
PO Box 9090
Stirling FK8 2SA
Helpline: 08457 90 90 90 (24 hours)
Email: jo@samaritans.org
Web: www.samaritans.org.uk

The Survivors Trust

Unit 2, Eastlands Court Business Centre
St. Peter's Road
Rugby
Warwickshire CV21 3QP
Tel: 01788 550554
Email: info@thesurvivorstrust.org
Web: www.thesurvivorstrust.org

Victim Support

Hallam House
56 – 60 Hallam Street
London W1W 6JL
Helpline: 0845 30 30 900
Tel: 0207 268 0200
Email: supportline@victimsupport.org.uk
Web: www.victimsupport.org.uk

Disabled survivors

Disability Law Service

12 City Forum
250 City Road
London EC1V 8AF
Tel: 020 7791 9800 option 5
Email: admin@dls.org.uk
Web: www.dls.org.uk

Respond

3rd Floor
24-32 Stephenson Way
London NW1 2HD
Helpline: 0808 808 0700
Email: admin@respond.org.uk
Web: www.respond.org.uk

LGBT survivors

Broken Rainbow

PO Box 68947
London E1W 9JJ
Helpline: 0300 999 5428
Trans* specific service Tuesday 1pm – 5pm
Email: help@brokenrainbow.org.uk
Web: www.brokenrainbow.org.uk

GALOP

2G Leroy House
436 Essex Road
London N1 3QP
Helpline: 020 7704 2040
Email: info@galop.org.uk
Web: www.galop.org.uk

London Lesbian & Gay Switchboard (National Service)

PO Box 7324
London N1 9QS
Helpline: 0300 330 0630
Email: chris@llgs.org.uk
Web: <http://www.llgs.org.uk>

Male survivors

Male Survivors Trust

Helpline: 0709 222 9264
Email: malesurvivorstrust@gmail.com
Web: <http://malesurvivorstrust.org.uk/>

M Power

Sue Lambert Trust
St Julians Hall
6 Music House Lane
Norwich NR1 1QL
Helpline: 0808 808 4321
Email: admin@suelamberttrust.org
Web: www.male-rape.org.uk/

SurvivorsUK

Unit 1 Queen Anne Terrace
Sovereign Court
The Highway
London E1W 3HH
Helpline: 0845 122 1201
Email: info@survivorsuk.org
Web: www.survivorsuk.org

Support in relation to domestic violence

National 24hr Domestic Violence Helpline (England)

Helpline: 0808 2000 247 (24 hour)
Email: helpline@womensaid.org.uk
Web: www.nationaldomesticviolencehelpline.org.uk

The Hideout

www.thehideout.org.uk

Support in relation to prostitution and trafficking

Poppy Project (part of Eaves)

Unit 2.03, Canterbury Court
Kennington Business Park
1-3 Brixton Road
London SW9 6DE
Tel: 020 7735 2062
Email: post@eavesforwomen.org.uk
Web: www.eaves4women.co.uk

UK Network of Sex Work Projects

UKNSWP
Unit 114 Cariocca Business Park
Sawley Road
Miles Platting
Manchester M40 8BB
Tel: 0161 629 9861
Email: admin@uknswp.org.uk
Web: www.uknswp.org

Legal advice

Law Society

The Law Society's Hall
113 Chancery Lane
London WC2A 1PL
Tel: 020 7242 1222
Web: www.lawsociety.org.uk/find-a-solicitor/

Rights of Women

52-54 Featherstone Street
London EC1R 8RT
Tel: 020 7251 6575
Web: www.rightsofwomen.org.uk

Criminal Injuries Compensation

Criminal Injuries Compensation Authority

Tay House
300 Bath Street
Glasgow G2 4JR
Helpline: 0300 003 3601
Web: www.justice.gov.uk/about/criminal-injuries-compensation-authority

Tribunals Service – Criminal Injuries Compensation

Wellington House
134 – 136 Wellington Street
Glasgow G2 2XL
Tel: 0141 354 8555
Email: enquiries-cicap@tribunals.gsi.gov.uk
Web: www.justice.gov.uk/tribunals/criminal-injuries-compensation

Complaints about the police

Independent Police Complaints Commission (IPCC)

PO Box 473
Sale M33 0BW
Tel: 0300 020 0096
Email: enquiries@ipcc.gsi.gov.uk
Web: www.ipcc.gov.uk/

Sentencing and post-release matters

National Offender Management Service

P.O. Box 4278,
Birmingham B15 1SA

Helpline: 0845 7585 112

Email: victim.helpline@noms.gsi.gov.uk

Web: www.justice.gov.uk/about/noms

The Parole Board for England and Wales

Grenadier House
99 – 105 Horseferry Road
London SW1P 2DX

Tel: 0300 047 4600

Web: www.justice.gov.uk/about/parole-board

The law relating to sexual and domestic violence is complex; in this legal guide we have only provided a basic overview of the relevant law and procedure. The law explained in this legal guide is as it stood at the date of publication. The law may have changed since then so you are advised to take up-to-date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

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52-54 Featherstone Street
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helping women through the law

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