

A Guide for Victim-Survivors of Sexual Crime

When your case is being
heard in the High Court

What's in this Guide?

About the Guide	03
The Start of the Criminal Investigation	05
• Giving a statement to the police	07
• COPFS consideration of the case	09
• Obtaining your personal records	10
• Victim Information and Advice	12
• The decision to prosecute	13
• The prosecutorial test	14
The Charging of the Accused and Preparation for Trial	15
• The Accused's first appearance in Court	16
• Bail FAQ	18
• Where the trial will take place	20
• Disclosure of evidence	21
• Guilty plea	23
• Sexual history and character evidence	24
• Special measures	25
• Preliminary Hearing	26
The Trial	27
• Stages of the preliminary hearing	28
• What to expect when arriving at Court	29
• What to prepare for when giving evidence	31
• Things to remember when giving evidence	32
• The jury's decision	33
After the Trial	34
• Sentencing	35
• Victim Notification Scheme	37
List of support	38
What are my rights as a complainant in a sexual offence trial?	40
Glossary	43

About

This guide is aimed at people who have been a victim of a sexual offence, such as rape or attempted rape, which is prosecuted in the High Court.

What this Guide covers

This guide is aimed at people who have been the victim of a sexual offence such as rape or attempted rape, which is prosecuted in the High Court.

It will explain some of the legal terms that you are likely to come across, and what your rights are as a victim of crime.

Whilst the guide is aimed at those who report offences such as rape or attempted rape, or other offences which are prosecuted in the High Court, some of the information may be relevant to other sexual offences.

It will cover the stages of the legal process in order, from the moment you give a statement to police until after a trial, if one takes place.

This guide offers information for those who choose to report a sexual offence to the police.

There is support for those who are unsure whether to report or who choose not to, see [here](#) for more information.

This guide does not give information on what to do in the immediate aftermath of a rape or sexual assault. If you have recently been raped or sexually assaulted and need health or medical advice, visit [NHS Inform](#).

The **Emma Ritch Law Clinic** provides free legal advice and representation to victim-survivors of sexual crime. If you need legal advice or support, contact the [National Advocacy Service](#) at **Rape Crisis Scotland** who can determine whether your case is suitable for referral.

How to use this Guide

If you need legal advice or support, you may find it helpful to contact the **National Advocacy Service at Rape Crisis Scotland** or another VAWG charity to learn how to be referred. This guide also signposts to other organisations and resources who can provide support.

- 1 **The initial investigation**
- 2 **The run up to the trial**
- 3 **The trial**
- 4 **After the trial: What comes next?**

You can read the guide as a whole, covering the process, step by step, or you may find it helpful to skip to a particular part of the process that you are unsure about or need more information on.

The guide ends with a glossary of legal terms that may be useful to know and a page outlining other support available.

It is important to be aware that there is support available for survivors who are trying to navigate the criminal justice system, including **Rape Crisis Scotland's National Advocacy Service** and the **Emma Ritch Law Clinic**.



Rape Crisis Scotland
0808 8010 302
rapecrisisscotland.org.uk

The Emma Ritch Law Clinic at the University of Glasgow

The Start of the Criminal Investigation

Giving a Statement to the Police

The Start of the Criminal Investigation

Giving a statement to the police

This section will tell you about what happens once you have decided to report a sexual offence to the police.

If you have reported an offence of rape or attempted rape then the police should ensure that specialist officers who are trained in dealing with victims of sexual offences, known as Sexual Offences Liaison Officers (SOLOs) take your statement.

1. Making a report

Some rape crisis centres can arrange for a SOLO to take your statement. These officers have specialist expertise and are trained in responding to victim-survivors of sexual offences. Sometimes non-specialist police officers will investigate other forms of sexual offences not including rape or attempted rape, such as sexual assault.

2. Forensic examination and medical records

With your consent and if necessary, the SOLO will arrange a Forensic Medical Examination (FME), although this usually only occurs if the assault took place within the last 7 days.

The SOLO should also provide you with regular updates and support throughout the investigation. The SOLO should be your main point of contact with the police. You can find more detailed information about forensic medical examinations and your rights [here](#).

At this early stage, the police should not usually request to access your medical records. If they do ask to do this, you are entitled to seek legal advice before you consent. If this happens, you should ask for time to speak to a solicitor. If you have an advocacy worker, they may be able to refer you directly to the Emma Ritch Law Clinic.

3. Giving a statement

When you are giving your statement, you are entitled to:

- Request breaks and give the statement over several days.
- Have an advocacy worker from a rape crisis centre present when you give the statement or a family member (if they are not a witness to the offence).
- State if you have a preference for it to be a female or male officer who takes your statement.

It's important for you to realise that if you give evidence later in court, if you say anything which is different from your statement to the police, then lawyers may suggest that the difference is because you are not telling the truth or cannot remember things accurately.

Whilst it is natural not to remember everything, you should always tell the truth in a statement to the police and never speculate or guess about matters.

You should be able to view your statement before you give evidence in court. You can find more detailed guidance about the process of giving a statement to the police [here](#).

4. Police investigation and your rights

Once you have made a report of a sexual offence to the police, they will carry out further investigations, this could include speaking to other potential witnesses such as family members or previous partners of the accused. **This process may take some time and it is important to remember this is not unusual. They are also likely to arrest the accused and ask them questions under caution and may charge them.**

If this happens you should be informed. Sometimes the police may inform you before an accused is arrested although practice varies. You are entitled to be told what is happening in the investigation and to have access to appropriate support.

The accused may be released from custody, prior to being charged. This is because police are limited in the time they can hold someone in custody prior to charging them and they may need to gather further evidence.

Whilst you have a right to general information about the investigation so you can understand matters, you are not entitled to have advance notice about things the police may or may not do, involving others.

If you have any concerns for your safety, it is important that you let the police know this. If you ever feel in danger, call 999. You can also find information about safety planning in abusive relationships [here](#).

5. What happens after the police investigation

Once the police have investigated the case, if there is enough evidence, they will send a report to the **Crown Office and Procurator Fiscal Service (COPFS)**.

This is the legal body that is responsible for prosecuting crime in Scotland in the public interest. COPFS decide whether to prosecute someone or not.

Once the accused has been charged and a report sent to COPFS, they may be kept in police custody until they appear in court, or they might be released to appear in court at a later date.

The police might impose bail conditions on the accused if they are released to appear in court at a later date, and these are likely to state that they shouldn't contact you.

A breach of bail is a criminal offence that can lead to a sentence from a court. If you believe the accused has breached bail, you should contact the police.

6: If there's not enough evidence

Sometimes the police will not send a report to COPFS. This can happen when they believe there is not enough evidence for the case to proceed further.

It's important to remember this does not mean that they don't believe what has happened to you, it is just that from a legal perspective, they don't think there is what is known as corroboration of your account. This means they do not think there is evidence from another source (i.e. not you), which supports your account.

In general terms, there must be corroboration of the identity of the accused as the person who committed the offences and that the offences themselves occurred.

Often it can be difficult to corroborate sexual offences which have occurred in private or have happened years ago.

If there is no corroboration you will be informed of this by the police. They will keep the matter under review and may further investigate if new evidence comes to light. You will be informed of this by the police if this is the case.

You are entitled to request a meeting with the police so that they can give more information about the evidence in the case and why they cannot corroborate your account. You can have advocacy support from your local rape crisis centre at this meeting.

COPFS' Consideration of the Case

If the police think there is enough evidence to send a report to COPFS, then they will do so (*see the section 5 above on what might happen to the accused when this occurs*).

COPFS will then examine the evidence in the case, and will decide whether to prosecute or not (*see the section below for more detail*).

They may also direct the police to carry out further investigations before making that decision. They may also want to speak to you, if this happens, they will write to you or call you.

Obtaining further information from you in this way is called a **'precognition'** although COPFS do not always use that word to describe the process.

During this process a member of staff from COPFS will ask you about what happened and you can bring advocacy support from your local rape crisis centre for this meeting.

They may ask you again about things that the police have asked you already and also about things that the police have not covered.

The Procurator Fiscal will wish to find out as much information as possible to allow them to make a decision about the case.

You should remember that anything you say to COPFS is likely to get disclosed to the defence lawyers acting for the accused should there be a trial. You should never do anything other than tell the truth about what occurred.

Although it can feel frustrating remember that COPFS acts in the public interest and the lawyers that work there are not your personal solicitor.

Because COPFS acts in the public interest, they must consider all the evidence obtained in the investigation.

Obtaining your Personal Records

COPFS will consider all the evidence obtained during the police investigation. This includes any evidence from forensic medical examinations or witness statements that you gave to the police. They might also need to obtain new evidence.

When COPFS requests your records

At this stage, the Procurator Fiscal may ask you via the police to consent to your personal records like medical, counselling or social work records, being accessed. This can also occur later once the accused has appeared in court.

Your concerns about disclosure

It is understandable to be worried about your personal records being recovered because this material might have to be disclosed to the defence if there is a trial.

Getting legal advice and guidance

You have legal rights in relation to this process and it is important that you take your time and seek legal advice if you are concerned. Detailed guidance about the process of COPFS obtaining your medical records is available [here](#).

When you are asked for consent

In short, COPFS must ask via the police for your written consent to obtain your records. COPFS or the police should explain why they are seeking your records and give you time to consider matters and take legal advice if you want to.

Obtaining your Personal Records

If you choose not to give consent

You are entitled to refuse to give permission to recovery of your medical records but bear in mind this might have implications for the case. It possible that the prosecution may not be raised or be discontinued if you do not consent to the recovery of the records.

If you do not consent

If you do not consent to recovery of the records, COPFS will discuss this with you and try to deal with your concerns.

If COPFS still thinks your personal records contain material information and must be recovered, they may seek a formal court order to recover the records without your consent although this is very rare.

You are entitled to instruct a lawyer using legal aid (i.e free of charge) to appear on your behalf at any hearing where the court will consider ordering disclosure.

Where to get legal support

The Emma Ritch Law Clinic provides specialist free legal advice and representation in this respect, and you can be referred to the service via your advocacy support worker.

Other solicitors are also available, and your local rape crisis centre should also be able to refer to you someone appropriate. You can also find information about solicitors who have undergone domestic abuse training [here](#).

Victim Information and Advice

During this initial stage of the process, you will be contacted by **Victim Information and Advice (VIA)**. VIA is a service provided by COPFS which provides support and information about the criminal justice process to victims of crime.

Learn what VIA does

VIA can tell you about hearing dates, bail decisions, verdicts and sentences. They will usually be your main COPFS point of contact.

Questions and updates

VIA can also answer any general questions you may have and can update you on the progression of your case. All cases have a reference number and it can be helpful to have this to hand when you contact COPFS

Support at court

VIA can also help organise special measures for court if your case is proceeding to trial. Special measures are discussed in detail on **p26**.

VIA contact

A VIA worker should contact you with case details via phone call. You can share your contact preferences with them.

Legal advice

You should remember that the VIA are not lawyers and so they cannot provide you with legal advice.

COPFS Decision to Prosecute

This section will give you some further information about how COPFS make a decision about whether to prosecute a case. This section may be especially helpful if COPFS have decided that your case will not proceed, and you are wondering why this may be.

The Decision to Prosecute

When making the decision about whether to prosecute or not COPFS will assess the guidance and the 'prosecutorial test' set out in the Prosecution Code. This Code explains the factors that prosecutors consider generally when deciding if a case should be prosecuted or not. It is publicly available and can be accessed [here](#). It can be helpful to think about the approach of prosecutors in two stages.

Stage 1: Is there enough admissible evidence and is there a reasonable prospect of conviction?

COPFS must assess all of the evidence available in the case. They will need to determine that it has been obtained fairly and would be admissible in court. They will also determine whether there is 'sufficient' evidence to allow the case to proceed (see the section above on corroboration in relation to police reports).

COPFS must also assess whether there is a reasonable prospect of conviction. This means that an objective, impartial and reasonable jury, sheriff or justice of the peace, as the case may be, properly directed and acting in accordance with the law, is more likely than not to convict the accused.

COPFS will also assess whether the evidence is credible and reliable, in other words is it believable and can it be trusted? If the evidence does not meet these standards, then it will not be possible to prosecute.

Stage 2: Is it in the public interest to prosecute?

Secondly, even if the evidence meets all of the requirements above, the COPFS will only decide to prosecute the case if it 'is in the public interest' to do so. Here, the COPFS will consider many different things.

They will assess factors like the seriousness of the offence and the impact that it has had on you or others. They will also consider factors like the age and circumstances of the accused and whether they are already serving a prison sentence.

In rape and serious sexual offence cases, it is likely that the public interest requirement will be met.

The Prosecutorial Test

Stage 2: Is it in the public interest to prosecute? (Cont'd)

If the COPFS decides that your case will not proceed to trial it is not because they don't believe you. It is because the evidence does not meet the standards that are required for a criminal prosecution.

You have the right to ask the COPFS to review the decision not to prosecute and this is called a **Victim's Right to Review**. COPFS should explain this to you when explaining that the case will not be prosecuted.

If you want to ask for a review of the decision this should be done as soon as possible and within 1 month of the decision. You should ask COPFS to provide as much information as possible so you can understand why they decided not to prosecute.

The Emma Ritch Law Clinic can also provide legal advice in certain instances in relation to Victim's Right to Review. Your advocacy worker will be able to provide further information in this respect.

Things to remember

- You have the right to ask COPFS to review the decision not to prosecute and this is called a Victim's Right to Review. COPFS should explain this to you when explaining that the case will not be prosecuted.
- If you want to ask for a review of the decision this should be done as soon as possible and ideally within 1 month of the decision.
- You should ask COPFS to provide as much information as possible so you can understand why they decided not to prosecute.

The Emma Ritch Law Clinic can also provide legal advice in certain instances in relation to Victim's Right to Review. Your advocacy worker will be able to provide further information on this.

The Emma Ritch Law Clinic at the University of Glasgow

Charging the Accused and Preparation for Trial

The accused's first appearance in court

1. COPFS decision to raise proceedings

If COPFS decide to raise proceedings after considering all of the evidence in the case, then the accused will be formally charged (this is different from the police charging the suspect after their investigation as described above).

The accused will at this stage require to appear in court 'on petition'. They may already be in custody after arrest by the police earlier or they may be at liberty having been released on a police undertaking. It varies from case to case.

2. Court appearance 'On Petition'

Once the decision to charge has been made, the accused will attend a private hearing at the Sheriff Court which is known as an appearance 'on petition'.

You do not need to attend this hearing and are not permitted to attend as members of the public are excluded. At this hearing a decision will be made about whether the accused will be granted bail by the court or remanded in custody.

The accused, the accused's lawyer, a lawyer from COPFS and the judge will be the only parties present. The accused's lawyer will also make 'no plea' in relation to the charges. This is just a legal expression used by lawyers at the beginning of the case.

The accused's first appearance in Court

3. The petition and charges

This petition details the initial charges against the accused that COPFS have decided to bring.

VIA should inform you about the nature of these charges that concern you, although you will not be entitled to see the petition.

4. What could happen next

It is important to remember that these charges are just provisional.

This means that the charges could change at a later stage of the case. COPFS is still investigating and gathering evidence at this point in the process.

There is no guarantee at this stage that your case will definitely go to trial as the accused may plead guilty later in the process or the prosecution may be discontinued by COPFS.

Bail FAQ

Q. What happens at the petition hearing?

At the petition hearing a decision will be made about whether the accused is granted bail or not. Whether that happens depends on the circumstances of the case.

Q. Can someone be granted bail even if the charge is serious?

It is important to bear in mind though that even in cases where serious charges such as rape or attempted rape have been brought by COPFS, courts are likely to grant bail unless the accused has breached bail previously or has multiple pending cases.

Q. What factors does the court consider when deciding on bail?

In making a decision about bail, the court will consider things such as the nature and seriousness of the offence, previous convictions and the public interest.

They will also consider if there is substantial risk that the accused will fail to appear in court, a substantial risk that the accused will interfere with witnesses and whether the offences before the court were allegedly committed while the accused was subject to bail or another court order.

Q. Is it normal to feel worried about the accused getting bail?

It is normal to feel concerned about the accused being released on bail. It may be helpful to know that there are conditions which the court always impose which ensure that the accused cooperates fully with the investigation and does not interfere with you, or others as witnesses.

The court can also impose further conditions on the accused to restrict their movement and potential to interfere with the case, to protect you if this is necessary. These conditions may prohibit them from entering certain locations or require them to regularly attend police stations to confirm their presence.

Bail FAQ

Q. What happens if the accused breaches bail conditions?

Any breach of bail should be considered a serious matter by the court and can result in further criminal charges and bail being revoked. VIA should explain to you the bail conditions imposed on the accused. If you are concerned about the accused breaching their bail conditions you should contact the police.

Q. What happens if the court refuses bail?

If the court refuses to grant bail to the accused, they will be remanded in custody and will then return to court within 8 clear days at a further hearing known as a ‘full committal’ where bail will be considered again. This is one of many time limits imposed on the court in order to prevent the perpetrator being kept in **custody** for longer than necessary.

Q. What if bail is refused again at full committal?

If the court refuses to grant bail at the full committal stage, then the accused will remain in custody pending trial although they may seek to appeal the decision about bail in the appeal court. VIA should keep you informed if this occurs.

Q. What are the time limits when someone is kept in custody?

When an accused is remanded in custody, COPFS must serve an indictment on them within 80 days of full committal (the second hearing referred to above), a preliminary hearing must be held within 110 days and begin a trial within 140 days but these timelines are often extended. If COPFS fail to meet these timelines the accused may be granted bail by the court.

Where the trial will take place

If your case is proceeding to trial, the Procurator Fiscal must also decide under what court procedure the case will be prosecuted.

In cases of rape or attempted rape, the case will be held in the High Court in front of a jury. The High Court sits in Edinburgh, Glasgow and Aberdeen regularly but may also sit in other places. Some other serious sexual offences can also be prosecuted in the Sheriff Court before a jury.

When a case is heard before a jury, this means that 15 members of the public decide the result of the trial. When a case is heard before a jury it is called solemn procedure. This is a term that you might hear throughout the process.

Other sexual offences may be heard in the Sheriff Court before a sheriff and without a jury. Under this procedure, it is the sheriff that decides the outcome of the trial.

This is called summary procedure. This guide relates mainly to High Court sexual offences and describes solemn procedure.

Disclosure of evidence and other things that may happen in the run up to trial

After the initial court appearance, COPFS must disclose all relevant and material evidence to the defence.

This is to ensure that the accused has a fair trial, that they understand what the details of the case against them are, and that they are not missing information which may support their case.

This means that any statements you have given to the police as well as things such as the forensic medical examination that occurred must also be disclosed to the defence.

It is important to understand that this material will be disclosed to defence lawyers but not given directly to the accused.

There are strict guidelines in place for lawyers to ensure that your information is only used for the purpose of preparing the case and it can be professional misconduct for lawyers to fail to adhere to these rules.

The accused should only ever be shown copies of statements and other evidence by their solicitor and should not be given copies themselves.

Disclosure of evidence and other things that may happen in the run up to trial

There are also limits on how long your information can be kept, and rules on how your information should be stored and destroyed (generally speaking it requires to be kept for 10 years before it is destroyed).

If the defence think that COPFS are in possession of information that is relevant to the case but that wasn't given to them, then they can make an application to the court to have it disclosed to them. A hearing would take place to decide whether this information should be disclosed.

This hearing takes place between the prosecutor and the defence and so you would not need to attend. In some cases, the defence may feel like someone else has important evidence for the case that needs to be disclosed.

In this situation, the defence must make an application to the court for this evidence to be disclosed. Again, none of this will require your attendance at court.

The defence may try to obtain evidence from a third party (i.e. not the prosecution) that contains your private information such as medical records or telephone records.

Where this occurs, you are entitled to have a lawyer represent you in court and make submissions as to whether the information should be disclosed or not.

You are entitled to legal aid and do not need to pay for your legal representation.

See the section above on the recovery of sensitive records which provides further information about this process generally. You should speak to your advocacy worker about arranging legal representation.

For more information about your rights when the defence apply to access your medial or sensitive records, please refer [here](#).

See the section on 'Obtaining your Personal Records.'

Guilty plea

Although it is rare in sexual offences cases, the accused may opt to plead guilty to the offences at an early stage, after they have appeared 'on petition' but before 'an indictment' is served.

The petition is the document which begins the case and contains the initial charges the accused will face and they appear in private in the sheriff court once a petition has been served.

If this is to occur, then VIA should let you know. A special hearing of the case will be arranged known as 'a s.76 hearing'.

In cases of Rape and Attempted Rape this will occur in the High Court.

- You are entitled to attend this hearing.
- You are entitled to attend with a supporter.

You should bear in mind that this hearing will be in public, you cannot have any special measures such as screens, etc.

If you have provided a Victim Impact Statement, the judge will be given a copy of this.

At the hearing, the judge will ask the defence lawyer what charges the accused is pleading guilty to, and confirm whether this is acceptable to the Crown.

The accused will then be asked to confirm their guilty pleas. Afterwards, a schedule of previous convictions of the accused (if they exist) will be provided to the court.

The judge might hear a jointly agreed version of the facts at this stage, or they might defer sentencing to have reports prepared on the accused before hearing the agreed facts

In cases of Rape, Attempted Rape and other serious sexual offences they will almost always call for reports and so sentence will be deferred for at least 4 weeks because reports are required when the court is considering imposing a period of imprisonment.

You can find more information about sentencing which includes a specific guide for victims [here](#).

Sexual history and character evidence

You should never be asked about your sexual history or character when giving evidence without being given prior notice of this.

If the defence or COPFS want to use evidence about your sexual history and character at trial or ask questions in relation to this, then they have to make an application to the court for this to be allowed. This is referred to a [s.275 application](#).

There will be a hearing which usually occurs at the same time as **the Preliminary Hearing** (see further below) and a judge will then decide if this evidence can be used.

It is normal to feel concerned about this sort of personal information about you being discussed by lawyers. However, there are strict rules in place which restrict how this type of evidence is allowed to be used in the trial.

These rules exist to ensure that your privacy and dignity are respected. The test that must be met in order for this type of evidence or questioning to be permitted is high.

In simple terms, the rules require that the evidence is specific and relevant to the charges. The judge must also ensure that the value of the evidence is significant and outweighs any risk of prejudice to the proper administration of justice, including the protection of your dignity and privacy.

The law also requires that your views on the s.275 application be obtained and presented to the court. A case preparer from COPFS will explain the content of the s.275 application to you and will ask for your views on it.

If you need time to consider matters before offering your views, then you should let COPFS know this. It is normal to feel uncomfortable or nervous when discussing these matters with the person interviewing you. If you would find it helpful to talk things through before giving a view, you can discuss this with a rape crisis advocacy worker.

COPFS will try to make you feel as comfortable as possible in the circumstances. You can have support from an advocacy worker at this meeting. Once your views have been noted, the lawyer for the prosecution will then present your views to the court at the hearing and a decision will be made. You do not require to attend the hearing.

Research has shown that the most common types of application to admit this evidence relate to when the defence submit that the sexual activity in the charge(s) was consensual.

These types of application are usually allowed because the accused is entitled to provide their account of events. Generally, courts do not allow evidence of past sexual activity with third parties as this is deemed irrelevant to the case.

Special measures

The court can put in place special measures to make it easier for victims of sexual crime to go through the court process. There are certain measures which you are always entitled to as a victim of this type of crime.

These include:

- **Evidence given in private through a television link**
- **Provision of a physical screen, so you would not have to see the accused**
- **Supporter in court alongside you when giving evidence (*can be a worker from a rape crisis centre or potentially a family member if they are not a witness*)**

It is important to be aware that the accused will always be able to see you as you give evidence although you may not be able to see them.

There are also other special measures that may be available. These are not standard special measures, and the court will consider whether it is appropriate to grant them or not. VIA should speak to you about all measures which may be available.

Someone from COPFS should have spoken with you about whether you want to use any of these other special measures earlier on in the process.

Your VIA worker will also be able to give you more information on these non-standard measures. A judge will then make a decision on whether these measures should be granted or not, usually in advance of the Preliminary Hearing.

One such measure would be the process of giving evidence via commission. This is when you give evidence before the trial in a more informal setting. You would still be asked questions by the defence lawyer and prosecution.

The accused would be able to watch this evidence but not in the same room and the evidence you give here would be recorded and then played at the trial on a later date to a jury. The date for the commission is usually set at the Preliminary Hearing.

If you want to know more about what's involved in a commission, you can watch a mock commission [here](#).

Accessibility in Court

Accessibility measures can be arranged if needed, but must be requested in advance. Your advocacy worker can help you raise these requests with VIA.



Wheelchair access

This is available on request.



Hearing support

Loop systems can be arranged for those with hearing difficulties.



Interpreter services

If English isn't your first language, an interpreter can be provided.

What to expect from the preliminary hearing

How the indictment process works

In a prosecution for Rape or Attempted Rape, the accused will be served with an indictment at some point after they have appeared on petition. This is a document specifying the final charges that they will stand trial for.

What happens at the court hearing

This might be different from the charges that appeared on the petition. The indictment will be served on the accused or their lawyers.

The indictment will also specify the date of a **Preliminary Hearing** that will occur in the case in the High Court.

This is an administrative calling of the case where the judge checks if both the prosecution and the defence are ready for trial. Most of these hearings occur online. You are not required to attend.

How long the legal process takes

There are time limits that apply to the service of an indictment and the holding of a preliminary hearing.

The preliminary hearing must be held within 11 months if they have been given bail and the trial should begin within 12 months.

If the accused is in custody then there must be a preliminary hearing within 110 days and the trial must begin within 140 days.

The Emma Ritch Law Clinic at the University of Glasgow

The Trial

Stages of the Preliminary Hearing

Unfortunately, due to the backlog of cases in the courts these timelines for cases coming to trial are regularly extended and so are only a rough guide. VIA should keep you updated about the timeline for trial and any hearings in the case.

01. Plea stage

- * The accused is asked (through their lawyer) how they plead to the charges.

They must say either:

- * **Guilty**

The case follows the s.76 process set out above.

- * **Not Guilty**

The case moves forward to trial

- * In rape and sexual offence cases, a not guilty plea is more common.

02. Judges checks

- * **What happens**

The judge will check that the prosecution and the defence are ready for trial, any technical legal arguments about whether evidence is admissible or not will be raised and dealt with.

- * **Applications**

The court will also consider whether applications to admit sexual history and character should be granted or not.

03. Setting the trial

- * **Trial dates**

At the Preliminary Hearing the court will fix dates within which the trial should begin and VIA should inform you of this.

- * **Floating trial**

The court may fix what is known as a 'floating trial'. This is where the trial could start on any one of several days within a specified period.

If you have any questions about this, you should contact VIA.

What to expect when arriving at court

1. Arrival time and dress code

On the day of the trial, you'll usually be asked to arrive early. Formal attire or smart dress is what most people wear to court.

2. What to bring with you

You should bring your citation letter with you. This is the letter you received which gives information about the date and time of your trial.

3. Finding the waiting room

Show your letter at the court building to find the waiting room. This is the room where you'll wait before giving your evidence.

4. Witness waiting room rules

The accused will not be allowed in the witness waiting room and you shouldn't have to be near them although sometimes you may see them or their family outside the court building.

5. Avoiding contact with the accused

If you are worried about bumping into the accused or their family you should ask VIA whether it is possible for you to use a separate entrance into court to try and avoid this.

6. Support and trial updates

Someone from VIA should meet you when you arrive at the Court. A court officer should be able to update you about the progress of the trial and let you know what stage it is at.

7. Length of the trial

It can be difficult to predict how long a trial might last but VIA should be able to estimate the time it will take if you ask them. It will not be necessary for you to attend every day. You will only need to attend for the part of the trial in which you are giving evidence.

8. Being called to give evidence

When it is your turn to give evidence a court officer will call you and escort you to the designated courtroom.

In the courtroom, there will be:

The Judge

**The
Prosecutor**

**The Clerk
of Court**

**The Court
Officer**

**The
Defence
Lawyer**

The Jury
(in solemn cases)

**The
Accused**

**Court
Police or
Security
Officers**

Who can be in the courtroom and what can be reported

**Who can
attend the trial**

The trial is generally open to the public. Members of the public and the press can sit in the courtroom and watch what happens.

**The role
of the press**

The press usually do not publish details that could identify victims. They may report general case details, including the name of the accused.

**When the
courtroom
is closed**

When you give evidence in a sexual offence case, the court should be closed. The general public cannot be in the room during this time, but journalists can be. The court may also pass orders stopping the publication of any details that may identify you.

**Your privacy
in court**

Your name and address will not be published in press reports. Your address can be given care of Police Scotland. This helps to protect your privacy throughout the trial process.

What to prepare for when giving evidence

Preparing to give evidence

It is normal to feel nervous about giving evidence.

There are special measures available to help you feel more comfortable and make the process a bit easier.

There is information about this on page 25 of this guide. Remember, you can ask VIA or your advocacy worker any questions you may have about the process in advance.

Entering the courtroom and taking the oath

Once you have been brought to the courtroom, a court official will call your name and show you to the witness box.

You will be asked to repeat an oath or affirmation and promise to tell the truth. After this, the process of giving evidence will begin.

Examination in Chief (Prosecution)

First, the prosecution will ask you questions. This is called the Examination in Chief. They will usually ask you your name, age and occupation.

You will then be asked to tell the court what you remember about the incident and about what happened to you.

Cross examination (Defence)

Next, the lawyer for the defence will ask you questions. This is called the Cross Examination. This is often the part of giving evidence that victims feel most anxious about.

Things to remember when giving evidence

What the defence may suggest

The defence may ask you questions that you find upsetting such as suggesting that you are being untruthful.

The lawyer representing the accused is required to put the accused person's position before the court.

It is common in sexual offences for it to be suggested that sexual activity was consensual.

Court rules and safeguards

The defence lawyer is not allowed to ask irrelevant questions or to try to insult you on a personal level. Nor should they scream or shout at you.

The judge should stop them if they try to do this. The prosecutor should also object to these sorts of questions being asked.

Speaking clearly and taking breaks

You should try to listen carefully and speak clearly. If you do not understand the question you are being asked, you can just say so.

You should always and only tell the truth and answer the questions you are asked. During the process of giving evidence, you should be aware that you will be permitted breaks.

Finishing evidence and leaving court

Once you have completed giving evidence, you will be informed when you are free to leave.

You can choose to watch the rest of the trial from the public gallery if you want to but you do not have to. A supporter can be with you if you choose to do this.

The Jury's decision

In solemn cases, the jury will consider all the evidence they have heard and make a decision on the result of the trial. Not all jurors have to agree to convict. 10 out of 15 jurors must agree on the decision.

In summary cases, the judge makes the decision as there is no jury.



Guilty

This means that the accused will be convicted of the crime. They will be sentenced by the judge to a punishment at a later stage. The accused is allowed to appeal this verdict.



Not guilty

This verdict mean that the accused has not been convicted and is free to leave the court. You cannot appeal the verdict.

The Crown cannot appeal the decision of a jury either. This verdict does not necessarily mean that you were not believed. It may just mean that there was not enough evidence to convict the accused.

You can ask VIA to keep you updated on when the verdict is likely to be reached so you can be in court when it is heard if you would like. If you have not stayed in court to hear the verdict, a VIA worker will get in touch to tell you the outcome.

If you are unhappy with the way in which the police or COPFS have acted in your case you are entitled to complain. Your advocacy worker can assist you with this.

A complaint about COPFS must usually be made within 6 months of the incident you wish to complain about (although this deadline can be extended if there are exceptional circumstances).

There is no deadline when it comes to complaining about the police.

**After the trial:
What comes next?**

Sentencing

Sentencing is when the judge decides what the punishment should be for the offender. If the offender is found guilty the judge can either sentence the offender straight away or delay the sentencing until a later date.

Sentencing hearings and reports

Normally a sentencing hearing will take place a short time after the verdict.

This normally takes place **about 4 weeks** after the trial as reports on the offender's background and attitude towards their offending are prepared (these are known as 'Criminal Justice Social Work Reports').

The judge will decide what happens to the offender while they are waiting for their sentencing. They will either be kept in custody, or they will be granted bail and ordered to return to court for sentencing.

How the sentence is decided

The sentence will be decided by the judge. They will consider the severity of the crime and any previous criminal convictions that the offender has.

Sentences for rape and attempted rape

If the trial was held in the High Court for rape or attempted rape, then there is no maximum time that the offender can be put in prison for.

The sentencing guidelines for rape cases sets out a range from five years up to 13 years' imprisonment, while sentences for the rape of a young child range from seven years up to 14 years' imprisonment.

In practice, rape cases involving offending against one victim, where no aggravating factors such as abduction or weapon use are present, typically result in sentences ranging from approximately five to six years.

If there are multiple victims, the sentence will likely be longer. Courts in Scotland generally sentence young offenders (those under the age of 25) more leniently than adults.

Non-harassment orders

Courts may also impose Non-Harassment Orders, after conviction, stopping the accused from doing certain things such as trying to approach or contact you for a number of years.

Early release and parole

It is important to bear in mind that the offender can qualify and may well be released at an earlier point of the sentence. For those serving sentences of over 4 years (including extended sentences) they are usually considered for release at the halfway point of their custodial sentence.

Whether they are released at that stage would be a decision for the parole board who consider the risk to the public. If they are released they will be subject to 'license conditions'.

For those sentenced to less than 4 years in prison for sexual offences they will be released automatically on licence at the halfway point of their sentence.

Life sentences and lifelong restrictions

In certain cases of rape it is possible that a life sentence or order for lifelong restriction could be given but this is exceptional and generally occurs where the accused had been convicted of such offences on previous occasions.

Victim Impact Statement



What it is

If you want to, you can prepare a Victim Impact Statement about how the crime has affected you mentally, physically and financially.



Your choice

There is no obligation to submit a Victim Impact Statement and it is your decision about whether you want to complete one or not.



How it's used

The judge will consider this statement when they are sentencing the accused. It allows the impact of the crime on you to be taken into account during the sentencing.



Getting support

Your VIA Officer will speak to you about Victim Impact Statements and give you more information on what should and should not be included.

Victim Notification Scheme

In all cases where a sentence of imprisonment of more than 18 months is imposed then you are entitled to register for the Victim Notification Scheme.

The Victim Notification Scheme, commonly referred to as the 'VNS', has two parts and you can register for either Part 1 only or for both parts 1 and 2.

Victim Notification Scheme: Part 1

Registering for Part 1 gives you the right to know certain details about the accused, such as the date of their release, whether they have passed away in prison, and if they are returned to prison for any reason after release and it is related to your case.

Victim Notification Scheme: Part 2

Registering for Part 2 allows you to submit written representations to the Parole Board for Scotland when the offender becomes eligible for release, ensuring your views are taken into account during the parole review process.

If the sentence is less than 18 months

If the accused is sentenced to less than 18 months, then you can ask the Scottish Prison Service to let you know the date of release of the accused.

Your advocacy worker can support you with the Victim Notification Scheme. You can find more information about the VNS schemes [here](#).

Where to find support and guidance

It is important to remember that throughout the criminal justice process, support is available from Rape Crisis Scotland and regional rape crisis centres. See the 'List of Support' section for further information and advice.

The Emma Ritch Law Clinic at the University of Glasgow

List of support Directory

List of Support

The National Advocacy Service

The National Advocacy Service (NAS) provides support and advocacy to survivors of sexual violence who are engaging, or considering engaging, with the criminal justice process. The service can provide: information about the justice process, assistance obtaining information, accompaniment to meetings and support in court.

Phone: 0808 801 0301

Web: <https://www.rapecrisisscotland.org.uk/national-advocacy-service/>

Contact advocacy@rapecrisisscotland.org

Sexual Assault Response Coordination Services (SARCS)

SARCS provide health and medical care, including forensic examinations, following rape or sexual assault. If you've been raped or sexually assaulted, you can self-refer to SARCS by phone 24 hours a day, 7 days a week. You can phone the sexual assault self-referral phone service.

Phone: 0800 148 88 88

Web: nhsinform.scot/sarcs

Amina Women's Resource Centre

Support for Muslim women across Scotland

Phone: 0808 801 0301

Web: mwrwc.org.uk

Crown Office (COPFS)

Prosecution service for Scotland

Phone: 0300 020 3000

Web: copfs.gov.uk

Beira's Place

Help for women 16+ across the Lothians area

Phone: 0131 526 3944

Web: beirasplace.org.uk

FearFree

Help for men and LGBTQ+ people in Scotland

Email: fearfreeinfo@sacro.org.uk

Web: fearfree.scot

Childline

Support and information for people under 19

Phone: 0800 1111

Web: childline.org.uk

Moirra Anderson Foundation

Support for children & adults affected by childhood sexual abuse

Phone: 01236 602 890

Web: moirraanderson.org

NHS Inform

Where to find help in your local area

Phone: 0800 148 88 88

Web: nhsinform.scot

Scotland's Domestic Abuse & Forced Marriage Helpline

24-hour helpline across Scotland, free to call

Phone: 0800 027 1234

Web: sdafmh.org.uk/en

Scottish Women's Aid

Help available through local branches in Scotland

Phone: 0800 027 1234

Web: womensaid.scot

Speak Out Loud

Help for men in Scotland who need support

Phone: 07488 399 917

Web: speakoutscotland.org

Survivors UK

Help for boys and men across the UK

Phone: 0203 598 3898

Web: survivorsuk.org

Victim Support Scotland

Information and support after a crime.

Phone: 0800 160 1985

Web: survivorsuk.org

SAY Women

Housing and support for women aged 16 to 25

Phone: 0141 552 5803

Web: say-women.co.uk

Wellbeing Scotland

Counselling and support services in Scotland

Phone: 01324 630 100

Web: wellbeingScotland.org

Scottish Women's Rights Centre

Free legal service for women in Scotland

Phone: 0800 027 1234

Web: scottishwomensrightscentre.org.uk

Rape Crisis Scotland

Rape Crisis Scotland provides support to anyone age 13 and over who has been affected by sexual violence.

Phone: 08088 01 03 02

Text support: 07537 410 027

Email: support@rapecrisisscotland.org.uk

Web: rapecrisisscotland.org.uk

The Emma Ritch Law Clinic at the University of Glasgow
Rape Crisis Scotland

What are my rights as a complainer in a sexual offence trial?

**Complainer is the legal term in Scotland for the person who has reported the crime*

You have the following rights:

- You have the right to an effective investigation capable of leading to the identification of and punishment for those responsible for the crime.
- You have the right to an investigation that is conducted independently, promptly and with reasonable speed.
- You have the right to participate effectively in the investigation and proceedings, to the extent that is necessary to secure your interests.
- You have a right to free legal advice and representation if the defence or prosecution want to obtain your medical or other sensitive records. This right does not apply to the Crown obtaining any records relating to any injuries from the rape or sexual assault.
- You have a right to be informed and have your views conveyed to the judge if the Crown or defence want to bring up anything about your sexual behaviour, history or character to suggest you should not be believed or did consent. The same applies to any attempt to suggest you suffer from a medical condition which means you should not be believed or did consent.
- You have a right to certain special measures to assist you in giving your evidence at trial where you wish this, such as having a supporter present in court, using a screen so you don't need to see the accused, and giving evidence from another room via live link.
- If your case is being heard in the High Court, you have the right to apply for a transcript of the trial once it has finished.
- You have the right to ask the prosecutor to review a decision not to take action or to stop prosecuting a case.
- If your case is a sexual offence case which being heard in front of a jury (in the sheriff or high court), you have a right to make a victim statement, setting out the impact the crime had upon you, and for this to be considered by the judge or sheriff if the perpetrator is convicted.
- If the perpetrator is convicted and sentenced to a jail term of more than 18 months, you have a right to be notified if they are being released from custody and to make representations about their release. If they are sentenced to less than 18 months you have the right to receive information about the date they are to be released from custody.
- You have the right to apply for state compensation for the harm you have experienced. You have to have reported the incident/s to the police, and applications for compensation normally need to be made within two years of the incident/s, although there are some exceptions to this.

The Police, the Courts and Prosecutors must have regard to the following principles:

- You should be able to obtain information about what is happening in the investigation or proceedings.
- Your safety should be ensured during and after the investigation and proceedings.
- You should have access to appropriate support during and after the investigation and proceedings.
- You should be able to participate effectively in the investigation and proceedings, in so far as it would be appropriate to do so.
- You should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner.
- You should, as far as is reasonably practicable, be able to understand information you are given and be understood in any information you provide.
- You should have your needs taken into consideration.
- You should be protected from secondary and repeat victimisation, intimidation, and retaliation.

You should expect...

- To be consulted about how you want to give your evidence.
- To be offered an opportunity to visit the court prior to giving evidence.
- To be offered an opportunity to meet the prosecutor before giving your evidence.
- To have a supporter in court with you when you are giving evidence, as long as they are not a witness in the case.
- That the Judge or Sheriff will consider clearing the public benches when you give your evidence. In practice, this happens routinely in the High Court, meaning no member of the public will be present when you are giving your evidence.
- That your name or any identifying information will not be published in any press coverage of the case.

Other important sources of information about your rights and service standards:

- [The Victims Code for Scotland](#)
- [Victim Services](#) | [COPFS](#)

Glossary

This glossary explains some of the legal terms used throughout this guide to help make the guide easier to follow.

Accused

The person alleged to have committed the crime.

Bail

When the accused is released from custody on a temporary basis under certain conditions set by the court.

Charge

The crime that the accused is alleged to have committed.

Citation

The document that will tell you where and when to go to court.

Custody

In prison or a police cell.

Complainer

The person who claims they have been the victim of an offence.

Corroboration

The need for evidence from two sources in order to convict an accused.

Cross Examination

Questioning by the defence lawyer.

Crown Office and Prosecution Service

Scotland's Criminal Prosecution Service. Sometimes referred to as 'The Crown' or 'COPFS' bring the charges against the accused in solemn proceedings.

Examination in Chief

Questioning by a lawyer of their own witness to introduce their evidence to the court.

Forensic Medical Examination (FME)

A specialised examination designed to gather forensic evidence that can be used to provide relevant information about the perpetrator and the offence.

Indictment

A court document setting out the charges against the accused in solemn proceedings.

Jury

15 members of the public who listen to the evidence at a trial and give their verdict.

Petition

A document which sets out the first draft of the criminal charges against the accused at the beginning of the legal process.

Plea

When the accused states if he is guilty or not guilty at the start of the criminal proceedings.

Pre-recognition

An interview by the Procurator Fiscal to help them find out further information about the case.

Procurator Fiscal

A lawyer working for the Crown Office and Prosecution Service who assesses the evidence in a case and makes a decision about what action to take.

Re-examination

Further questioning by a lawyer of their own witness to clarify any issues following the cross-examination.

Sentencing

The process where the judge decides the punishment for the accused following a guilty verdict.

Sexual Offences Liaison Officers (SOLOs)

Especially trained police officers who investigate sexual offences.

Solemn Procedure

A serious case heard before a Judge and a Jury in either the High Court or the Sheriff Court.

Summary Procedure

A case heard before a Judge in the Sheriff Court with no jury.

S.275 Application

An application by the defence to present evidence to the court about the complainer's sexual history and character.

Verdict

The decision reached at the end of the trial. A verdict can either be guilty or not guilty.

Victims Information and Advice

A service provided by the Crown Office and Prosecution Service to support victims through the legal process.

DON'T KNOW WHERE
TO TURN IF YOU'VE
BEEN RAPED
OR SEXUALLY
ASSAULTED?
TURN TO SARCS.



Healthier
Scotland
Scottish
Government



We're an NHS Scotland service, here to offer you healthcare choices and support in the days after an assault, even if you're not ready to go to the police. Find out more at nhsinform.scot/SARCS

Sexual Assault Response Coordination Service



The Glasgow Open Justice Centre at the University of Glasgow aims to empower individuals and communities to use the law to access justice and achieve fair outcomes.



This guide was prepared by staff and students in the Emma Ritch Law Clinic.



The Clinic, based in the Glasgow Open Justice Centre, provides independent legal advice and representation to complainers in sexual violence cases.

Rape Crisis Scotland

Rape Crisis Scotland provides support to anyone age 13 and over who has been affected by sexual violence.

Phone: 0808 8010 302 (5pm to midnight)

Text support: 07537 410 027 (Text number will show on your bill)

Email: support@rapecrisisscotland.org.uk

Helpline webchat support: rapecrisisscotland.org.uk

For further details,
please get in touch with us



**The Emma Ritch Law Clinic
at the University of Glasgow**

Email emma-ritch-law-clinic@glasgow.ac.uk

Website gla.ac.uk/schools/law/gojustice