



**Law
Commission**
Reforming the law



The way evidence is used when courts deal with sexual offences

Part 2. The complainant and defendant

Let us know what you think.

You need to let us know by 29 September 2023



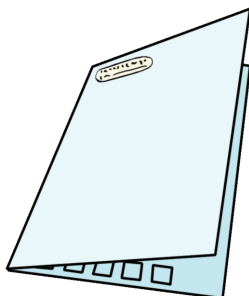
EasyRead version



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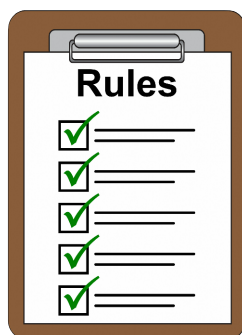
You can have your say **2**



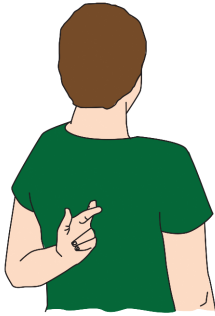
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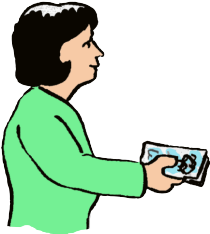
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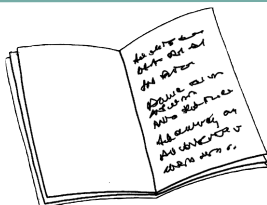
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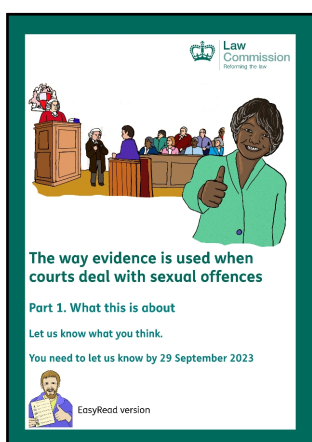


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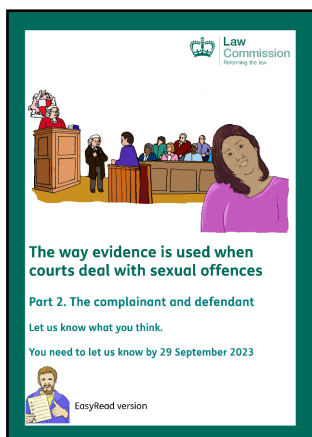
The different parts of this paper



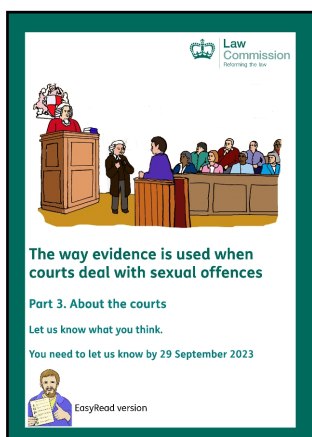
There are different parts of this paper explaining different things and asking you different questions.



Part 1 has general information about what we are talking about.



This is Part 2. It is about the complainant and defendant.



Part 3 is about the courts.

You can have your say



We are having a **consultation**.

Consultation means we are asking people to tell us what they think.

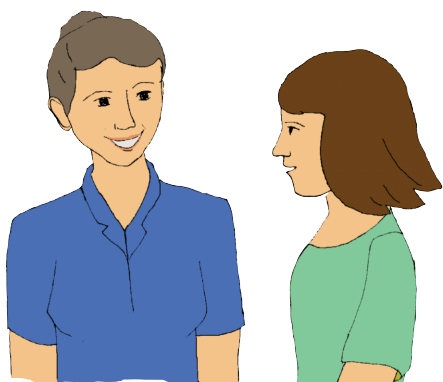


We are asking:

- people who work in the law



- people who have been a victim of a **sexual offence**



- services that help victims



- anyone affected by sexual offences, including anyone accused of committing a sexual offence.



This paper tells you about our ideas.



We want you to help us by telling us what you think.



Please read this paper and answer the questions in **blue**.

Personal information about the complainant



1. Third-party records

A **record** is information that has been written down. Organisations keep records about us.



These include doctors, counsellors, government departments, schools, immigration authorities, child and family services, and employers. We call them **third parties**.



There is no single set of rules that says how third-party records can be used after someone makes a complaint to the police of a sexual crime.



Instead, lots of different rules apply which makes it hard to understand what can happen to our personal information.

Question 1



We would like to see one set of clear rules about how our third-party records can be used after someone makes a complaint to the police of a sexual crime.

Do you agree?



2. Counselling records

When a person has been raped they may visit a counsellor. A counsellor can help the person work through their feelings.



The counsellor will make a record of their visit. This is called a **counselling record**.



Counselling records may include words said by us and about us.



These records are very personal and you may not want other people to see or read them.



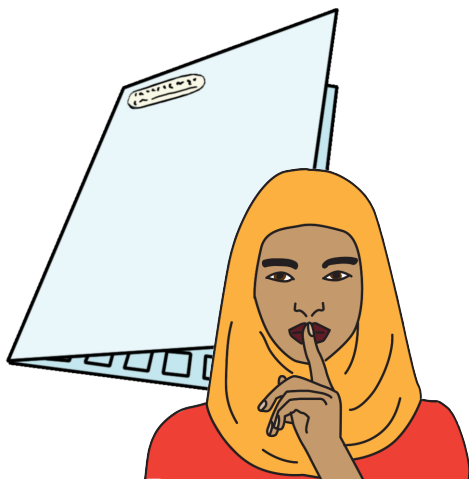
But in a rape case, police and lawyers can often read these records and then use them as evidence in a trial.



We are worried that people will not go to see a counsellor if they think what they say to a counsellor will be read out in court.

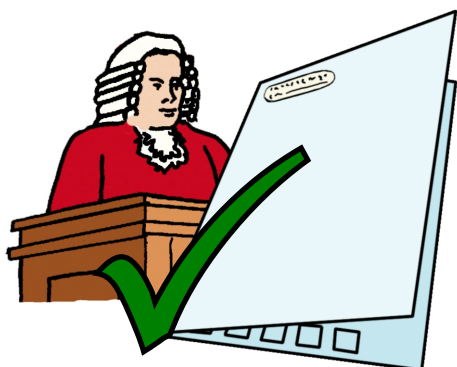


We are also worried that people will not report a crime so they can safely have counselling.



We asked people if all records should be kept private. Some people told us they did not want all records to be private because in some cases counselling records may include important evidence that is needed for the court to reach a fair decision. The evidence in the record may not be available from anywhere else.

Question 2



We think counselling records should sometimes be available to keep the trial fair.

Do you agree?



3. Our ideas for rules about using your records

Police and prosecutors can get access to third-party records.



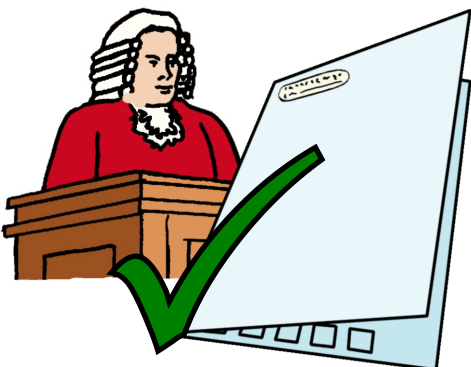
The third party who has the record can agree to provide the records to police and prosecutors.



Or, the police and prosecutors can ask the court to make an order requiring the third party to provide the records. This is called **compelled production**.



The lawyers who help the **defendant** may also be able to see the third-party records if it will help their case.



The third-party records may be allowed to be used as evidence in the trial.



We think it is fair to allow records to be used in some circumstances. However, we also think that there need to be clear rules about when and how that can happen.



We looked at how this happens in Canada where records must be **relevant** and can only be accessed or used if it is **necessary in the interests of justice**.

Relevant means the records will help people understand the case.

Necessary in the interests of justice means that the trial is fair for everyone.

Question 3



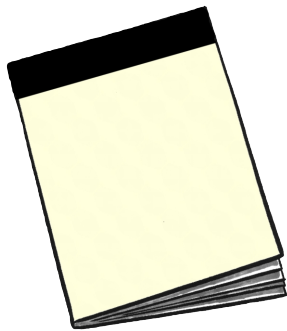
We think third-party records should only be seen by police, prosecutors and the defendant, and used in a trial if they are relevant and it is necessary in the interests of justice.

Do you agree?

Evidence about the sexual behaviour of the complainant

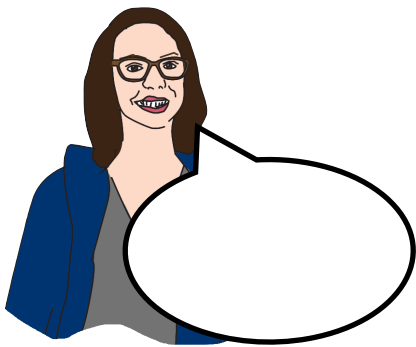


Evidence in a trial means information given to a court or a **jury** to help prove if something is true or not true.

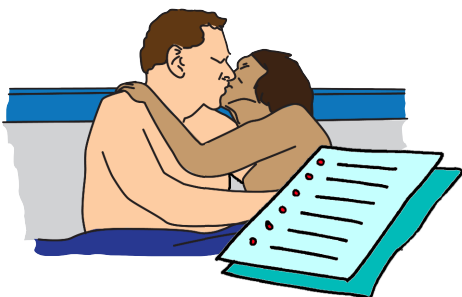


Evidence may be:

- a document

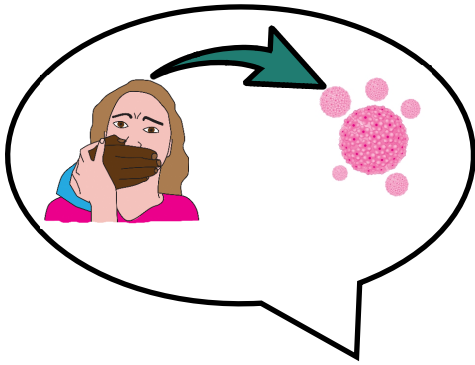


- what a witness says.



Evidence about the **complainant's** sexual behaviour must be used carefully to protect the complainant and the defendant.

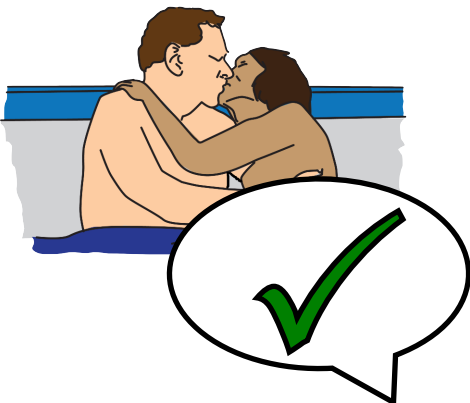
Evidence about sexual behaviour can be helpful.



Example: the complainant says the defendant gave her a sexually transmitted disease (STD) when he raped her.

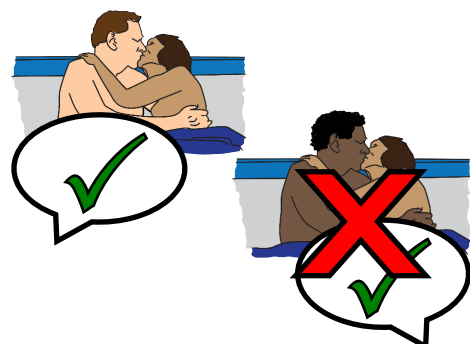


But the evidence shows the complainant had other sexual partners who could have given her the STD.



But sexual behaviour evidence can build on myths and misunderstandings.

Example myth: The complainant consented to sexual activity in the past therefore they must have consented to sex with the defendant.

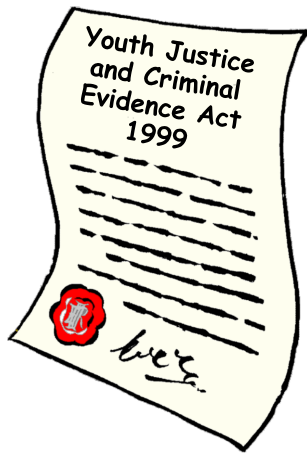


Fact: **Consent** to sexual activity once does not mean that there is consent to sexual activity again.

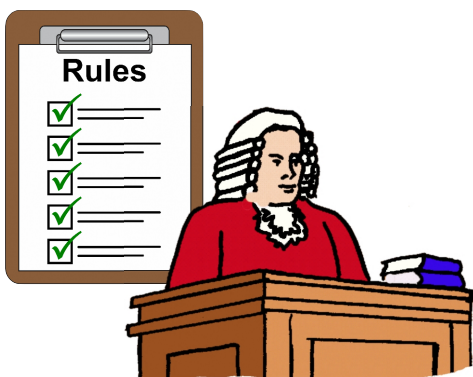


Sexual behaviour evidence is also very personal and it can be very embarrassing or upsetting to be asked about it in court.

Rules about using evidence about the sexual behaviour of the complainant



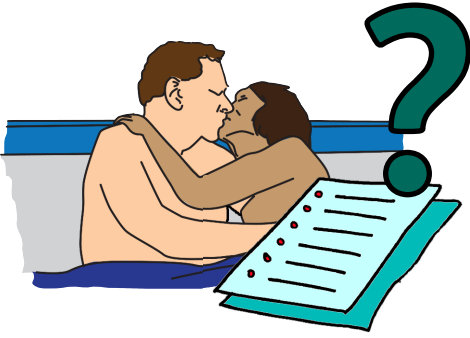
The Youth Justice and Criminal Evidence Act 1999 gives us rules about when evidence about a person's sexual behaviour can be shared in court.



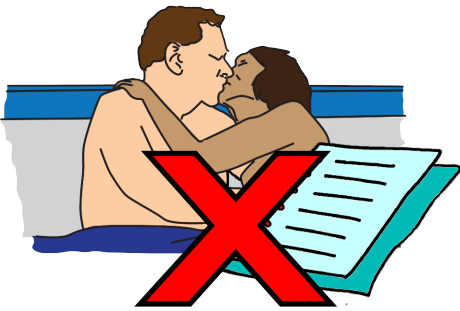
The rules help the court decide if evidence about the complainant's sexual behaviour can be used as evidence.



Some people say the rules are not working well so we need to look for better ways of keeping a trial fair.

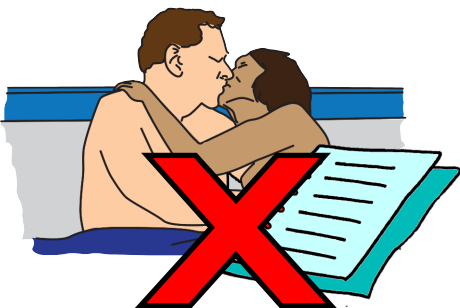


We have looked at other ways to help courts decide if a person's sexual behaviour can be shared as evidence.



We think that evidence about a person's sexual behaviour should not be used in a trial unless it is needed to help prove an important point and to keep the trial fair.

Question 4



We think that evidence about a person's sexual behaviour should only be used in a trial if it is needed to help prove an important point and to keep the trial fair.

Do you agree with this idea?

Question 5



If you said yes to question 4, please tell us if the judge should think about:

1. protecting the complainant's dignity, privacy and legal rights



2. protecting the defendant's right to a fair trial



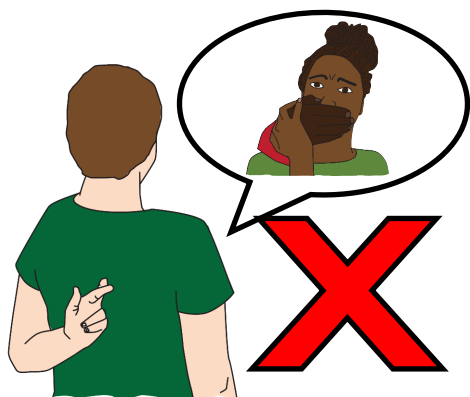
3. making it easier for victims to report and provide evidence for sexual assault trials



4. possible myths or misunderstandings

Anything else?

Evidence about the complainant telling lies in the past

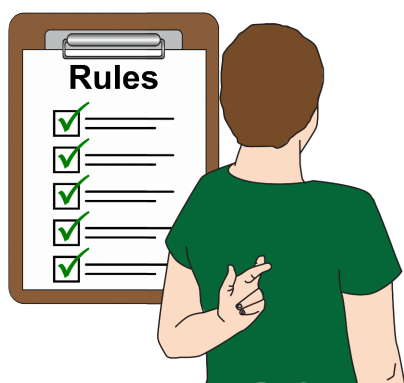


We know that telling lies about a sexual assault is wrong.

Sometimes people do tell lies, but it is a **rape myth** that complainants are often lying.



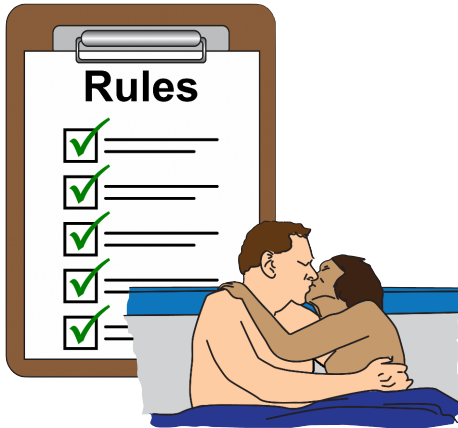
A jury may decide that a person who may have lied about a sexual assault in the past may be lying again this time. It would be a problem if juries decide this because they believe a rape myth.



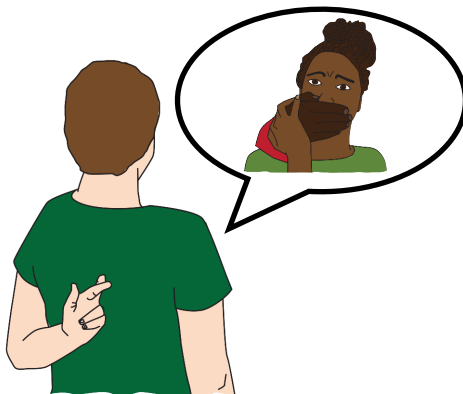
We think there should be rules about when a person can be asked about telling lies in the past.



When a lawyer tells the court that someone may have lied about a sexual assault in the past there are the same problems as when lawyers ask about the person's sexual behaviour in the past.

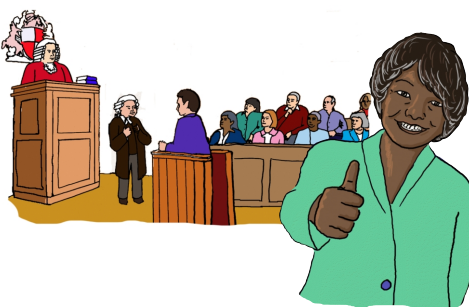


Because of this we think the same rules should apply here that apply when someone wants to use sexual behaviour evidence in a trial.



Question 6

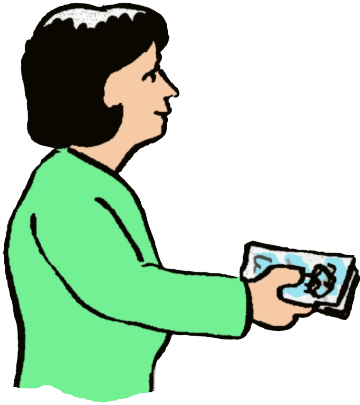
This question is about if the defendant wants to give evidence that the complainant lied about being raped before.



We think that this evidence should only be used in a trial if it is needed to help prove an important point and to keep the trial fair.

Do you agree with this idea?

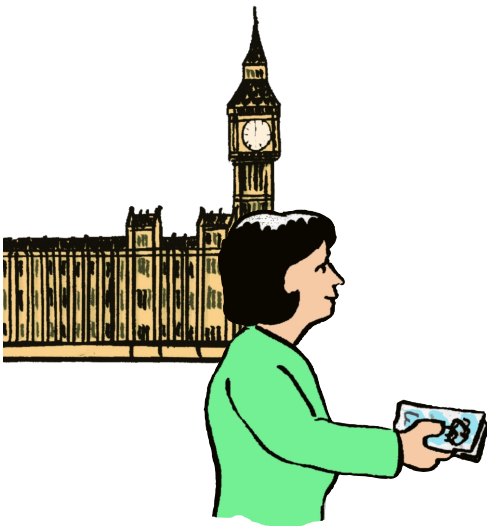
Compensation



Compensation is money paid for injury or suffering caused by a crime. The injury can be physical or emotional.

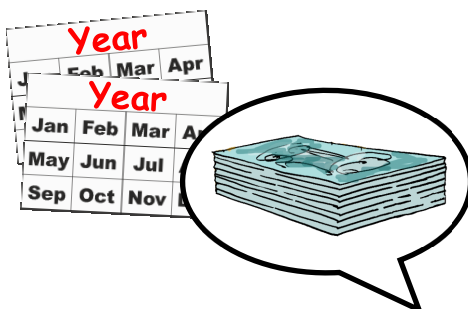


People can use the money to help with their recovery, for example to pay for therapy.



A person who has been hurt by a sexual offence can ask a government-funded organisation for money.

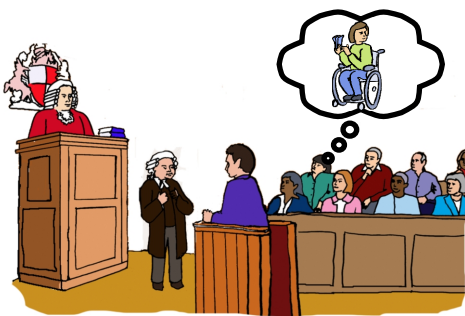
The organisation is called the Criminal Injuries Compensation Authority (CICA).



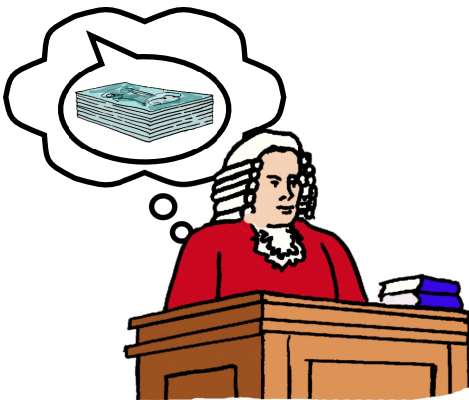
The law says you must put in your claim for compensation as soon as possible after the incident. You only have 2 years to claim.



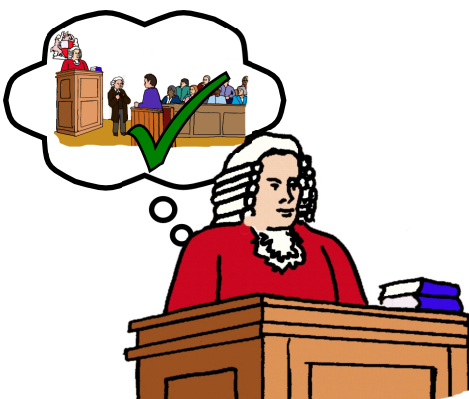
In the trial, the lawyer for the defendant can ask if you have applied for the compensation.



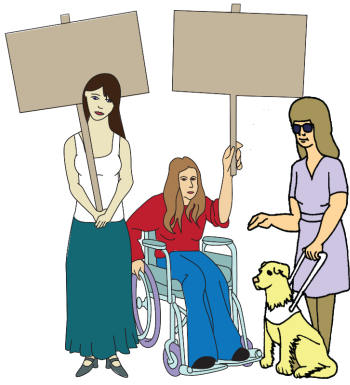
This may make a jury think you are lying about being raped so you can ask for money.



So we think a judge should decide if a person can be asked about claiming compensation.



The judge would decide if this information will help the trial.

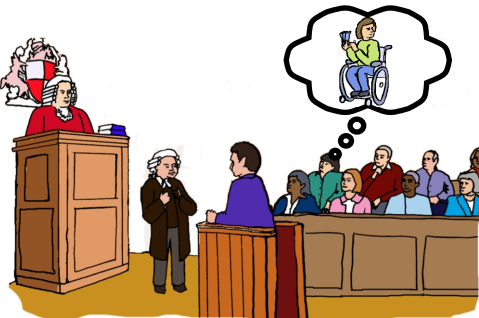


The judge will need to think about:

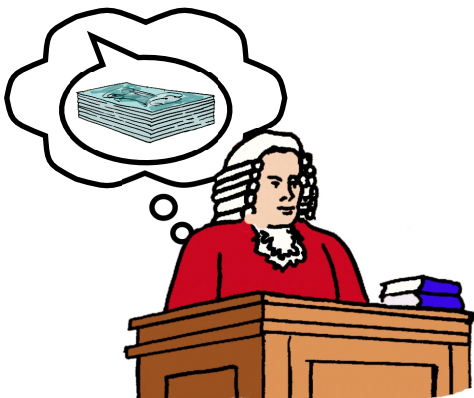
- respect for the complainant and their rights



- having a fair trial for both sides



- if the jury may think you are lying so you can get money.



Question 7

Do you agree that a judge should decide if a complainant can be asked if they have applied for compensation?

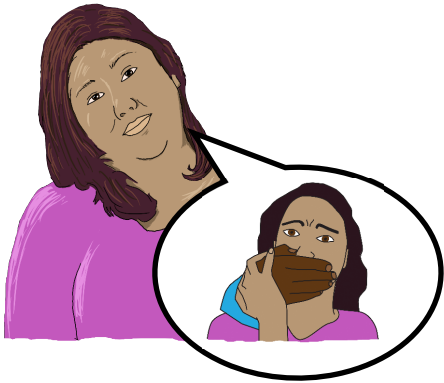
Question 8



We think that the judge should only allow this evidence to be used in a trial if it is needed to help prove an important point and to keep the trial fair.

Do you agree with this idea?

Special measures for complainants



In sexual offence case trials **complainants** are often the main witness.



This means that complainants need to give evidence at the trial. They will need to speak to the judge and jury about what happened to them.



They will be asked questions by the prosecutor.



Then they will be asked questions by the lawyer for the defendant. This is called cross-examination.



Then the prosecutor may ask more questions to clear up any confusion. This is called re-examination.



If a witness is **vulnerable**, these questions can be hard and stressful.

Vulnerable means a person can't always protect themselves and they may need help.



The complainant may feel scared about talking about what happened to them at court.

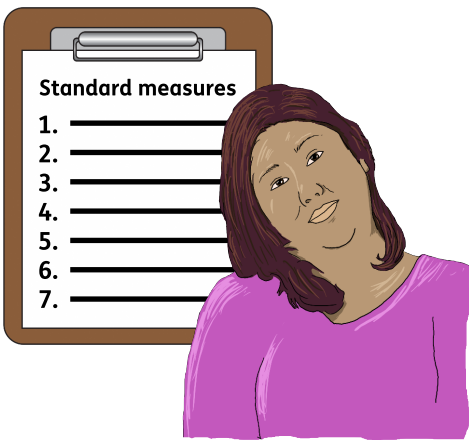


They can ask for special measures to help them give evidence, such as extra support.



The court decides if they need special measures.

Ways we help complainants in sexual offence trials



We think all complainants in sexual offence trials should have access to help called **standard measures** when they give evidence.



Standard measures are things like:

1. Screens. The complainant gives evidence from behind a screen so they do not have to look at the defendant.



2. Live link. The complainant gives evidence live from a room outside the courtroom via a video link.



3. Recorded evidence. The complainant gives their evidence before the trial and away from the jury and the public.

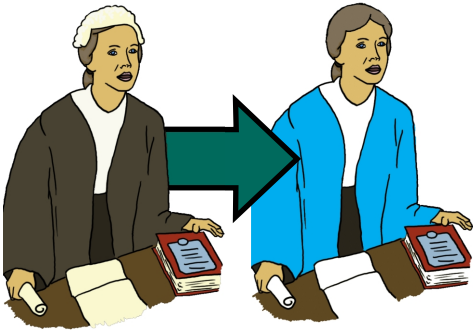
Their evidence is recorded and then played to the jury during the trial.



4. Help from a supporter such as an Independent Sexual Violence Adviser while they give their evidence.



5. The public are sent out of the court while the complainant gives evidence. People who can stay are a named representative of the press; the defendant; legal representatives; and an interpreter or other person who is helping the complainant.



6. Judges and barristers take off their wigs and gowns in the court while the complainant gives evidence.



7. Separate accessible entrances and a waiting room for the complainant away from members of the public and the defendant.

Question 9

Please look at the 7 standard measures above that will make it easier for complainants to give their evidence.



Do you agree these should be available to all complainants?

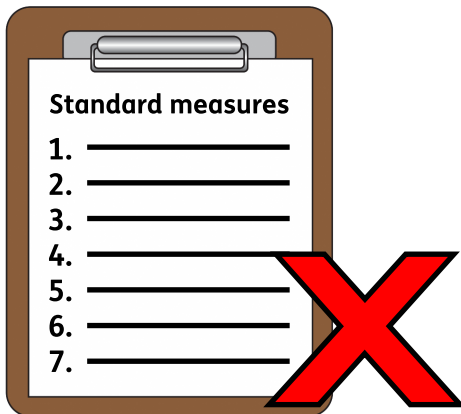
Can you think of any more?



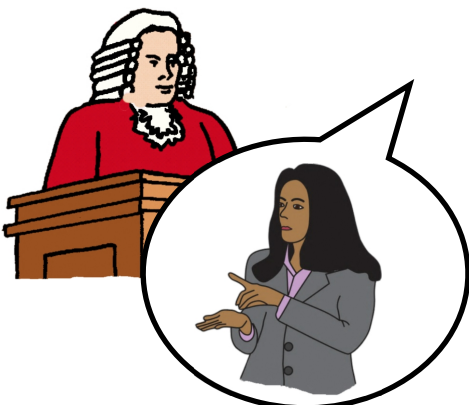
Another example of a special measure is an **intermediary** to help witnesses with communication difficulties.



The **intermediary** will check the complainant understands what they are being asked, and the court understands their evidence.

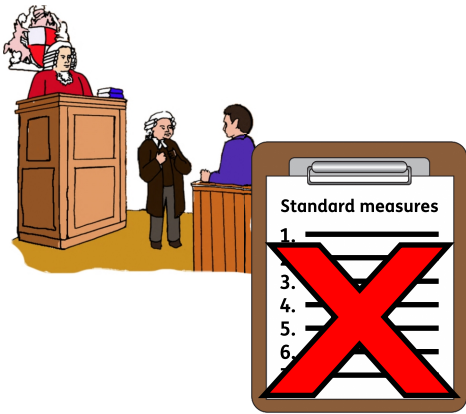


We think this does not need to be a standard measure because not every complainant will need one.

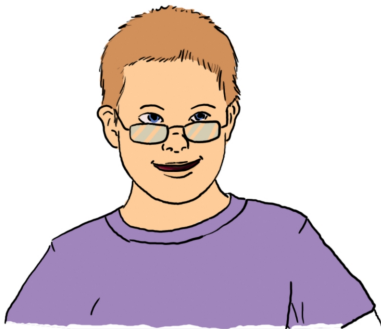


Complainants who do need an intermediary should still be able to ask the court for one.

Special measures for defendants



At the moment there are no special measures for defendants in sexual offence trials.

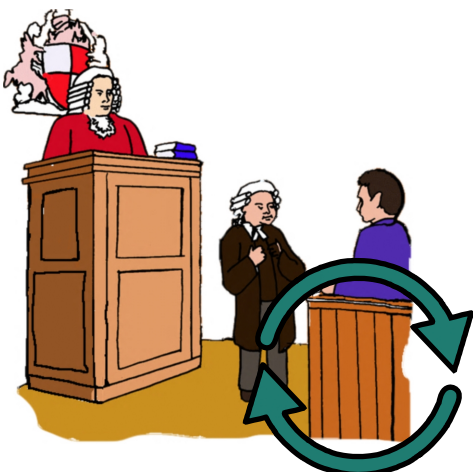


The court can provide a live link and an intermediary for defendants who are:

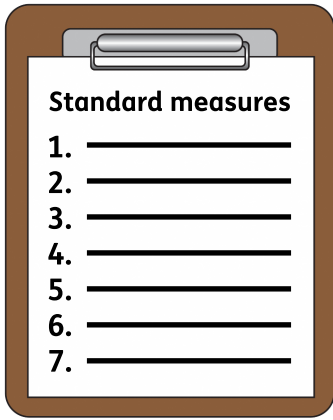
- under 18 and need help



- over 18 and need help because they have learning disabilities or a mental disorder.



The court can also make other changes for vulnerable defendants.



Question 10

Are there any special measures the courts could use to help defendants in sexual offence cases?

How to tell us what you think

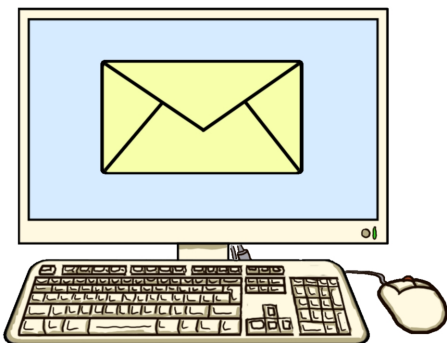


Thank you for reading our paper and answering the questions.

There are 3 ways to send in your answers:



Online:
consult.justice.gov.uk/law-commission/evidence-in-sexual-offences-easyread



By email to:
evidence.rasso@lawcommission.gov.uk



By post to:
**Evidence in Sexual Offences Team,
Law Commission,
1st Floor, 52 Queen Anne's Gate,
London, SW1H 9AG.**



Please send your answers to us by
29 September 2023.



Where can I read the full paper?

The full consultation paper and a shorter summary of it are available at our website:

www.lawcom.gov.uk/project/evidence-in-sexual-offence-prosecutions/



What happens next?

After looking at all the responses, we will write a report to Government.

Government then decides whether to use our ideas.

What the words mean

Compelled production. Police and prosecutors can ask to see a person's personal records.

Complainants are the people who say they have been raped or sexually assaulted.

Consent means you say yes to something.

Consultation means we are asking people to tell us what they think.

Crown Prosecution Service or CPS. The CPS work on behalf of the state and the public. They look at evidence from the police when they think a crime has happened and they prosecute the defendant in court. They decide whether to formally accuse the defendant of committing the crime.

Defendant. The person in court who is accused of a crime.

Evidence is all the information about the crime. Evidence may be a document or what a witness says. Evidence used at trial is information that helps prove whether something is true or not true about the crime.

Intermediary. An example of a special measure to help witnesses in court who have communication difficulties. The intermediary will check the complainant understands what they are being asked, and the court understands their evidence.

Jury. A group of 12 people who listen to the evidence and decide what has been proved and what has not. Their decision is called a verdict.

Prosecution. A lawyer who represents the state and the public.

Rape myths. Stories about sexual assault that are not based on truth.

Records. Information that has been written down. They include medical records and counselling records.

Sexual offence is a crime where there is sexual activity without a person's consent.

Examples of sexual offences are rape and sexual assault.

Third parties. Organisations that keep records about people. These include doctors, counsellors, government departments, schools, immigration authorities, child and family services, and employers.

Credits



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