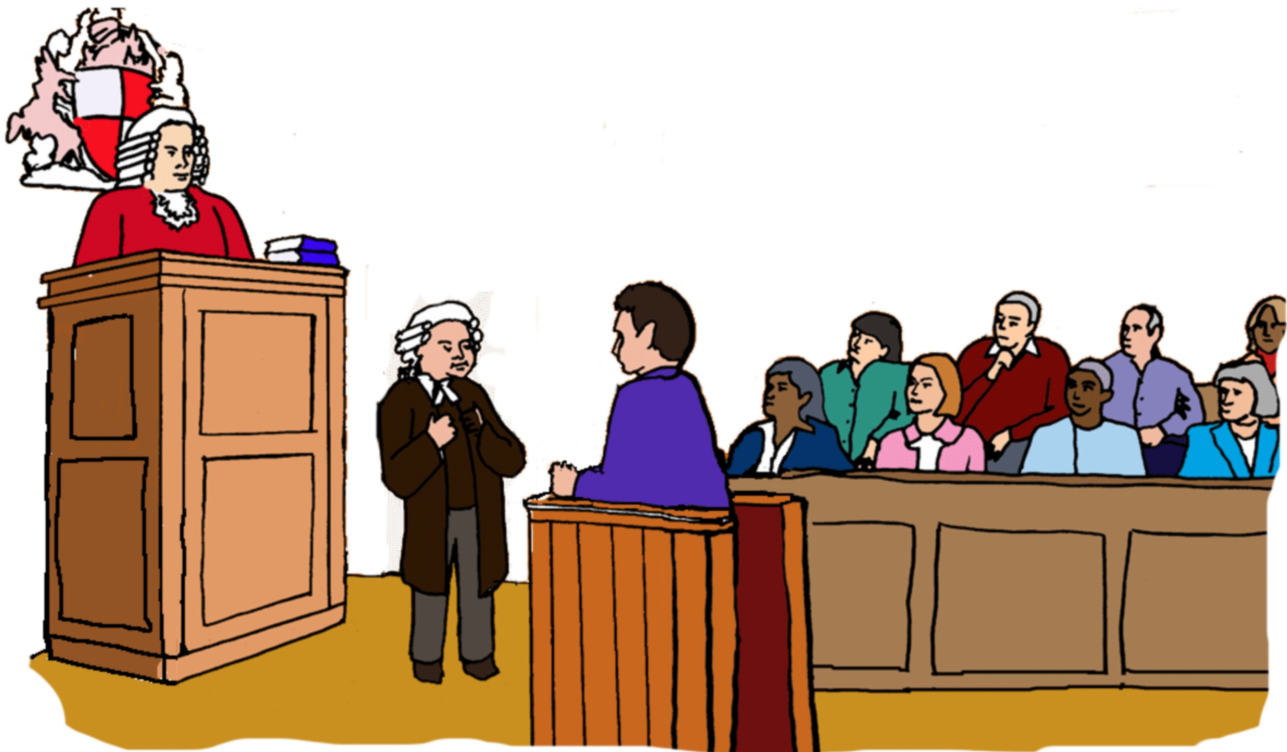




**Law
Commission**
Reforming the law



The way evidence is used when courts deal with sexual offences

Part 3. About the courts

Let us know what you think.

You need to let us know by 29 September 2023



EasyRead version



The different parts of this paper **1**



You can have your say **2**



How criminal courts in England and Wales work **4**



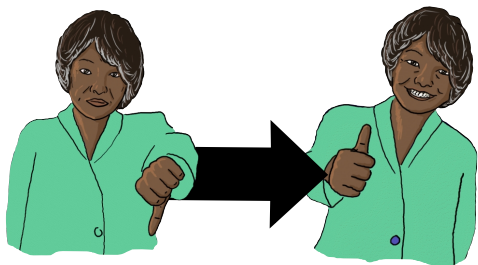
Juries **9**



Training for lawyers and judges **17**



The right to appeal what evidence is used **19**



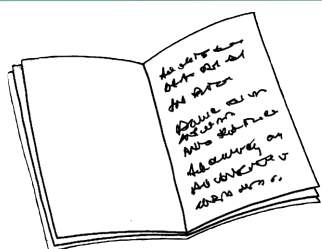
Other ideas about making trials
work better

21



How to tell us what you think

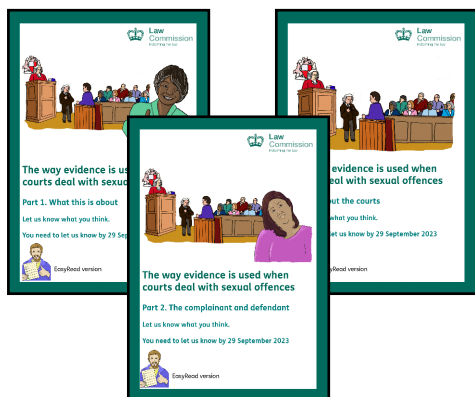
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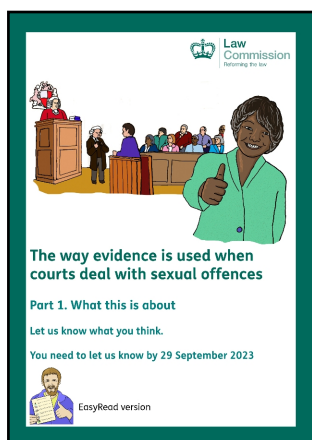
What the words mean

32

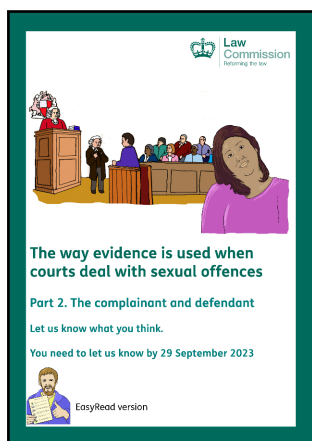
The different parts of this paper



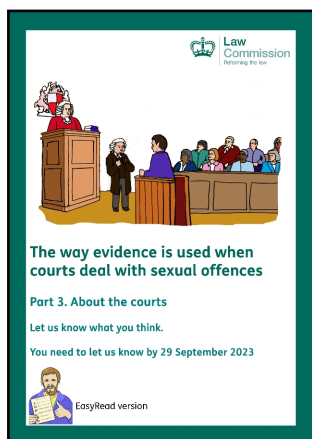
There are different parts of this paper explaining different things and asking you different questions.



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



Part 2 is about the complainant and defendant.



This is Part 3. It 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.

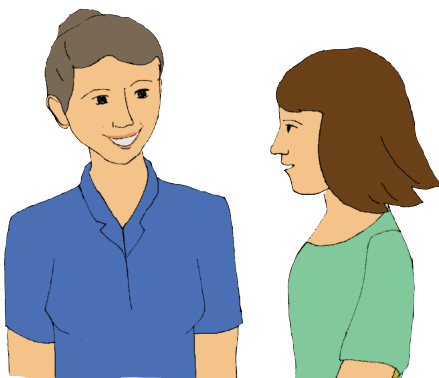


We are asking:

- people who work in the law



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



- services that help victims



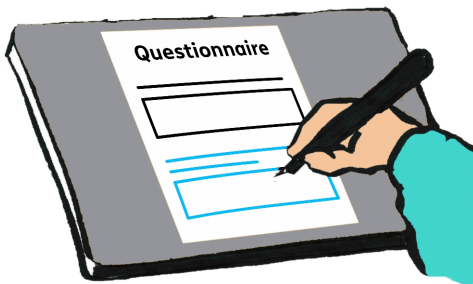
- anyone affected by sexual offences, including anyone accused of committing a sexual offence.



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**.

How criminal courts in England and Wales work

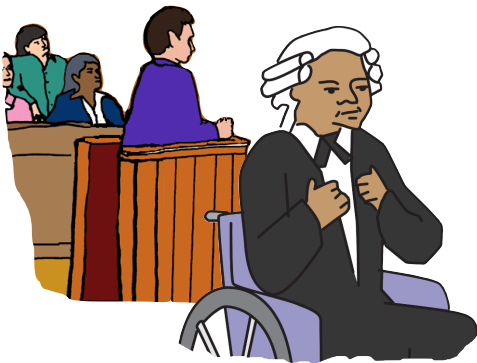


There are 2 sides in a court case.

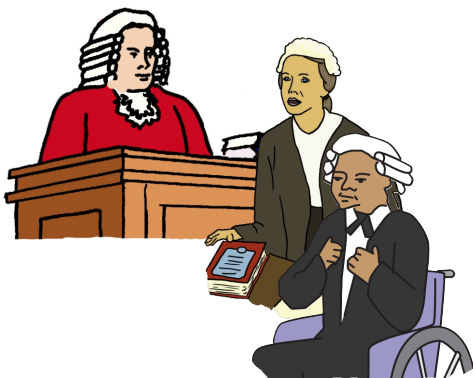
They are called the **prosecution** and the **defence**.



The **prosecution** is a lawyer who represents the state and the public.



The **defence** lawyer represents the **defendant**.



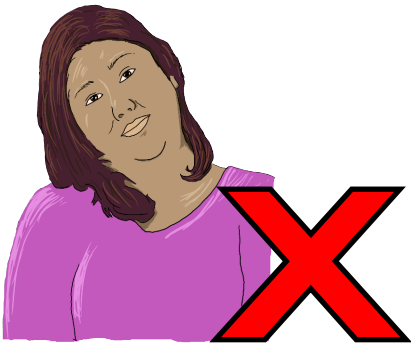
The prosecution and the defence try to show the judge or the **jury** how strong their case is.

The defendant



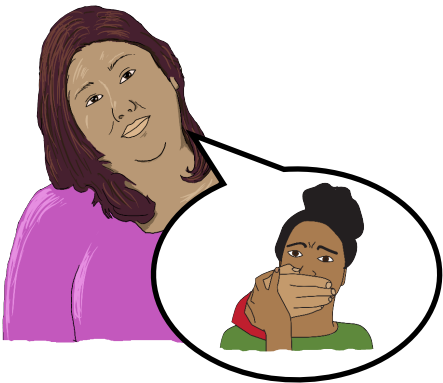
The defendant has the right to independent legal **representation** as part of their right to a fair trial.

Representation means a trained legal person speaks for them.



The complainant

The **complainant** is not part of the criminal proceedings.



They might be a witness for the prosecution.



The complainant has a right to privacy but their sensitive personal information can be used as **evidence**.



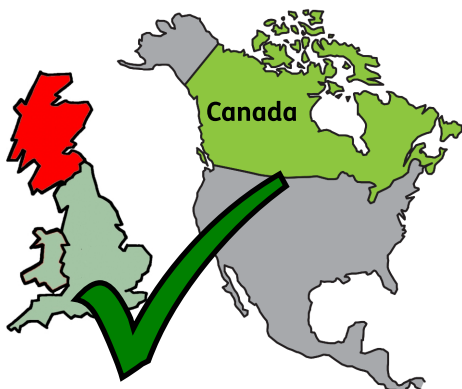
They may be asked embarrassing questions and have their personal **records** looked at.



At present they can pay for independent legal advice privately, but their solicitor cannot talk with the other parties or see all the documents or evidence or represent them during court proceedings.

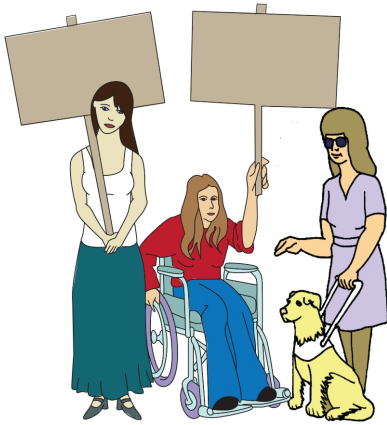


We are asking if complainants in sexual offences prosecutions should have a right to be part of the proceedings with independent legal advice or representation to help them.



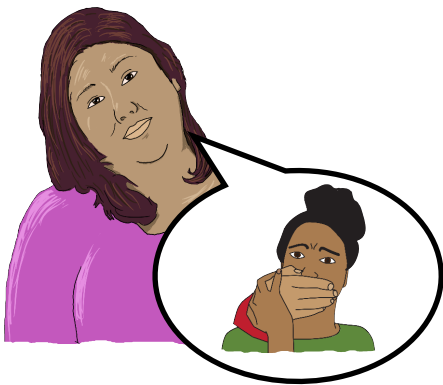
This already happens in other countries such as Canada and Scotland.

What could be good about complainants having legal advice and representation

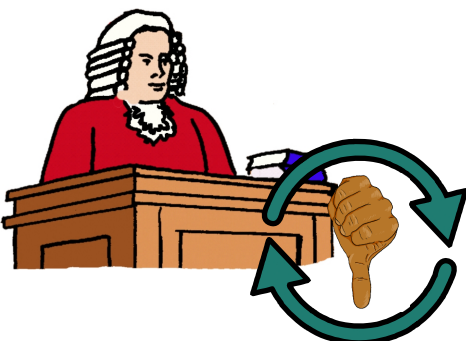


Legal advice and representation:

- helps the complainant understand their rights
- lets the complainant tell the court about their own records and history
- gives the complainant the chance to directly say no to inappropriate requests and applications.



What may not be good about complainants having legal advice and representation



- it may be hard to the change the current system



- a defendant could have to face two people accusing them of the crime: the prosecutor and the complainant's lawyer. This might mean they would not have a fair trial.



- it may slow things down and be costly.

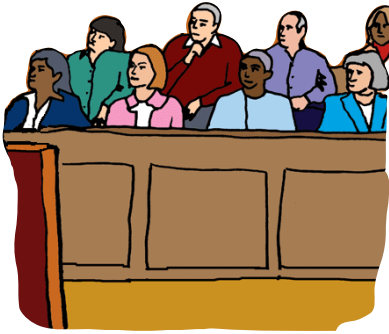
Question 11



We think complainants should have access to independent legal advice and representation when the judge decides whether to access their personal records or use their sexual behaviour evidence.

Do you agree?

Juries



A jury is a group of 12 people who listen to the evidence and decide what has been proved and what has not.



In our courts we say the defendant is innocent unless the jury decides they are guilty at the end of the trial.



At the end of the trial, the jury will say if they think the defendant is guilty or not guilty.



Sometimes people in a jury think they understand about sexual assault.

But what they think they know might come from stories. It may not be based on truth.

We call these stories **rape myths**.



If juries accept these myths, the complainant or the defendant may not get a fair trial.



Ways to help juries make fair decisions

Here are 3 ways that could help juries make fair decisions.



1. Judicial directions

A judicial direction is when the judge explains the law or process to the jury.



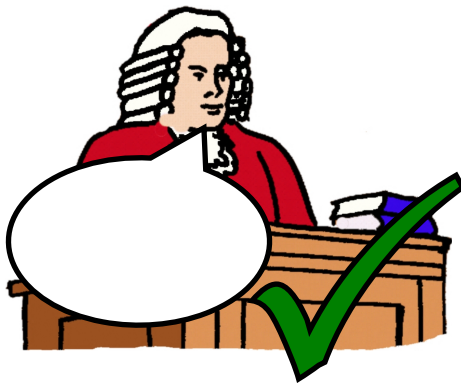
The judge's direction can help the jury think carefully about the evidence and not use stories or myths they have heard about sexual offences.



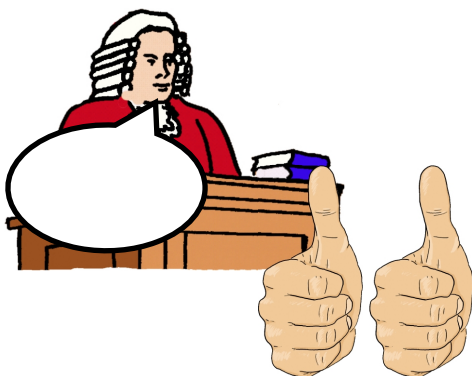
The judge will remind the jury how to stay fair when looking at all the evidence.



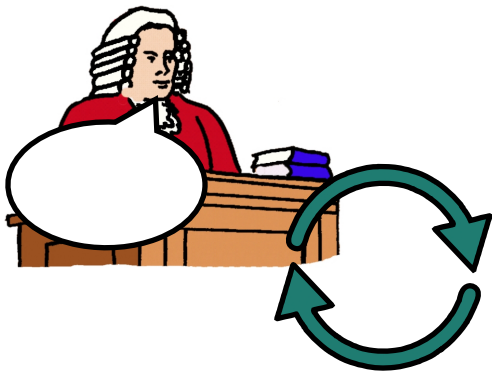
Some people told us jurors may not understand the judge's directions.



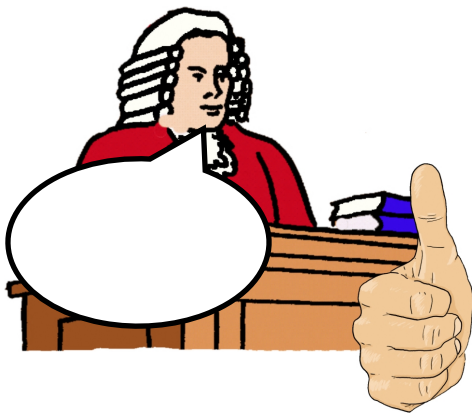
Some judges told us their directions worked well because jurors understood them.



We want to know how judges' directions could be made better to help jurors not decide based on myths.



One way is to change the example directions that judges use now to make them work better in sexual offence cases.



Question 12

Do you think the directions judges give to juries can be improved?



2. Expert evidence

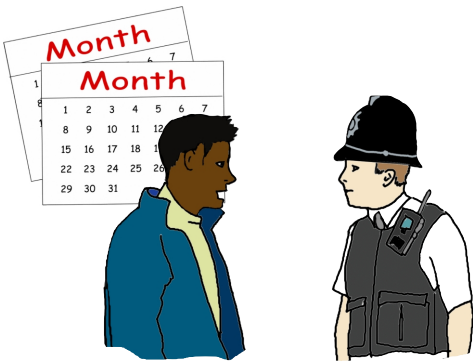
Experts are people who know a lot about a topic.



Sexual violence is difficult to understand.



Experts can help judges and juries understand why people do or say things about the sexual violence they have experienced.



For example, expert evidence could help a jury understand why it can take some people a long time to report a sexual assault.



Question 13

Do you think expert evidence would be a good way to help jurors understand how people can be affected by sexual violence?

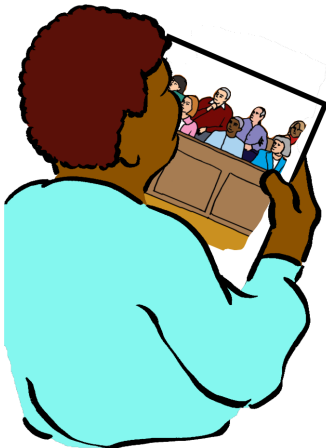
3. Teaching jurors

Give jurors good information

Courts in England and Wales give jurors an information notice at the start of a trial.



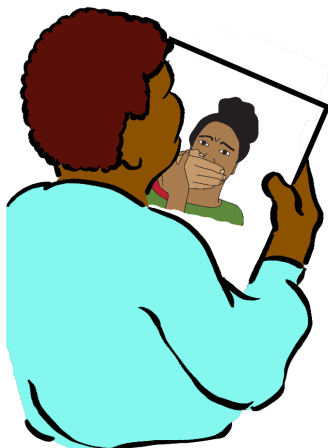
The information tells them what it means to sit on a jury.



We know this information helps jurors understand their role and responsibilities.



An information notice about myths could help jurors understand sexual offences trials.





Give jurors videos to watch

Jurors can learn about their role by watching a video.



Videos could also deal with myths amongst jurors.



We do not know if videos work well.



Offer jurors an online tool

An online tool may help jurors understand the myths and misconceptions they may have.



We have heard that online tools could work well, and do not cost much.



Question 14

What do you think about teaching jurors about sexual offences by using notices, videos and online learning?

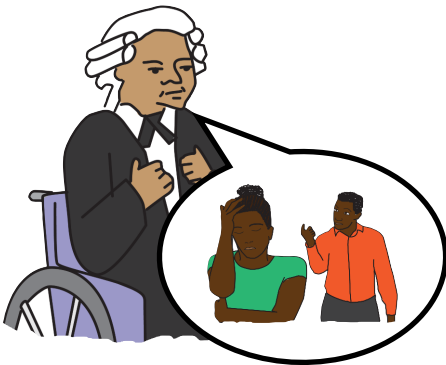
Training for lawyers and judges



During a trial it is important for juries to hear information that is correct and relevant to the case.



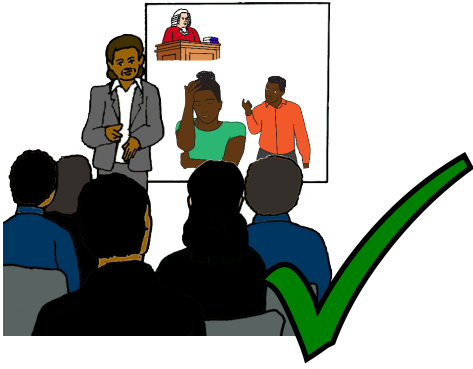
We want the jury to make their decision based on good evidence.



If lawyers or judges use myths about sexual offences in their speeches it could lead to the jury making a wrong decision.



We want the complainant and the defendant to have a fair trial.



Judges are trained to avoid myths.



But some lawyers are not trained about myths.



We know that training can be costly and does not always help.



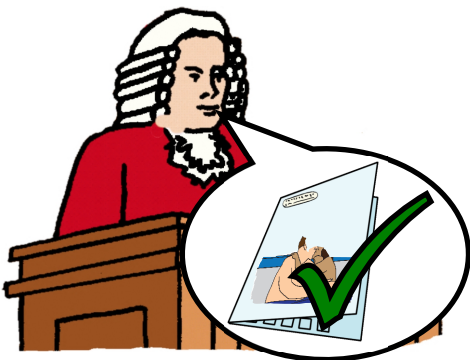
Question 15

Do you think all lawyers working on sexual offences cases should be trained about myths?

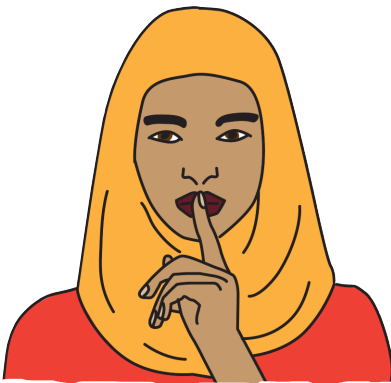
The right to appeal what evidence is used



Evidence in a sexual offence trial can include personal records about the complainant and information about the complainant's sexual behaviour.



The court decides if these records or evidence can be used in a case. This is called **admissibility**.

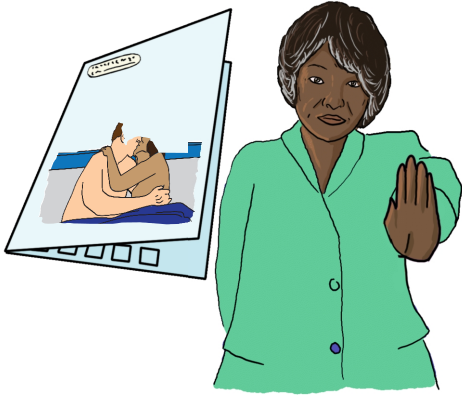


The court must protect the privacy of the complainant as much as they can.



Sometimes, the prosecution and the defence can **appeal** the court's decision about using evidence.

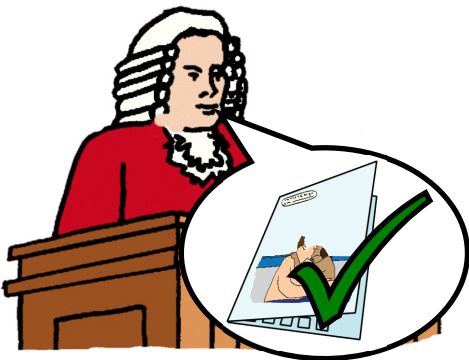
Appeal means they can say they do not agree with the court's decision and a higher court should look at it. The complainant cannot appeal.



We think complainants should also have a right to appeal a decision about evidence that affects their privacy rights.

Question 16

We think complainants should have a right to appeal when:



- a court makes a decision about using their personal records or evidence about their sexual behaviour

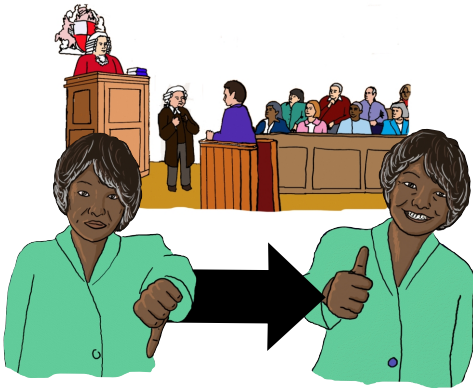
and



- the defence already has a right to appeal that same decision.

Do you agree?

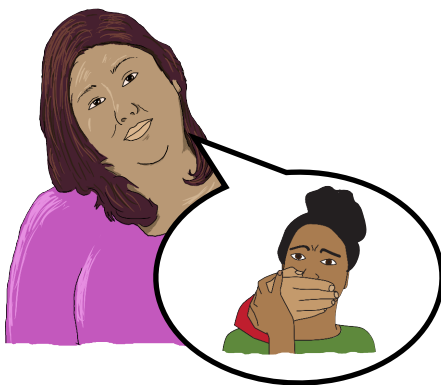
Other ideas about making trials work better



Some people think there are other ways to improve sexual offences trials.



We want to know what you think about these 3 ideas.



Idea 1: specialist examiners

Telling a court about a sexual offence can be painful for the complainant.



Also, the defendant's lawyer may make it hard for a complainant to give their best evidence.

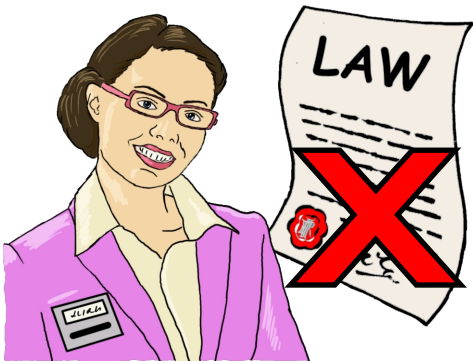


A way around this is for another lawyer or an expert in communication to ask the complainant questions.



But we are not sure if this will work because:

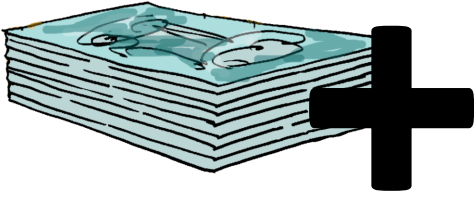
- another lawyer may not ask the right questions



- an expert in communication may not understand the law



- the jury may be confused because there is someone new asking questions



- this step would add extra cost to a trial.



Question 17

Do you think someone who is not the defendant's lawyer should ask the complainant questions? If so, who?



Idea 2: specialist courts

In a specialist court everyone would have training about sexual offences and **trauma**.

Trauma means something is very upsetting and has hurt your mind or body.



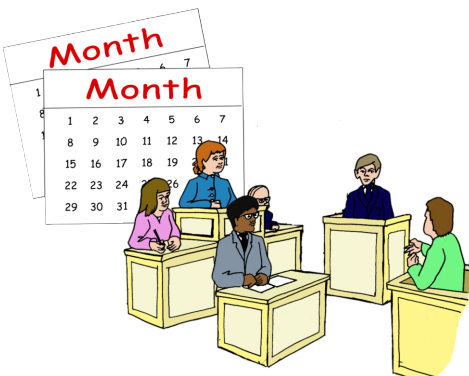
The court would have equipment to allow for effective special measures such as cameras, screens and tv screens.



It could be a room in an existing courthouse or an entirely separate building only dealing with sexual offences cases.



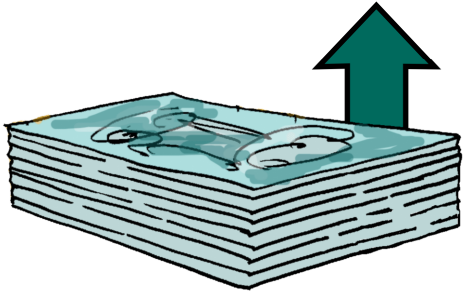
Sexual offences trials could be organised so that they happen quickly.



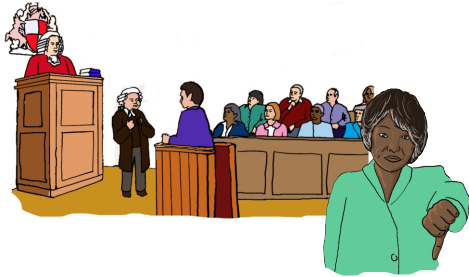
There are some potential risks with specialist courts:

- if all sexual offences had to go through a small number of courts or courtrooms, there could be delays
- judges, lawyers and court staff could become burnt out dealing only with sexual offences cases





- it would cost more money

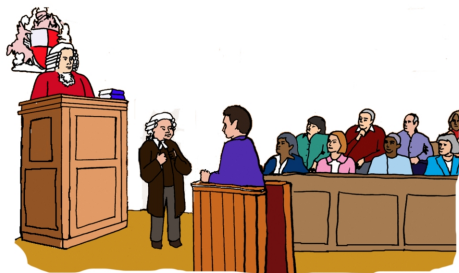


- people may think that defendants in sexual offences cases are more dangerous and they would not get a fair trial.



Question 18

Do you think that sexual offences trials should take place in a specialised court or courtroom?



Idea 3: trials with no jury

Juries are used in serious criminal cases in England and Wales.

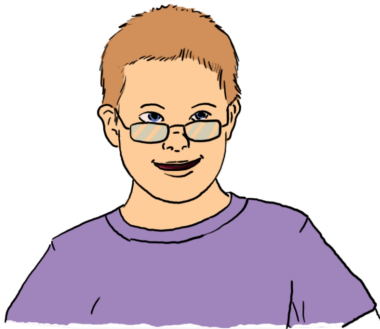


Juries are not used:

- for less serious offences tried in the magistrates' court



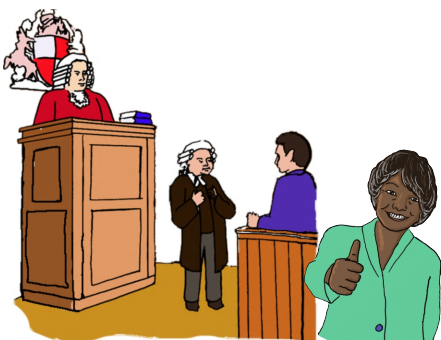
- when a defendant pleads guilty



- for offences tried in the Youth Court (when the defendant is less than 18 years old)



- in cases where there is a danger of someone interfering with the jury.



A trial can be fair without a jury.



There are some reasons to keep juries:

- people in our community think juries are important for a fair criminal justice system



- juries make people feel confident about the justice system



- we don't want people to think juries can't be trusted in other criminal cases

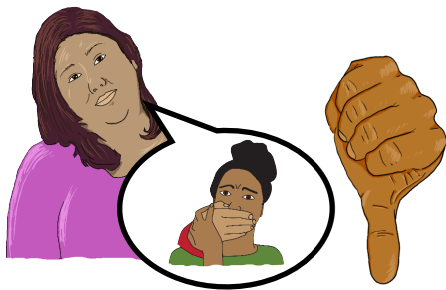


- juries help keep courts open and fair.

There are some reasons not to keep juries:



- people in a jury may say the defendant is guilty or not believe the complainant because they believe myths about sexual offences. This is not fair



- telling their story to 12 strangers can be painful for the complainant



- the lawyer helping the defendant may try to influence the jury with stories and myths.



If there was no jury:

- we could use just 1 judge, a panel of judges, or a judge with help from some everyday people to hear cases



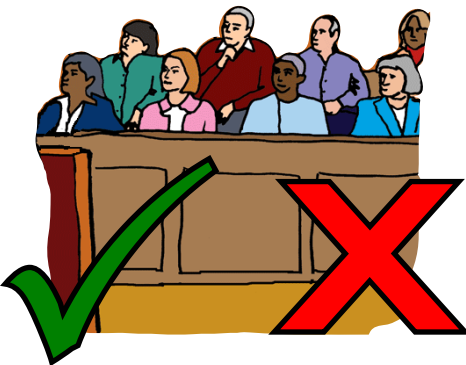
- we could train these people on being fair and open



- they would have to explain the reasons for their decision



- but judges could become burnt out by only dealing with sexual offences cases.



Question 19

Do you think we should keep juries or get rid of juries in sexual offences cases?

How to tell us what you think

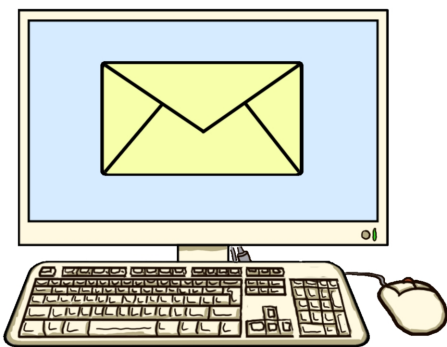


Thank you for reading our paper and answering the questions.

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

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

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

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

Defence. The defendant and the lawyer that represents the defendant.

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.

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.

Representation means a trained legal person speaks on behalf of a person in a court case.

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

Examples of sexual offences are rape and sexual assault.

Trauma and traumatic means something is very upsetting and has hurt your mind or body.

Credits



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