

WHAT IS SEXUAL ASSAULT?



RIGHTS  WOMEN

This information sheet examines the offence of “sexual assault” as set out in the Sexual Offences Act 2003 (“the Act”). Sexual assault is a new offence and the information contained in this information sheet relates to sexual assaults that took place after 1 May 2004 when the Act came into force.

This information sheet refers to the offender as “he” although we acknowledge that this is not always the case. We use the term “victim” because this is the word used in the Act. However we acknowledge that many women would prefer to be referred to as “survivors”.

Changes in the law

Before the Sexual Offences Act 2003 came into force, the Sexual Offences Act 1956 and common law rules (rules determined by court cases rather than legislation) set out this area of law. The nearest equivalent to the offence of sexual assault was the old offence of “indecent assault”.

The Act created a new offence of sexual assault to replace indecent assault. Sexual assault has a wider meaning than indecent assault, as it may be easier to prove that something is sexual than to prove it is indecent. The offence covers a wide range of unacceptable behaviour from fondling or groping (on the train, for example) to really serious violent sexual assaults including rape. Sexual assaults are acts involving the “sexual touching of another without their consent”.

This information sheet concentrates on the less serious examples only because these are the matters that the new offence will cover.

What is “sexual”?

The Act makes this quite complex to define. The Act does not include a list of actions which are considered sexual, but the approach to determining this is set out. Basically, there are two categories of acts which are “sexual” for the purposes of this law.

The magistrate or jury have to decide whether a reasonable person would consider **either** that the particular act is, by its nature, sexual; **or** whether it *could* be sexual, AND either because of the particular circumstances and / or the offender’s intention, it is sexual.

In short, the term “sexual” is not completely fixed. It will be determined by what happened and what was actually in the mind of the offender at the time he committed the act.

Definition of Sexual Assault

Sexual assault can be committed by both men and women against either a man or a woman.

An offender is guilty of this offence if:

- The offender intentionally touches the victim AND
- The touching is sexual (see above) AND
- The victim does not consent to the touching AND
- The offender does not reasonably believe that the victim consents.

Sexual assault is a non-consensual offence. The Crown Prosecution Service (CPS) must prove that the victim did not consent and the offender did not reasonably believe that she did. For more detailed information on consent, please see our information sheet *Dealing with the issue of consent*.

What is touching?

Touching can be the slightest touch. This includes touching with any part of the body, anything else and through anything (for examples see “Some Questions Answered”).

Sentences for Sexual Assault

This offence can be dealt with in either the Magistrates Court or the Crown Court. Which court the case is heard in will be determined by the seriousness of the

assault. The maximum sentence someone could receive if the case went to the Crown Court and they were found guilty, would be 10 years imprisonment. The maximum sentence if the person was found guilty in the Magistrates Court would be 6 months imprisonment or the maximum fine allowed.

Some Questions Answered

Can pinching my bottom be a sexual assault?

Yes. The touching must be of a sexual nature and can be with any item or body part whether yours, that of the offender or someone else.

Can a person rubbing himself on my leg whilst on the train be a sexual assault?

If this was accidental contact (because, for example, the train is very full) then this would not be sexual assault. But if this involved acts such as fondling or groping, or if the act was sexual and was made so by the offender’s intention, then it would be considered a sexual assault if the victim did not consent.

Can a doctor who is giving me a general examination but who then touches my breast be committing a sexual assault?

If you allowed your doctor to touch your breast for medical purposes then this would not be a sexual assault as it would not be sexual or an assault. However, if the doctor did this for sexual gratification, then this would definitely be a sexual assault and a breach of trust by the doctor.

Other common circumstances

It would also be an offence for someone who is trying to calm his partner down after an argument to do so by touching her sexually without her consent.

Each situation will need to be looked at individually to determine exactly what happened, and the motives of the person who committed the act. See 'What is "sexual"?' above.

If the victim consented because the offender pretended to be someone else or, in the case of a doctor, the victim was

falsely told there was some medical reason for the act, this would make their consent void, (i.e. cancel it out) as it was given under false pretences.

For further details on sexual assault and on the investigations and proceedings involved, please order our handbook *From Report to Court: A Handbook for Adult Survivors of Sexual Violence*. This guide is free and gives you an overview of each stage of the legal process.

The law relating to this issue is very complex. We have provided only a very basic overview of the terminology, law and procedure. We would strongly advise any woman involved in or considering reporting an offence to seek further advice and support from our advice line or the organisations listed overleaf.

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**For free confidential legal advice on sexual violence and the criminal law
call our sexual violence advice line on
020 7251 8887 (telephone) or 020 7490 2562 (textphone).**

Mondays 11am – 1pm and Tuesdays 10am – 12 noon

Other useful telephone numbers

London Lesbian and Gay Switchboard	020 7837 7324	www.llgs.org.uk
One in Four	020 8697 2112	www.oneinfour.org.uk
Rape Crisis Federation (for details of local helplines)		www.rapecrisis.org.uk
Rape & Sexual Abuse Support (RASAC)	0845 122 1331	www.rasac.org.uk
Samaritans	0845 790 9090	www.samaritans.org.uk
Sexual Assault Referral Centres		www.homeoffice.gov.uk/crime/ sexualoffences/referral centres.html
Southall Black Sisters	020 8571 9595	www.southallblacksisters.org.uk
Support for Disabled Survivors (Respond)	0808 8080700	www.respond.org.uk
Women and Girls Network	020 7610 4345	info@wgn.org.uk
Victim Support Line	0845 3030900	www.victimsupport.org

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

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Industrial and Provident Society No: 23221R

