



**Ascent**



## **Good Practice Briefing**

# **Options when an abuser is not prosecuted**



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## About this guide

### ASCENT - Support services to organisations

Ascent is a partnership within the London Violence Against Women and Girls (VAWG) Consortium, delivering a range of services for survivors of domestic and sexual violence, under six themes, funded by London Councils.

Ascent is delivered by a partnership led by the Women's Resource Centre (WRC) and comprised of five further organisations: AVA, Imkaan, Respect, Rights of Women, and Women and Girls Network.

This second tier support project aims to address the long term sustainability needs of organisations providing services to those affected by sexual and domestic violence on a pan-London basis.

The project seeks to improve the quality of such services across London by providing a range of training and support, including:

- Accredited training
- Expert-led training
- Sustainability training
- Seminars
- Special Events
- Equality Act 2010 Workshops
- One-to-one support
- Newsletter
- Best practice briefings
- Sector Conversations

### Best practice briefings

The purpose of the best practice briefings is to provide organisations supporting those affected by domestic and sexual violence with information to help them become more sustainable and contribute with making their work more effective.

For more information, please see:

[www.thelondonvawgconsortium.org.uk](http://www.thelondonvawgconsortium.org.uk)



**London  
VAWG  
Consortium**

## Introduction

This guide explores the options for survivors of domestic and/or sexual violence where the police or CPS do not charge the abuser with an offence.

The briefing aims to provide information to practitioners so they can understand what options a survivor has in these circumstances and support them to secure justice and safety through other routes if they choose to.

## The decision to charge

The decision to charge a suspect is made after the police investigation into a crime. The decision is made by either the police themselves or the Crown Prosecution Service (CPS)<sup>1</sup>. The police will generally make the decision to charge where the offence is less serious – otherwise, they will refer the case to the CPS and ask them to make the decision. This decision-making process can take some time.

When the police or CPS make a charging decision, they consider all the evidence available in the case and apply a two-stage test:

- 1. Is there sufficient evidence to provide a realistic prospect of conviction?** The police or CPS must think that there is enough evidence to suggest that the defendant is more likely to be found guilty than not guilty.
- 2. Is it in the public interest to prosecute?** If the evidential stage is passed, the police or CPS must then balance factors for and against prosecution. A prosecution will usually take place unless there are public interest reasons why someone should not be prosecuted that clearly outweigh the reasons why they should be prosecuted.<sup>2</sup>

The CPS should take the victim's opinion into account when making their decision.

When a decision about whether or not to charge has been made, this should be clearly communicated to the victim. Under the CPS Code of Practice,<sup>3</sup> often called 'The Victims Code', victims of sexual offences and domestic violence are entitled to an 'enhanced service'.<sup>4</sup> This means they should be informed of these key decisions within one day rather than five days.

## Where a suspect is charged

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<sup>1</sup> The CPS is the government body responsible for prosecuting criminal cases in England and Wales

<sup>2</sup> You can read more about the public interest factors the police and CPS will consider here:

<https://www.cps.gov.uk/publication/code-crown-prosecutors>

<sup>3</sup> You can read more about the Victims' Code here: <https://www.victimsupport.org.uk/help-and-support/your-rights/victims-code>

<sup>4</sup> You can read more about enhanced entitlements on the Nottinghamshire Police website (but all police forces will follow this guidance): <https://www.nottinghamshire.police.uk/faqs/what-are-%E2%80%98enhanced-entitlements%E2%80%99-and-how-do-i-know-if-i-can-receive-them>

If the CPS or police decide to charge a suspect then the case will be taken to court. For more information of what happens when a suspect is charged, please refer to Rights of Women's guide 'From Report to Court'.<sup>5</sup>

### **Where a suspect is not charged**

If the Crown Prosecution Service (CPS) or police decide not to charge a suspect then he will have no further action taken against him. A decision not to charge is sometimes called a decision not to prosecute or taking no further action ('NFA'). This guide explores the options open to victims in these circumstances.

## **The Victims' Right To Review Scheme**

Victims can use the Victim's Right to Review (VRR) scheme to ask for a review of a decision not to charge the suspect in their case.

### **Which decisions can be reviewed?**

The VRR scheme applies to decisions made by the CPS on or after 5 June 2013. The VRR scheme also applies to some decisions made by the police after 1 April 2015.

Under this scheme a survivor can seek a review of the following CPS decisions:

- Not to charge (where no further action is taken against the abuser, and the case will come to an end with no court case)
- To discontinue or withdraw charges (where the CPS decides not to take the case further)
- To offer no evidence at court in all proceedings (when the CPS lawyer decides not to go ahead with a trial at court by offering no evidence)
- To leave all charges in the proceedings to "lie on file" (this is the term used where the CPS makes a decision not to proceed but the charges are kept on their file marked 'not to be proceeded with without the leave [permission] of this Court or the Court of Appeal')

The following is a list of some of the cases which **do not** fall within the scope of the scheme:

- Cases where the decision was made before 5 June 2013
- Cases where the police exercise their discretion not to investigate or investigate further and the CPS have not been asked to make a formal decision to charge.<sup>6</sup>
- Cases where charges are brought in respect of some (but not all) allegations
- Cases where a single charge or charges aren't followed through but another charge or related charges are followed through
- Cases where there is an 'out of court disposal' such as a caution, conditional caution or penalty notice for disorder

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<sup>5</sup> The guide can be accessed at: <https://rightsofwomen.org.uk/wp-content/uploads/2019/03/From-Report-to-Court-2018.pdf>

<sup>6</sup> A review can still be requested in these circumstances, but requests should be addressed to the relevant police service. A search of the relevant police force and the term "VRR" will take you to the correct guidance.

- Cases where the victim/survivor has asked that proceedings be stopped or they have withdrawn support for the prosecution

## **Making a VRR application**

Victims have three months from the date the decision not to charge was made to use the VRR scheme. They can put in their request for a review by email, letter or phone. It may be best to use email or letter so the survivor can keep a copy of what was sent.

When requesting a review the victim needs to outline the reasons why she thinks the decision not to charge was wrong and include any evidence that she wishes to be considered.

### *First stage: local area review*

The first stage of the VRR Scheme is a review by a new prosecutor from the local CPS area that made the decision. You can find information about the office local to the victim on the CPS website.<sup>7</sup>

The local CPS area can either uphold or change the original decision and should provide clear reasons for their decision.

### *Second stage: independent review*

If the victim is unhappy with the outcome, she can ask for the case to be reviewed by another prosecutor who was not involved with the case.

The CPS aim to complete the review within six weeks.

Survivors entitled to enhanced support under the Victims' Code (see page 4) should also be offered a meeting at the end of the review process to discuss the outcome.

## **Working with the police**

Sometimes the police officers working on a case disagree with the decision made by the CPS, and they can also request a review. This can be discussed with them.

Rights of Women have put together a detailed guide on using the VRR scheme, which can be accessed on our website.<sup>8</sup>

## **Judicial Review**

If the outcome of the VRR is not satisfactory, it may be possible to bring a legal challenge called a judicial review, in the High Court. These cases are a way to

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<sup>7</sup> See: <https://www.cps.gov.uk/about-cps/cps-areas-cps-direct-cps-central-casework-divisions-and-cps-proceeds-crime>

<sup>8</sup> See: <https://rightsofwomen.org.uk/wp-content/uploads/2018/02/A-guide-to-the-victims-right-to-review-scheme.pdf>

challenge the way a decision was made, rather than the decision itself, and are often very complex.<sup>9</sup> They can also be expensive.

Specialist legal advice should be sought if a survivor is thinking about a judicial review. It is possible that a lawyer might agree to act for the victim survivor 'pro bono', which means for free,<sup>10</sup> but there would still be other costs associated with the case.

## Private Prosecutions

A private prosecution is a criminal court case brought against an abuser by a survivor rather than by the CPS. There is no legal aid (i.e. public funding) for this kind of case, and the costs can be high. Again, the survivor will need to involve a solicitor and/or barrister, and this may be costly. It is possible that a lawyer might act for the victim survivor 'pro bono', which means for free.<sup>11</sup>

The Director of Public Prosecutions (the head of the CPS) can take over a private prosecution and stop it, provided they do not act unreasonably (i.e. if they think there is insufficient evidence in the case).<sup>12</sup> They can also take over the case and run it themselves.

## Complaints

If a survivor is unhappy with the way the police officers or CPS prosecutors have behaved toward her then she can put in a complaint.

### Police

Each police force will have its own internal complaint process, and information will be available on that police force's website.

Survivors can also complain to the Independent Office for Police Conduct's (IOPC).<sup>13</sup> In the first instance, the IOPC will send the complaint direct to the police force involved. The police force or relevant organisation will also consider whether the complaint should be referred to the IOPC.

### CPS

The CPS has its own complaints scheme:

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<sup>9</sup> To find out more about judicial review, see this guide by the Public Law Project: <https://publiclawproject.org.uk/wp-content/uploads/2019/02/Intro-to-JR-Guide-1.pdf>

<sup>10</sup> You can find out about lawyers willing to act for free in certain cases at [www.weareadvocate.org.uk](http://www.weareadvocate.org.uk)

<sup>11</sup> As above

<sup>12</sup> You can find out about private prosecutions here: <https://www.cps.gov.uk/legal-guidance/private-prosecutions>

<sup>13</sup> You can find out more about the IOPC, and how to complain direct to local police forces, here: <https://www.policeconduct.gov.uk/complaints-reviews-and-appeals/make-complaint>

- **Stage One:** This stage is managed by the local CPS Area where the complaint originated. They will look into the complaint and reply within 20 working days or write stating the date by which they hope to reply.
- **Stage Two:** If the response is not satisfactory, the complaint can be escalated within one month of the CPS's reply and a more senior manager will review the complaint and provide a response within 20 working days or write to provide the date by which they hope to reply.
- **Stage Three:** If the complaint refers to the way the CPS have conducted themselves (i.e. how they behaved toward the survivor), the complaint can then be referred to the Independent Assessor of Complaints (IAC). This must be done within one month of the Stage Two reply.<sup>14</sup>

## Domestic Violence Injunctions

There are two injunctions – in this case, orders made in the Family Court – that victims may wish to apply for. If a victim is considering one of the routes discussed above, she may also want to seek one of these orders to protect herself in the meantime.

### Non-molestation Orders

Non-molestation Orders are used to prevent an abuser from using or threatening violence, intimidating, harassing or pestering a survivor. This is done by imposing a range of conditions that the abuser isn't allowed to break. If he does break the conditions, he can be arrested and charged with a criminal offence.

When applying for an order, the survivor needs to show the court how her health, safety or well-being – and/or the health, safety and well-being of her children – are at risk.

The survivor can apply for this Order even where she wants or has to continue to live with the abuser.

If an abuser does breach the conditions, the survivor doesn't have to call the police if she would prefer not to – she can instead start civil proceedings to 'enforce' (i.e. make him follow) the order, but the civil court does not have the same powers as the criminal court.

You can find a detailed legal guide on non-molestation orders on the Rights of Women website.<sup>15</sup>

### Occupation Order

An Occupation Order prevents an abuser from coming into or living in the family home – even if he owns or part owns it, or is named on the tenancy. He may still have to pay rent or mortgage payments and bills during the time he is excluded.

<sup>14</sup> You can find out more about the CPS complaints process and the IAC here: <https://www.cps.gov.uk/feedback-and-complaints>

<sup>15</sup> See: <https://rightsofwomen.org.uk/wp-content/uploads/2015/09/ROW-%C2%AD-Legal-Guide-DV-Injunctions-final.pdf>



The order may require him to move out, keep a certain distance away from the property or only reside in parts of home (i.e. a different bedroom).

The court can attach power of arrest to the Order, which means the police can arrest the abuser if he breaches the conditions. This will usually be done where the abuser has used or threatened violence.

If no power of arrest is attached, the victim/survivor can still apply to the court that made the order to have abuser held to account.

You can find a detailed legal guide on occupation orders on the Rights of Women website.<sup>16</sup>

### **How to apply**

The application for both of these Orders is free – but the victim/survivor may want to ‘instruct’ (pay for) a barrister or a solicitor. This can be expensive.

She will need to use the form FL401, available online, to make her application.<sup>17</sup>

The survivor may be eligible for legal aid to cover the cost of her lawyer, if she meets the financial criteria (the means test) and the test for whether it is reasonable to provide legal aid for her case (the merits test).

If she cannot access a solicitor or barrister then she can make the applications herself, without a lawyer.

## **Criminal Injuries Compensation**

If a survivor has received a physical or psychological injury from a physical attack, she can apply for compensation from the Criminal Injuries Compensation Authority (‘CICA’). The abuser does not have to have been charged with an offence for the victim/survivor to apply for compensation.

Claims officers at CICA decide whether an applicant for criminal injuries compensation is eligible for an award, and, if so, how much they are given.

Where the victim/survivor was sexually assaulted, she does not have to prove any specific injury.

If a survivor lost earnings for over 28 weeks as a result of the injury she may also qualify for additional compensation for the lost earnings. The survivor also claim for special expenses she incurred as a result of the injury (i.e. for medical expenses or equipment).

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<sup>16</sup> See: <https://rightsofwomen.org.uk/wp-content/uploads/2015/09/ROW-%C2%AD-Legal-Guide-DV-Injunctions-final.pdf>

<sup>17</sup> <https://www.gov.uk/government/publications/form-fl401-application-for-a-non-molestation-order-occupation-order>

There is a two year time limit for applying for compensation (although there are some exceptions).

The application can be made online and should include evidence to support the application. This could include medical evidence or evidence of any additional losses such as loss of earnings or expenses resulting from the injury.

Rights of Women has put together a detailed guide to CICA, available on our website.<sup>18</sup>

## Resources

### **Rights of Women criminal law advice line**

020 7251 8887

<https://rightsofwomen.org.uk/get-advice/>

For free, confidential, legal advice on criminal law matters, contact the Rights of Women criminal law advice line. Rights of Women also have family law, immigration law and sexual harassment helplines.

For opening times and more information, see our website.

### **Independent Office for Police Conduct**

0300 020 0096

[enquiries@policeconduct.gov.uk](mailto:enquiries@policeconduct.gov.uk)

<https://www.policeconduct.gov.uk/>

### **Criminal Injuries Compensation Authority**

0300 003 3601

<https://www.gov.uk/government/organisations/criminal-injuries-compensation-authority>

### **FLAWS (Finding Legal Options for Women Survivors)**

For advice and support with domestic abuse injunctions

0203 745 7707

<https://www.flaws.org.uk/support-for-women>

### **Advocate**

020 7092 3960

[enquiries@weareadvocate.org.uk](mailto:enquiries@weareadvocate.org.uk)

<https://weareadvocate.org.uk/>

### **24 hour National Domestic Violence Helpline**

0808 200 0247

[www.nationaldomesticviolencehelpline.org.uk](http://www.nationaldomesticviolencehelpline.org.uk)

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<sup>18</sup> See: <https://rightsofwomen.org.uk/wp-content/uploads/2014/10/PDF-guide-to-criminal-injuries-compensation.pdf>

**Rape Crisis**

0808 802 9999

<https://rapecrisis.org.uk/get-help/want-to-talk/>

**National LGBT Domestic Violence Helpline**

0800 999 5428

<http://www.galop.org.uk/domesticabuse/>

**The Ascent project within the London VAWG Consortium**

<https://thelondonvawgconsortium.org.uk/about/the-ascent-project/>

**Specialist services for Black and minoritised women**

For a list, see: <https://www.imkaan.org.uk/get-help>

**Find a Solicitor**

020 7320 5650

<https://solicitors.lawsociety.org.uk/>

The law is complex and may have changed since this briefing was produced. This briefing is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice. Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this briefing.

Rights of Women, December 2020