

Rape convictions in London

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The Lilith Project, 2005



Terms of reference and sources

This report examines the frequency and length of sexual offences prosecuted in Greater London. The cases cover all sexual offences from April 2003 to March 2004 that resulted in a custodial sentence.

The Home Office Offender index provided all primary data relating to the prosecuted offences. Other primary sources included newspaper articles, anecdotal evidence, and findings from The Haven at Whitechapel, London.

The report draws secondary data from the Office of National Statistics, the British Crime Survey 2001, research reports and Home Office findings on offender patterns. Details of sources are included in the References and Appendices.

Objectives

The report will:

- outline the criminal justice process and how it impacts upon women reporting sexual offences
- discuss the impact of the 2003 Sexual Offences Act on sexual offences sentencing in London
- highlight weaknesses in the current system
- compare and assess the frequency and length of the custodial sentences given before and after the Sexual Offence Act 2003
- examine the treatment of sexual offence cases in the media
- offer recommendations to improve rape reporting and conviction.

Methodology

Data from all Greater London Crown courts in the period April 2003 – March 2005 was collated by the Offenders Index office and analysed by the Lilith Project Research officer. Additional data on sentencing at magistrate and Crown Court level was provided by the Home Office and the Office of National Statistics. Anecdotal evidence is presented anonymously to preserve victim confidence.

Newspaper articles were taken from four national news sources and analysed for content and linguistic use. Secondary sources on rape and sexual assault were consulted. Full details are listed in the References section.

Executive Summary

The current judicial process does not effectively handle sexual offences cases. From the moment of reporting to the culmination of a criminal case, the emphasis of guilt and truth-telling is upon the victim, not the defendant.

The introduction of new legislation to clarify consent and place the burden of proof more squarely on the defendant has yet to have a noticeable effect. The effectiveness of the new Sexual Offences Act 2003 is weakened by judges who persist in supporting conjecture about the victim and her lifestyle, and who continue to hold outdated assumptions of 'stranger' rape. The prevalence of group rape has also affected the conviction of sexual offences, as it is not a convictable offence, and is poorly understood.

Outside of the courtroom, the media reporting of rape and sexual offences heavily influences public understanding. The reports resort to reducing victims and offenders to basic stereotypes, and in doing so, alienate women wishing to report attacks.

These elements combine to create a climate where reports of sexual offences to police are increasing, but convictions are decreasing. When a conviction is achieved, a downward pattern is established, where defendants are charged with lesser offences and lower sentences to secure a conviction. The London court statistics bear this out.

The Lilith Project believes that this current system is unacceptable. In the short term, a rolling training programme for all judiciary staff and Police must be set up. The Press Complaints Commission should create a dedicated complaints procedure for sexual offences, as a true portrayal of these crimes is in the public interest. In the medium term, a peer group of young women, who are statistically more likely to report a rape, should advise on new policy, and in the long term, a new offence of group rape should be enacted into law.

Introduction

1 in 10 women have experienced rape, sexual assault, or some form of sexual violence in their lives.

1,508,000 women in England and Wales have been victims of sexual violence.

0.9% of these women, 61,000 victims, said that they had been raped in one year.

This represents a conviction rate of just 5.6%,

British Crime Survey 2001

The current judicial system is perceived by women as adversarial and hostile towards victims of sexual violence. Continued media attention on a handful of false rape allegations and excessively violent cases reinforces the perception of rape as a horror perpetrated by poorly socialised monsters. If a woman brings a case against a partner or acquaintance, she is labelled as a vindictive liar. Rape in the 21st century is not a rare occurrence. A successful rape conviction is much more unlikely. The rate of attrition in rape cases is worryingly high, and although reports of sexual violence rise year on year, the conviction rate remains at 5.6%.

Disappearing complaints

When a woman is assaulted, her choice of confidant or 'first contact' is crucial. If she speaks to someone who is hostile or distrusting towards the police, or she feels that making an official complaint may disgrace her or her family, her complaint will end here. If she makes it to a police station, she may be one of the 1 in 4 reports that are 'no crimed'. 33% more reports are lost at the investigative stages, either through issues with physical evidence (a lack of DNA, inability to locate an offender) or problems with the victim's statement (she is not a credible witness, she cannot give a statement to the satisfaction of police). 86% of the remaining cases will fail to secure a conviction at court, and 50% of those convictions will be due to a guilty plea in return for a reduced sentence.¹

The 2001 study *Routes to (in)justice* lists factors decreasing chances of an arrest, and consequently a conviction.

- Any non-conformity (such as truancy, perceived sexual or social deviancy)
- Previous relationship (the defendant and victim were acquainted or had a physical relationship)
- Being unable to give a statement to the satisfaction of police²

Factors that may influence an arrest and conviction are

- Resistance by the victim
- Willingness of victim to cooperate
- Another witness
- Evidence of injury³

Despite efforts by women's groups and judiciary training programmes, preconceptions like these are still exploited by defence counsels and the media to create an idea of rapists as isolated asocial monsters, rather than merely being ordinary men who rape, and a corresponding myth that a victim

must be lying if she does not fit an improbable stereotype of purity or social acceptability. These assumptions may also contribute to underreporting, making a woman who has experienced sexual violence more reticent about approaching the police if she does not fit a perceived victim profile.

¹ All attrition statistics: L Kelly, J Lovett, L Regan: *A Gap or a Chasm? Attrition in reported rape cases*, Home Office Research, Development and Statistics Directorate, 2005

² L Kelly: *Routes in (in)justice: a research review on the reporting, investigation and prosecution of rape cases*, CWASU 2001

³ L Kelly: *Routes in (in)justice: a research review on the reporting, investigation and prosecution of rape cases*, CWASU 2001

Brave new world: sentencing after the Sexual Offences Act (2003)

Rape law has evolved slowly in the British judiciary. Until the case of *R v R* in 1992, marital rape was not recognised as criminal,⁴ and before 1993 a boy under 14 who committed an offence could not be punished.⁵ Sexual violence was usually punished by a fine or a prison term, which was automatically upgraded to a life term if the offender repeated his offence. Before 2003, the main pieces of legislation were the Sexual Offences (Amendment) Acts of 1976 and 1992, and the Youth Justice and Criminal Evidence Act 1999. These were replaced by the Sexual Offences Act 2003.

Under the Sexual Offences Act (2003), all sexual offences⁶ were brought together under a single Act which replaced all previous legislation. Before this point sexual offences were covered in different Acts in a piecemeal approach. Anonymity to victims was granted in the Sexual Offences (Amendment) Acts of 1976 and 1992, and 'Special Measures' such as the right (upon application to the judge) to give evidence from behind screens or via video was granted to vulnerable victims in the Youth Justice and Criminal Evidence Act 1999. These elements continue under the new Act, but the majority of their content is superseded by the Sexual Offences Act 2003. For a comparison of sentencing tariffs before and after the Act, please see Appendix 1.

The new Act is notable for redefining consent as "if A does not reasonably believe that B consents". This is intended to remove some of the responsibility of establishing guilt away from the victim, by making the defendant responsible for proving that he had made adequate attempts to obtain consent. In several cases, consent cannot be assumed under any circumstances.

However, as the low rates of conviction show, clearly the courts are not convicting men who rape, even with the new definitions given by the Act.

Circumstances when consent cannot be given

(a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;

(b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;

(c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;

(d) the complainant was asleep or otherwise unconscious at the time of the relevant act;

(e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;

(f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

If the victim is under 13 years of age, consent cannot be given.

HMSO: Sexual Offences Act (2003)

Young women aged 16-19 are the most likely to report rape.⁷ They are also considered to be unreliable witnesses. Preconceptions about young women, promiscuity, implied social deviancy or availability and a lack of awareness around sexual victimisation have a negative impact on a potential conviction, and jeopardise the possibility of more young women who have been victims of sexual violence coming forward.

The next section of the report examines the problems faced by young women in court in reference to group rape, and highlights the issue of judge opinion in rape trials.

⁴ ICLR: R v R (The Incorporated Council of Law Reporting) 1992

⁵ This was altered with the passing into law of the Criminal Justice and Public Order Act 1994

⁶ Barring gross indecency and attempted rape, which do not have tariffs included in the Act.

⁷ Home Office: *British Crime Survey Findings 159*, Home Office 2001

Case studies: Getting off lightly? Group rape and judge opinion

Incidences of group rape are rising. A recent study in the London borough of Southwark revealed an increasing culture of gang initiation involving the group rapes of young women. 19% of sexual allegations in the borough in 2003 involved multiple assailants, and 20% of these involved four assailants or more.⁸ However, these cases rarely end in a conviction. These rapes are symptomatic of the increased incidences of sexual victimisation of young women, who despite making the most reports of sexual offences to police,⁹ are often the least likely to be believed.

Case Study 1

A 15 year old girl claimed that she was gang-raped by four youths aged 16 to 19 in a Southwark flat after meeting the group in central London.

Barristers attempted to discredit her evidence by claiming she told the defendants that she was not a virgin, and claiming that she said she 'only gave it to black boys'.

The defendants all maintained that they had consensual sex with the victim and denied rape. The judge directed the jury to clear one defendant of rape because he did not consider forced oral sex to count. The trial is continuing.

South London Press: 'Girl weeps at sex claim', SLP 23 Sept 2005

South London Press: 'I didn't hide her knickers', SLP 4 Oct 2005

As the above study shows, the defence suggests that the witness is promiscuous in order to discredit her. The implication is clear: promiscuous young women cannot be raped.

Case Study 2

A 14 year old girl met a 17 year old. They got chatting and exchanged numbers. He later called her but she refused to meet up with him. He spotted her out with a friend, and he persuaded the two young women to accompany him and two friends to a hostel.

The two girls were separated and the 14 year old was taken to a toilet, where she was raped by the three defendants, who threatened more rapes and violence if she went to the police.

She reported the rapes, and the case went to trial. All the defendants denied rape and claimed they thought the girl was 16. All defendants were cleared of rape but convicted of sexual activity with a child. At the time of writing a custodial sentence has not been given.

South London Press: 'Rapist gang took turns' says girl, 14, SLP 26 Aug 2005
South London Press: 'Trio cleared of rape in hostel bathroom' SLP 9 Sep 2005

The Sexual Offences Act does not define or recognise either group rape or sexual victimisation, making it difficult to apply in these cases. Furthermore, a large number of group rape cases are brought by young women against young men that they are acquainted with. This relationship is then used by the defence as a point to discredit the victim's evidence as attention-seeking or vindictiveness.

Judge opinion and the discrediting of witnesses also play a key role in influencing the possibility of a rape conviction. In some cases, the jury must follow the judge's decision to acquit, regardless of their own feelings. Rape and sexual offences are an area where a judge's own preconceptions show.

Case Study 3

A judge dismissed a woman's complaint of a 10 year campaign of childhood sexual abuse as "at the lowest end of the scale", saying that the alleged abuse was "at the borderline between touching and being excessively effusive". Elsewhere in his summing up he dismissed the claims of alleged indecency as "very slight".

The judge made his comments during the trial of a man charged with nine counts of indecent assault. The judge instructed the jury to find the man not guilty. At least three jury members are said to have protested.

Justin Davenport: 'Judge rules child abuse case 'trivial'', *Evening Standard* 23rd Feb 2005

As the above example shows, even if the judge had not directed the jury to acquit, his inappropriate comments jeopardise the possibility of getting a conviction. A judge is in a position of trust in the courtroom and commands a great deal of jury influence, as many jurors will be unfamiliar with legislation and court procedure.

Specialist rape training for judges is available as three-day courses run twice-yearly. There are approximately 5,300 judges and part-time judges in the UK, at the time of writing 439, 8% of the total judge pool, have attended over the last three years.¹⁰ It would seem that sexual violence awareness is not considered as a high priority by the judiciary.

⁸ Dr. Kathryn Curran & Dr. Andrew Millie, *Safer Southwark Partnership: Rape and Indecent Assault: Incidence and Service Provision in Southwark*, August 2003

⁹ Home Office: *British Crime Survey Findings 159*, Home Office 2001

¹⁰ Judicial Studies Board (2005) Annual Report 2004/2005

The strength of our convictions

If a rape case ends in a conviction, there are four sentencing options; discharge, fine, community sentence or prison. 93% of all convictions do not result in prison, though some 'serious' crimes carry an automatic custodial sentences. Rape is not one of these.

Fines and discharges are employed when a defendant has been seen to express remorse and the fact that he has gained a criminal record is considered to be sufficient punishment. Fines and discharges account for around 79% of convictions, with a maximum fine penalty set at £5,000. In 2003 community sentences accounted for 13% of convictions, and are most commonly used when defendants are not considered to be a danger to the public or when imprisoning the defendant would impact negatively upon his family.¹¹

Case Study 4

A defendant aged 20 befriended a girl of 12 over the Internet. He was invited to her home which she shared with her parents, where he had sex with the girl. He subsequently arrested and charged with unlawful sex.

At the trial, the judge was disparaging of the girl's position, describing her as 'a willing participant' at 12 years of age, ignoring the fact that if the defendant had committed the offence after May 2003 when the new Sexual Offences Act came into force, he would be liable for an immediate charge of raping a child under 13.

The defendant was given a two-year conditional discharge, was made to sign the Sex Offenders Register and escaped prison.

BBC News: 'Child sex man avoids jail', BBC 23rd Nov 2004

Tariffs for custodial sentences

If the judge deems that a custodial sentence is the only option and the offence was committed after May 2003, then he or she will consult the sentencing guidelines set out within the Sexual Offences Act. Sentencing tariffs are set within the Act as maximums. The judge has a great deal of influence over a defendant's sentence, and a guilty plea will often result in a reduction in the sentence length of up to a third. 50% of convictions in rape cases are due to guilty pleas.¹²

Offence	Modification	Tariff
Rape	On indictment	Life
Assault by penetration	On indictment	Life
Sexual assault	On indictment (if vaginal or anal penetration, or penetration with a penis were involved)	Life
Rape of a child under 13	On indictment	Life
Child sex offences committed by children or young persons under 18	On indictment	5 years
Child sex offences committed by children or young persons	Summary conviction	6 months/ fine not more than £5,000

Please see Appendix 1 for an extended table of tariffs.

In rape cases, the likelihood of a custodial sentence is greatly reduced unless there is some degree of extra force or aggression used, or indications that a defendant is a serial attacker. The 'life penalty' is also fixed to a maximum of 99 years, representing a 300% increase on previous sentencing guidelines. In 2003 260 defendants across England and Wales were made to pay fines for sexual offences¹³ and 5,907 were given immediate custodial sentences at either magistrate or Crown Court level, 7.5% of the total custodial sentences handed down.¹⁴

Judges may also take the following factors into account:

- The defendant's record (whether they've offended before)

- The defendant's personal circumstances and whether he is remorseful
- Time already spent in custody (this can be subtracted from the sentence)
- Whether the offence was premeditated or impulsive

These factors can also have a negative effect on the victim and her testimony. As the case studies show there is anecdotal evidence that judges may also give undue weight to a defendant's previous good character, or to a victim's implied bad character. Preconceptions about a woman's sexual autonomy or personal opinion on the part of the judge also negatively affect a woman's opportunity to see justice done.

¹¹ Home Office: Table S1.1(A) Defendants proceeded against by offence, sex and result (England and Wales) 2003

¹² L Kelly, J Lovett, L Regan: *A Gap or a Chasm? Attrition in reported rape cases*, Home Office Research, Development and Statistics Directorate, 2005

¹³ Table S2.3 Persons fined for all offences by amount of fine, sex and offence group (Crown Court)

Table S1.2 Persons fined for all offence by amount of fine, sex and type of offence (Magistrate)

¹⁴ Home Office: Table S2.4 Persons sentenced to unsuspended imprisonment by offence, sex, length of sentence and average length of sentence (England and Wales) 2003

Home Office: Table S1.3 Persons sentenced to unsuspended imprisonment by offence, sex, length of sentence and average sentence length sentence (England and Wales) 2003

<http://www.homeoffice.gov.uk/rds/crimstats03.html>

Judge: <http://www.thisislondon.co.uk/news/articles/16925433?source=Evening%20Standard>

Case study 1

http://icsouthlondon.icnetwork.co.uk/0100news/0200southlondonheadlines/tm_objectid=16165265%26method=full%26siteid=50100-name_page.html

Case study 2

http://icsouthlondon.icnetwork.co.uk/0100news/0200southlondonheadlines/tm_objectid=15896926%26method=full%26siteid=50100-name_page.html

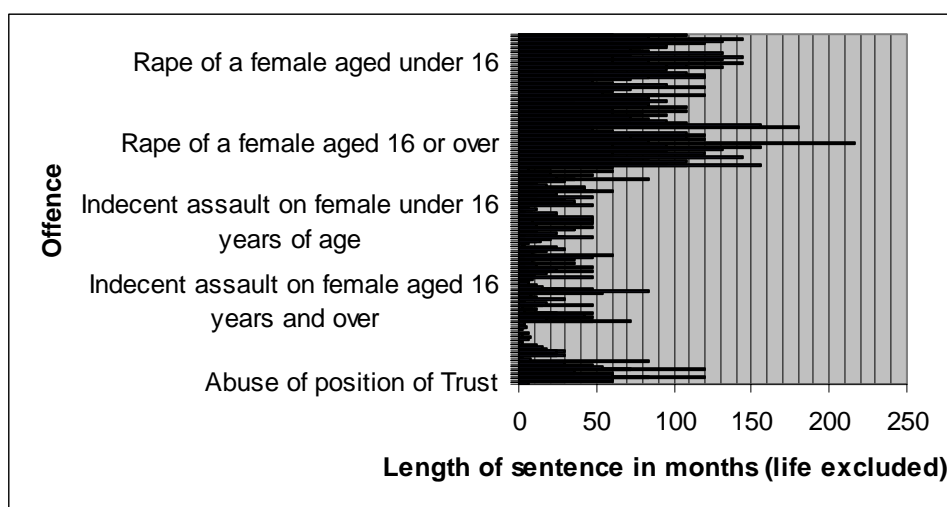
http://icsouthlondon.icnetwork.co.uk/0100news/0300southwark/tm_objectid=15947778&method=full&siteid=50100&headline=trio-cleared-of-rape-in-hostel-bathroom-name_page.html

child sex:

<http://news.bbc.co.uk/1/hi/england/bristol/4036277.stm>

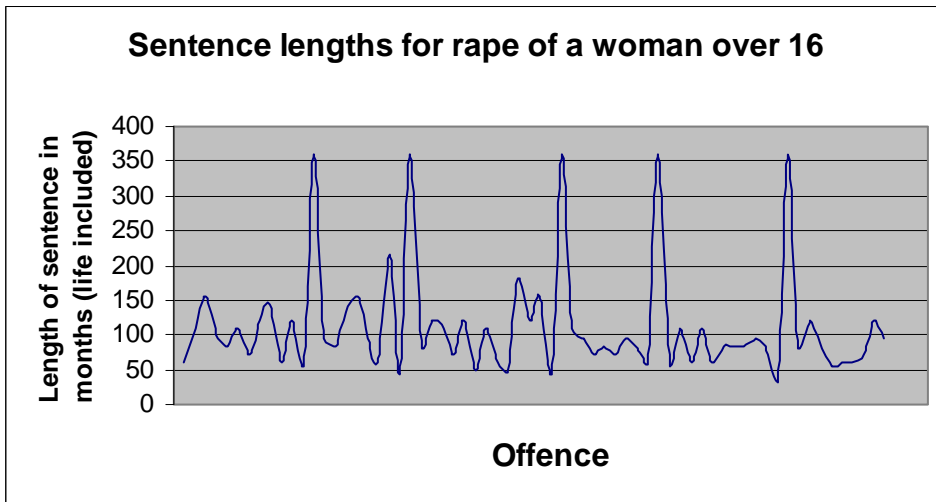
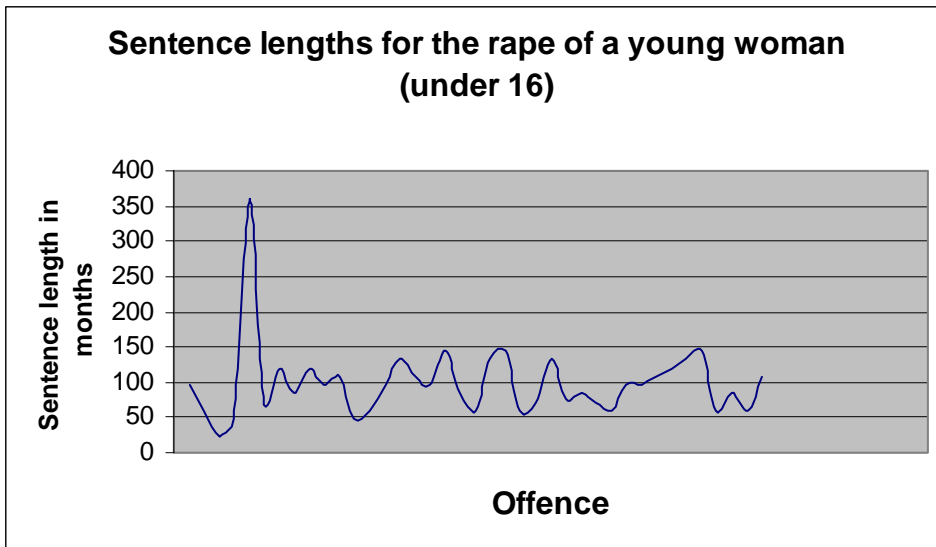
Sexual offences sentencing FY2003 (Pre Sexual Offences Act 2003)

From April 2002 to March 2003 the Home Office Offenders Index logged 265 convictions of sexual offences against women and girls in London. In this period 105 rapes, 129 indecent assaults and 18 attempted rapes were convicted in London courts. The average sentence, if 'life' is taken as 30 years, was 53 months, or just over 4 years, in prison. If the 'life' sentences are screened out, the average sentence length was just over 12 months.



For breakdowns of each offence please refer to Appendix

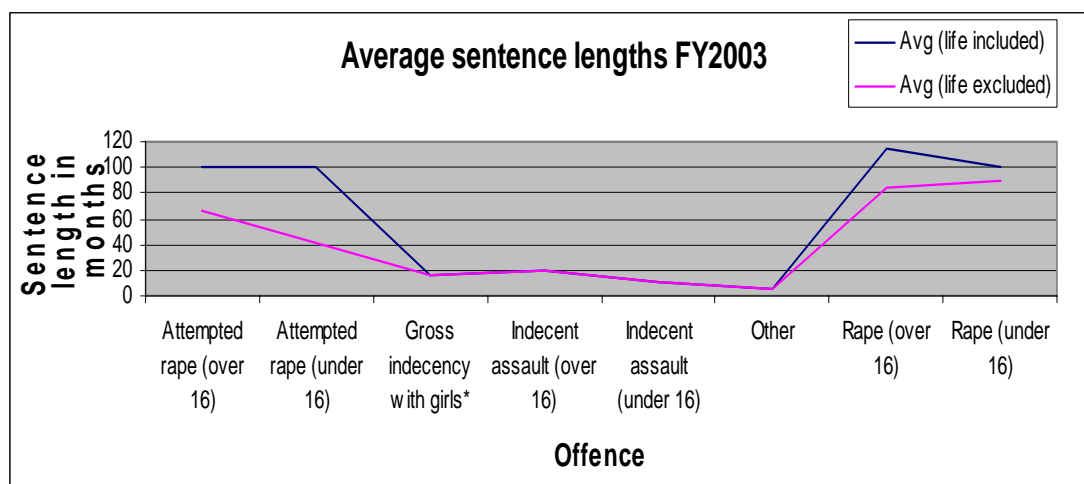
As the graph shows, the sentencing patterns do not favour higher sentencing for offences perpetrated against young women under the age of 16, and in fact, a rape trial involving a victim over 16 is more likely to result in a life sentence. The Home Office does not break statistics down into group, stranger or acquaintance rape, so it is difficult to account for this apparent reversal of public perception. Women in the 16-19 age group are the most likely to report sexual violence,¹⁵ but there is little official information on reporting by younger victims, due to conflicts with Child Protection procedures.



As the two graphs show, there is a wide range of sentencing for rape. The spikes on the graphs denote a life term, which appears more frequently in the cases with a victim of 16 or over. The cases for this age group reflect higher sentences on average, suggesting that if a case is one of the 5.6% that are convicted, there is a good chance of a sentence of 8 years or more, though the maximum sentence is not often used.¹⁶

	Average sentence in years (life included)	Average sentence in years (life excluded)
Rape (over 16)	9.5	7
Rape (under 16)	8.4	7.5

The maximum sentencing tariff for rape or sexual assault is life imprisonment, though it is generally understood that this tariff is only used when there are aggravating circumstances such as repeated offending, kidnap, or excessive use of violence. In the 2003 sentencing period six life terms were handed down.



As the above graph shows, life sentencing is used most commonly for offences of rape and attempted rape, indicating that these are the offences most likely to have ‘aggravating’ circumstances. Given that achieving any rape conviction at all is difficult and factoring in conservative sentencing and the lack of official consensus over consent, a life conviction in either of these offences indicates an incident far beyond the violence habitually used in sexual offences.

The differences between attempted rape sentencing illustrated above clearly show that a significant proportion of convicted rape cases are not what could be considered as representative of many women’s experiences of rape, and that this experience is not represented anywhere in the judicial system. Effectively there is a hierarchy of rape from report to court, which is imposing a value judgement on the horror of women’s experiences and their ability to fit a victim stereotype.

¹⁵ Home Office: *British Crime Survey Findings 159*, Home Office 2001

¹⁶ L Kelly, J Lovett, L Regan, *A Gap or a Chasm? Attrition in reported rape cases*, Home Office Research, Development and Statistics Directorate, 2005

Ground Zero: the real impact of the Sexual Offences Act

From March 2003 to April 2004 268 sexual offences were convicted in London courts, a rise of three cases since the inception of the new Sexual Offences Act. The most noticeable influence of the new legislation is the prevalence of longer life sentences of 99 years, which were handed down to two offenders who attempted rape of women aged over 16, and nine offenders charged with raping a woman over 16.¹⁷

The Sexual Offences Act renamed the majority of sexual offences, resulting in 12 categories of offence in 2004 as opposed to 8 categories in 2003.

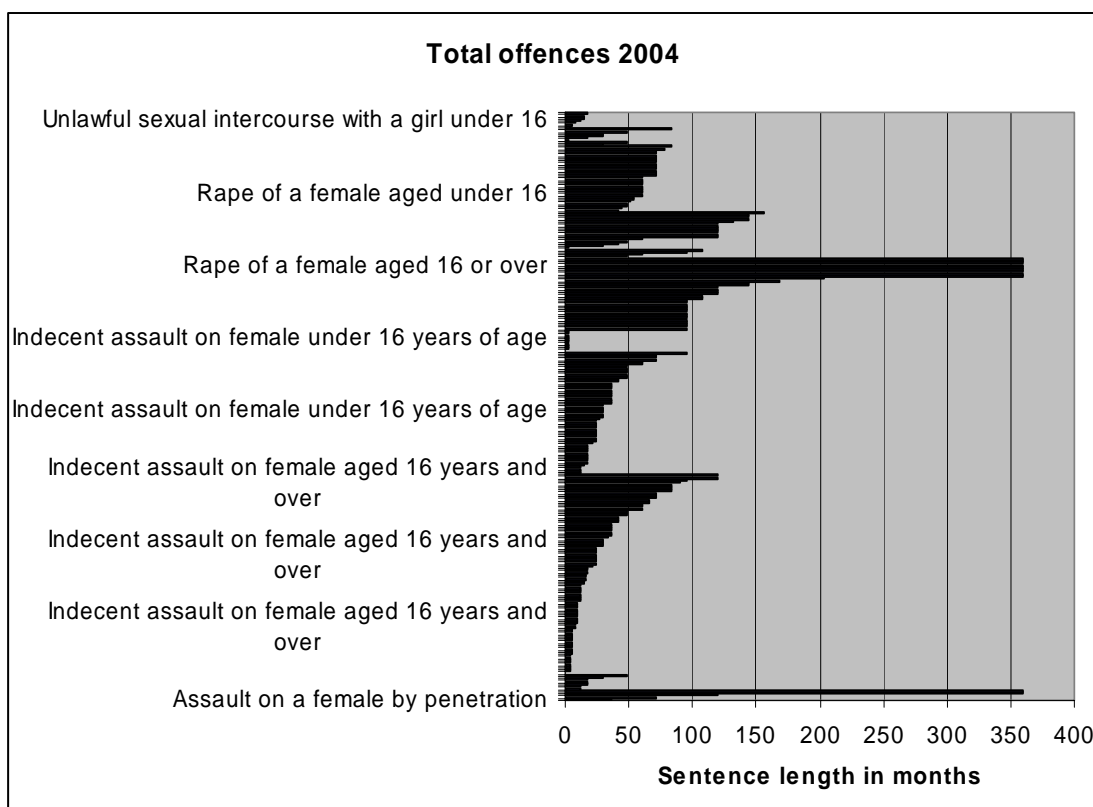
Offences	2003	2004
Abuse of position of Trust - Sexual activity other than intercourse	1	0
Assault on a female by penetration	0	1
Attempted rape of a female aged 16 or over	12	4
Attempted rape of a female under 16	6	0
Gross indecency with girls	12	8
Indecent assault on female aged 16 years and over	73	90
Indecent assault on female under 16 years of age	56	66
Rape of a female aged 16 or over	66	42
Rape of a female aged under 16	39	42
Sexual activity with a female child under 13 - offender aged 18 or over - no penetration	0	1
Sexual activity with a female child under 13 - offender aged 18 or over - penetration	0	1
Sexual assault on a female	0	3
Unlawful sexual intercourse with a girl under 13	0	3
Unlawful sexual intercourse with a girl under 16	0	7
	265	268

The new sentencing categories may have had a negative impact on the number of offences now being classified as rape. Convictions for rape of over 16s in the London courts have decreased by 35% in the 12 months following the introduction of the Act.

However, there have been corresponding rises in convictions for indecent assault and rape of young women under 16 (21% and 9% increases

respectively). The presence of 6 new categories of sentencing in the 2004 results suggest that judges are confident in using the new sentencing guidelines to secure convictions where previously they would have directed the jury to acquit rather than serve a sentence with a high penalty and a perceived degree of social damage, such as rape.

The one case of assault by penetration attracted a penalty of 3 years from a maximum tariff of life imprisonment, which suggests that some forms of penetration are still seen as less severe than others. The wide range of indecent assault sentences ranging from 4 months to 99 years imprisonment demonstrate that some parts of the legislation remain imprecise despite the new Act, and this lack of clarity encourages conservative sentencing.



Life sentences are shortened from 99 to 30 years for comparison.

The overall pattern of sentencing after the introduction of the Act remains broadly the same. There is a marked decrease in the use of longer sentencing tariffs for the offence of raping a young woman under the age of 16, and no life penalties were served in this time in 2004 compared to the previous year.

This reduced sentencing for rape is reflected in a greater use of indecent assault charges and the new unlawful sexual intercourse charge. As Case Study 2 shows, there is a tendency among judges to convict a defendant for a lesser charge of indecent assault or unlawful sex if a charge of rape cannot be brought or is unlikely to succeed.¹⁸ This is particularly true in cases of group rape, where defendants are tried separately for their own part in an offence, rather than the cumulative effect of the offences upon the victim, often resulting in lighter sentencing or acquittal.

Life included	2003	2004
Rape of a female aged 16 or over	9.5	28
Rape of a female aged under 16	8.4	7

Life excluded	2003	2004
Rape of a female aged 16 or over	7	8
Rape of a female aged under 16	7.5	7

The table above shows the average sentence lengths for the offences of rape in 2003 and 2004. The average sentence if life is included increased by 300% with the introduction of the Sexual Offences Act, an increase largely due to the introduction to the 99 year life penalty. If the instances of life imprisonment are removed, the average sentence length increased by just 12 months for raping women over 16, and actually decreased by 6 months for offences against younger women.

The reduction in sentencing for attacks against younger women underlines the public perception that women under 25 do not make credible witnesses, although historically younger victims under the age of 13 were seen as more 'truthful', as they had not developed the life experience to lie. As is the case in Case Study 2, the defendant can exonerate himself from some responsibility by claiming the victim said she was 16 and he saw no reason to disbelieve her. He infers that she is unchildlike and worldly, and it is only a short step from 'worldly' to 'easy' as Case Study 1 shows. The charge of unlawful sex in Case Study 2 reflects a reluctance to convict the defendant of rape, even

though the offence was committed as a group rape with several others. If the victim had been 18 months younger her consent would have been irrelevant and the offence would have been rape of a child, carrying an immediate tariff of life in prison.

The new life penalty is clearly intended as a deterrent, and a man being convicted of rape after 2003 will have a statistically greater chance of a longer prison sentence.

However, the severity of the new sentencing may deter judges from using it for cases other than the most horrifically violent attacks or serial rapes, which will still leave the majority of rape offenders who attack their acquaintances and partners without extra force in the position of getting an acquittal or short sentence. This then leaves the rape victims without any incentive to pursue their cases.

The recent press interest around 'spurious' rape claims focusing on John Leslie in 2003, the La Manga football scandal in 2004 and the recent spate of claims around Queens Park Rangers players, have intensified scrutiny on victims and increased the pressure to appear credible to the jury. In contrast, the media interest has made it easier for rapists to be acquitted or given light sentences, requiring them to simply prove their social standing, and preferably their high earnings or sporting prowess. The following case study highlights this attitude in reference to the footballer Cristiano Ronaldo, who has since been cleared of all rape charges.

Case Study 5

Sir Alex Ferguson is ready to keep Cristiano Ronaldo in Manchester United's starting line-up against Spurs today - despite the winger's arrest on suspicion of rape. Ronaldo was questioned by detectives for six hours at a Manchester police station on Wednesday in connection with the alleged rape of two women at a London hotel.

"Cristiano has had a difficult few days but he's okay for Saturday," said Fergie. "He trained on Thursday and Friday and he'll definitely be involved on Saturday." Ronaldo played against Lille last Tuesday in the knowledge that he would be arrested the following morning and questioned in connection with the alleged incident on October 2.

Despite the trauma of the past few days, Fergie is understood to be confident that Ronaldo has the mental strength to start today's must-win Premiership clash at Old Trafford.

David McDonnell: FERGIE STANDS BY RONALDO: RAPE QUIZ KID PLAYS ON
The Mirror, October 22, 2005

The introduction of the Act has acted has a mixed blessing on sentencing at this early stage. As the legislation is very new the tendencies shown here may alter over time, and also may depend on the locality of the offence and the courts. The new sentencing categories allow judges greater flexibility in determining offences, but pose the risk of an increase in 'lesser' charges of sexual offences that will ensure a conviction, but will potentially negate the victim's continued experiences.

As rape is unique in UK legal law for being almost exclusively a question of consent and subjective opinion, there is a danger that the most severe penalties will be used less often, when there needs to be heavier sentencing across the board to make a sexual offences conviction a real deterrent.

¹⁷ To maintain comparisons with the 2003 statistics, for some analyses these longer sentences will be reduced to 30 years.

¹⁸ See page 8.

Media perception of rape trials

The London Havens Sexual Assault Referral Centres estimate that in 2002 there were approximately 15,000 rapes in London.

2,690 of these were reported to police, 166 went to court and of these there were 119 convictions.

This represents a 4.42% conviction, a quarter *lower* than the national average.¹

Media attention has historically focused upon trials with a sensational element, such as the 'sex-beast in the bushes',¹⁹ the pervert in a position of trust, or the despoiled virgin. In recent years this focus has come to include sports personalities (or celebrities of any kind), asylum seekers and men from a Black Minority Ethnic or Refugee background.

Although the trauma of the victims in these publicised cases should not be trivialised, the restrictive focus and methodology of rape reporting in the media is distorting the public perception of what rape is and how it is punished, and consequently creating a negative impact upon women who experience sexual violence.

The media's selective reporting of rape trials can negatively affect the victim at multiple points in her case. From the moment of reporting, she has a 75% chance of her complaint even being reported by police, depending upon her credibility. During the investigative process she could be of the 33% of cases that is dropped. Once she gets to court, if she does not act the way a witness should, or if the rapist does not fit the stereotypes mentioned, she has an 86% chance of failure. Finally, if a conviction is reached, it is far more likely to be as a result of her attacker pleading guilty.²⁰

Victims feel unable to report as their case doesn't 'fit' public perception, the police and CPS are less likely to pursue cases that are unlikely to secure a conviction, and men who commit sexual offences continue to do so because they are confident of not being tried, due to not being a 'typical' rapist (attractive, well-spoken, possibly in a relationship, holding a good job etc).

Sampling the media

To examine media reporting in more depth, a sample of cases from April 2003 to March 2005 were selected. To qualify, a rape trial had to be brought in a London court in the time period specified, and result in a custodial sentence. The rape also had to be reported in at least two publications, which were identified using Lexis Nexis.

This focus means that high profile cases, such as Antoni Imiela, the 'M25 rapist' and the group rape by two police officers²¹, are not included, as the defendants were convicted outside of London.

Over the 24 months given, the following cases were convicted.

Convicted for	Sentence in months	Sentence in years
Attempted rape and kidnapping	360	30
Biological GBH	96	8
Burglary with intent to rape	180	15
Burglary with intent to rape	132	11
Indecent assault	42	3.5
Rape of female over 16	120	10
Rape of female over 16	120	10
Rape of female over 16	96	8
Rape of female over 16	168	14
Rape of female over 16	144	12
Rape of female over 16	144	12
Rape of female over 16	132	11
Rape of female over 16	72	6
Rape of female over 16	96	8

Rape of female over 16 and attempted kidnapping	360	30
Rape of female over 16 and GBH	144	12
Rape of female over 16 while infected with HIV	120	10
Rape of female under 16	120	10
Rape of female under 16	84	7
Rape of female under 16 (previous history)	180	15

Life to be given as 30 years.

The average sentence length for rape of a woman over 16 is 12 years, which is clearly a lot higher than anecdotal evidence and the general perception of rape trials would have us believe. If the one count of 'life' is screened out the average is 10 years in prison, which is still higher than expected. Is there a problem of public and victim confidence in the criminal justice process?

If there is a perception of low prison tariffs, it is partly due to selectivity. While the media reported 21 cases of rape conviction over 24 months, the Home Office reported 265 cases of rape conviction in 2003 alone. The newspapers are choosing to report less than 3% of rape cases ending in a conviction.

Sensational news

How are the publications choosing their stories? The sample articles suggest that certain cases are more likely to be highlighted, particularly if a certain 'angle' can be found. Of the cases chosen, every one has at least one element of the 'sensational' details mentioned above. One case involving a man attempting to rape an 11 year old child in her bed as he burgled her home merited two mentions in the national news (the BBC online news feed and the Mirror), primarily because the victim fought her attacker off and later wrote an articulate letter to the court.

However, a 'vampire rapist' who forced his victim to drink his blood and later courted controversy in court by labelling his victim a 'Goth pagan' in an attempt to discredit her received extensive press, with over 30 articles in 13 different publications, including newspapers in France, Spain and Italy. He also takes his place alongside four other attackers dubbed 'vampire rapists' in the past six months, despite their attacks ranging from domestic violence

through to paedophilia. As Soothill and Walby noted, the media attempts to create symbolic links between rapists, which serves two purposes, giving the rapist a defined identity relating solely to their crime, and further divorcing the idea of a rapist as being an ordinary man who goes to work and socialises regularly with other people without standing out.²²

Rather than a rapist being an average man who rapes, the media presents rapists as a selection of isolated individuals who hold aberrant beliefs and have odd habits. They rape because they are 'weird', and not at all the newspapers' readers, who can be comforted in believing that they would never come into contact with a rapist, or that they could identify one if they did.

Stranger danger

Unfortunately, 94% of rapes do not fit this 'stranger' pattern.²³ The majority of rapes are perpetrated upon female victims by men they know, and the 'real rape' stereotype that features heavily in the newspapers represents only one in ten of rapes committed. In the samples given above, 80% of the attacks were 'stranger' rapes or attacks where the defendant deliberately befriended the victim with the sole intention of raping her. In two of these cases women were advised at the time of the attacks to walk in well-lit areas and carry rape alarms. This seems a clear indication that the cases chosen by the media are skewed towards stranger rape, and do not challenge the assumption that stranger rape is 'real rape' and far more traumatising and more likely than acquaintance rape.

This skewing has multiple negative impacts upon victims of sexual violence, reinforcing a hierarchy of rape, with sexual assault being less serious and stranger rape being the most serious. Furthermore, the advice to women on how to avoid being raped once again puts the responsibility of her rape squarely upon the victim's shoulders. She is responsible for ensuring that men do not rape her, by staying out of certain areas at certain times. The rapist is not at fault in this picture. As the majority of rapes occur either in the victim's

home or in the home of her attacker,²⁴ safety advice to stay at home is of little use, other than to reinforce the stranger rape stereotype, both in the mind of the woman reporting sexual violence, and in the minds of the jury.

Jury rigged

The samples cover a wide range of cases within the spectrum of sexual violence, and despite the continued focus of stranger rape, the most violent attacks were perpetrated by a man upon his lover, and by a group of young men upon a young woman they knew from school. 42% of the attackers were men from low-income jobs, with 20% having insecure asylum status and a further 10% being unemployed or engaged in criminal activity.

By contrast, the victims were described as 'brave' or 'very brave' (20%), 'vulnerable' (15%), or by their family situation, such as mother or grandmother (20%). According to the reports at least two victims broke down in the courtroom.

All of these factors support the other persistent rape stereotype of the credible victim. Thanks to DNA testing, the majority of rape trials are decided on the issue of consent, and so victim credibility is now key to a successful conviction.

Throughout her case the victim is dependent upon other parties and is continually assessed as to her credibility. If any women sit on the jury during rape trial, they must assess the credibility of other women, and anecdotal evidence suggests that female jurors are more critical of female victims. Similarly, the perpetrator's credibility is also assessed, and in the sample cases a great deal was made of the majority of defendants being of low economic status. 30% were presented as serial abusers, and 20% were described as 'predatory'.

As the samples represent a minority of the cases convicted in 2003, the media's choice to highlight these over other cases suggests a wish to

maintain and perpetuate the rapist stereotypes, ignoring the overwhelming evidence that rape is a crime that affects all sections of society.

¹⁹ K Soothill and S Walby: *Sex Crimes in the News*, 1991

²⁰ L Kelly, J Lovett, L Regan: *A Gap or a Chasm? Attrition in reported rape cases*, Home Office Research, Development and Statistics Directorate, 2005

²¹ <http://news.bbc.co.uk/1/hi/england/4325165.stm>

²² Soothill, Keith and Sylvia Walby. *Sex Crime in the News*. London, Routledge 1991

²³ British Crime Survey 2001

²⁴ British Crime Survey 2001

Recommendations

Court process

- All Police and frontline agencies to be trained in the applications of the Sexual Offences Act 2003 so that they can correctly advise women on what will happen during the judicial process.
- All judiciary, including judges and Recorders, to undergo mandatory training in rape and sexual assault awareness.
- All inappropriate comments by defending counsels and judges to be dealt with in a public and transparent manner.
- A peer-led focus group of young women to be consulted about improvements to the judicial process to increase confidence.

Convictions and sentencing

- Sexual offences to be given a mandatory prison term.
- Eradication of value judgements about the severity of attacks.
- Heavier sentencing across the board to deter attacks.
- Rape and assault by penetration to be treated as equally damaging to the victim.
- A new offence of group rape which calculates the cumulative effect of attacks rather than individual participants.
- Public campaign to raise awareness of increases to sentencing.

Media representation

- A new category of complaint against the media to be created to allow questioning of media representation.
- Campaigning to raise awareness of media bias.
- Education campaign in schools to eradicate perceptions of rape myths.

Appendix 1

Comparison of penalties for sexual offences before and after the Sexual Offences Act 2003			
Offences prior to Sexual Offences Act	Penalty	Sexual Offences Act 2003	Penalty
Rape: anal or vaginal intercourse by a man without consent Sexual Offences Act 1956 Section 1	Life	Rape: penile penetration of another person's vagina, anus or mouth, without consent (including surgically reconstructed male and female genitalia) Section 1 Rape of a child under 13: penile penetration of the vagina, anus or mouth of a child under 13 (including reconstructed male and female genitalia) Section 5	Life Life
Indecent assault on a woman SOA 1956, Section 14 Indecent assault on a man SOA 1956 Section 15	10 years 10 years	Assault by penetration: sexual penetration of the vagina or anus with any part of the body or any other object, without consent. Section 2 Sexual assault: sexual touching without consent Section 3 Assault of a child under 13 by penetration: sexual penetration of the vagina or anus with any part of the body or with another object Section 6	Life 10 years Life
New New		Causing a person to engage in sexual activity without consent Section 4 Causing or inciting a child under 13 to engage in sexual activity Section 8	Life (if penetration occurs) otherwise 10 years Life (if penetration occurs) otherwise 14 years
Assault with the intention to	10 years	Committing an offence with intent to	Life if the offence

commit buggery SOA 1956, Section 16		commit a sexual offence Section 62	included kidnapping or false imprisonment, otherwise 10 years
Trespass with intent to commit rape Theft Act 1968 Section 9	14 years (if a dwelling) - 10 years for any other building	Trespass with intent to commit a sexual offence Section 62	10 years
Abduction of a woman by force or for the sake of her property. SOA 1956 Section 19	14 years	Committing an offence with intent to commit a sexual offence Section 62	Life if the offence included kidnapping, or false imprisonment, otherwise 10 years
Abduction of an unmarried girl under 18 from parent or guardian SOA 1956 Section 19	2 years	Committing an offence with intent to commit a sexual offence Section 62	Life if the offence included kidnapping, or false imprisonment, otherwise 10 years
Abduction of defective from parent or guardian SOA 1956 Section 21	2 years	Committing an offence with intent to commit a sexual offence Section 62	Life if the offence included kidnapping, or false imprisonment, otherwise 10 years
Administering drugs to a woman to obtain or facilitate intercourse SOA 1956 Section 4	2 years	Administering a substance with intent in order to stupefy or overpower a victim to enable sexual activity Section 61	10 years
Sexual intercourse with a girl under 13 SOA 1956 Section 5 Buggery – anal intercourse with a child under the age of consent	Life Life	Rape of a child under 13: penile penetration of the vagina, anus or mouth of a child under 13 (including sexually reconstructed male and female genitalia) Section 5 Assault of a child under 13 by penetration: sexual penetration of the vagina or anus with any part of the body or with another object	Life Life

<p>Sexual intercourse with a girl under 16 SOA 1956 Section 6</p>	<p>2 years</p>	<p>Sexual activity with a child: where a person engages in physical sexual activity with a child Section 9</p>	<p>14 years where the defendant is 18 years or over, otherwise 5 years</p>
<p>Indecency with a child under 16: any person who commits an act of gross indecency with or towards a child, or who incites a child to commit such an act with him or another.</p> <p>Indecency with Children Act 1960 Section 1</p> <p>New</p> <p>New</p> <p>New</p> <p>New</p> <p>New</p>	<p>10 years</p>	<p>Rape of a child under 13: penile penetration of the vagina, anus or mouth of a child under 13 (including sexually reconstructed male and female genitalia) Section 5</p> <p>Sexual assault of a child under 13 Section 7</p> <p>Causing or inciting a child under 13 to engage in sexual activity Section 8</p> <p>Sexual activity with a child Section 9</p> <p>Causing or inciting a child to engage in sexual activity Section 8</p> <p>Engaging in sexual activity in the presence of a child Section 11</p> <p>Causing a child to watch a sexual act Section 12</p>	<p>Life</p> <p>14 years</p> <p>Life, where the sexual activity includes penetration; otherwise 14 years</p> <p>14 years where the defendant is 18 years or over, otherwise 5 years</p> <p>14 years where the defendant is 18 years or over, otherwise 5 years</p> <p>10 years where the defendant is 18 years or over, otherwise 5 years</p> <p>10 years where the defendant is 18 years or over, otherwise 5 years</p>
<p>New</p>		<p>Arranging or facilitating commission of a child sex offence: where a person enables a sexual offence against a child, whether or not the sexual offence takes place; also where a sexual offence would be committed if a person's intentions were to be realised, even if there are factors to make the commission of the offence impossible. Section 14</p>	<p>14 years</p>
<p>New</p>		<p>Meeting a child following sexual grooming etc: to tackle grooming behaviour by paedophiles both offline</p>	<p>10 years</p>

		and online.	
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Incitement of girls under 16 to commit incest SOA 1596 Section 11	2 years	Inciting a child family member to engage in sexual activity Section 26	14 years where the defendant is aged 18 or over, otherwise 5 years
Incest by a woman : with her consent SOA 1956 S11	7 years	Sexual activity with a child family member Section 25 Sex with an adult relative: penetration Section 64 Sex with an adult relative: consenting to penetration Section 65	14 years where the defendant is aged 18 or over, otherwise 5 years 2 years 2 years
Abuse of trust: people in certain positions of trust and responsibility (as defined by the Act) who engage in sexual activity with a child in their care SOA (A) 2000	5 years	Abuse of trust: as at present but expanded to include Connexions and Personal advisors, also those who care for and train or are in charge of young people on a one to one basis Sections 16-24	
Intercourse with a defective Section 7 New New New	2 years	Sexual activity with a person with a mental disorder impeding choice where the person is unable to refuse because of that disability Section 30 Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity where the person is unable to refuse because of that disability Section S31 Engaging in sexual activity in the presence of a person with a mental disorder impeding choice where the person is unable to refuse because of that disability Section S32 Causing a person with a mental disorder impeding choice to watch a sexual act where the person is unable to refuse because	Life for penetration, otherwise 14 years Life for penetration, otherwise 14 years 10 years 10 years

New		of that disability Section 33	
New		Inducement, threat or deception to procure sexual activity with a person with a mental disorder Section 34	Life for penetration, otherwise 14 years
New		Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception Section 36	10 years
New		Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder Section 36	10 years
New		Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception Section 37	10 years
Sexual intercourse with patients: a member of staff etc of a hospital or mental nursing home having sexual intercourse, or committing gross indecency with a patient Mental Health Act 1956 Section 128	2 years	Care workers: sexual activity with a person with a mental disorder Section 38	14 years for penetration, otherwise 10 years
New		Care workers: causing or inciting sexual activity Section 39	14 years for penetration, otherwise 10 years
New		Care workers: sexual activity in the presence of a person with a mental disorder. Section 40	7 years
New		Care workers: causing a person with a mental disorder to watch a sexual act Section 41	7 years
		If the victim does not have a mental disorder, generic offences such as rape would cover this behaviour.	
Procurement of sexual intercourse from a woman by threat or intimidation SOA 1956, Section 2	2 years	Inducement, threat or deception to procure sexual activity with a person with a mental health disorder	Life for penetration, otherwise 14 years

<p>Procurement of intercourse from a woman by false pretences or false representations SOA 1956 Section 3</p>	<p>2 years</p>	<p>Section 34</p> <p>Causing a person with a mental disorder to agree to engage in sexual activity by inducement, threat or deception Section 35</p> <p>If the victim does not have a mental disorder, generic offences such as rape would cover this behaviour.</p>	<p>Life for penetration, otherwise 14 years</p>
<p>Incest: sexual intercourse with a woman known to be a sister, half-sister, grand-daughter or mother SOA 1956 Section Section 10</p> <p>New</p> <p>New</p> <p>New</p> <p>New</p>	<p>Life (where victim is under 13) otherwise 7 years</p>	<p>Rape of a child under 13 Section 5</p> <p>Assault of a child under 13 by penetration: sexual penetration of the vagina or anus with any part of the body or with another object Section 6</p> <p>Sexual assault of a child under 13 Section 7</p> <p>Causing or inciting a child under 13 to engage in sexual activity Section 8</p> <p>Sexual activity with a child family member, where one person is the other's parent, step-parent, grandparent, brother, sister, half brother, half-sister, aunt, uncle or foster parent, also cousins, where one or other has been the partner of the others parent or the spouse of an aunt or uncle or the parent of one of them has been the other's foster parent <u>and</u> they live or have lived in the same household <u>or</u> one is or has been regularly involved in caring for, training or supervising or in sole charger of the other; and also where they live or have lived in the same household <u>and</u> one is or has been regularly involved in caring for, training or supervising or in sole charge of the other. Section 25</p> <p>Inciting a child family member to engage in sexual activity Section 26</p> <p>Sex with an adult relative: penetration</p>	<p>Life</p> <p>Life</p> <p>14 years</p> <p>Life (if penetration occurs) otherwise 14 years</p> <p>14 years where the defendant is aged 18 or over, otherwise 5 years</p> <p>14 years where the defendant is aged 18 or over, otherwise 5 years</p> <p>2 years</p>

		Where penetration of an under 18 by a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece over 18 occurs Section 65	
Indecent exposure Wilfully, openly, lewdly and obscenely exposing a penis with intent to insult any female Vagrancy Act 1824 Section 4, Town and Police Clauses Act 1847 Section 28	3 months (1 year if there are subsequent convictions)	Exposure Exposure of the genitalia (male or female) with intent that someone will see them and that person will be caused alarm or distress Section 66	2 years

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