

D. SEXUAL OFFENCES

D.1 General

Sexual offences will invariably pose a number of difficulties for the prosecutor, which may be evidential or involve the careful exercise of discretion in a number of areas. The following points are of general application and may arise additionally to any of the specific factors considered in the context of particular offences (post).

D.1.1 Corroboration. Prosecutors should ensure they are familiar with the rules of law and practice concerning corroboration, which are particularly significant in this branch of the law.

D.1.2 Sexual offences involving children.

- (i) The credibility and credit of the child will often be of limited value and, in the case of very young children, may be nil. In cases involving young victims - or young witnesses - it will always be necessary to consider whether the child is likely to be permitted to give evidence on oath or, alternatively, give unsworn evidence having regard to the court's duties and discretions in these respects. Whether a child is able to be sworn will affect the need to obtain corroboration as a matter of law, although it will always be looked for as a matter of practice. It is most undesirable that a child as young as five should be called as a witness (R v Wallworth (1958) 42 Cr. App. R. 153).
- (ii) Apart from such legal considerations, the welfare of the child must not be overlooked and it will often be necessary to balance the interests of the former with the need to bring offenders to justice. More trauma may be produced by requiring the child to recount the incident in court, but equally the public interest may require that such difficulties are confronted and proceedings commenced. Depending on the gravity of the allegation, the attitude of the child's parents should be taken into account, and the parents should be made aware that criminal proceedings may entail the need for the child to give evidence. If the victim

was a willing party, it will be necessary to take into account his or her age and the relative age of the parties, and whether seduction or corruption was involved.

- (iii) All cases involving children (whether as victims or non-involved witnesses) should be handled with the utmost care and sensitivity, and every effort should be made to have the proceedings heard at the earliest possible opportunity.

D.1.3 Mental defectives. When considering sexual offences generally, special attention should be paid to the mental condition of both the victim and the accused. There are often special provisions where the victim is mentally defective (for example Section 15(3) Sexual Offences Act 1956) and in any event the victim's mental condition must have a bearing upon whether a prosecution is justified. On the one hand, for example, a mentally defective victim needs particular protection, whilst on the other such a person could be a very difficult witness requiring corroboration on all the salient points of the offence. With a mentally defective defendant, the question arises whether he sufficiently understood what he was doing, together with whether a prosecution will help protect potential victims. Thus, for example, where the accused is already in a secure institution, there should be a greater reluctance to take proceedings, subject to the seriousness of the offence and the degree of handicap and likely repetition.

D.1.4 Victims of sexual assaults. It is essential that due regard should be had to the feelings of a victim of sexual assault (particularly rape). Not only must such a witness be treated with sensitivity but consideration should be given to the victim's feelings when deciding whether and how to proceed. Nevertheless, the interests of justice are ultimately wider than those of the victim, whose feelings are but one factor in the scales. When confronted by a truly vindictive or reluctant witness, in assessing the sufficiency of evidence the prosecutor should ask himself whether such a person is likely to convince a jury in the absence of other compelling evidence of the