



CPS

CPS Policy for Prosecuting Cases of Rape

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1 Introduction

- 1.1** This policy statement explains the way we, the Crown Prosecution Service (CPS), deal with cases in which an allegation of rape has been made. It gives advice on what the CPS does, how rape cases are prosecuted, and what victims can expect from the CPS. The document is particularly designed for those who support victims of rape, whether professionally or personally, although it may be of interest to victims, witnesses and the general public.
- 1.2** This is the second edition of the policy statement and reflects the changes in the law and CPS procedures that have taken place since the publication of the first edition in 2004. Rape is one of the most serious of all criminal offences. It can inflict lasting trauma on victims and their families. We want people to know that our aim is to prosecute rape cases effectively, and we want people to know what they can expect from us.
- 1.3** We are aware that there is a general perception that most rapes are committed by a single man against a woman unknown to him. In fact, the majority of rape victims are women and most know their rapist. However, rape can involve male and female victims of all ages. This policy statement covers the handling of all types of rape case, including marital and relationship rape, acquaintance and stranger rape, against male and female victims. All are equally serious and traumatic for the victim. Rape also has a devastating effect on families of victims.
- 1.4** Cases of rape where the victim is a child present additional challenges. We will take account of the needs of abused

children, the effects of the crime, and the effects of the court appearance on the child witness.

1.5 We realise that victims of rape have difficult decisions to make that will affect their lives and the lives of those close to them.

1.6 We acknowledge that barriers exist, which mean that some people are less likely to report offences.

- Victims who are or have been in a relationship with their attacker may blame themselves or feel that agencies will blame them, and may well face wider difficulties such as disruption to the lives of their children and extended families.
- People from Black and minority ethnic communities may have experienced racism. They may fear that they will not be believed, or that they will not be treated properly. As a result they may be reluctant to report offences or support a prosecution. Cultural and religious beliefs may also prevent people from reporting offences or supporting a prosecution.
- In cases involving rape within same sex relationships, victims may fear a homophobic reaction from the criminal justice system. They may also fear being "outed" by the process.
- People with physical disabilities may fear reporting rape if the offender is a carer, or fear the loss of residential care.
- Elderly people, in particular, may be deterred from reporting rape by feelings of shame or embarrassment.
- People with learning difficulties or mental health problems may feel that they will not be believed if they report being raped.

- 1.7** We currently work with Independent Sexual Violence Advisors and a number of national and local organisations (for example the Witness Service provided by Victim Support), which offer support to victims throughout the proceedings. Special measures can be used to help a victim or witness to give evidence.
- 1.8** Although this policy statement applies specifically to rape, we will strive to apply best practices and procedures to all other types of sexual offence prosecuted, and ensure that these cases are treated seriously and sensitively.
- 1.9** Some words and phrases used in this document may not be familiar to everybody. We have therefore set out a glossary of terms at the back of this document in which we have defined some of the words and phrases used.

2 What is the definition of rape?

2.1 The definition of rape was substantially changed by the Sexual Offences Act 2003, which came into force on 1 May 2004.

2.2 Offences committed before 1 May 2004 are prosecuted under the Sexual Offences Act 1956. Under the 1956 Act, the statutory definition of rape is any act of non-consensual intercourse by a man with a person, and the victim can be either male or female. Intercourse can be vaginal or anal. It does not include non-consensual oral sex. The courts had defined consent as having its ordinary meaning, and lack of consent could be inferred from the surrounding circumstances, such as submission through fear. It is a defence if the defendant believed that the victim was consenting, even if this belief was unreasonable, and this is a matter of fact for the jury.

2.3 Offences committed on or after 1 May 2004 are prosecuted under the Sexual Offences Act 2003. The 2003 Act extends the definition of rape to include the penetration by a penis of the vagina, anus or mouth of another person. The 2003 Act also changes the law about consent and belief in consent.

2.4 The word "consent" in the context of the offence of rape is now defined in the Sexual Offences Act 2003. A person consents if he or she agrees by choice, and has the freedom and capacity to make that choice. The essence of this definition is the agreement by choice. The law does not require the victim to have resisted physically in order to prove a lack of consent. The question of whether the victim

consented is a matter for the jury to decide, although we consider this issue very carefully throughout the life of the case. The prosecutor will take into account evidence of all the circumstances surrounding the offence.

- 2.5** We are aware that the meaning of consent can be of particular relevance in rape where there has been, or is, a pre-existing relationship between the defendant and the victim, or where domestic violence has existed prior to the rape. As the 2003 Act makes it clearer what is meant by the term "consent", it should help juries decide whether the victim was able to, and did in fact, give his or her consent at the time.
- 2.6** The Sexual Offences Act 2003 requires the defendant to show that his belief in consent was reasonable. In deciding whether the belief of the defendant was reasonable, a jury must have regard to all the circumstances, including any steps he has taken to ascertain whether the victim consented. In certain circumstances, there is a presumption that the victim did not consent to sexual activity and the defendant did not reasonably believe that the victim consented, unless he can show otherwise. Examples of circumstances where the presumption applies are where the victim was unconscious, drugged, abducted or subject to threats or fear of serious harm.
- 2.7** People who have consumed alcohol may reach such a level of drunkenness that they no longer have the capacity to give consent. The courts recognise that this stage may be reached well before they become unconscious.
- 2.8** Proving the absence of consent is usually the most difficult part of a rape prosecution, and is the most common reason

for a rape case to fail. Prosecutors will look for evidence such as injury, struggle, or immediate distress to help them prove that the victim did not consent, but frequently there may be no such corroborating evidence. This does not mean that these cases can never be successfully prosecuted, but it does mean that they are more difficult. In the absence of any other evidence to help prove the victim did not consent, there is the possibility that some cases may fail to meet the evidential stage of the Code for Crown Prosecutors: (see paragraph 4.2).

- 2.9** We recognise that both men and women can be victims. Although the majority of victims are women, and taking action against rape is included as part of the CPS Violence Against Women Strategy, we will apply our rape policy without discrimination in all cases.

3 The role of the CPS

- 3.1** The CPS is one part of the criminal justice system, which includes other organisations such as the police, the courts, defence lawyers, the National Offender Management Service, Youth Offender Teams (YOTs), the Witness Service and the Prison Service.
- 3.2** We are a public prosecution service for England and Wales, headed by the Director of Public Prosecutions. We were set up in 1986 to prosecute cases investigated by the police. Although we work closely with the police, we are independent of them. We are answerable to Parliament through the Attorney General, who is the senior Law Officer of the Crown and also a Government Minister.
- 3.3** We are a national organisation consisting of 42 Areas, plus an out-of-hours service called 'CPS Direct'. Each Area is headed by a Chief Crown Prosecutor and corresponds to a single police force area, with one Area covering London. The 42 Areas are now grouped into 14 Strategic Boards, excluding CPS London, which has a management team of its own, led by the Chief Crown Prosecutor of London. Each Strategic Board is led by a Group Chair Chief Crown Prosecutor.
- 3.4** The police are responsible for investigating allegations of rape and for gathering the evidence. Since 2004, we have had the responsibility for deciding (in all but the most minor cases) whether a suspect should be charged with a criminal offence, and, if so, what the charge(s) should be. The police do not refer every complaint of a criminal offence to us. However, when the police have a reasonable suspicion that

a suspect has committed the offence of rape, they must refer that case to a Crown Prosecutor, who will make the decision whether to charge.

- 3.5** The CPS and the police have signed a joint national protocol agreeing to adhere to best practice and policies in the investigation and prosecution of rape cases.
- 3.6** As part of our commitment to improve the prosecution of rape cases, we have established a network of specialist prosecutors in each CPS Area. The CPS has set down a standard for rape specialist prosecutors, as our specialist prosecutors in each of the 42 CPS Areas are expected to be trained and experienced in prosecuting rape and other sexual offence cases. The specialist network also provides mutual support to rape specialist prosecutors by enabling them to share knowledge and experience. This reinforces their expertise and assists future rape prosecutions.
- 3.7** Early consultation will take place between the specialist prosecutor and the police to ensure that all possible avenues of evidence are explored and that the correct charge is identified. We intend wherever possible that the same specialist prosecutor will be responsible for the case from beginning to end and will work closely with the police throughout. This degree of continuity is important. It enables us to ensure that the victim is provided with the best possible support throughout the progress of the case.
- 3.8** If, following the receipt of an evidential report from the police, a rape specialist prosecutor decides that the case should not proceed, a second rape specialist must confirm the decision.

- 3.9** Since 1 October 2007, only prosecution advocates who have attended a CPS accredited course and have demonstrated the right skills while being monitored are able to undertake rape prosecutions in court.

4 The Code for Crown Prosecutors

4.1 The Code for Crown Prosecutors (The Code) sets out how we make decisions about whether or not to prosecute. The Code is a public document. We review the cases referred to us by the police in line with the test set out in the Code. The Full Code test has two stages.

The evidential stage

4.2 We must be satisfied first of all that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. This means that a jury or a judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged charge.

4.3 The test that we use to decide whether or not to prosecute is different from the one applied by the court before it may convict a defendant. For there to be a conviction, we have to prove the case so that the court is sure of the defendant's guilt.

4.4 If the case does not pass the evidential stage, it must not go ahead, no matter how important or serious it may be

The public interest stage

4.5 If the case does pass the evidential stage, we must decide if a prosecution is needed in the public interest. A prosecution will usually take place unless: "there are public interest factors tending against prosecution which clearly outweigh

those tending in favour” (Code for Crown Prosecutors). If the evidential test is passed, we believe that rape is so serious that a prosecution is almost certainly required in the public interest.

4.6 When considering the public interest stage, one of the factors that Crown Prosecutors should always take into account is: “the consequences for the victim of the decision whether or not to prosecute; and any views expressed by the victim or the victim’s family”: paragraph 5.12 of the Code. We always think very carefully about the interests of the victim when we decide where the public interest lies. But we prosecute cases on behalf of the public at large and not just in the interests of any particular individual. Striking this balance can be difficult. The views and interests of the victim are important, but they cannot be the final word on the subject of a CPS prosecution.

The Threshold Test

4.7 Crown Prosecutors will apply the Full Code Test wherever possible. However, there will sometimes be cases when the person arrested will be considered unsuitable to be granted bail but when not all the evidence is available at the time a charging decision has to be made.

4.8 In such cases, when the investigation is incomplete, the CPS may apply the Threshold Test. However, the Threshold Test can only be applied when all the following conditions are met:

- there is insufficient evidence to apply the Full Code Test;
- there are reasonable grounds for believing better evidence will be available in a reasonable time;

- the seriousness of the circumstances justifies the making of an immediate charging decision; and
- there are continuing substantial grounds to object to bail.

4.9 Where all these conditions are met, the Threshold Test may be applied and the suspect charged. A decision to charge under the Threshold Test must be kept under review and the Full Code Test must be applied to the case as soon as reasonably practicable.

5 Is there enough evidence to prosecute?

- 5.1** Rape usually takes place in a private setting where the victim is the only witness. Unless the defendant pleads guilty, the victim will almost certainly have to give evidence in court. Where there is conflicting evidence, the prosecutor has a duty to assess the credibility and reliability of the victim's evidence. This will always be done in a careful and sensitive way, using all the information provided to the prosecutor. A case may not proceed, not because the prosecution does not believe the victim, but because, when considering all the available evidence in the case, there is not enough to meet the evidential stage of the Code test.
- 5.2** There are rules about disclosing to the defence relevant material obtained during the investigation, which is not part of the prosecution case. The rules are complex, but broadly speaking, there is a duty to disclose to the defence any material that might undermine the prosecution case or assist the defence.
- 5.3** The police will always look for corroboration or supporting evidence (such as medical or scientific evidence, CCTV evidence, or eyewitnesses to events prior to or after the incident) but it is not essential and a prosecution can still go ahead without it. However, the prosecution must always prove the defendant's guilt. Cases may fail because a jury cannot decide between what the victim says and what the defendant says. This is why it is essential to obtain all possible forensic and scientific evidence as soon as possible. The earlier a rape is reported, the higher the chance of this

being done, and the higher the chance of building a strong prosecution case.

5.4 Where a victim has disclosed being raped to other persons prior to reporting it to the police, strict legal rules of evidence govern whether these disclosures can be used as evidence at court.

5.5 We are aware that there are myths and stereotypes surrounding the offence of rape. Examples of such myths include:

- rape occurs between strangers in dark alleys;
- victims provoke rape by the way they dress or act;
- victims who drink alcohol or use drugs are asking to be raped;
- rape is a crime of passion;
- if they did not scream, fight or get injured, it was not rape;
- you can tell if they 'really' have been raped by how they acts;
- victims cry rape when they regret having sex or want revenge;
- only gay men get raped/only gay men rape men; and
- prostitutes cannot be raped.

Prosecutors who deal with rape cases are taught about them as part of their specialist training. We will not allow these myths and stereotypes to influence our decisions and we will robustly challenge such attitudes in the courtroom.

5.6 We know that some victims will find it very difficult to give evidence and may need practical and emotional support. The specialist prosecutor will know about the emotional and

psychological effects of rape and will be aware that some complaints of rape are not made immediately. Any delay could be attributed to a fear of reprisals, intimidation or a significant number of other factors. It is possible that the effect on rape victims may render them emotionally incapable of providing a written statement shortly after an attack, or even for days or weeks. Specialist agencies can provide support and advice.

What happens when the victim withdraws support for the prosecution or no longer wishes to give evidence?

5.7 Sometimes a victim may withdraw support for a prosecution and may no longer wish to give evidence. This does not mean that the case will automatically be stopped. If the victim has decided to withdraw support for the prosecution, we have to find out why. This may involve delaying the court hearing to investigate the facts and decide the best course of action.

5.8 We will take the following steps:

- if the victim decides to withdraw support, we will ask the police to take a written statement from the victim to explain the reasons for that withdrawal, to confirm whether the original complaint was true and to find out whether the victim has been put under any pressure to withdraw support; and
- we will ask the police to give their views about the evidence in the case and how they think the victim might react if they are compelled to attend court.

- 5.9** If the victim's statement, after withdrawing the complaint, is not the same as the earlier statement, we expect the police to ask the victim to explain why it has changed.
- 5.10** If the victim confirms that the original complaint is true, we will consider first whether it is possible to continue with a prosecution without his or her evidence (the evidential stage) and then, if it is possible, whether we should continue the case without the support of the victim and against the victim's wishes (the public interest stage).
- 5.11** The prosecutor will want to know the reason why the victim no longer wishes to give evidence. This may be because the victim is experiencing feelings of embarrassment or fears that they may not be believed. It may be because they live in a place in which they feel isolated or particularly vulnerable (and we recognise that feeling isolated or vulnerable may have deterred or delayed the victim from reporting the incident in the first place), where supporting the prosecution may place the victim at further risk of harm. In such cases, the prosecutor must have regard to any special measures or other support available to the victim that may help them to overcome their concerns.
- 5.12** If we suspect that the victim has been pressurised, or frightened into withdrawing the complaint, we will ask the police to investigate further. The investigation may reveal new offences, such as, for example, harassment or witness intimidation, or that bail conditions have been breached. If necessary, we will ask the court to delay any hearing so that a thorough investigation may take place before we decide about the future of the case. If the reason for a victim or witness's withdrawal is based on fear or intimidation, the

prosecutor will consider that evidence and decide whether further charges, for example, of witness intimidation, should be brought.

- 5.13** We will explore all these options fully before we decide whether to proceed with a prosecution. The safety of the victim or any other potentially vulnerable person will be a prime consideration in reaching our decision.

What happens when a decision is taken to continue with a prosecution against a victim's wishes?

- 5.14** Generally, the more serious the offence (for example, because of the level of violence used or the real and continuing threat to the victim or others), the more likely we are to prosecute in the public interest, even if the victim says they do not wish us to do so.
- 5.15** In cases where we have sufficient other evidence, we may decide to proceed without relying on the evidence of the victim at all.
- 5.16** If we decide that the case should continue and that it is necessary to rely on the victim's evidence to prove the case, we have to decide:
- whether we should apply to the court to allow us to use the victim's statement as evidence without the victim having to give evidence in court;
 - whether we can proceed with the prosecution by helping the victim to attend the court by the use of special measures; or
 - whether we should compel the victim to give evidence in person in court.

- 5.17** Background information is crucial in helping a prosecutor to make the correct decision about how to proceed in a case where the victim has withdrawn their support for the prosecution.
- 5.18** The law allows us to use the victim's statement in court without calling the victim to give oral evidence but only in very limited circumstances. It is for the court to decide and it will only allow this if it is in the interests of justice to do so. If the victim is the only witness to the offence, it may be difficult to satisfy the court that justice is being served when the defence cannot cross-examine the principal witness in the case.
- 5.19** The specialist rape prosecutor will only call a victim to give evidence against their wishes if the prosecutor is satisfied, after consultation with the police and any other interested person, that such a course of action is necessary.
- 5.20** We always prefer victims and witnesses to give evidence willingly and will take whatever steps we can to help them overcome their fears and give their best evidence.

Background information

Bad character

- 5.21** There are strict legal rules of evidence which govern whether a suspect's previous convictions or other evidence of bad character can be used in court. We have to bear these rules in mind when we are deciding whether we can proceed with a case.

- 5.22** Even if we cannot use this type of evidence, it may be important background information that will help us to put the offence in context. The victim may, for example, have been subjected to repeated attacks and may be vulnerable to other consequences if the prosecution does not proceed.
- 5.23** Some information might come from sources such as schools, employers, and social services. All this information must be collected by the police and given to the CPS prosecutor.

Victim Personal Statements

- 5.24** Another important source of information for the prosecutor and the court is the Victim Personal Statement. This is a statement made by a victim of crime explaining the effect that the crime has had on them. In the statement, victims can explain their wishes or needs during the case and whether they want help from any of the support agencies. They can say whether or not they support a prosecution and can raise their concerns about issues such as their safety, any intimidation or the defendant's bail. Victims can make more than one Statement which can help explain how the crime has affected them in the longer term. Victim Personal Statements are included in the case papers and are seen by everyone involved in the case, including the defendant and his lawyer. Victim Personal Statements help the prosecutor and the judge to understand the crime, and its effects and consequences. Victims have the right to choose whether to make a Victim Personal Statement and whether they need help to make a statement from a support worker or family member.

5.25 It should be clear in a victim's statement whether or not they have been told about the fact that they may make a Victim Personal Statement. Where it is not clear, the prosecutor will ask the police officer to go back to the victim and explain that they may make a Victim Personal Statement if they wish to do so. A leaflet is available which explains what Victim Personal Statements are and how they can be used. Copies of the leaflet can be found at:

www.homeoffice.gov.uk/documents/victimstate.pdf

5.26 We will take account of any information contained in a Victim Personal Statement and we will tell the court about the effects of the crime on the victim. We can also use these Statements to help to make decisions about cases, for example, when deciding whether or not to ask the court to refuse bail or to impose bail conditions.

6 Bail issues

- 6.1** Once a suspect has been charged with rape, the police will take the decision whether it is appropriate to release the suspect on bail to attend a court hearing within a short period of time. However, because rape is such a serious offence, the decision may be taken to keep the suspect in custody so that he may appear at the next available court for a remand hearing.
- 6.2** At the bail hearing, the magistrates decide whether bail is appropriate after they have heard representations from both the prosecution and the defence. A defendant has a right to bail. The court may only refuse bail if it is satisfied that the defendant would fail to surrender to custody, commit an offence while on bail, or would interfere with witnesses or otherwise obstruct the course of justice. Bail can also be refused if the offence was committed while the defendant was already on bail for another serious offence, or for the defendant's own protection. There is an exception to the right to bail for some serious repeat offenders including those previously convicted of rape. Then the court can only grant bail in exceptional circumstances.
- 6.3** At the hearing, the police will provide sufficient information to prosecutors to enable a decision to be made whether to oppose bail for the defendant.
- 6.4** Where there has been a relationship between the victim and the defendant, the police will provide as much background information as possible. This might include information about the number and ages of any children and the proximity of the addresses of the relations of the defendant

to that of the victim. It will also include details of any civil orders in force and any other relevant information.

- 6.5** The prosecutor will take into account the Victim Personal Statement, if the victim has decided to make one, in making decisions whether or not to oppose bail, and what conditions might be suitable. In the Victim Personal Statement, the victim can choose to describe the effects of the rape and any concerns about the defendant being granted bail. Any decision during the case will take account of the Victim Personal Statement.
- 6.6** To protect the victim or witnesses from the risk of danger, threats or pressure, which might obstruct the course of justice, we may ask that the defendant is kept in custody.
- 6.7** Magistrates are required to give reasons in open court if they grant bail to a defendant. If they do not give reasons, we will ask them to state their reasons. If the prosecutor opposes bail, but the magistrates grant bail, the prosecutor will make a decision whether or not to appeal that decision. If an appeal is made, the defendant will be kept in custody until a judge at the Crown Court hears the appeal.
- 6.8** We will work closely with the police to obtain the views of victims and witnesses about bail conditions and any proposed changes to them. We will work with the police and the courts to make sure that the victim or witness is kept informed, either by the police or by us, of any change to the bail conditions or custody status of the accused person.

7 Helping victims and witnesses to give evidence

Special measures

7.1 Giving evidence in court can be a particularly traumatic experience for victims of rape. In particular, some victims may find it difficult to give evidence in the sight of the defendant. If this is so, we can apply to the court for the victim to give evidence in another way so that he or she can give their best evidence. These alternative ways of giving evidence are known as ‘special measures’ and examples include:

- playing to the court the victim’s or witness’s video recorded interview (previously taken by the police during the course of the investigation). This means that the victim or witness will not have to give ‘live’ evidence about what happened to them, but they will still have to answer questions put to them by the defendant’s lawyer in cross-examination;
- giving evidence from behind a screen in a courtroom to prevent the victim (or other witness) and the defendant seeing each other; and
- giving evidence away from the courtroom through a live television link to prevent the victim or witness having to go into court. The witness will not see the defendant over the TV link but the defendant will usually still see the witness on a TV screen.

- 7.2** Evidence may also be given in private by clearing the public gallery in sexual offence cases or cases involving intimidation.
- 7.3** The prosecutor is responsible for applying to the court for any special measures on behalf of victims and witnesses following discussion with the police. It is crucial that we know which special measures victims and witnesses want. It is also crucial that the advantages and disadvantages of each of the available special measures have been explained to the victim so that they can make an informed choice.
- 7.4** It is for the court to decide whether to grant or refuse applications for special measures in rape cases. A victim of rape is automatically presumed to be eligible for special measures unless the court is informed that he or she does not require this. If the victim or witness is a child, their evidence is video recorded and played in court unless the court considers that it is not in the interests of justice for this to be done, for example, where the video recording contains technical faults, improper questions, or other material prejudicial to a fair trial.
- 7.5** Ideally, early decisions should be taken about special measures to assist victims and witnesses; however, circumstances might change and it is always possible to apply at any stage of the proceedings. If necessary, a meeting can be arranged with the victim or witnesses to discuss what special measures would be appropriate.
- 7.6** In some cases, victims initially state that they do not require special measures but may subsequently realise that they do and are then afraid to say so. We will ensure that victims

and witnesses are made aware that they can change their minds about special measures.

- 7.7** It is important that we have all the available information that could help us to apply for special measures for a witness. Normally, the police or the Witness Care Officer will pass the information to us. Sometimes we may get the information by meeting the witness directly.

Using intermediaries for vulnerable witnesses

- 7.8** The use of an intermediary is another example of the “special measures” available to victims and witnesses. An intermediary is someone who is approved by the court to provide a service which enables witnesses and the court to communicate. Professional intermediaries – usually speech and language therapists or deaf intermediaries who understand deaf culture – work with witnesses to make sure they are understood and can understand the questions put to them. Intermediaries can work with witnesses and assist in the initial taking of their evidence and when they are in court so that they achieve their best evidence at the trial. Intermediaries may come from a range of backgrounds including social work, speech and language therapy or they may simply have a unique knowledge of the witness.

Special measures meetings between the CPS and rape victims and witnesses

- 7.9** When we have decided whether we are going to make an application to the court for special measures, we will ask the police to find out if the witness would like to meet the prosecutor.

7.10 The purpose of such a meeting is to build trust and confidence and to enable us to reassure the witness that their needs will be taken into account. We will also offer such a meeting if we have decided not to apply for special measures so that we can explain that decision. The witness does not have to attend that meeting unaccompanied. They may bring a partner, a relative, a friend or other supporter. It may also be appropriate for an interpreter or other similar person, to attend the meeting. Wherever possible, the CPS prosecutor will ensure that the advocate who will be conducting the trial attends the meeting between the CPS prosecutor and the witness.

7.11 Further information about meetings with the CPS for vulnerable or intimidated witnesses is contained in the leaflet: “Witnesses, Your Meeting with the CPS Prosecutor”. This leaflet from our website:

www.cps.gov.uk/publications/prosecution/witnesseng.html

Pre-trial witness interviews

7.12 The prosecutor is able to meet the victim or other witnesses at an early stage in the criminal process where they consider this to be appropriate at what is called a pre-trial interview. These meetings are different from the special measures meetings described above. The purpose of pre-trial witness interviews is to enable the prosecutor to reach a better informed decision about any aspect of the case. Our decisions will be objective but made within a framework that promotes support for victims by keeping them informed.

7.13 The witness may be accompanied by a supporter of their choice provided that the supporter does not have any actual or potential involvement in the case or any personal knowledge of the matters likely to be discussed. The presence of a police officer will not normally be appropriate but exceptionally the prosecutor may request the presence of a police officer if they deem this necessary.

Anonymity

7.14 Many victims and witnesses are concerned about their safety and fear that personal details or information about them might become public knowledge and place them at risk of further attack or harassment.

7.15 Generally, it is a fundamental principle of our criminal justice system that those accused of crimes are entitled to know the name of their accuser. Most criminal proceedings are held in public, and information about the identity of the witness will become a matter of public record.

7.16 However, victims of rape and serious sexual offences are entitled as a matter of law to anonymity in the media, even if their name has been given in court.

7.17 Furthermore, addresses of witnesses are not disclosed to the defendant and, unless already known (for example, where an offence is committed by a neighbour) or if required for evidential purposes, will not be mentioned in the court proceedings.

7.18 Only in certain exceptional circumstances may a court allow witnesses not to give their name in open court.

7.19 In other cases, the court has the power to forbid the media from reporting a witness's personal details if it considers that the quality of the witness's evidence or co-operation in the proceedings is likely to be reduced because the witness is afraid of being identified as a witness in the case. Media representatives have the right to object, in the interests of open reporting, to a court order that prohibits publication of this information.

Support for victims and witnesses at court

7.20 The CPS is fully committed to taking all practicable steps to help victims and witnesses through the often difficult experience of becoming involved in the criminal justice system.

7.21 Initiatives such as special measures, meetings between the CPS and witnesses, and the creation of dedicated Witness Care Units staffed by CPS and police personnel are all designed to increase the confidence of victims within the criminal justice system. Support is also available at a very early stage from the police and other support agencies, which can continue throughout the life of the prosecution.

7.22 We make sure that appropriate arrangements are made to have an interpreter available for the court proceedings when one is needed.

7.23 When a witness attends court, the CPS prosecutor presenting the case or the CPS caseworker will introduce themselves and answer any general queries that a witness may have. However, they are not permitted to discuss the detail of the case with a witness.

- 7.24** Sometimes, the prosecuting lawyer may be a barrister (also known as counsel) or a solicitor, who is not a member of the CPS but who has been employed by us to present the case in court. We expect every barrister or solicitor we employ to be familiar with our policies and procedures and to act in accordance with them. We are committed to instructing advocates who have the right skills to prosecute rape cases, including their ability to deal sensitively with victims and witnesses. We will instruct them to speak to victims and witnesses before they give evidence and try to put nervous witnesses at ease.
- 7.25** We will pay reasonable expenses to a witness for attending court and for their childcare costs.
- 7.26** If witnesses are kept waiting, we will make sure they are told the reasons for the delay and the estimated time when they will be required to give evidence.
- 7.27** Wherever possible, we will try to make sure that separate waiting facilities are made available for prosecution witnesses so that they do not have to mix with the defendant or his or her friends or family, and vice versa.

The Witness Service

- 7.28** Magistrates' courts and Crown Court centres have a Witness Service, which is a service provided by Victim Support. More information on this service can be found from the local police or local Victim Support Group (telephone number 0845 30 30 900). Some courts also have a specialist Child Witness Service.

7.29 Members of the Witness Service may be able to arrange pre-court familiarisation visits if needed and are able to explain what might happen at court. They are not, however, allowed to discuss the details of the case. When a witness is concerned and worried about going to court and giving evidence, a member of the Witness Service may be permitted to accompany the witness into court, to give support. If the witness has had support from other agencies a member of that support service (for example, Women's Aid or an IDVA) may also be permitted to accompany the witness into court.

Independent Sexual Violence Advisors

7.30 A network of Independent Sexual Violence Advisors (ISVAs) is being set up across England and Wales as part of a Government initiative to provide targeted professional support to victims of sexual violent crime. These professionally trained specialists work alongside victims from the point of crisis, such as initial contact with emergency services, throughout the legal process and beyond. Some advisors are based in Sexual Assault Referral Centres (SARCs) or specialist sexual violence voluntary organisations. They provide the link with essential services such as victim and witness organisations, counselling and health, to ensure that the safety of the victim is co-ordinated across all agencies.

7.31 We will work with ISVAs or other local groups providing specialist support to victims of rape to develop good practice guidelines.

Witness Care Units

- 7.32** No Witness No Justice is a joint programme between the police and the CPS and is aimed at responding to the individual needs of victims and witnesses through dedicated Witness Care Units.
- 7.33** We have Witness Care Units in all 42 CPS Areas and these are run jointly by the CPS and the police. Witness Care Officers provide a single point of contact and tailored support for each witness to ensure that they are able to give their best evidence. This tailored support is based on a needs assessment which includes consideration of what specialist support a witness may need.
- 7.34** Witness Care Officers will manage the care of the victim from the first hearing in the magistrates' court right up until the final hearing and will liaise with the Witness Service to arrange pre-trial visits. In addition, they will ensure that the victim is provided with support following the finalisation of the case. Where someone is convicted of a sexual offence and is given a sentence of imprisonment or detention of 12 months or more, the Witness Care Unit will speak with the victim about referring them to the National Probation Service Victim Contact Scheme and provide them with a leaflet regarding the scheme. The scheme enables victims to make representations about what licence conditions or supervision requirements the offender should be subject to on their release. Thereafter, those operating the scheme will ensure that the victim is informed of the conditions imposed.

The Prosecutors' Pledge

7.35 This is a ten point Pledge that describes the level of service victims can expect to receive from prosecutors. The Prosecutors' Pledge ensures that the specific needs of victims and witnesses are addressed; that they are assisted at court to refresh their memory from their written statement or video interview; and that they are protected from unwarranted or irrelevant attacks on their character.

7.36 The Prosecutors' Pledge leaflet is available from the CPS Communications Branch or from our website:

www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

Other Decisions

7.37 Often, decisions about the progress of a case may be taken at court. Victims will be informed about those decisions when they are at court, either by us or by the prosecuting advocate we have instructed. If they are not at court, they will be informed as soon as possible afterwards either by us or by the police.

7.38 In most trials, the defence lawyer will seek to challenge the victim's account of the allegations. This is normal and part of their job. The defence has a duty to challenge the victim about his or her account. However, there are rules about inappropriate cross-examination and particularly questioning about a victim's previous sexual behaviour. This type of questioning can only take place with the permission of the

judge. We will ensure that the prosecuting lawyer is active in making appropriate objections to such questioning.

7.39 We will also object to allegations about the character or demeanour of the victim which are irrelevant to the issues in the case.

Pre-Trial Therapy

7.40 Rape victims may be undertaking or considering undertaking pre-trial therapy to help them recover from their experiences.

7.41 The best interests of the victim are paramount and men or women who have been raped should not feel reluctant to seek professional assistance.

7.42 Whether a rape victim should receive therapy before a criminal trial is not a decision for the police or CPS. It is for the person or their carers, in conjunction with the professional agencies providing support, to decide whether or not to undertake therapy.

7.43 It is important, however, that the police and CPS are informed if therapy is either proposed, or being undertaken.

7.44 Full Guidance can be found in: *Provision of Therapy for Child Witnesses Prior to a Criminal Trial (Practice Guidance)* and: *Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial (Practice Guidance)*. Both these documents can be found at:
www.cps.gov.uk and
www.homeoffice.gov.uk

8 Accepting pleas

- 8.1** In some cases, we may consider accepting a guilty plea from the defendant to a charge other than rape. This might arise, for example, if a defendant pleads guilty to some but not all of the charges, or because the victim does not wish to proceed, or because new evidence comes to light.

- 8.2** When considering whether to accept a plea, we will, in accordance with our obligations under the: 'Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise 2005 (revised 2007)', discuss the situation with the victim or the victim's family whenever possible, so that we can explain the position and obtain their views in order to help us to make the right decision. We will keep them informed and explain our decisions once they are made at court.

- 8.3** We will always take proper account of the victim's interests, and we will not accept a guilty plea which is put forward upon a misleading or untrue set of facts.

9 Sentencing

- 9.1** If the defendant is convicted of rape, the judge decides the sentence. There are guidelines for judges when sentencing defendants convicted of rape. The prosecution does not have any power to ask for a particular sentence.
- 9.2** The prosecuting advocate has a duty actively to assist the judge with the law and guidelines on sentencing including any other orders that may be available to the court.
- 9.3** The guidelines state that relationship and acquaintance rapes should be treated by the courts as seriously as stranger rape. Male rapes are as serious as those between a man and a woman. All types of rape are equally serious.
- 9.4** We will make sure that the court has all the information it needs to sentence appropriately. If there is a Victim Personal Statement, we will advise the court of it so that it can help the court to understand the effect of the crime upon the victim. In this way we will ensure that the court is able to come to an informed decision regarding sentence. (For details of Victim Personal Statements, see paragraph 5.24.)
- 9.5** Before being sentenced, a defendant is entitled to make a plea in mitigation. We will challenge defence mitigation which is misleading, untrue or which unfairly attacks the victim's character.
- 9.6** If the defendant pleads guilty to an offence but disagrees with the prosecution version of events, the court has to decide on which version to sentence. In order to do this, the court may hold a 'Newton hearing', The court will only hold

such a hearing if it feels that there would be a substantial difference in sentence if the defendant were to be sentenced on the prosecution's version of events. If the court considers that there would be no substantial difference to sentence, the defendant is sentenced on his version of events.

- 9.7** If, however, the court feels that it would make a substantial difference to sentence, the court can hear evidence from both parties and can make a decision based on representations from both the defence and the prosecution. At the end of the hearing, the judge must announce whether the prosecution has proved its version of events beyond reasonable doubt.
- 9.8** If the judge passes a sentence which the prosecution considers to be unduly lenient because it does not reflect the seriousness of the offence, the CPS will ask the Attorney General to review the sentence.
- 9.9** If the prosecution does not consider the sentence unduly lenient but the victim disagrees, the victim can ask the Attorney General to consider it, but this has to be done within 28 days of the sentencing decision. If the CPS decides not to submit the case for the consideration of the Attorney General, it must notify the victim without delay so that the victim's option of complaining directly to the Attorney General is preserved, and so that the Attorney General has sufficient time to consider the case.
- 9.10** If the Attorney General thinks that the sentence is unduly lenient, the Attorney General can refer it to the Court of Appeal.

- 9.11** The application to the Court of Appeal must be made within 28 days of the sentence. The Court of Appeal decides whether or not the sentence is unduly lenient and, if it is, whether to increase the sentence.
- 9.12** We will, through the Witness Care Unit (or other single point of contact, for example, a police officer), keep victims informed of any appeals by the defence against conviction and sentence (see section 6 of the Code of Practice for Victims of Crime). The Witness Care Unit or the police will also inform victims if a defendant is granted bail following a successful application for leave to appeal, or where an appeal is granted.

10 Keeping victims informed

- 10.1** We understand how important it is for victims to be kept informed about the progress of a case. Witness Care Units are responsible for letting victims and witnesses know about dates of court hearings or other important case developments.
- 10.2** We are aware that some victims may prefer to nominate a friend, family member, ISVA or other member of the voluntary services to act as their point of contact, to receive information about their case and we are happy to accommodate this. Alternatively, they may rely on a specially trained police officer.

The Code of Practice for Victims of Crime

- 10.3** This Code sets out the obligations of the CPS towards victims. One of these obligations is to tell a victim if we decide that there is insufficient evidence to bring a prosecution (following a full evidential report from the police), or if we decide to drop a case, or substantially to alter the charges. In such circumstances, we will explain to a victim why we have made these decisions. Normally we will do this by writing a letter directly to the victim.

- 10.4** In a rape case, the prosecutor who made the decision to drop or substantially alter the charge will notify the victim within one working day and will also offer to meet the victim to explain personally the reasons for the decision. Where a prosecutor has made a decision not to charge during a face-to-face consultation with a police officer (that is, without a full, written evidential report), the police officer must notify the victim.
- 10.5** When a case is to be dropped or a charge reduced and the police and CPS decide it is appropriate to do so, the police will, in accordance with the CPS/ACPO Rape Protocol, personally deliver an explanatory letter to the victim.
- 10.6** Copies of the Code of Practice for Victims of Crime are available from our website:

www.cps.gov.uk/victims_witnesses/victims_code.pdf

11 Community Engagement

- 11.1** We recognise the importance of working with the community to build positive relationships. The publication of this policy statement is an important step towards achieving this goal. We have consulted widely in its preparation and will keep it under review after publication. We will put the policy into practice and seek thereby to build the trust of local communities in the work we do and the decisions we make.
- 11.2** We are already working locally to develop closer links with representative groups and individuals. This helps us to explain the policy statement and how we expect it to operate in the criminal justice system. We will answer questions about the CPS and the criminal justice system frankly and without raising false expectations about what can be offered.

12 Complaints

- 12.1** Anyone who has a complaint about the way they have been treated by the CPS, or who feels that the criminal justice system has let them down and does not know who may be responsible, can write to the Chief Crown Prosecutor for the CPS Area where they live. The CPS has a complaints policy, and a leaflet describing the procedure to follow can be obtained from the local CPS office.
- 12.2** Breaches of The Code of Practice for Victims of Crime should be referred initially to the Crown Prosecution Service to be dealt with under our complaints procedures. If the complainant remains dissatisfied, the complaint can be investigated and reported on by the Parliamentary Ombudsman.
- 12.3** Contact points for the CPS are printed on the back cover of this document.

13 Conclusion

- 13.1** We are committed to playing our part in improving the way that rape cases are dealt with in the criminal justice system. We want victims to have confidence in the way in which we review and progress cases.
- 13.2** We hope that this document will help victims of rape and their families to understand the work of the CPS, how we make our decisions and the different stages of the prosecution process.
- 13.3** We will continue to work with our colleagues in the criminal justice system and the third sector at national and local levels to help us develop best practice.
- 13.4** We will review this policy statement regularly so that it reflects current law and thinking. We welcome any comments and observations that help us to do this. Comments and suggestions can be made to the:

Crown Prosecution Service
Policy Directorate
50 Ludgate Hill
London EC4M 7EX
Email: hqpolicy@cps.gsi.gov.uk.

GLOSSARY

Adjournment

The postponement of the hearing of a case until a future date.

Appeal

A request for a higher court to change a decision made by a lower court.

Bail

The release of a person held in custody while awaiting trial or appealing against a criminal conviction.

Charge

When a suspect is formally accused of committing a crime.

Civil Proceedings

These are non criminal proceedings that usually take place in the County or High Court Applications for non-molestation orders, divorce proceedings, child contact and residence are all examples of civil proceedings

Code for Crown Prosecutors

A document that sets out how the Crown Prosecution Service (CPS) makes decisions about cases. It is widely available to the public from any of our offices, and it is on the internet at: www.cps.gov.uk/victims_witnesses/code.html.

Conviction

A decision by magistrates or a jury that the defendant is guilty.

Cross-examination

Challenging the evidence given by a witness in court.

Crown Court

A court where criminal cases are dealt with by a judge and a jury of twelve members of the public. The cases heard in the Crown Court are those likely to attract higher sentences (for example, rape, grievous bodily harm and murder). The Crown Court also deals with appeals for cases dealt with by the magistrates' and youth courts.

Defendant

A person charged with a criminal offence.

Evidence

The information given to the court to help make it to make a decision about whether or not a defendant is guilty. 'Evidence-in-chief' is the evidence presented to the court during the examination-in-chief.

Examination-in-chief

The questioning of the witness by the party who called him or her. Prosecution witnesses will be questioned first by the prosecution, before being cross-examined by the defence.

Intermediary

An intermediary is a person specifically trained to help children and adults who are considered vulnerable to be able to communicate at the police station and at court.

Independent Sexual Violence Adviser (ISVA)

An independent specialist who works alongside victims throughout the legal process, and beyond. They link in with essential services such as victim and witness support organisations, counselling, health and housing, whilst making sure that agencies to coordinate to keep the victim safe.

Magistrates' court

A court where criminal cases are dealt with by magistrates or district judges. Magistrates' courts tend to deal with cases that attract a lower sentence, such as common assault and criminal damage.

Newton hearing

The court may decide to hold a 'Newton hearing' where the defendant pleads guilty, but the defence and prosecution dispute the facts upon which the court is going to sentence the defendant. The purpose of the hearing is to establish the factual basis for the sentence to be passed.

Plea

When a defendant says he or she is guilty or not guilty.

Prosecutor

The person who presents the case against one or more defendants. Prosecutors present cases on behalf of the Crown (in other words, the state) and do not act on behalf of victims.

Re-examination

This involved the questioning of a witness in court by the person who originally called him or her to give evidence. It follows cross-examination.

Special measures

The help for witnesses that a court can offer so that they can give their best evidence in court. They include: live video links, video-recorded statements, screens around the witness box, and assistance with communication.

Statutory charging

The system through which the CPS has responsibility for deciding (in all but the most minor cases) whether a suspect should be charged, and, if so, what the charge(s) should be.

Trial

This occurs after a defendant has entered a not guilty plea or refuses to enter a plea. The magistrates or jury hear what happened from the prosecution and defence, so that they can make up their minds about whether or not the defendant is guilty.

Victim

A person who has had a crime committed against them.

Witness

A person who can give relevant evidence in a criminal case. This will usually include the victim of a crime.

Witness Care Unit

Run by the police and CPS, Witness Care Units provide help and information for victims and prosecution witnesses.

Witness summons

A court order to an individual to appear in court at a specified place and time.

Annex A

Women's Aid

Women's Aid is a key national charity working in England to end domestic violence of women and children.

PO Box 391

Bristol BS99 7WS

Tel: 0117 944 4411

Fax: 0117 924 1703

National Domestic Violence Helpline: 0808 2000 247

Email: info@womensaid.org.uk; helpline@womensaid.org.uk

Victim Support National Centre

Victim Support is an independent national charity that provides free and confidential support and information to help victims deal with their experiences.

Hallam House

56-60 Hallam Street

London W1W 6JL

Tel: 020 7268 0200

Web: www.victimsupport.org.uk

Victim Supportline

Victim Support line: 0845 3030 900

Email: supportline@victimsupport.org.uk

Refuge

Refuge is the national charity for women and children who experience domestic violence.

4th Floor

International House

1 St Katherine's Way

London E1W 1UN

Tel: 020 7395 7700

National Domestic Violence Helpline: 0808 2000 247

Email: info@refuge.org.uk

Web: www.refuge.org.uk

ChildLine

ChildLine is the free 24-hour helpline for children and young people in the UK.

Tel: 0800 1111

NSPCC National Child Protection Helpline

A free 24-hour helpline that provides advice, help or information on issues relating to a child's welfare.

Tel: 0808 800 5000

Email: help@nspcc.org.uk

24-hour Domestic Violence Helpline

The confidential 24-hour national domestic violence free phone helpline is run in partnership by Refuge and Women's Aid.

The 24-hour free phone number is:

Tel: 0808 2000 247

Survivors UK Helpline

Supports and provides resources for men who have experienced any form of sexual violence.

Tel: 0845 122 1201 (helpline open Tuesday and Thursday 7pm – 10pm)

Web: www.survivorsuk.co.uk

Women's Rape and Sexual Abuse Centre Cornwall

Free confidential support for women and teenage girls.

Helpline: 01208 77099

Helpline hours: Monday to Thursday, 10am – 1pm
Monday Evenings, 7.30pm – 10pm. Plus 24-hour answer phone

Southall Black Sisters

A not-for-profit organisation established to meet the needs of black (Asian and Afro-Caribbean) women.

21 Avenue Road

Southall

Middlesex UB1 3BL

Tel: 020 8571 9595 (closed Wednesday)

Email: sbs@leonet.co.uk

Web: www.southallblacksisters.org.uk



This is a public document.

It is available on the CPS website: www.cps.gov.uk

Further copies of this document may be obtained from:

CPS Communications Branch

50 Ludgate Hill

London EC4M 7EX

Telephone: 020 7796 8442

Email: publicity.branch@cps.gsi.gov.uk

CPS Policy Directorate

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