



NPIA
National Policing
Improvement Agency

PRACTICE
IMPROVEMENT

Guidance on

INVESTIGATING AND PROSECUTING RAPE

Abridged Edition

2010

Produced on behalf of the Association of Chief Police Officers and the
Crown Prosecution Service by the National Policing Improvement Agency

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Abridged Edition

In response to wide public interest, the ACPO Rape Working Group have decided to authorise the publication of a public facing version of the ***ACPO (2009) Guidance on Investigating and Prosecuting Rape***.

This abridged edition replicates the original document; however, the following information has been removed to protect sensitive tactical options that, if disclosed, may assist an offender.

The material listed below and cross-references to it have been removed.

1 Definitions, Reporting and Identifying Risk

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Partial text within 1.13.2

2 Investigative Development and Case Building

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Preface

This guidance replaces **ACPO (2005) Guidance on Investigating Serious Sexual Offences** and is an additional resource to **CPS (2008) Rape Manual**. It has been developed in partnership with the police and Crown Prosecution Service (CPS) to enhance the prosecution team approach, which is being adopted throughout England and Wales, to improve outcomes for victims of rape. This guidance is underpinned by joint performance measures and an enthusiasm to work more closely together to achieve better criminal justice outcomes.

The priorities of the Police Service and the CPS in responding to rape offences are to:

- Improve the standard of investigation and prosecution of rape offences;
- Improve the quality of treatment for victims who make complaints of rape;
- Take effective action against offenders so that they can be held accountable through the criminal justice system;
- Increase confidence in the criminal justice system and encourage more victims to report rape to the police;
- Increase the proportion of cases which result in a charge, court case and conviction;
- Use existing national systems to record information and intelligence that will assist in the identification of linked offences;
- Adopt a proactive multi-agency approach in the provision of services to victims.

The legal obligations underpinning the above priorities include the duties within the Human Rights Act 1998, which incorporates the European Convention on Human Rights 1950 (ECHR) to protect individuals, without discrimination, from inhuman and degrading treatment.

The Human Rights Act 1998 and other legislation place a clear responsibility on public authorities to fulfil these obligations without discriminating on a range of grounds including race, disability, age, religion or belief, sexual orientation and gender. All victims of rape should receive an appropriate quality of service according to their individual needs. All reports should be properly investigated and offenders held accountable through the criminal justice system, without discrimination.

Chief officers and chief crown prosecutors should establish and implement policies to ensure that investigative and prosecution responses to rape fully support and achieve these priorities. Police and prosecution staff should maintain and enhance public confidence by delivering these priorities to a high professional standard.

Partnership working between criminal justice agencies and other statutory and voluntary sector specialist sexual violence services is essential in providing improved victim care throughout the investigation and prosecution processes, and to fulfil the above priorities and obligations. Victims should experience a seamless service between police, CPS, health services and specialist sexual violence services.

This guidance provides the Police Service and the CPS with clear information about the investigation and prosecution of rape offences committed against adults. It is structured to follow the pattern of reporting, responding to, investigating and prosecuting rape as well as monitoring outcomes of cases and working together as a prosecution team. It is supplemented by **ACPO (2009) Briefing Note on Initial Contact in Rape Cases** and **ACPO (2009) Briefing Note on First Response to Rape**.

For chief police officers and chief crown prosecutors the following strategic issues emerge from the guidance:

- Implementing a comprehensive policy that incorporates **ACPO/CPS (2009) Guidance on Investigating and Prosecuting Rape** and **CPS (2008) Rape Manual**;
- Developing and sustaining prosecution team partnerships which improve investigations and prosecutions, thereby obtaining better outcomes for victims of rape;
- Developing information systems which support the implementation of this guidance;
- Developing and sustaining partnerships which provide improved multi-agency and specialist sexual violence services;
- Focusing on police and CPS responsibility for the investigation and prosecution of rape and the fulfilment of that role in the criminal justice system to ensure that offenders are held to account;
- Ensuring that the training needs of all staff are met.

1

Definitions, Reporting and Identifying Risk

Although the information in this guidance relates to the offence of rape, many of the principles of the investigation and prosecution also apply to other types of sexual offence. This section sets out the elements of rape and assault by penetration, and defines other commonly used terms for the purposes of this guidance. There is also information on receiving reports of rape and identifying risks associated with rape offences and offenders. It should be read in conjunction with *ACPO (2009) Briefing Note on First Response to Rape* and *ACPO (2009) Briefing Note on Initial Contact in Rape Cases*. This guidance provides advice on offences of adult rape and assault by penetration, some of which is also relevant to child victims. For specific advice relating to sexual offences committed against children, see *ACPO (forthcoming) Guidance on Investigating Child Abuse and Safeguarding Children, Second Edition*.

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1.1 Legal Definitions

This guidance focuses on the offence of rape (section 1 Sexual Offences Act 2003). It also includes investigations and prosecutions of assault by penetration (section 2 of the Sexual Offences Act 2003). The Sexual Offences Act 2003 came into force on 1 May 2004. It repealed almost all of the existing statute law in relation to sexual offences. The purpose of the Act was to strengthen and modernise the law on sexual offences, while improving preventive measures and the protection of individuals from sexual offenders. For offences committed before 1 May 2004, the previous legislation (principally the Sexual Offences Act 1956) still applies; see **1.3.1 Transitional Period Between the 2003 Act and Previous Legislation – Assault by Penetration**.

1.2 Rape (Section 1) Sexual Offences Act 2003

The elements of an offence of rape are:

- (1) (A) intentionally penetrates the vagina, anus or mouth of another person (B) with his penis;
- (2) (B) does not consent to the penetration;
- (3) (A) does not reasonably believe that (B) consents.

Rape is still a crime of basic intent, and self-induced intoxication is no defence. It is indictable only and carries a maximum penalty of life imprisonment. See **3.4 Consent, Capacity and Freedom to Consent**.

1.2.1. Transitional Period Between the Sexual Offences Act 2003 and Previous Legislation – Rape

When reviewing a case in which a complainant is unsure as to the date of the alleged offence, and where it may have happened either before or after 1 May 2004, prosecutors must be aware of the principle in *R v Bellman* [1989] AC 836. In this case the House of Lords considered whether mutually exclusive counts could appear on the same indictment, for example, one count of rape contrary to the Sexual Offences Act 1956 (the 1956 Act) and for the same conduct, one count of rape contrary to the 2003 Act. It was held that where alternative inconsistent allegations are included in the indictment, and the evidence establishes a prima facie case on both counts, the matter should be left to the jury to determine which, if either count has been proved.

Where it is clear that an individual has committed crime A or crime B but there is no prima facie evidence to say which crime has been committed, then neither crime can be left to the jury to decide. If there is uncertainty as to whether the alleged offence occurred before or after the commencement date but there is prima facie evidence of either scenario, then there should be a charge under the old legislation and in the alternative, a charge under the new legislation.

As far as rape is concerned, if penetration of the anus of another person with the defendant's penis and without the victim's consent was committed before 1 May 2004, prosecutors would need to charge under section 1(1) of the 1956 Act, as amended by section 142 of the Criminal Justice and Public Order Act 1994, which came into force on 3 November 1994. With regard to penetration of a woman's mouth, prosecutors would need to charge under section 14(1) of the Sexual Offences Act 1956 (Indecent Assault against a Woman). With regard to penetration of a man's mouth, prosecutors would need to charge under section 15(1) of the Sexual Offences Act 1956 (Indecent Assault against a Man).

In circumstances in which it is not possible to prove the date of the offence, and the offence may straddle the two legislative regimes, then section 55(3) Violent Crime Reduction Act 2006 applies, it states that:

For the purpose of determining the guilt of the defendant it shall be conclusively presumed that the time when the conduct took place was:

- a) if the maximum penalty for the pre-commencement offence is less than the maximum penalty for the 2003 Act offence, a time before the coming into force of the repeal of the enactment providing for the pre-commencement offence; and
- b) in any other case, a time after the coming into force of the enactment providing for the 2003 Act offence.

The maximum penalty for rape is the same under both the 1956 Act and the 2003 Act (life imprisonment). Therefore, in cases where there is uncertainty as to whether rape was committed before or after 1 May 2004, prosecutors should charge under section 1(1) of the 2003 Act in cases of vaginal and anal penetrations. In cases of oral penetration, prosecutors should charge under section 14(1) of the Sexual Offences Act 1956.

1.2.2. Code for Crown Prosecutors – Considerations for Rape Offences

A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Rape is so serious an offence that a prosecution is almost certainly required in the public interest, see **CPS (2010) The Code for Crown Prosecutors** at http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

1.3 Assault by Penetration (Section 2) Sexual Offences Act 2003

The previous offence of indecent assault under the Sexual Offences Act 1956 covered a wide range of offending behaviour. The 2003 Act breaks this down into two clearly defined offences of assault by penetration and the lesser offence of sexual assault (which is not covered by this guidance).

The elements of assault by penetration are:

A person (A) intentionally penetrates the vagina or anus of another person (B) with a part of their body or anything else

- The penetration is sexual;
- (B) does not consent to the penetration; and
- (A) does not reasonably believe that (B) consents.

The meaning of sexual, consent, reasonable belief and the evidential and conclusive presumptions all apply to this offence, see 3.4 Consent, Capacity and Freedom to Consent.

- There has to be penetration of the vagina or anus but not the mouth. Penetration is by any part of A's body (eg, finger, tongue, toe) or by anything else (eg, bottle).
- The offence can be committed by either gender and should be charged where there is insufficient evidence to charge rape, for example, if the victim is unsure if penetration was by a penis or something else.
- Penalty - the offence is indictable only with maximum penalty of life imprisonment.

1.3.1 Transitional Period Between the 2003 Act and Previous Legislation – Assault by Penetration

If the offence was committed against a woman before 1 May 2004, prosecutors need to charge under section 14(1) of the Sexual Offences Act 1956 (Indecent Assault against a Woman). If the assault was committed against a man, section 15(1) (Indecent Assault against a Man) would apply.

The above would apply in cases where there is uncertainty as to whether the offence was committed before or after 1 May 2004.

1.3.2 Code for Crown Prosecutors – Considerations for Assault by Penetration

This offence is in essence similar to rape and a prosecution is almost certainly required in the public interest, see ***CPS (2010) The Code for Crown Prosecutors*** at http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

For further information on principal offences and comparison with previous legislation, see http://www.cps.gov.uk/legal/p_to_r/rape_manual/rape_manual/#a02

1.4 Other Serious Sexual Offences

Police officers and prosecutors might also use the investigative and prosecution procedures outlined in this guidance in cases that fall outside the above offences of rape or assault by penetration. Some sexual offences may require similar investigative and prosecution procedures to those adopted for rape cases because of the circumstances of the offence, such as a sexual assault on an old or vulnerable person, racially-motivated offences, or where it is suspected that the offence is part of a series of offences committed by the same offender or offenders.

This guidance covers offences committed against adults. Information on investigating child abuse can be found in ***ACPO (forthcoming) Guidance on Investigating Child Abuse and Safeguarding Children, Second Edition***.

1.5 Commonly Used Terms

Several terms have been used in this guidance to describe particular types of rape offending. These categorisations have been used to assist officers and prosecutors in using this guidance during an investigation. Officers and prosecutors should remain open-minded throughout an investigation and beware of labelling an offence before all evidence has been gathered. The terms listed below do not have any legal status and different terms may be used by the various statutory and voluntary agencies.

For the purposes of this guidance the following terms (listed in alphabetical order) have been adopted:

Acquaintance Rapes - are offences where the victim is able to identify the suspect as someone known to them. Examples include cases where the suspect is a neighbour, friend, social acquaintance or person known through 'dating'.

Domestic or Relationship Rapes - are offences committed by people who are, or have been, intimate partners or family members of the victim. Family members include parents, siblings and grandparents, whether directly related, in-laws or step family. This term includes all

offences that fall within the definition of domestic violence described in **ACPO (2008) Guidance on Investigating Domestic Abuse**.

Drug-Assisted Rapes - are offences where alcohol and/or drugs are intentionally administered to the victim before committing a rape, or knowing or believing that a person has ingested sufficient quantities of alcohol or a specific type of drug that will impair their ability to consent and not reasonably believing that the person consented to a sexual act, or offending against an incapacitated victim. The most commonly known form of drug-assisted rape is facilitated by alcohol. Associated offences include administering a substance with intent (section 61 of the Sexual Offences Act 2003).

Multiple Offender Rapes - are offences which involve or are suspected to involve more than one offender either in the actual offence or in the commissioning of that offence.

Stranger Rapes - are offences in which the victim has no previous knowledge of the perpetrator and has not knowingly met them before the offence. They are, therefore, unable to name them or to provide information about their identity. It also includes cases in which there were brief or single encounters within a short time period where the victim may be able to identify the offender but would not describe them as an acquaintance.

These terms are not mutually exclusive and some offences may fall within more than one category. For example, where a victim has been dating a suspect for a short period of time and the offence occurred while the victim was intoxicated, an investigator may need to investigate the offence as both an acquaintance offence and a drug-assisted offence. Where a suspect offends against a victim they have only recently met, such as in a pub, this may need to be investigated as an acquaintance offence or a stranger offence. In some cases of stranger offences the offender intentionally establishes a link with a victim, to find out information about them before committing the offence. The offender can then portray a picture to others that will assist them in later claiming that the victim consented to sex. On the other hand, an offence which appears to have been committed by a stranger may, after investigation, be identified as a domestic or acquaintance rape.

1.6 Reporting

1.6.1 Reports Made by the Victim

First-hand reporting by a victim is the most common way in which rape cases come to the attention of the police. The report is usually received via the telephone, by the victim visiting the police station or through direct contact with police officers. Police forces may experience peaks in reporting both on a weekly basis and a seasonal basis. This should be

developed as part of a force specific problem profile, see

1.8.1 Developing Problem Profiles on Rape.

Victims making a report of rape might not always identify it as such at the time and may, therefore, delay before making the report. People making reports can appear confused about the circumstances of the offence (particularly if the victim is distressed or may feel uncomfortable about disclosing details of the offence or context of the offence), see **2.4.1 Recognising Post-Traumatic Stress Disorder**. Some victims might report an offence not apparently linked to a rape offence, for example, a domestic assault or theft of personal property. Domestic abuse risk identification processes also request information about any related sexual abuse. Any information from this process should be retained as intelligence and an investigating officer (IO) should make an assessment about carrying out an investigation into the disclosed sexual offences. Specialist support should be offered to the victim and a specially trained officer (STO) should be allocated to the domestic abuse case.

Officers and police staff receiving reports of rape from victims should consider the difficulties that victims are likely to face when describing their experience, for example, the intimate nature of such an offence, feelings of shame and a fear that they will not be believed or may be blamed for the offence. This presents difficulties for staff receiving reports as the need to obtain information about the nature of the offence to preserve forensic evidence may conflict with the ability and willingness of the victim to communicate specific information.

The initial response to a report of rape is a fundamental part of the investigation. The preservation of physical evidence is a priority and the victim should be asked if they have told anybody else about the offence in order to record and identify evidence of early complaint. See **ACPO (2009) Briefing Note on First Response to Rape**.

Detailed questioning of a victim of rape is not appropriate during the report-taking or first response stages. Interviews of vulnerable victims and witnesses should be carried out using the principles outlined in **Office for Criminal Justice Reform (2007) Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures**.

The response that a victim receives from officers and police staff will also influence the process of recovery from the aftermath of the offence. Those taking initial reports of rape from victims should remember that this requires the victim to provide intimate details of a traumatic experience. For further information see **ACPO (2009) Briefing Note on Initial Contact in Rape Cases** and **ACPO (2009) Briefing Note on First Response to Rape**.

Report takers should listen attentively and show concern for the victim while taking the report. Establishing trust at this stage of the investigation is essential to encourage the victim to provide full details of the offence and the surrounding circumstances of the offence at the later stage of interview. For further information about victims' responses to rape, see **2.4.1 Recognising Post-Traumatic Stress Disorder**.

All reports of rape should be recorded in compliance with **Home Office (2008) National Crime Recording Standard**. For further details of National Crime Recording Standard, see <http://www.homeoffice.gov.uk/rds/countrules.html>

1.6.2. Delayed Reporting

Delayed reporting is not uncommon in rape cases. There is more likely to be a delay in reporting acquaintance and domestic or relationship offences than stranger offences. There are various reasons for such delays. These include a victim's lack of confidence in the criminal justice system, preferring to tell someone they know and trust, and fears for their personal safety and that of their children in domestic and relationship rapes.

In *R v D (JA)* [2008] EWCA Crim 2557 it was held that judges are entitled to comment that a delay in a rape complaint may be because 'the trauma of rape can cause feelings of shame and guilt which might inhibit a woman from making a complaint'. Furthermore, it is appropriate for judges to direct juries that 'a late complaint does not necessarily mean that it is a false complaint'.

Children may also delay disclosing or reporting sexual offences out of fear, loyalty issues or a lack of understanding. Children may disclose offences in a number of ways depending on factors such as their age, development, sex, emotional state and feelings of safety. Sometimes delays in reporting amount to 'historic' reports of rape offences.

Whether it is a child or an adult victim reporting rape, officers and police staff should not underestimate how difficult it is for them to do so and must not undermine the credibility of the victim's account, or in any way allow it to affect the quality of the police investigation or delay the police response.

1.6.3. Third-Party Reporting

Rape is occasionally reported by a named and identified third party. A third-party report of an offence is one made to the police by a person or organisation other than the victim. It can include a witness to the offence or someone that the victim has confided in.

When reports are made by third-parties or anonymous callers, report takers should try to identify the capacity in which the person is making the report (eg, Sexual Assault Referral Centre (SARC), witness, relative, friend, neighbour) and the reason for making a report. See **1.7 Reports or Referrals from Other Agencies**. Report takers should provide contact details of a nominated IO so that callers can ring back with any further information. Report takers should then contact the nominated IO to brief them about the nature of the report.

A victim of rape may not wish to deal directly with the police, may be unable to make the report themselves or the report may be made without the victim's knowledge and/or consent. In all such cases report takers should take a detailed report from the third party and encourage them to persuade the victim to speak directly to the police and to seek help from other specialist sexual violence services. In circumstances where the victim persists in refusing contact with the police, every effort should be made to ensure that the victim is safe, and is referred to the appropriate local medical and support services for advice, eg, on preventing sexually transmitted infections.

The confidentiality of the third party should be respected, where possible. Usually, direct contact should not be made with the victim without the knowledge of the third party. Police officers should, however, avoid giving an undertaking not to contact the victim as there may be occasions when this is necessary, despite the victim's apparent unwillingness to assist in any enquiry. Contact could be required, for example, if it is suspected that the offence is one of a series of offences by the same offender(s) or if the victim is still at risk of further offences. The victim should be contacted only after consultation with the appropriate supervisory IO and following a risk assessment. In such cases the IO should consider deploying an STO for any direct initial contact with the victim, see **8.1 Specially Trained Officers**. SARCs, independent sexual violence advisors (ISVAs) and specialist sexual violence services are particularly useful in cases where the victim refuses direct contact with the police as they can provide support and advice to the victim and act on their behalf in any agreements to share information or store evidence.

If the third party identifies the alleged offender by name or makes them identifiable by other means, the IO should consider further investigation and make an arrest if there is reasonable suspicion that an offence has taken place and that the alleged offender is reasonably suspected of having committed it. Decisions to arrest the alleged offender or ask them to assist voluntarily with police enquiries should include a risk assessment of the impact on the victim's safety. See **1.13 Risk Identification in Rape and Serious Sexual Offences Cases**.

1.6.4 Anonymous Reporting

In some circumstances anonymous reports will be received through SARCs, partner agencies, Crimestoppers or other sources. Where an anonymous report provides information naming or identifying an alleged offender, the IO should explore ways to seek corroboration and consider whether there might be sufficient evidence amounting to reasonable suspicion to make an arrest at a later stage in the investigation. Further research of police intelligence sources and any other corroboration of the report should be undertaken prior to making an arrest or requesting the alleged offender to voluntarily assist with enquiries. Any arrest for a recordable offence allows for a sample to be taken from the suspect for uploading onto the National DNA Database (NDNAD).

In circumstances where a name or identity of a suspect is provided as part of an anonymous report, the IO should give full consideration to informing the suspect of the allegation as this information will be retained as intelligence by police forces. It also allows the suspect to provide an account. However, this decision should be balanced with consideration of the victim's wishes, the risks posed (which might be unclear, depending on the quality of the information) and the requirement to encourage reporting. If the IO believes there to be uncertainty about the safety of the victim and the possibility of danger being increased by a direct early approach to the suspect, they should develop a strategy for further investigation without directly approaching the suspect. Any approach to a suspect should also include a risk assessment of the impact of this on the victim's safety and confidence in the police, particularly when the alleged offender continues to have access to the victim. See **1.13 Risk Identification in Rape and Serious Sexual Offences Cases**. Specialist sexual violence services should be alerted to any anonymous reports so that they are able to monitor forthcoming reports for similarities, and safety and medical advice can be provided through developed channels of communication, as relevant. See **5 Victim and Witness Care**.

1.7 Reports or Referrals from Other Agencies

Police may be alerted to rape offences through contact with other agencies, as a documented or verbal referral, or where an agency is providing information as part of a regular or agreed routine information-sharing process.

When a referral is received from another agency, including a SARC or specialist sexual violence service, it should be recorded and investigated according to local information-sharing protocols. Partner agencies should be able to make the appropriate contact with the police to facilitate referrals, investigations and information sharing. This requires an auditable process to be developed as part of a protocol, enabling all agencies to develop a more accurate picture of offending in the local

area. All reports of rape offences should be monitored, irrespective of the source of the report. Information should be used to develop crime pattern analysis (and a problem profile) from intelligence reports as well as from reports made directly to the police. This is particularly useful when an agency provides information to the police that comes from a victim who has self-referred and who wishes to remain anonymous, but provides details of the offence and/or the name of the suspect. See **1.6.4 Anonymous Reporting**. In circumstances where the victim has undergone a forensic medical examination and has given permission for the sample to be provided to the police, attempts to cross-match DNA using the NDNAD should be made. Such intelligence can also be useful in the investigation of current crimes and the reinvestigation of cold cases.

Police forces should, wherever possible, ensure that their information technology (IT) systems have the capability to record information from partner agencies, the decisions made and any subsequent action taken, thereby creating an audit process. If a referral indicates that a crime has been committed according to **Home Office (2008) National Crime Recording Standard**, supervisors should ensure that the incident is investigated and a crime report is completed.

1.7.1 Encouraging Reporting

Police forces, prosecutors, health agencies and other partners should work to increase reporting levels of rape in their local areas. Any media coverage relating to rape issues, such as successful court outcomes or cold case reviews, provide opportunities for officers and partner agencies to reinforce the importance of reporting and the services available to victims of rape. Any messages given to the media should be compiled carefully to avoid perpetuating myths about rape or putting unfair pressure on victims of crime to report for altruistic reasons. The focus should be on commitment to investigate cases and the support services available to victims. Messages designed for offenders and future offenders should also be included in any media communication. In addition, liaison officers with specific roles, eg, those working within education campuses, should have up-to-date information about reporting rape and increasing safety.

Information and intelligence should provide officers with background material from which victims, potential victims and suspects can be identified. Information about rape offences comes to the police from a number of sources. Intelligence should be identified, assessed, stored and retained according to the provisions in **ACPO (2006) Guidance on the Management of Police Information**. Failure to record and use information about rape and other serious sexual offences could significantly reduce the effectiveness of the police response.

1.8 Identifying Information and Intelligence About Rapes

Information should be examined regularly to identify trends, linked incidents and vulnerable locations at the earliest opportunity. Intelligence should be gathered from as wide a variety of sources as possible to capture the most accurate picture of rape, and police forces should seek information from specialist sexual violence services and health service providers. See **1.8.1 Developing Problem Profiles on Rape**. Any recent or new information or intelligence should lead to a further assessment.

Police officers should use information and intelligence about rape offences in the following ways:

- To identify and target offenders;
- To identify linked offences;
- To identify any links with other criminal activities and criminals;
- To identify risk factors associated with victims and potential victims;
- As a potential indicator of further information on local and national computer systems;
- To monitor the accuracy of offence intelligence data;
- To disseminate to police personnel;
- To produce statistical information;
- For information sharing purposes with partner agencies, where appropriate;
- To assist in the assessment of risk as part of Multi-Agency Risk Assessment Conferences (MARACs) and the Multi-Agency Public Protection Arrangements (MAPPA), as required;
- To develop strategy and identify implications for future resourcing;
- To direct policing activity and resources through the recognised tasking and co-ordination process, see **ACPO (2006) Practice Advice on Tasking and Co-ordination**;
- To develop a problem profile on rape and include information from it as part of the force strategic assessment (where relevant);
- To develop a prevention and enforcement strategy.

1.8.1 Developing Problem Profiles on Rape

A 'problem profile' is a report, commissioned through the tasking and co-ordination process, produced after a detailed examination of a problem faced. Each police force should develop and update a problem profile on rape in order to understand the scope and context of both reporting and offending in the locality. The problem profile should be closely aligned with local action plans, which reflect how the police, together with the CPS in the case of a joint police/CPS action plan, will achieve improvements in the investigation and prosecution of rape, see **7.5.5 Developing a Joint Rape Action Plan**. Its analysis should assist in prioritising resources according to problems, providing information to develop prevention, intelligence and enforcement plans and actions, predicting patterns of reporting of rape (and matching these to any further intelligence on offending patterns), highlight new sources of information (such as intelligence from specialist sexual violence services and information from domestic abuse risk identification forms) and assess threat levels to individuals or groups of individuals. The problem profile should provide information pertinent to local resourcing and partnership working and the information should be included in the force strategic assessment, as necessary. For further information see **ACPO (2005) Guidance on the National Intelligence Model** and **ACPO (2006) Practice Advice on Tasking and Co-ordination**.

1.9 Requesting Information When Taking an Initial Report

The receipt of a report of a rape is the beginning of the investigation and as much detail as possible should be recorded at this stage. Report takers should ask open questions and record them, along with the answers. Questions should be relevant to assessing the immediate safety of the victim and/or the person making the report, and to enable officers deployed to the incident to be briefed. Report taking should be distinct from investigative interviewing, where details about the offence are obtained for the purposes of the enquiry. In cases of emergency, the following list should be abridged to gain only the details necessary to deploy officers, reassure the victim/caller and detain the suspect.

Checklist 1: Requesting Information when Taking an Initial Report of a Rape

Officers and report takers should obtain and record the following information:

- The location and identity of the person making the report;
- The exact location (where possible) and time of the incident;
- Whether the person making the report is the victim, third party or witness, and the capacity in which they are making the report;

- Nature of the incident;
- Location and identity of the victim (if known);
- Location and identity of the suspect (if known);
- Whether medical assistance is required and details of any injuries;
- A first description of the suspect;
- Location of any parties (witnesses, supporters) and their contact details;
- Whether any weapons have been used in the commission of the offence;
- If the suspect is known to the victim, whether there is a history of violence or sexual offences;
- Whether steps have been taken to preserve evidence;
- Whether there are any particular considerations, for example, disability, language and whether an interpreter is required;
- Details of the demeanour of the victim or reporter;
- A first account of what the reporter says has occurred (verbatim or recorded for transcription);
- Preferred contact point if not at the scene;
- If the reporter wishes to remain anonymous, the reason for this.

For further information see briefing notes **ACPO (2009) Briefing Note on Initial Contact in Rape Cases** and **ACPO (2009) Briefing Note on First Response to Rape**.

1.10 Providing a Single Point of Contact

The first officer to respond to the complaint should remain as the single point of contact (SPOC) for the victim until an STO is appointed to the case. Once an STO has been appointed they should become the SPOC for the victim and also any witnesses. In circumstances where an ISVA is appointed to the case, the ISVA may become the SPOC to advise the victim about the progress of the case. In cases where the victim is a child, the Child Abuse Investigation Unit (CAIU) should appoint a SPOC. The STO should inform the victim of the identity and role of the IO and that the IO is available to speak to them, either in person or by telephone, should they wish to discuss the investigation further. Issues of cross-contamination should be considered before arranging meetings between the victim and any officer involved in the investigation at the same time as, or soon after, the offence occurred.

1.11 Providing Real Time Supervision to Non-Specialist First Responders

In circumstances where the first response to a rape is provided by a non-specialist officer, consideration should be given to providing real-time supervision and support during the early stages of the investigation. This supervision would allow on-duty/on-call IOs to provide direction and to assist in identifying further opportunities for evidence gathering. This process could also be used to support the use of early evidence kits (EEKs) and ensure that officers are able to provide the best possible service to victims, without compromising evidential information.

1.12 Notification to Specialist Departments

The first response officer should ensure that the relevant departments are informed of any complaint of a rape. This will usually involve informing the criminal investigation department or specialist investigation team, according to local arrangements. The supervisory IO should then appoint an STO to carry out specific investigative duties, and to provide early support to the victim. In cases where the victim is a child, the supervisory IO should make a notification to the CAIU, which may conduct the investigation, depending on local force arrangements. Where a report of a rape is known or suspected to be connected to domestic abuse, the supervisory IO should inform the police domestic abuse coordinator of the details of the case and its progress, and contribute to any risk assessment processes. For further details see **8.1 Specially Trained Officers**.

1.13 Risk Identification in Rape and Serious Sexual Offences Cases

Risk identification in this guidance refers to the identification of risk factors in rape and serious sexual offences, and should not be confused with risk assessment. All police officers should be aware of the risk factors relating to rape and serious sexual offences, which are summarised below. Any risk identification should be subject to frequent monitoring. The information regarding risk factors for rape and serious sexual offences in this guidance relates to adult victims. For a general summary of risk factors in cases of child abuse, see **ACPO (forthcoming) Guidance on Investigating Child Abuse and Safeguarding Children, Second Edition**. Risks are organised into those relating to the behaviour and circumstances of the suspect, and those relating to the circumstances of the victim.

1.13.1 Risk Factors Relating to the Behaviour and Circumstances of the Suspect

The following factors focus on the behaviour and circumstances of the suspect that may provide information about current and future risk. This information can come from the police, other agencies' records, ongoing and past investigations, the suspect, the victim, witnesses or other people. Identification of any of the following should be clearly recorded and included within the investigative process. These risk factors are based on the offending background of the suspect and other routes by which the suspect might begin serious sexual offending.

Some relate to antecedents of committing serious sexual offences and others are offences associated with sexual offending, such as domestic abuse and domestic burglary.

Information is derived from a number of sources including published research. Most studies of rape and serious sexual offending focus on cases for which convictions have been obtained, but these are unrepresentative of sexual offending in its entirety as relatively few cases come to the attention of the police, and even fewer result in a prosecution, successful or otherwise. There is also a prevalence of research on stranger offences while little information is available about all other types of serious sexual offences. The following list is not exhaustive.

1. Suspect has access to the victim

In domestic and some acquaintance serious sexual offences, there are particular risks associated with the perpetrator's ready access to, and knowledge of, the victim. This is particularly dangerous in those cases where the perpetrator has access to the victim at their home or work, or has knowledge of their daily routine. Similarly, in stranger cases where the offence took place in the victim's home or workplace, there may be an increased risk of repeat victimisation and/or a fear of repeat victimisation.

In domestic or relationship offences, evidence demonstrates that separation from a partner and any attempts to end a relationship are strongly linked to further risks, including homicide. Despite the commonly held assumption that leaving a violent partner will end the violence, women victims who separate from their partners are, in fact, at a higher risk of physical violence, serious sexual offences and homicide. For further information about risk in domestic violence cases and safety planning, see **ACPO (2008) *Guidance on Investigating Domestic Abuse***.

2. Text Redacted (See Page 7)

3. Text Redacted (See Page 7)

4. Text Redacted (See Page 7)

5. Text Redacted (See Page 7)

6. Text Redacted (See Page 7)

7. Text Redacted (See Page 7)

1.13.2 Risk Factors Relating to the Victim's Circumstances

The risk factors outlined below can assist investigators, police staff and others to understand a victim's circumstances, their fears and the potential for future victims being vulnerable to harm. Caution should be exercised with risk factors relating to the victim. Examples of risk factors have been redacted (see Page 7). Responsibility for rape offences **always** rests with the offender.

Depending on the circumstances, the risk identification process should also be applied to witnesses and potential future victims. All possible action should be taken to minimise risk. Full use should also be made of the statutory provisions available for dealing with the intimidation of witnesses, harassment and anti-social behaviour.

1. Victim's perception that they are at risk of future harm

Victims who have reported serious sexual offences also often report a fear of recrimination and intimidation by the suspect(s) and/or their associates. These fears may be exacerbated where the suspect has not been arrested and is able to identify the victim or the victim's residence. Any information about the victim's feelings of safety and security can be included as part of the Victim Personal Statement should the victim wish to make one. For further information see **2.4.7 Section Redacted** (see Page 7).

IOs should identify risks faced by the victim before they leave police care, and ensure that all reasonable steps are taken to safeguard them (in compliance with the positive obligations under the Human Rights Act 1998). The scale of response will vary according to each individual case. Examples have been redacted (see Page 7).

2. Victim vulnerability due to disability, incapacity, location and opportunity

Risk factors which increase vulnerability differ according to the type of rape and serious sexual assault committed. Broadly, risk factors can be separated into those associated with the victim's location or circumstances, such as being in an isolated or dark place, and those which decrease the victim's awareness and sensitivity to danger, eg, incapacity because of mental ill-health, disability, alcohol or drug use. For further information on the abuse of vulnerable adults, see ***Department of Health and Home Office (forthcoming) No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse, Second Edition.***

Part of the definition of a vulnerable adult in this guidance is any individual aged 18 years or over who is or may be unable to take care of him or herself, or is unable to protect him or herself against significant harm or exploitation. This harm includes being a victim of sexual offences or sexual acts to which the vulnerable adult has not consented, could not have consented or was pressured into consenting to.

Alcohol use by the victim is associated with an increase in their vulnerability to rape offences. Sexual offenders are likely to target potential victims who are already intoxicated or can be easily persuaded or coerced into becoming intoxicated without arousing their suspicion or the suspicion of others.

Crime prevention messages should be addressed to potential offenders and their associates (eg, warning that proactive investigations will be carried out). These messages should also inform potential victims by highlighting personal safety issues such as the risk of drinks becoming spiked with drugs or alcohol.

Other factors which increase risk have been redacted (see Page 7).

3. Text Redacted (See Page 7)

Contents of text box redacted (see Page 7).

4. Text Redacted (See Page 7)

Further details of some of the research about risk factors and other up-to-date research on rape offences are available from the National Police Library <http://www.npia.police.uk/en/5218.htm>

1.14 MAPPAs and the Management of Potentially Dangerous Persons

Any investigation of a rape offence should include an assessment of the continuing risk posed to the victim or potential victims by a suspect. This may require the contribution of those in the force who specialise in the management of potentially dangerous persons (PDPs) and sexual and violent offenders under MAPPAs. This will be relevant during the course of the investigation and, in some cases, after an investigation is concluded, eg, where there has been an acquittal of an individual who falls within the definition of a PDP. The IO should be familiar with local arrangements for bringing public protection concerns to the attention of the appropriate police unit, eg, the manager of a force public protection unit or the senior officer representative for MAPPAs. **Ministry of Justice (forthcoming) MAPPAs Guidance, Version 3.0**, should be followed when MAPPAs are relevant to a particular case. **ACPO (2007)**

Guidance on Protecting the Public: Managing Sexual Offenders and Violent Offenders should be followed for cases which fall within MAPPAs and those involving PDPs. IOs should also consider using databases, such as the Violent Offender and Sex Offender Register (ViSOR), for recording information about individuals which may be relevant for future policing purposes including managing risk and the investigation of crime, see **NPIA (2008) ViSOR Standards**. Rape investigations often uncover information which is important in managing the risk an individual poses. When a suspect is subject to a formal process such as MAPPAs, the IO should ensure that there is effective communication between the police and multi-agency systems for managing that individual.

1.15 Multi-Agency Risk Assessment Conferences

Multi-agency risk assessment conferences (MARACs) focus on domestic abuse and provide an opportunity (as part of a single meeting) to combine up-to-date risk information with a timely assessment of a victim's needs. These needs can be linked directly to the provision of services for those involved in the case: victim, children and offender. This can also provide an opportunity for the police to identify further lines of enquiry, opportunities for target hardening and/or protective factors which might be used to increase the safety of the victim and any children. In cases of domestic abuse involving sexual offending and/or rape, MARACs can be used to share relevant information and to manage risks related to increasing the safety of the victim.

The aims of MARACs are to:

- Share information to increase the safety, health and well-being of victims - adults and their children;
- Determine whether the perpetrator poses a significant risk to any particular individual and/or to the general community;
- Construct jointly and implement a risk management action plan that provides professional support to all those at risk of harm;
- Reduce repeat victimisation;
- Improve agency accountability;
- Improve support for staff involved in managing high-risk domestic abuse cases.

In practice, most risk identification processes for domestic abuse contain a question (posed to the victim) asking whether they have received any unwanted sexual attention or have been subject to any behaviour which makes them uncomfortable in relation to sexual contact (with the offender). Other agencies or specialist workers, such as independent domestic violence advisors (IDVAs), often receive more detailed disclosures than their police counterparts. Disclosures made

through the risk identification process might tend to focus on unreasonable sexual demands or similar behaviour, and will infrequently name the risk-related behaviour as rape or sexual offending. Furthermore, the disclosure is often made during the risk identification process rather than as reporting a crime.

If the referral to the MARAC is made by the police and includes disclosure of a sexual offence or rape, then the police should consider a full investigation of the disclosure. The decision should be made by a supervisory IO, and a policy log should be opened detailing the information available to the officer and the decision-making process. Central to this decision should be a consideration of the current risk faced by the victim, the known level of danger posed by the offender and any further information available from other agencies represented at the MARAC who have contact with the case. In all cases where sexual offences are disclosed as part of the risk identification process, the victim should be offered appropriate support. In cases where disclosure has been made directly to the police, this will usually mean that victims are contacted by an STO, who should encourage them to report the offences for the purposes of an investigation. In cases where the disclosure was made to another agency, the referring agency should contact the victim and provide them with information about reporting it to the police. They should also ensure that the victim has access to an STO and an ISVA, if available, or similar local service. Victims should also be given full access to SARCs or their local equivalent where they can access appropriate medical care and support. However, when a referral is made by an agency other than the police, before instigating a full and direct investigation, police officers should request the views of all agencies participating in the MARAC, and consider all possible forms of action along with the victim's needs and the known associated risks. For further information see ***Co-ordinated Action Against Domestic Abuse (CAADA) (2007) MARAC Implementation Guide, Revised.***

Management Issues

- Linking internal police IT systems to ensure the appropriate availability of information to investigate rape, where possible.
- Identifying working links between staff who conduct rape investigations and prosecutions with those involved in overlapping and related specialist investigations and prosecutions.
- Establishing systems to ensure that police officers and police staff ask relevant questions at the initial contact and first reporting stages.
- Providing real-time investigative supervision to non-specialist first responders in all rape cases.
- Providing EEKs and establishing procedures with all first response staff to increase and improve the effectiveness of use.
- Providing adequate scene preservation training for all police staff and police officers.
- Ensuring that all officers have information about SARCs and other equivalent examination suites and their functions and location.
- Developing systems of intelligence sharing between police, specialist sexual violence services, support organisations for sex workers and SARCs.
- Developing a local problem profile on rape and keeping this updated.
- Developing control strategies based on the problem profiles.
- Developing and communicating strategies to provide a specialist response to rape within the organisation.
- To inform the public of investigation and prosecution approaches in rape cases in order to encourage reporting and to promote prevention.
- Developing within the police and the CPS an understanding of risk in all types of rape cases.
- Ensuring that risks presented by released suspects are effectively managed, using the MARAC and MAPPAs processes, where relevant.
- Ensuring that efforts are made to develop and contribute to the prevention of offences of rape and sexual violence.

2

Investigative Development and Case Building

This section provides information on managing the investigation and identifying possible lines of enquiry for specific types of offences. It will assist all police officers investigating rape, in particular, STOs, IOs, rape specialist prosecutors and CPS Area Rape Coordinators involved in serious and complex investigations. It may also be of interest to crime scene investigators (CSIs), forensic scientists and forensic physicians involved in the recovery of physical and forensic evidence. This section should be read in conjunction with *ACPO (2009) National Sources of Operational Support and Intelligence for Rape Investigations* and *ACPO (2005) Practice Advice on Core Investigative Doctrine*.

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2.1 Managing the Investigation

In most circumstances the IO will have obtained a comprehensive overview of the case while providing real-time supervision to the first response officer. If, however, the IO was not involved at the early stages of the investigation then they should review all action already taken. If a single investigative log has been used by the first responder and the STO this should be reviewed by the IO and can be adopted as a shared policy log for the case. Through the STO, they should also offer to make early personal contact with the victim (ensuring that any contact does not compromise evidence by cross-contamination). Although the STO should have a coordinating role in communicating with the victim, this should not exclude the IO from having contact with them. The victim should be asked whether they would like to be updated by the IO, STO, ISVA (where available) or a combination of these. If the IO updates the victim independently of the STO, any information provided to the victim should be communicated to the STO and added to the investigative log.

The IO should consider the resourcing requirements of the investigation, the need to establish an incident room and whether the information from the investigation should be managed through the Home Office Large Major Enquiry System (HOLMES).

2.1.1 Assessment

During the initial response phase a great deal of information will usually have been gathered. Examples of the information gathered have been redacted (see Page 7).

This information, together with any other information that is available, should be used to identify priorities for pursuing lines of enquiry and should be entered on policy files. Where the suspect's identity is known, lines of enquiry will usually focus on gathering evidence to corroborate the victim's account of the incident and to test possible defences of consent or mistaken identity. All material gathered as part of the investigation should be retained as it will be subject to the rules of disclosure under the common law or the Criminal Procedure and Investigations Act 1996, see **6.3 Disclosure and Third-Party Material**.

2.1.2 Case-Building Between the Police and Crown Prosecution Service

The police and the CPS should work together during the investigative stage to build cases and develop a proactive approach to investigating and prosecuting offences. Statutory charging has allowed prosecutors to become involved in cases at pre-charge stage to work with investigators to build evidentially strong cases. IOs should consult the allocated rape specialist prosecutor once they have made an initial assessment of the case and any recovered evidence.

Combining the investigative skills of the police with the expertise of the rape specialist prosecutor on case strategy should ensure the early development of a joint strategy for the prosecution. Rape specialist prosecutors could provide a provisional assessment of the case, lines of enquiry, identification of the likely charges and of the evidence required to support them. They will be proactive in identifying and, where possible, rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further evidence.

Rape specialist prosecutors also give guidance and advice to investigators throughout the investigating and prosecuting process. This includes evidential requirements and assistance in any pre-charge procedures.

Early consultations need not be restricted to cases that pass the Threshold Test, or where there is already an identifiable suspect. They may take place in any case where the early involvement of a prosecutor would assist in the gathering of relevant evidence. Items to be discussed during consultation have been redacted (see Page 7). A brief written record of the consultation should be made. For further information on arrangements for early consultation, see **4.1 Early Consultation Between the Police and Crown Prosecution Service**.

2.1.3 Critical Incidents and Community Impact Assessments

Where cases of rape meet the definition of a critical incident, local force policies and **ACPO (2007) Practice Advice on Critical Incident Management** should be followed. The definition of a critical incident in that practice advice is:

Any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or community.

Mechanisms to manage the wider community issues have been redacted (see Page 7).

Groups to be considered

In the initial community impact assessment, consideration should be given to a number of different groups. These are:

- Victims, their family and friends;
- Witnesses;
- Geographical local community;
- People using the local facilities in the area of the incident;

- Members of minority groups of which the victim is a member;
- Members of minority groups of which the suspect is a member;
- People sharing characteristics with the victim, eg, sex, age group, sexual orientation, occupation or interest;
- Registered sexual offenders (RSOs).

If a high level of impact is identified, the IO should liaise with local managers to ensure an appropriate response. Responses could include targeting certain groups who may be affected, providing them with specific crime prevention advice. Methods for providing crime prevention advice may differ according to the characteristics of the identified group. Suitable options for reaching specific groups could be, for example, via text messaging, emails or the specialist press.

IOs should consider using the media to provide advice or information to potential victims of rape, the suspect and possible associates of the suspect. They should also consider using it to offer advice to those who might unwittingly cause alarm to the public during the investigative period, eg, men walking home late at night who might be seen as a potential danger to those afraid of being attacked. For further information see **1.13 Risk Identification in Rape and Serious Sexual Offences Cases**.

Any crime prevention advice given to members of the public should avoid messages that unnecessarily increase levels of fear or that could be interpreted as blaming the victim. Police officers should also avoid giving any advice about self-defence strategies to potential victims. Crime prevention strategies should be based on the understanding that the only person who can prevent serious sexual offences from occurring is the offender themselves. Strategies should also target the associates of offenders to encourage them to provide the police with any information that they might have surrounding the circumstances or other offences.

2.1.4 Consulting the Crown Prosecution Service Prior to Engaging the Media

Any strategy to engage the media at an early stage to trace witnesses, provide crime prevention advice or publicise an investigation should involve consultation with the rape specialist prosecutor allocated to the case. Information about which details of the case to reveal should be agreed between the police and the CPS to ensure that sensitive information, which might later be used as part of the investigation or prosecution, is protected appropriately.

Similar safeguards should be made about any information which might inadvertently identify the victim. Information that threatens the

anonymity of the victim, or which is otherwise sensitive to them, should be withheld from the media unless or until the victim has given permission for its disclosure, and this disclosure is necessary to the case. For further information see **ACPO (2003) Media Guidance for Senior Investigators in Major Investigations**.

2.1.5 Using the Media to Trace Witnesses

Investigations into stranger rape cases often attract media attention within the first twenty-four hours. IOs should consider from the outset whether media coverage will assist the investigation, eg, in locating witnesses, and, if they believe this to be the case, make arrangements to use it. Local force press and media offices should be consulted prior to any media activity. Where possible, the views of the victim should be sought before using the media. The details of a case should be carefully considered to assess the impact that releasing information might have on the investigation, on the victim and on the immediate community. All media releases should be made in accordance with individual force policy and procedures.

When dealing with a rape offence involving a victim from a minority group, it is not appropriate to focus publicity solely on media servicing the relevant minority group. While this may be of use in some cases, wider publicity via the mainstream media is also needed so that any potential witnesses are not missed.

Where the victim identifies the suspect as being from a distinguishable group, association or minority group, the IO should consider using specialist or minority group media for such appeals. These appeals should also be duplicated in the mainstream media in order to maximise the potential for witnesses to come forward. When preparing a media appeal that includes a suspect description, IOs should be mindful that, because of the circumstances of a case, victims do not always provide accurate visual descriptions.

2.1.6 Reconstructions, Witness Appeals and Crime Appeal Programmes

Reconstructions of an offence can be combined with anniversary activity or developed in association with a local or national crime appeal programme to renew public interest. They can also be useful as a means of testing whether witness accounts are consistent or to identify the existence of other people present in the vicinity of an incident but who have not yet been traced. They are of particular value where an incident has occurred in a public place, where many people may have been present without realising what was happening.

As reconstructions are usually resource intensive, clear objectives should be set beforehand. Local or national crime appeal programmes can provide

additional publicity for an enquiry, and may also provide assistance with developing a reconstruction that would otherwise not be possible. Witness appeals at the location of the incident, or other relevant locations on the anniversary of the incident (a week, a month, a year), are often productive in stimulating interest and locating further witnesses. Reasons for the usefulness of witness appeals have been redacted (see Page 7).

Rape offences can make sensationalist or engaging subjects for crime appeal programmes. IOs may be approached by programme makers and feel under pressure to cooperate with them. Before agreeing to any request, IOs should liaise with their force communications departments and ensure that they are satisfied that there are clear objectives for the inclusion of such material in programmes. The more specific the information they can provide to the public, the more manageable and potentially useful the response will be. They should also ensure that there is adequate staff available to receive and process information after the appeal.

Care should be taken to keep the victim informed of any proposed anniversary activity, reconstruction or inclusion in a crime appeal programme. Victims should always be consulted before IOs agree to an appeal programme. If the victim objects, the IO should take account of this in their decision making.

2.1.7 Communication Strategy

IOs should ensure that there is effective communication with the public, the investigation team, including the CPS, and other police colleagues. The two main elements of a communication strategy are managing the media and internal communications. The IO should consult their force communications department at the earliest opportunity for advice and support.

The IO should not concentrate on media issues to the detriment of internal communications. Instead they should capitalise on all media and internal communications as these offer potential investigative opportunities. The individual force media department should be consulted in all cases and regularly updated on the progress of the investigation and any lines of enquiry obtained from the communications strategy. In cases attracting a lot of public and media interest, IOs should consider requesting the assistance of the media or press officer to support the communications strategy, and rape specialist prosecutors should be informed to jointly prepare a communication strategy. For further information see **ACPO (2006) Murder Investigation Manual**.

2.1.8 Debriefing

A number of people from the Police Service and other agencies will have usually been involved in the initial response to the report of a rape

offence. Regular debriefings should, therefore, be carried out and a formal debriefing held to ensure that the investigation and prosecution team and the IO have properly understood the information gathered so far, and that all necessary records have been completed.

A single debriefing for all parties involved in a case, including the rape specialist prosecutor, should be considered, although this may not always be possible. Detailed records of the debriefings should be made and retained for investigative and disclosure purposes. The principal reason for the debriefing is evidential, ie, to ensure that all available evidence is pooled. An occupational health debriefing may also be required for police officers and staff involved in such cases, in particular, for the first response officer involved in the case and the STO. For further information see ***ACPO (2006) Guidance on the National Briefing Model.***

2.1.9 Section Redacted (See Page 7)

2.1.10 Section Redacted (See Page 7)

2.1.11 Cold Case Reviews

Historic unsolved cases of rape and serious sexual offences should be reviewed periodically in line with local force policies. These reviews are sometimes known as cold case reviews. IOs should consider upgrading forensic samples (including fingerprints, if available) and re-opening cases. Case files should be retained in every unsolved rape case for possible future cold case review. IOs should also ensure that material obtained during an investigation is retained to enable further review should technological advances or new information or lines of enquiry emerge. For further details of cold case reviews, see ***Police Standards Unit (2005) Good Practice Guide to Cold Case Reviews of Rapes and Serious Sexual Assaults.***

2.2 Lines of Enquiry

Lines of enquiry should be established in order to maximise evidential opportunities, ascertain the facts of the case and target efforts among the available investigative resources. Lines of enquiry should also be directed at finding corroboration of the accounts given by both the victim and suspect.

2.2.1 General Lines of Enquiry for Investigating Rape Offences

The following list provides officers with some options for possible lines of enquiry. It is not an exhaustive list and lines of enquiry will obviously depend, for example, on whether a suspect is identified. Officers should remain open-minded throughout an investigation and beware of labelling an offence before all evidence has been gathered.

Checklists 2 – 7 may all be relevant to any one rape offence investigation.

In all rape cases the IO should consider whether the reported offence might be a part of a series of offences, see **2.1.9 Section Redacted (See Page 7)**. Specific checklists of potential lines of enquiry (following in this section) may also be useful to include as part of the investigation strategy. Officers should consider using diagrams that map the progress and development of a particular line of enquiry.

In cases involving child victims, IOs should also refer to the suggested lines of enquiry in **ACPO (forthcoming) Guidance on Investigating Child Abuse and Safeguarding Children, Second Edition**.

Checklist 2: Checklist Redacted (See Page 7)

2.2.2 Possible Lines of Enquiry – Domestic or Relationship Rape

Any investigation of a domestic or relationship rape should include consideration of the possibility that the reported offence is part of a pattern of domestic abuse-related offending. Officers investigating domestic or relationship rapes should consider whether the victim has additional barriers to reporting and supporting a prosecution and, if so, consider how they might be supported during the investigation and court processes. Engaging domestic abuse officers (DAOs) to provide advice and facilitating access to specialist sexual violence services might be of benefit to the victim and the investigative process. In cases of forced marriage, see **ACPO (2008) Guidance on Investigating Domestic Abuse** and **ACPO, Foreign and Commonwealth Office and Home Office (2005) Dealing with Cases of Forced Marriage: Guidance for Police Officers, Second Edition** and **ACPO (2008) Honour Based Violence Strategy**.

Cases involving honour-based violence may present additional investigative difficulties. These may include barriers to involving the victim's family members as supporters, increased anxiety about reporting rape and supporting an investigation, and increased pressure to retract or withdraw complaints to avoid bringing shame on family and/or community.

Checklist 3: Checklist Redacted (See Page 7)

2.2.3 Possible Lines of Enquiry – Acquaintance Rape

Checklist 4: Checklist Redacted (See Page 7)

2.2.4 Possible Lines of Enquiry – Stranger Rape

Where the suspect is a stranger to the victim, lines of enquiry will focus on identifying suspects. When the suspect is identified, issues of consent and mistaken identity are integral to the investigation (as possible defences) and should be pursued alongside the identification enquiries. Further information on tracing unknown suspects can be found in **ACPO (2006) *Murder Investigation Manual***.

Checklist 5: Checklist Redacted (See Page 7)

2.2.5 Section Redacted (See Page 7)

Checklist 6: Checklist Redacted (See Page 7)

2.2.6 Possible Lines of Enquiry – Multiple Offender Rape

When investigating reports of multiple offender rape cases, officers should note that most multiple offender rapes are pair offences (two offenders), and that offences carried out in this manner are often targeted at strangers. Sometimes the victim may be able to identify a suspect but may not necessarily know them personally (eg, somebody they recognise from school or work), which might reflect the method by which offenders target victims.

Checklist 7: Checklist Redacted (See Page 7)

2.3 Forensic Science

2.3.1 Section Redacted (See Page 7)

2.3.2 Consent to Disclose Details of the Medical Examinations

The victim must consent to the forensic medical examination and the forensic physician should obtain this before the examination. The forensic physician should also explain the need for each sample to the victim. The victim must give consent for the forensic physician to disclose findings from the examination to the police. The forensic physician will usually discuss this with the victim prior to the examination and arrange for a verbal or note-style debrief with the police afterwards, or for the STO to be present behind a screen throughout the process to make notes. The forensic physician should also make the victim aware that anything that is said or found as a

result will be recorded and could be disclosed to a court. In cases where the victim is a child, the forensic physician will need to establish whether the child is competent to give consent to the examination. If this is not the case, then the person with parental responsibility must be present in order to give consent as the examination will not proceed without it. For further information see ***ACPO (forthcoming) Guidance on Investigating Child Abuse and Safeguarding Children, Second Edition.***

The forensic physician should inform the STO which samples should be submitted to the forensic science laboratory along with the full list of all samples that have been taken. This allows the forensic scientist to request any further samples for submission, if required. Forensic samples and associated copies of medical paperwork should be sent to the forensic science laboratory together with a summary of the victim's first account and interview (when available), and copies of other witness statements including that of the suspect (when available). Any discussions that take place between the forensic physician and the victim should be restricted to areas which have a bearing on the allegation under investigation and related medical issues.

2.3.3 Section Redacted (See Page 7)

Checklist 8: Checklist Redacted (See Page 7)

2.3.4 Section Redacted (See Page 7)

Checklist 9: Checklist Redacted (See Page 7)

2.3.5 Section Redacted (See Page 7)

2.4 Victim and Witness Evidence

An STO who has been appointed to the case should pass information from the victim and the IO. The STO is integral to the investigation team and should be included in all briefings. Every effort should be made to ensure that the victim is supported by the police and feels supported by them, as well as by ISVAs (where available) and other appropriate agencies such as sexual violence outreach services or Victim Support (VS).

In cases involving victims with identified mental health issues or learning disabilities, the STO should engage specialist support services. This might include the use of intermediaries or other representatives who are able to support the victim, see **6.5.3 Use of Intermediaries**. For further information on the abuse of vulnerable adults, see ***Department of Health and Home Office (forthcoming) No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse, Second Edition.***

Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime qualifies the timescales by which the police are

required to update victims of the progress made in investigations and for informing them of decisions to bring criminal proceedings.

2.4.1 Recognising Post-Traumatic Stress Disorder

Post-traumatic stress disorder (PTSD) is a well-documented medical and psychological condition suffered by many victims of rape; it is sometimes referred to as Rape Trauma Syndrome. The effects on the victim and the impact this can have on the investigation need to be understood by the IO, STO, ISVA and all others working with the victim.

PTSD can be viewed in three stages:

- **Acute:** Shock, disbelief, terror, vulnerability, expressed or controlled emotion, physical suffering and anxiety. Victims will usually be in the acute phase when making a report of a serious sexual offence and they might remain at this stage for quite some time afterwards, although a report can be made at any stage.
- **Adjustment:** Denial, flashbacks, sleep disturbances, humiliation, rejection, phobias and loss of security.
- **Long term:** Inability to have steady relationships, constant reminders of the attack, eg, the smell of a particular aftershave or a mode of transport.

Officers in contact with victims, particularly those responsible for conducting interviews with them, should keep detailed notes of the observed physical condition and demeanour of the victim, at all stages of the investigation.

As responses to a rape offence vary, officers should note that a victim may not appear visibly distressed but this should not be interpreted by them as undermining the victim's account. As PTSD can affect the victim's memory of events, officers should also be prepared to carry out further interviews when it is necessary to do so. The additional information obtained may be essential in corroborating the victim's account at a later stage. Care should be taken to restrict note-taking to what is actually observed, eg, crying, shaking, controlled emotion, rather than making assumptions about the victim's underlying state of mind.

2.4.2 The Timing of the Victim Interview

PTSD can have a significant effect on the victim interview. Officers should, therefore, decide, in consultation with the victim, when the interview takes place. This decision should balance the needs of the investigation and responsibilities under Police and Criminal Evidence Act 1984 (PACE) with the potential effects of trauma and stress, see **2.4.1 Recognising Post-Traumatic Stress Disorder**. Interviews should be timed to ensure that the

needs of the victim are met, especially in relation to putting the victim back in control of their own situation and that the potential for recall is maximised. Trauma and stress can interfere with the process of remembering and, therefore, decisions about the timing of the interview should be made on the basis of the facts of the case and by asking the interviewee rather than by application of an arbitrary period of time, eg, to fit in with a shift pattern. Some interviewees will want to be interviewed relatively quickly while others may wish to be interviewed at a later date; this might also depend partly upon the nature of the reported offence and on how recent it was. It should always be factored into decisions that the potential for memory contamination increases with delays. Victims should not be interviewed when in a sleep deprived state.

2.4.3 Special Measures at Interview Stage

The IO should develop a strategy for interviewing the victim and any significant witnesses. For further information on interviewing significant witnesses, see **ACPO (2006) Murder Investigation Manual**. Victims of sexual assault are eligible for assistance on the grounds of fear or distress about testifying by section 17(4) of the Youth Justice and Criminal Evidence Act 1999. Witnesses falling within the provisions of the Act are those whose quality of testimony is likely to be diminished by reason of fear or distress at the prospect of giving evidence. However, they might also be identified by the IO as being vulnerable. The following definitions are used for the purposes of defining the needs of the victim and/or witness:

- Vulnerable witnesses, section 16 Youth Justice and Criminal Evidence Act 1999 includes children under the age of 17 years; and people whose quality of evidence is likely to be diminished because they are suffering from a mental disorder, or have a significant impairment of intelligence and social functioning, or have a physical disability or are suffering from a physical disorder;
- Intimidated witnesses, section 17 Youth Justice and Criminal Evidence Act 1999 includes witnesses whose quality of evidence is likely to be diminished by reason of fear or distress about testifying in criminal proceedings. Section 17(4) Youth Justice and Criminal Evidence Act 1999 provides that the complainant in respect of a sexual offence will be deemed to be an intimidated witness, and therefore eligible for the special measures that are available to the court, unless the witness has indicated that he/she does not wish to be so eligible. Where the investigation commenced on or after 1 September 2007, complainants in sexual offences are automatically eligible in crown court cases for the special measure of video-recorded evidence-in-chief. However, an application is still required to be made to the court. See **Ministry of Justice Circular 25/06/2007 Complainants in sexual offences tried in the**

Crown Court: implementation of Section 27 of the Youth Justice and Criminal Evidence Act 1999 at
<http://www.justice.gov.uk/publications/circulars.htm>

- Significant witnesses are those who have or claim to have witnessed, visually or otherwise, an indictable offence (or events closely connected with it) but who are unlikely to have their video recordings of their interviews admitted as evidence-in-chief under section 137 of the Criminal Justice Act 2003 as a result of there having been a lengthy interval between the alleged event and the interview. They are also those who stand in a particular relationship to the victim or have a central position in the investigation into an indictable offence.

The Youth Justice and Criminal Evidence Act 1999 contains a range of measures which can be used to record evidence, and help vulnerable and intimidated witnesses to give evidence. Although it may be clear at the outset of an investigation that a victim or witness falls into one of the categories eligible for special measures, the eventual designation of the witness for the purposes of making an application for special measures to the court can wait for consideration by the CPS after all necessary enquiries are completed, see **6.5.2 Application for a Special Measures Direction**. The need for special measures might change from the time of the investigation to the time of the trial. Vulnerable and intimidated witnesses (as defined by the Act) are also able to receive social support at all stages of the investigation, including interview support. Interview support should be provided by someone independent of the police who is not party to the case being investigated and who is present at the original investigative interview.

Special measures can include a range of provisions including the use of screens in court to shield the witness from the defendant, a live link enabling the witness to give evidence from outside the court room, evidence given in private, removal of wigs and gowns, video recording of evidence as evidence-in-chief, video-recorded cross-examination, examination of the witness through an intermediary (available to vulnerable witnesses) and aids to communication (available to vulnerable witnesses). For further information on using intermediaries, see ***Office for Criminal Justice Reform (2007) Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures*** and ***Office for Criminal Justice Reform (2005) Intermediary Procedural Guidance Manual*** at http://frontline.cjsonline.gov.uk/_includes/downloads/guidance/victims-and-witnesses/Intermediary_Procedural_Guidance_Manual.pdf

Victims of rape need to feel safe and may require support and encouragement to participate in an interview. Officers should obtain the victim's views about the possibility of having a supporter present during the interview and about the possible use of special measures, including their

preferred method of recording the interview. In order to fully explain the options available to record their interview, the following information should be discussed with the victim beforehand:

- That visual recording is an option but that they could produce a detailed statement or an audio recording as an alternative. An audio recording cannot be played as evidence-in-chief and the material on it needs to be transferred into a format acceptable to the criminal justice system (exhibited transcript or full statement); the audio-recording is then provided to the defendant and defence team prior to the court case along with other material that makes up the prosecution case.
- A visual recording can be shown to the court as evidence-in-chief if the application is accepted.
- If the visual recording is accepted by the court as evidence-in-chief, the interview will be shown in open court.
- Showing the recorded interview will reduce the amount of time that the victim spends giving evidence in court, and, hopefully, the stress involved in repeating their account.
- Any visual recording will be provided to the defendant and the defence team prior to the court case along with all the other material that makes up the prosecution case.
- The victim will still need to attend court to be cross-examined, this could be live in court, behind a screen in court or via a live link to the court (often from a room in the court buildings).

It is important that the STO informs the victim that although their views on special measures will be taken into account, the final decision on access to special measures is taken by the court, based on the application made by the CPS. A decision should then be taken on the most effective way to record the victim or witness interview, taking into account all the circumstances of the case. The victim should be given an explanation of the possible benefits and disadvantages of having (or not having) the interview video recorded, and who might see the video-recorded interview (this includes the defendant). STOs should familiarise themselves with how special measures operate in their local court so that they can provide the victim with accurate information about them. The kind of TV screens used to play back videos, the location and nature of the screens around the witness box and how a witness gets to them, and the location of the live link room all vary from court to court.

2.4.4 Section Redacted (See Page 7)

Checklist 10: Checklist Redacted (See Page 7)

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2.4.5 Section Redacted (See Page 7)

2.4.6 Section Redacted (See Page 7)

2.4.7 Section Redacted (See Page 7)

2.4.8 Section Redacted (See Page 7)

2.4.9 Section Redacted (See Page 7)

2.5 Evidential Opportunities

2.5.1 Section Redacted (See Page 7)

2.5.2 Section Redacted (See Page 7)

2.5.3 Section Redacted (See Page 7)

2.5.4 Section Redacted (See Page 7)

2.5.5 Section Redacted (See Page 7)

2.5.6 Section Redacted (See Page 7)

Checklist 11: Checklist Redacted (See Page 7)

2.5.7 Section Redacted (See Page 7)

2.5.8 Identification Procedures

A range of techniques may be used to identify a rape offence suspect, including video technology. Officers should provide victims with clear information about the identification process used, and explain that a suspect's legal representative might be present depending on the circumstances of the investigation. Where it is necessary for the victim to come face-to-face with the suspect, special care should be taken and every effort made to minimise the distress to the victim. The STO should not accompany the victim to any identification process but, rather, arrange for an independent person to do so, such as an officer not involved in the investigation or a VS scheme worker. For further information see PACE Code D: Identification.

2.5.9 Intelligence

Specialist sources of intelligence in serious sexual offence cases are included in **ACPO (2009) National Sources of Operational Support and Intelligence for Rape Investigations**.

Depending on the needs of the individual investigation, the IO should use the expertise of an analyst and/or an intelligence officer in the investigation. It is the responsibility of the IO to task the analyst to assist with the development of sequence of events charts and association charts. For further information see **ACPO (2008) Practice Advice on Analysis**.

Checklist 12: Checklist Redacted (See Page 7)

Management Issues

- Ensuring that rape investigations include all sources of evidence and do not focus solely on the victim's statement.
- Developing a prosecution team approach between the police and CPS by involving CPS at the case-building stage, as necessary.
- Ensuring that officers conduct early assessments to determine whether victims require special measures and that early special measures meetings take place, as required.
- Providing a copy of the victim's statement or a summary of the victim interview and those of any witnesses to the forensic science supplier, with any samples.
- Ensuring that evidential DNA samples are presented for cross-matching with samples held by the NDNAD.
- Developing a central submission policy for forensic samples within which quality, costing and other issues can be managed at a force level.
- Ensuring the provision of clean, secure forensic examination suites, preferably within SARCs or similar facilities.
- Developing systems to keep forensic physicians apprised of the progress of all investigations and any court outcomes.
- Monitoring the quality of investigative policy logs.
- Developing a generic media handling strategy with safeguards for victim protection.
- Ensuring that all police officers involved in investigating rape offences have received appropriate training.

3

Suspect Management

This section provides guidance on suspect management. It includes planning an arrest, custody planning, examination of the suspect and interviewing the suspect. It is particularly relevant to arresting officers, custody officers, specialist interviewers, STOs and rape specialist prosecutors.

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3.3 Section Redacted (See Page 7)

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Checklist 15: Checklist Redacted (See Page 7)

3.3.4 Section Redacted (See Page 7)

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3.3.7 Section Redacted (See Page 7)

3.4 Consent, Capacity and Freedom to Consent

Text Redacted (See Page 7)

3.4.1 Section Redacted (See Page 7)

3.4.2 Reasonable Belief in Consent

A person (A) is only guilty of rape if she or he:

- Acts intentionally;
- (B) does not consent to the act; and
- (A) does not reasonably believe that (B) consents.

Deciding whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps (A) has taken to ascertain whether (B) consents (subsection (2) of sections 1-4, Sexual

Offences Act 2003). It is likely that this will include a defendant's attributes, such as disability or extreme youth, but not if she/he has any particular fetishes. A suspect will not have a reasonable belief in consent if:

- They know or believe that the victim has not consented;
- They are reckless (do not care or are indifferent to) whether or not the victim has consented.

This is a major change in the law and the 2003 Act abolishes the Morgan defence of a genuine though unreasonably mistaken belief as to the consent of the victim. It means that the defendant (A) has the responsibility to ensure that (B) consents to the sexual activity at the time in question. It is, therefore, important for the police to ask the suspect in interview what steps she or he took to satisfy him or herself that the victim consented, in order to show his or her state of mind at the time.

The test of reasonable belief is a subjective test with an objective element. The best way of dealing with this issue is to ask two questions.

- (i) Did the suspect believe the victim consented? This relates to his or her personal capacity to evaluate consent (the subjective element of the test).
- (ii) If so, did the suspect reasonably believe it? It will be for the jury to decide if his or her belief was reasonable (the objective element).

Whether the suspect's belief in consent was reasonable or not will depend upon the individual circumstances of the case and a close examination during police interview of any steps taken to find out whether the victim was consenting.

3.4.3 Section Redacted (See Page 7)

3.4.4 Conclusive Presumptions

If the defendant performs the relevant act and any one of the circumstances specified below existed, it is conclusively presumed that the victim did not consent, and that the suspect did not believe that the victim consented. These circumstances are:

- a) The defendant intentionally deceived the complainant as to the nature or purpose of the relevant act, eg, where a defendant conducted breast examinations for his own sexual gratification, on the pretence that he was collecting data for a cancer screening program R v Tabassum [2000] 2 Cr App R 328;

- b) The defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant. This extends the categories of impersonation sufficient to invalidate consent beyond a husband or regular sexual partner.

3.4.5 Section Redacted (See Page 7)

Checklist 16: Checklist Redacted (See Page 7)

Management Issues

- Managing cross-contamination issues at arrest stages and during custody.
- Ensuring that any possible physical evidence associated with the suspect is preserved, recorded and used as part of the investigative process.
- Prioritising risk identification when a suspect is in police custody, in order to anticipate any bail considerations.
- Considering victim safety issues prior to disclosing information to the legal adviser and the suspect.
- Managing pre-interview disclosure to legal advisers.
- Supervising investigative interviewing.
- Implementing **ACPO (2009) National Investigative Interviewing Strategy**.
- Considering developing an investigative process which allows STOs to be able to interview suspects as a second or supporting interviewer, in order to ensure that information from the victim interview is not overlooked.
- Ensuring that IOs (and any interviewing teams) view the recording of the victim and witness interviews prior to conducting the suspect interview.
- Researching evidence of bad character during the planning stages of the suspect interview.
- Ensuring that issues of consent are fully covered during the suspect interview.

4

Charging, Bail and Case Preparation

This section is relevant to police IOs, STOs, custody officers, rape specialist prosecutors and other prosecutors providing advice on charging in rape cases.

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4.1 Early Consultation Between the Police and Crown Prosecution Service

Officers investigating rape should liaise with the CPS at the earliest opportunity. The involvement of a CPS lawyer during the investigative phase (while not compulsory) is likely to assist the IO in identifying key evidential issues which can be dealt with prior to charging the suspect. It may also minimise the need for an arrested suspect to be released on police bail while investigators gather further evidence. For further information see **2.1.2 Case-Building Between the Police and Crown Prosecution Service**.

The IO should arrange an early consultation with a rape specialist prosecutor in the following circumstances:

- Once the Threshold Test has been passed;
- Where the allegations have not been or are not being admitted;
- Where it seems likely that the allegations will be denied.

At the consultation stage, when it is not yet anticipated that authority to charge will be given, the police are not required to submit an evidential report but should share with the rape specialist prosecutor the information that they have about the case. Consultation should be face-to-face wherever possible. A telephone consultation may suffice in some circumstances, for example, to facilitate consultation in large rural areas.

Where a custody charging decision may be required, an early consultation with a rape specialist prosecutor should take place as soon as practicable. However, where the detained person is considered suitable for bail, the initial early consultation should take place within three working days of the release on bail.

Should the rape specialist prosecutor consider there is not enough evidence to proceed to charge but that further evidence could be obtained, they should provide investigative advice identifying all evidence required and steps that may be undertaken to provide a realistic prospect of conviction. This includes the completion of a detailed action plan on the MG3.

Chief constables and chief crown prosecutors should agree local arrangements for these consultations to take place. Arrangements should include a commitment that the rape specialist prosecutor maintains continuing responsibility for the case.

4.1.1 Pre-Charge Actions for Rape Specialist Prosecutors

If the victim interview has been visually recorded, the rape specialist prosecutor should view the whole interview for the purposes of the

charging decision or, following use of the Threshold Test, before they apply the Full Code Test. This is necessary even when a transcript is available or where the video interview has been superseded by the taking of a full witness statement. The prosecutor will not be in a position to review the case properly and will be ill-equipped to apply the disclosure test if they have not viewed the whole interview.

The fact that the prosecutor has viewed the interview must be recorded on the case management system (CMS), together with comments on the quality and admissibility of the evidence. Any technical issues such as high camera angles or poor picture and sound quality must also be recorded and the information fed back to the police.

Checklist 17: Pre-Charge Actions for Rape Specialist Prosecutors

On receipt of an expedited report or an evidential report, the case should be allocated to a rape specialist prosecutor who should:

- Create an MG3/3A and an action plan with action dates;
- Check that the correct forms have been completed (reverse of MG11 and any related MG2);
- Ensure that the case is properly flagged or identified as a rape case on CMS;
- Create a detailed review on CMS (see ***CPS (2008) Rape Prosecutions Advice/Review Checklist*** at http://www.cps.gov.uk/legal/p_to_r/rape_manual/annex_d_rape_prosecutions_advice_review_sheet/index.html);
- Consider unused material, including potential third-party material;
- Consider the investigation strategy and the forensic strategy;
- Review the evidence of the forensic physician (where relevant) and establish whether they are able to provide an expert opinion. Where they are not, consider instructing a further forensic physician who can provide an expert opinion on the results of the medical examination.

4.2 Charging

4.2.1 Applying the Threshold Test

Paragraph 3.2 of ***CPS (2004) The Code for Crown Prosecutors*** requires that charging decisions will be made in accordance with the Full Code Test except in the limited circumstances where the Threshold Test applies. Paragraph 3.3 and the whole of paragraph 6 of

CPS (2004) The Code for Crown Prosecutors set out in detail the circumstances in which a crown prosecutor may apply the Threshold Test. This test may only be applied to a case where it is proposed to keep the suspect in custody after charge because they present a substantial bail risk, but much of the evidence is not available at the time the charging decision is to be made, and the prosecutor considers that it would be proper to make an application to withhold bail at court.

To make it perfectly clear, prosecutors should, wherever possible, seek to apply the Full Code Test when considering the charging of a case. The Threshold Test is **not** an interim stage to be reached in every case. It is a temporary test which may only be applied when:

- The available evidence establishes at least reasonable suspicion that the suspect has committed the offence under consideration, **but**
 - The evidence to allow consideration of the Full Code Test is not yet available, **and**
 - Steps are being or are about to be taken to obtain that evidence and there is a likelihood of it becoming available in a reasonable time.
- The evidence will have a significant impact on the case.
- The custody officer has decided it would be appropriate to detain the suspect in custody after charge until the next court hearing, **and**
 - An application to withhold bail can properly be made at court by a prosecutor.

These restrictions on the use of the Threshold Test are obligatory and prosecutors must record the circumstances giving rise to the use of the Threshold Test.

The public interest means the same as under the Full Code Test, but will be based on the information available at the time of charge (which is often limited).

The Threshold Test is not to be regarded as a shortcut to obtaining a charging decision to place offenders before a court quickly. The amendments to section 37 (7) PACE are intended to ensure that in any case where a suspect is suitable to be released on bail, the evidence required to satisfy the Full Code Test is gathered before charging takes place.

A decision to charge and withhold bail must be kept under review. The evidence gathered must be regularly assessed to ensure the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as reasonably practicable.

If a charging decision is made by CPS Direct, the file will then be immediately forwarded to a rape specialist prosecutor. In the event of a duty prosecutor, who is not a rape specialist prosecutor, having to make the decision, the duty prosecutor should, wherever possible, consult a rape specialist prosecutor. In circumstances where a duty prosecutor makes a charging decision and determines that the case does not pass the Threshold Test, they cannot determine that there should be no further action without the agreement of a rape specialist prosecutor. If the rape specialist prosecutor reaches the same decision then this should be confirmed by a second rape specialist prosecutor. For further information see *Prosecution Team (2008) A Protocol Between the Police and Crown Prosecution Service in the Investigation and Prosecution of Allegations of Rape*, at http://www.cps.gov.uk/legal/p_to_r/rape_manual/annex_f_protocol_between_the_police_and_the_cps/ and *CPS (2007) The Director's Guidance on Charging, Third Edition*.

4.3 Preparing Information for The Crown Prosecution Service for The Full Code Test

The police should provide the crown prosecutor with as much information as possible so that they can make an informed decision about a particular case. This assists in the effective prosecution of the case and can be used in the protection of the victim and any witnesses when applying for a remand in custody or bail conditions.

Checklist 18: Police File Preparation and Associated Actions

The CPS requires the following information as appropriate to each case:

- All relevant victim statements (including the victim personal statement, record of video interview (ROVI) and any statement made on behalf of the victim);
- All relevant witness statements (including any statement of early complaint);
- First description given of the suspect;
- Case exhibits;
- Forensic science reports;
- Medical statements;
- Details of any victim injuries (medical, photographic and written);
- Results of DNA searches carried out;
- Any identified cross-contamination issues;
- Audio or visual recordings of the victim and any witness interviews;
- Defendant interviews (record of taped interview, (ROTI));

- Any photographic or CCTV evidence;
- Relevant police records, for example, pocket notebook entries, incident logs, custody records and 999 tapes, where appropriate;
- History of any previous relationship between the victim and defendant, if there has been one;
- Any previous convictions;
- Description of the scene with any photographic evidence or relevant statements including those from the first officer at the scene;
- Whether the defendant used a weapon;
- Whether the defendant made any threats before the incident or has since;
- Whether the defendant appears to have planned the incident;
- Location of the address of the victim and the defendant in relation to one another, and the location of the scene, if different;
- Any sequence of event charts;
- Any bail conditions and whether the defendant has broken any previous bail conditions;
- Whether the defendant, victim or witness requires an interpreter;
- Names of any interpreters used during police interviews;
- Any requests by the defendant, victim or witness for an interpreter of the same sex or of a particular ethnic group, political orientation or affiliation;
- Whether there is a need for an early special measures meeting with the CPS;
- Where applicable, which special measures would be available to assist a witness and why;
- Whether the victim has had any counselling or psychotherapy since the incident - for further information see **Home Office, CPS, Department of Health (2002) Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial: Practice Guidance**;

- Crime reports and intelligence relating to previous allegations, including those against other victims, indicating potential bad character evidence;
- Details of any unused material gathered during the course of an investigation, in accordance with the Criminal Procedure and Investigations Act 1996, including any medical information relating to the victim which is not relevant to the case;
- Any relevant records or statements from other agencies, for example, pre-sentence reports from the Probation Service, Prison Service information, MAPPAs reports or risk assessments.

The information may not always be readily available but it should be passed to the CPS as soon as possible. The CPS should be updated with any change in circumstances. For further information see **ACPO/CPS (2004/05) The Prosecution Team Manual of Guidance**.

4.3.1 Applying The Full Code Test

The Full Code Test has two stages. The first stage is consideration of the evidence. If the case does not pass the evidential stage, it must not go ahead no matter how important or serious it may be. If the case does pass the evidential stage, crown prosecutors must proceed to the second stage and decide if a prosecution is needed in the public interest. For a full explanation of the evidential and public interest stages, see http://www.cps.gov.uk/victims_witnesses/codetest.html

The charging decision should be recorded on the MG3/3A on CMS and should set out whether it is the Threshold Test or the Full Code Test that applies. The detailed review on CMS should include a list of the authorised charges and refer to all relevant issues from the **CPS (2008) Rape Prosecutions Advice/Review Checklist** at http://www.cps.gov.uk/legal/p_to_r/rape_manual/annex_d_rape_prosecutions_advice_review_sheet/index.html

Prosecutors should specify in the indictment whether the vagina, anus or mouth was penetrated. Where penetration of more than one orifice occurs, separate counts of rape should be preferred.

The IO and the prosecutor should agree a realistic timescale for receipt of evidence (eg, forensic) and the preparation of case papers, see **4.3 Preparing Information for the Crown Prosecution Service for the Full Code Test**. This timescale must be recorded in the action plan. The IO and the prosecutor should give consideration to any possible media interest in the case, and a media interest form should be completed if appropriate.

For investigations started on or after 1 September 2007, where an adult complainant of rape has been video-interviewed, the police should provide three copies of the recording and a ROVI. The ROVI should contain an accurate record of all of the salient points of the complainant's interview but does not have to be a transcript. The ROVI will be used for all CPS and court purposes except trial, for which the CPS will obtain a full transcript and will edit the recording as necessary for court purposes.

4.3.2 Alternative Charges

Prosecutors should use alternative counts sparingly and only where there are doubts about the issues, eg, the evidence is unclear whether the victim was penetrated by a penis or other object, in which case an alternative charge of assault by penetration would be appropriate.

Prosecutors may face a situation where:

- A complainant under 16 years of age has alleged rape or other forms of non-consensual sexual activity.
- However, the credibility of the complainant is so inherently poor, or so badly damaged, that he or she cannot be relied on as a prosecution witness and there is insufficient evidence to proceed on the non-consensual offence.
- The defendant accepts that intercourse or other forms of sexual activity took place, but claims that the complainant consented. This account, therefore, amounts to a denial of the complainant's allegations, but an admission of guilt to a child sexual offence (contrary to section 5 to section 13 of the Sexual Offences Act 2003).

In these circumstances the rape specialist prosecutor must decide whether to accept a plea based on the defendant's account, as the prosecution is not in a position to put evidence forward which contradicts the defence's version of events, or to discontinue the case. Each case must be carefully considered, but the presentational difficulties of accepting an alternative, lesser plea may be overcome by:

- Explaining to the judge that the prosecution are no longer in a position to proceed with the more serious non-consensual offence;
- Outlining the facts that are common between the defence and the prosecution;
- Outlining the defendant's account of the sex act in interview, and informing the judge that the prosecution are not in a position to contradict this account;

- Describing the complainant's injuries (if any) and outlining the available medical evidence.

The judge can then sentence on that basis. Although this course of action is, perhaps, less than satisfactory, the defendant will be convicted of a serious offence which they have, in fact, admitted to. Prosecutors are reminded, however, that such a course would require careful and sensitive witness handling.

If the defendant asserts a fact which is outside the knowledge of the prosecutor or prosecution witness, such as his or her state of mind, and it is accepted in mitigation, it will have a significant impact on sentence. The sentencer should, therefore, be invited not to accept such mitigation without hearing from the offender on oath and testing the offender's account in cross-examination at a Newton Hearing.

Prosecutors may also face a situation where:

- A complainant under the age of 16 years (but over the age of 13 years) has made a clear and credible complaint of rape;
- The defendant accepts that sexual activity took place, but claims that it was with the complainant's consent;
- There is prima facie evidence that the defendant knew that the complainant was aged under 16 years of age.

In these circumstances the prosecutor will have to consider whether to charge an offence of Sexual Activity with a Child (section 9) as an alternative to rape.

It is impossible to issue prescriptive guidance, as each case will turn on its own facts. However, in exercising their judgment prosecutors will need to balance that section 9 is predicated on the existence of consent. Charging sexual activity with a child as an alternative to rape may send a signal to the jury that the prosecution is not confident of its case, and may thereby weaken the prosecution's position in respect of the primary offence of rape. It may also serve to give a jury an easy option of convicting on sexual activity with a child, rather than rape.

Failure to charge with sexual activity with a child means the defendant escapes punishment entirely (for a serious sexual offence which they may have even admitted) if the jury acquit of rape.

4.3.3 Charging Youths

The decision to charge a youth with a sexual offence should be taken by a youth specialist prosecutor, who will be a lawyer with at least two years' prosecution experience and who has undertaken the CPS Youth

Offender Specialist course. The decision to charge a youth with an offence of rape should be taken by a youth specialist, who is also a rape specialist prosecutor, or by a youth specialist in consultation with a rape specialist prosecutor.

Where there is sufficient evidence to provide a realistic prospect of conviction for a sexual offence, careful consideration should be paid to the public interest test and the CPS legal guidance on youth offenders. If the victim of the alleged offence is a child under the age of 18 years, the views of the police, other agencies such as children's social care, the child and their parents should be sought and taken into account.

It is also important to obtain information about any background or similar behaviour, any relationship between the two and the effect that a prosecution might have on the victim. Positive action should be taken, although this will not necessarily be a prosecution. Consensual sexual activity between, for example, a 14 or 15 year-old with another teenage partner would not normally require criminal proceedings in the absence of aggravating features. Where the public interest would not be satisfied by informal action or local authority intervention, consideration should be given to a reprimand or warning if the offence is admitted and the youth is otherwise eligible for the statutory diversion scheme. Prosecutors should consult **Home Office Circular (14/2006) The Final Warning Scheme**, which includes the gravity matrix used by the police to assess offence seriousness, and **Home Office/Youth Justice Board (2002) Final Warning Scheme - Guidance for the Police and Youth Offending Teams** to determine whether the public interest is satisfied by diversion.

4.4 Bail

4.4.1 Police Bail

STOs should make efforts to consult victims prior to a decision about police bail being made. Custody officers should ensure that bail conditions are designed to protect victims, witnesses and other members of the public from the defendant by consulting the STO and IO. See also **1.13 Risk Identification in Rape and Serious Sexual Offences Cases**.

If there is insufficient evidence to charge a suspect, consideration should be given to releasing them under section 47(3) of PACE to enable further enquiries to be completed. This will allow time for other witnesses to come forward and for a more detailed investigation to be undertaken. The Criminal Justice Act 2003 allows for bail conditions to be imposed where a suspect is bailed to return to a police station while pre-charge advice is being sought from the CPS.

In rape cases where police bail has been granted, and, particularly, if the suspect knows the victim's contact details or has ready access to them, the following bail conditions should be considered to afford maximum protection to victims:

- Not contacting the victim either directly or indirectly (ensuring that their home address or temporary accommodation addresses, including refuges, are kept confidential);
- Residing at a named address;
- Reporting to a named police station on specific days of the week at specified times;
- Obeying any curfews set or curfew conditions.

The force granting police bail should ensure that these conditions are strictly adhered to.

When considering bail conditions in a domestic abuse-related rape case, see **ACPO (2008) *Guidance on Investigating Domestic Abuse***.

4.4.2 Release on Bail

Before a suspect is released from a police station, officers should:

- Inform the victim of the suspect's impending release on bail and record this notification;
- Ensure that all area control rooms and other intelligence databases are updated regarding any bail conditions imposed, in case of future calls.

A suspect charged with rape should be placed before the court at the earliest opportunity and bailed for the shortest period that local service level agreements and guidance from local criminal justice boards (LCJBs) will permit. This minimises the opportunities that a suspect has to intimidate witnesses. In cases of domestic and acquaintance rape, police officers should identify any risk factors specific to the victim and communicate them to all other officers and personnel involved in the case. This will normally involve informing the STO, custody suite (for consideration of any police bail conditions), the IO and the SARC (or similar facility). The STO or DAO should inform the victim of any risks/risk factors to them, and of any protective measures put in place to reduce these risks. Referring the cases to a MARAC should also be considered, see **1.15 Multi-Agency Risk Assessment Conferences**. Identified risk factors relating to child victims should be communicated to parents or carers and similar safety strategies developed to reduce risk.

Where a suspect and victim know each other, it is important to clarify the following points at the time bail is granted:

- It is the suspect's responsibility (not the victim's) to comply fully with any bail conditions;
- Any breaches of bail involving contact between the victim and the suspect will be treated as such. Where the suspect alleges that the victim agreed to such contact, this should be investigated, verified and the prosecutor informed of the correct position.

If an application is made to the court for a defendant to be remanded in custody, the IO should be present at court to assist the CPS. The victim personal statement (which may contain information about how the victim would feel were the suspect to be bailed) can be used by the prosecution to object to bail being granted.

4.4.3 Keeping the Victim Informed of Investigation Progress and Bail Conditions

If a suspect is charged with an offence and released on police bail to appear at court, **Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime** requires that the police notify the victim of this, and of the date of the court hearing and any relevant bail conditions, within one working day for vulnerable or intimidated victims, and within five working days for other victims. In practice, in rape cases involving specific risk factors, officers should, where possible, inform the victim of the police bail decision and any conditions prior to release. Once a decision has been made to bail a suspect, however, release must not be delayed by difficulties in contacting the victim or their representative.

Similar requirements exist within **Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime** for informing victims or family members of any changes to bail conditions, applications to remand the suspect in custody, decisions to remand the suspect and other forms of case disposal. Police supervisory officers should monitor the ways in which victims are updated about police bail decisions and decisions relating to charges, including cases in which no charges are brought.

4.4.4 Informing Victims of Decisions Not to Charge, Discontinuance and Alternative Charges

Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime sets out the services that victims can expect to receive from the police and CPS in cases where a decision is made not to charge a suspect.

It is the duty of the police and the CPS to ensure that victims are informed of all charging decisions. In cases where, following discussions between an IO and a rape specialist prosecutor, the decision is taken that there is insufficient evidence to bring any proceedings for a relevant criminal offence it will be the responsibility of the police to notify the victim of this fact.

Where a rape specialist prosecutor, after receipt of a full evidential report takes the decision, in consultation with a second rape specialist prosecutor, that there is insufficient evidence to charge, it will be the responsibility of the CPS to notify the victim of this fact within one working day of the decision being made, unless the decision was made during discussion with the IO. Where the decision was made during that discussion, it will be the responsibility of the police to inform the victim of the decision, usually through the STO. The name of the second rape specialist prosecutor should be recorded on CMS. Where the responsibility to notify the victim of the decision falls to the CPS, a direct communication letter offering a meeting with the CPS should be sent to the victim in accordance with **Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime.**

If, after a defendant has been charged and following case review, the rape specialist prosecutor (in consultation with a second rape specialist prosecutor) takes a decision to substantially alter or discontinue any charge, the prosecutor must notify the victim within one working day. In all other circumstances the police will be responsible for notifying victims of decisions in cases. A direct communication letter offering a meeting with the CPS should be sent to the victim in accordance with **Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime.** Prosecutors should refer to **CPS (n.d.) Legal Guidance: Direct Communication with Victims**, at http://www.cps.gov.uk/legal/d_to_g/direct_communication_with_victims/ which takes into account changes in process brought about by the implementation of the statutory charging scheme, **Cabinet Office (2004) No Witness No Justice: The National Victim and Witness Care Programme** and **Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime.**

4.4.5 Informing The Suspect of No Further Action

Where no further action is to be taken against the suspect, the rape specialist prosecutor should first inform the IO of this decision. The suspect should then be advised of that outcome in accordance with force policy. The notification to the suspect should be made in writing. Suspects should be advised to retain and preserve any documents or other evidence that supports their defence as the investigation could be resumed. This may occur where, for example, any fresh evidence comes

to light or new or historic allegations are made which are relevant to the same circumstances as the original investigation.

4.4.6 Reopening An Investigation

The police should advise victims when a case will be subject to periodic review and ask the victim or family representative whether they wish to be advised of review procedures. The decision should be recorded by the IO. In circumstances where family members wish to be advised of review procedures, the police should ensure that information about the review is passed to the victim or family representative within one working day of the review procedure commencing. Decisions made at the time of the discussion should be recorded so that reviewing officers can consider the wishes of the victim or family member before making contact with them. Where new evidence emerges in a closed case, the case may be subject to a cold case review, see **2.1.11 Cold Case Reviews**.

Management Issues

- Implementing early consultation.
- Agreeing local arrangements for the carrying out of full and early consultation.
- Ensuring the allocation of rape cases to rape specialist prosecutors, who will be responsible for the case from pre-charge stage to its completion.
- Maintaining a list of rape specialist prosecutors who meet the required standards of training and expertise.
- Ensuring that obligations as set by the ***Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime*** are met.
- Reducing periods of police bail to facilitate early charging, where possible.
- Ensuring that IOs are aware of the role of CPS rape specialist prosecutors and have systems for accessing their advice.
- Ensuring that complete prosecution files are submitted to the CPS as quickly as possible for charging decisions, and continuously monitoring this process.

5

Victim and Witness Care

This section is relevant to police officers and rape specialist prosecutors involved in rape cases, staff providing services from witness care units, and specialist sexual violence service providers such as ISVAs and their local equivalents. It covers all the different types of support available for the victim between the charging and court stages of the criminal justice process.

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5.1 Impartial Information and Support for Victims and Witnesses

Victims and their supporters and family members should have access to information about local counselling and support services as well as any specialist facilities such as SARCs, see **5.1.1 Sexual Assault Referral Centres**.

Officers should ensure that all victims of rape are able to access a copy of *Rights of Women (2008) From Report to Court: A handbook for adult survivors of sexual violence, Third Edition*. This publication provides victims with a wide range of information about the criminal justice processes involved in rape cases and the sources of support available to victims and their families. For further information see <http://www.rightsofwomen.org.uk/publications.html>

The criminal justice system website provides useful information for victims of crime, including an interactive tour to guide victims through the criminal justice system. The tour explains each stage of the process that a victim of any crime will encounter, beginning from the time a crime is reported and the police investigation through to prosecution, the court process and sentencing. There is also information on the help and support available to victims of crime, including how to apply for compensation. For further information see <http://www.cjonline.gov.uk/victim/>

5.1.1 Sexual Assault Referral Centres

A Sexual Assault Referral Centre (SARC) is a single site with facilities for a high standard of forensic examination. Here, victims can receive medical care and counselling while, at the same time, having the opportunity to assist the police investigation. SARCs are not currently available in every area, but similar facilities should be accessible locally even if they are not collocated as part of a SARC initiative. They are usually provided by a partnership including the local police force(s) and health services, with close involvement of the specialist sexual violence services. There is a wide range of models of SARCs; most have been established in premises away from police stations, usually in residential areas or on hospital sites.

SARCs usually provide all or some of the following:

- Crisis workers to support the victim, facilities for forensic medical examinations, access to forensic physicians and reporting mechanisms to the police;
- Immediate on-site access to emergency contraception and drugs to prevent sexually transmitted infections including HIV;
- Integral follow-up services including psycho-social support and counselling, sexual health, and support throughout the criminal justice process;

- Infrastructure to ensure ongoing client care, DNA decontamination, staffing, training and maintenance, including stocking medication;
- A managed and quality-assured service.

SARCs usually provide a confidential self-referral service whereby victims can attend the centre directly. In these circumstances staff at SARCs discuss the following four options with the victim:

- Report the matter to the police for investigation.
- Report the facts anonymously to the police for intelligence purposes.
- Secure and retain all necessary physical evidence samples for subsequent referral to the police. If this course of action is decided upon, each force will have a protocol with their local SARC for the storage of evidence and the recording of information in cases where the victim does not wish to report the offence immediately to the police may wish to do so later.
- Provide the victim with appropriate medical, psychological and counselling support without retaining evidence or reporting the offence to the police.

Evidence of the benefits of SARCs and information about good practice can be found in ***Home Office (2004) Sexual Assault Referral Centres: developing good practice and maximising potentials. Research Study 285***. ACPO has also produced ***ACPO (n.d.) Sexual Assault Referral Centres (SARCs) 'Getting Started' Guide***. This is a practical guide for setting up a SARC, and includes information about the different SARC models currently in operation. For access to these documents and for further information on SARCs, see <http://www.homeoffice.gov.uk/>

5.1.2 Specialist Advocate Services and Independent Sexual Violence Advisors

Advocates, support workers and independent sexual violence advisers (ISVAs) work to provide specialist support, independently of the criminal justice system, to the victims of sexual violence. Various models of advocacy and support services exist locally. Details of their contact information and the services they provide locally should be widely known and accessible to all police officers and any prosecutors involved in rape cases, along with information about how they make referrals to these services.

Rape Crisis Centres provide a range of specialist services for women and girls who have been raped or have been subject to other forms of sexual violence - whether as adults or as children. Most centres offer advocacy, counselling and a telephone support line, but they may also provide services such as training, educational work in schools, court support or work with male survivors. Rape Crisis Centres are not just for women currently in 'crisis'; many women first make contact with these centres years, or even decades, after they have been raped or sexually abused. For further information on the coordination of national networks of Rape Crisis Centres and support services, see <http://www.rapecrisis.org.uk/>

The Survivors Trust is a UK-wide umbrella agency for specialist rape crisis, sexual violence and childhood sexual abuse voluntary sector services. Member agencies provide a comprehensive and holistic range of services including crisis support and counselling, helplines, supervision, training, advocacy, information and ISVA services. Importantly, the services are provided on a needs-led basis, without time limits. Some services ask for a donation towards running costs. It is well recognised within The Survivors Trust membership that counselling provision for victims of sexual violence and childhood sexual abuse is likely to be in-depth and protracted, sometimes lasting years.

In England there are sixty-two services working with women and men, thirty-seven women-only services and six male victim-only services. For youth clients there are eighty-two services for young women, fifty-one for young men and forty-six working with all youth clients. In Wales there are five services working with women and men, one women-only service and three services working with all youth clients. Contact details for all services can be accessed through <http://www.thesurvivorstrust.org> which lists geographical location, telephone contacts, services provided and opening hours.

ISVAs were introduced alongside their domestic abuse counterparts, IDVAs, to build on existing specialist advocacy services, which are provided by the third or voluntary sector. ISVAs may be based in SARCs (or an equivalent facility), rape crisis organisations or in local police stations. They accept referrals from a variety of agencies, including the police, and usually support victims who are engaged with a statutory service. Although ISVAs provide support to victims throughout the criminal justice process, they also continue to provide support when cases will not progress to court. In addition, they may provide support services to people who report offences which happened some time ago.

Although roles vary locally, the role of an ISVA is to work within a multi-agency setting to provide a proactive service to adult victims of sexual violence within and outside of the criminal justice system to:

- Risk assess and help clients to keep safe;
- Help clients access their rights;
- Help clients access health and other services they require;
- Monitor and keep clients informed of the progress of their case;
- Provide support and information through the criminal justice system.

For further information on the role of ISVAs, see ***Co-ordinated Action Against Domestic Abuse (CAADA) (n.d.) An Implementation Guide for Newly Appointed Independent Sexual Violence Advisors*** at <http://www.caada.org.uk/>

5.1.3 The Witness Service

The Witness Service (WS) is part of Victim Support and gives free and confidential support to victims of crime, witnesses and their families. It provides the following services:

- Pre-court visits to see the inside of a court and to learn about court procedures;
- Separate waiting areas (if available);
- Support in court throughout the process of the trial and giving evidence;
- Practical help (for example, with expense forms);
- Easier access to those professionals who can answer specific questions about the case (the WS cannot discuss evidence or offer legal advice);
- Post-trial support or information.

For further information see http://www.victimsupport.org.uk/vs_england_wales/services/witness_services.php

5.2 Police and Crown Prosecution Service Witness Care

The police and CPS should take all practicable steps possible to help victims through the often difficult experience of becoming involved in the criminal justice system. Efforts should be made to increase the victim's confidence in the criminal justice system and to provide them with as much information as possible.

5.2.1 Witness Care Units

As part of the government's ongoing programme to transform the experiences of victims and witnesses of crime, the **Cabinet Office**

(2004) No Witness, No Justice: The National Victim and Witness Care Programme project introduced Witness Care Units across England and Wales. Implementation of this initiative has significantly improved the standards of service provided to victims and witnesses of crime.

The units provide a SPOC for victims and witnesses and will provide support and information, from the point of charge to the conclusion of the case, tailored to the needs of the individual victim or witness. By being provided with better information and support, witnesses are more likely to feel confident and be willing to support the prosecution process. Witness Care Units aim to lead to more positive outcomes for the criminal justice system, with fewer failed cases and more offences being brought to justice in addition to a more positive experience for victims and witnesses.

The Witness Care Unit should carry out a detailed needs assessment for those witnesses required to attend court, to identify the support needed to enable witnesses to attend court and to give their best evidence. Support may include help to address childcare or transport problems, language difficulties, disabilities or particular concerns such as intimidation.

Witness Care Units will not always be the SPOC for the victim (and possibly some witnesses), particularly in serious and sensitive cases involving offences such as rape. Each CPS Area should have in place a local protocol, which clearly sets out the roles and responsibilities of the Witness Care Unit and the specialist police units in these types of cases. Arrangements for managing the SPOC should be agreed by the Witness Care Officer and the IO on a case-by-case basis. The Witness Care Officer should work with the STO or ISVA (where attached to the case) as agreed. Witness Care Units do not affect the obligations placed upon police and prosecutors to inform victims of decisions as set out by the **Office for Criminal Justice Reform (2005) The Code of Practice for Victims of Crime**.

5.2.2 Court Familiarisation Visits

If other agencies or individuals are involved in supporting the victim, they should be made aware of the date of the court hearing. The victim should also be referred (with consent) to the WS at the relevant court. The WS should arrange a court familiarisation visit to see the courtroom and organise a meeting about how the proceedings take place. This support and contact should be coordinated by the Witness Care Unit, STO or ISVA (if appointed to the victim) and offered to the victim from the outset. The STO should also take the opportunity to assess whether the victim needs any additional support in the lead-up to the trial. For example, it may be that their fears of intimidation have increased and some additional short-term measures are needed.

It may also be necessary to introduce a second STO (one not involved in the case) to the victim; this might be particularly useful in cases where the victim has not had support from an ISVA or other specialist support service that might be present during the court case. This will ensure that if the original officer is prevented from entering the courtroom when the victim is giving evidence, there is an alternative officer, already known to the victim, available to support them. The IO should deploy STOs as necessary and ensure that they are provided with full briefings and debriefings.

Management Issues

- Working in partnership with specialist sexual violence services to provide appropriate support for all victims of rape.
- Developing facilities (SARCs or similar) that provide single site access to a range of services for victims, including forensic medical examinations and medical aftercare.
- Monitoring the performance of Witness Care Units and their provision of service to victims of rape.
- Ensuring that victims are always offered court familiarisation visits prior to their court case.

6

Pre-Trial Case Preparation

This section is relevant to rape specialist prosecutors, Area Rape Coordinators, Crown advocates and police officers involved in pre-trial preparation. It covers all activity post charge, prior to court.

This section should be read in conjunction with *CPS (2008) Rape Manual*.

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6.1 Preparing and Managing The Case

On receipt of the full evidential file from the police, a comprehensive file review should be drafted by the allocated rape specialist prosecutor and recorded on CMS.

Checklist 19: Preparing and Managing a Case

Rape specialist prosecutors should undertake the following actions:

- Draft and forward to the police an action plan (if required);
- Review the unused material;
- Serve prosecution evidence in accordance with the court's directions;
- Supply initial disclosure and update disclosure record sheet as appropriate throughout pre-trial process;
- Prepare special measures applications, bad character applications and hearsay applications as necessary;
- Brief an appropriate counsel who has been accredited and monitored, or an in-house advocate who is a rape specialist prosecutor;
- Prepare instructions to counsel to include all relevant issues, using the **CPS (2008) Advice/Review Checklist** at http://www.cps.gov.uk/legal/p_to_r/rape_manual/annex_d_rape_prosecutions_advice_review_sheet/index.html
- Arrange to hold a pre-trial case conference with trial counsel, the IO, the forensic physician and any other expert witnesses as soon as possible;
- Ensure a record is made of any conference, including those held at court;
- Coordinate all special measures meetings to enable counsel to meet the witness;
- Record on CMS any particular reasons for not including the forensic physician at the conference;
- Consider the defence statement and any actions required, or chase the defence and advise the court if none is received;
- Copy the defence statement to police with an Action Plan – consider the response – supply a continuing disclosure letter;
- Liaise with the Witness Care Unit over the outcome of any application for special measures and pre-court familiarisation visit, and ensure that the victim is updated on the progress of their case;

- Address any victim or witness concerns;
- Check that an updated Victim Personal Statement has been served on the defence and the court;
- Ensure that the victim has been advised of the making and outcome of any section 41 Youth Justice and Criminal Evidence Act 1999 application, or confirm with the defence that none is to be made and remind them of the timescales.

6.2 Pre-Trial Witness Interviews

A pre-trial witness interview may be conducted by a crown prosecutor designated by the chief crown prosecutor for their area or head of division, or by an independent advocate on the authority of a designated crown prosecutor (after training) in accordance with **CPS (2008) Pre-trial witness interviews: Code of practice**, which is issued by the Director of Public Prosecutions. The purpose of the interview is to:

- Assess the reliability of the witness's evidence;
- Assist the prosecutor in understanding complex evidence;
- Answer questions on court procedures.

The **CPS (2008) Pre-trial witness interviews: Code of practice** applies to interviews (referred to throughout this document as a pre-trial interview) for the purpose of assisting a prosecutor to assess the reliability of a witness's evidence or to understand complex evidence. It does not apply to other meetings with witnesses such as special measures meetings, court familiarisation visits or meetings to explain a decision to discontinue a case or to significantly alter a charge.

The attendance of a witness at a pre-trial interview is voluntary; they cannot be compelled to attend. If a witness declines to attend a pre-trial interview, this fact and any explanations for it given by the witness should normally be disclosed to the defence in accordance with the prosecutor's disclosure obligations.

Checklist 20: Considerations Prior to Conducting a Pre-Trial Interview

Rape specialist prosecutors should consider:

- Whether a pre-trial interview will enable them to make a better informed decision about any aspect of the case;
- Whether a pre-trial interview will enable them to assess the reliability of the witness's evidence by asking questions about the content of their statement(s) and any other issues relating to reliability;

- Timing of the pre-trial interview, as it may be carried out at any stage of the proceedings (after the witness has provided a signed police statement or visually recorded interview) prior to the witness giving evidence at court;
- Consulting the SIO or IO to confirm that the person to be interviewed is not and is not likely to become a suspect in the case; if the person comes under suspicion (for the offence under investigation or another offence), the prosecutor must terminate the interview.

6.2.1 People Present at the Pre-Trial Interview

An interview may be conducted by more than one prosecutor or by a prosecutor and an independent advocate. Where this is the case, however, the interview process should be led by one person. Other CPS staff may also be present to provide administrative support to the prosecutor.

Usually, the presence of a police officer will not be appropriate but, exceptionally, the prosecutor or other designated person conducting the interview may request the presence of a police officer if they deem this necessary.

If a police officer is requested to attend the interview, they should be familiar with the case but, if possible, they should not be the officer who interviewed the witness or obtained the witness's original statement. An officer attending a pre-trial interview should play no part in the questioning of the witness. If, as a result of something said in interview, the officer and prosecutor need to confer about an evidential point, the interview should be suspended and the discussion should take place in the absence of the witness.

In any case where the prosecutor considers it necessary for the witness to have the assistance of an interpreter or intermediary (whether or not the original statement was taken in such manner), the prosecutor should arrange for the attendance of a suitably qualified person to attend the pre-trial interview. People who may themselves be potential witnesses must not be used as interpreters or intermediaries, but a person who assisted in the interview or taking of a witness statement may assist at a pre-trial interview. Prosecutors should refer to existing guidance on the selection of interpreters, see ***Office for Criminal Justice Reform (2008) National Agreement on Arrangements for the Use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings Within the Criminal Justice System, as revised 2007.***

The witness may be accompanied by a supporter. Prosecutors must satisfy themselves that the supporter has no actual or potential involvement in the case and has no personal knowledge of the matters likely to be discussed. The prosecutor conducting the interview has discretion as to whether the supporter should be permitted to be present, or to remain, during the interview. If, in the view of the prosecutor, the proposed supporter is unsuitable to act in this role, then the witness should be given an opportunity to arrange for an alternative supporter who is suitable and the interview should be rearranged for this purpose. The prosecutor must outline the supporter's role and ensure that they do not prompt, influence or inhibit the witness in any way.

6.2.2 Conducting the Pre-Trial Interview

The prosecutor must remain objective and dispassionate throughout the interview. Training or coaching for witnesses is not permitted (see *R v Momodou and Limani* [2005] EWCA Crim 177). Prosecutors must not under any circumstances train, practise or coach the witness, or ask questions that may taint the witness's evidence. Leading questions should be avoided.

Where there is significant conflict between witnesses that cannot be resolved by careful questioning, alternative accounts may be put to the witness for comment - so long as any source of the alternative account is not attributed. It should never be suggested to the witness that they adopt the alternative account.

Prosecutors should remain dispassionate to the witnesses' responses. In particular, they must never suggest to a witness that he or she might be wrong, or indicate approval or disapproval in any way to any answer given by the witness. To depart from this standard carries with it the risk of allegations that the witness has been led or coached in their evidence.

A pre-trial interview should, wherever practicable, involve face-to-face contact between the prosecutor and the witness. This is because it provides greater opportunities for the witness to raise issues of concern and to be put at their ease about the process of giving evidence. However, a prosecutor may, at their discretion, conduct a pre-trial interview by indirect means including (but not limited to) telephone or video-link. In such cases the prosecutor must make arrangements for the interview to be audio recorded.

Checklist 21: Conducting the Pre-Trial Interview

Rape specialist prosecutors conducting pre-trial witness interviews should:

- Explain their statutory role;
- Explain the purpose of the interview and respond to any questions in relation to this;
- Ensure that the pre-trial interview is not conducted in the presence of any other witness in the case;
- Provide the witness with a copy of the witness statement(s) before or during the interview, or, where the witness has participated in a visually-recorded interview, give an opportunity of viewing it again;
- If the prosecutor considers it to be necessary, provide the witness with an opportunity to comment on the contents of their statement or visually-recorded interview;
- In circumstances where the witness has had access to their statement or visually-recorded interview in advance of the pre-trial interview, this fact should be confirmed at the start;
- If the prosecutor considers it to be necessary, the witness should be shown items or documents exhibited by them;
- Make a comprehensive audio recording of the pre-trial interview - if the witness previously made a visually recorded interview the pre-trial interview may also be visually-recorded;
- Ensure that if the witness provides further evidence during the pre-trial interview, which is material to the case, a further witness statement or visually-recorded interview is conducted by a police officer and served upon the defence;
- Notify the disclosure officer of any unused material generated by the pre-trial interview so that it can be recorded on the appropriate disclosure schedule;
- Reimburse the witness (and their supporter, if present) for reasonable expenses incurred in attending the venue where the pre-trial interview is held.

The record of a pre-trial interview will generally be unused material, and disclosure should be determined by the application of the appropriate statutory test(s). A record of a pre-trial interview will normally meet these tests and, subject to the application of Public Interest Immunity (PII), the recording of the interview will be supplied automatically to

the defence as unused material. When a recording is supplied to the defence, a transcript will not be prepared.

6.2.3 Children, Other Vulnerable Witnesses and Pre-Trial Interviews

Special care should always be taken when making a decision to hold a pre-trial interview with a child. The purpose of video recording the evidence-in-chief of children and other vulnerable witnesses is to preserve their evidence at an early stage, and to protect them from having to continually repeat their account during the course of the criminal prosecution process. (In cases where children and other vulnerable witnesses are victims of abuse, therapy may have commenced following the video recording of their testimony.)

Pre-trial interviews will, therefore, only be considered for children and vulnerable witnesses in exceptional cases. Prosecutors will have the benefit of the video recording in order to assess the witness and determine if there are areas that require further clarification. Consideration will be given to asking the original interviewer to explore these by way of an additional video-recorded interview. The investigative interviewers will have already built a rapport with the witness and have the special skills required to gently probe the issue in a clear but non-suggestive way.

When deciding whether to hold a pre-trial interview, consideration should be given to the age, degree of vulnerability and status of the witness. Where the original statement was video recorded, the pre-trial interview should/is likely to also be video recorded. The venue must be appropriate for the witness but usually the police video-interview suite is used. The witness must have appropriate support and the prosecutor will take advice from the trained police interviewer as to the type and level of questions to be put. For further information see ***Office for Criminal Justice Reform (2007) Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures*** and ***CPS (2008) Pre-trial witness interviews: Code of practice***, at http://www.cps.gov.uk/victims_witnesses/interviews.html

6.3 Disclosure and Third-Party Material

The current law in relation to disclosure is set out in the Criminal Procedure and Investigations Act 1996 and the Code of Practice to CPIA, issued under section 23 of that Act. Detailed procedural guidance on the discharge of the police and the CPS duties of disclosure are set out in ***CPS (2005) The Prosecution Team Disclosure Manual***.

The following material details those aspects of law and practice most likely to be of relevance to the prosecution of cases of rape and other serious sexual offences.

The duties imposed on the police and the CPS under the Act are not simply about compiling schedules of unused material as part of preparation for court, and then applying the disclosure test. At the heart of every investigation is the obligation, in the Act and the Code, to pursue all reasonable lines of enquiry - whether these point towards or away from the suspect. Reasonable lines of enquiry may include enquiries as to the existence of material in the hands of a third party (paragraph 3.6 Code of Practice CPIA).

The disclosure test is objective. To comply, the police and prosecutor must disclose to the accused, any prosecution material which has not previously been disclosed and which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused, save to the extent that the court, on application by the prosecutor, orders it is not in the public interest to disclose it.

6.3.1. Applying the Disclosure Test

Only material satisfying the disclosure test (capable of undermining the prosecution case or assisting the case for the accused) should be disclosed to the defence. Blanket disclosure should not take place. If the regime is not followed and, in particular, if all reasonable enquiries are not pursued, the court could stay proceedings for abuse of process (see *R v Feltham Magistrates Court ex parte Ebrahim; Mouat v DPP* [2001] 2 Cr App R 23).

The police and the rape specialist prosecutor should anticipate possible defence arguments and check to see whether the following types of unused material generated during the course of a rape investigation have the potential to satisfy the disclosure test. This should enable the prosecution team to build a strong case and avoid victims and other witnesses being presented with unexpected lines of questioning during a court case.

Checklist 22: Unused Material Which Might Undermine the Prosecution Case or Assist the Case for the Defence

Police and prosecutors should consider the types of material listed below, if relevant, when applying the disclosure test to a rape case:

- Medical records, and in particular psychiatric records, that might provide information relating to the credibility of the complainant or other prosecution witness.
- Local authority material, for example, social care or educational records, that might provide information relating to the credibility of the complainant or other prosecution witness.
- Material relating to past or current Family Court proceedings.
- Information that the complainant is pursuing a civil claim for compensation, and documentation relating to such a claim and/or to applications for compensation made to the Criminal Injuries Compensation Authority.
- Information relating to previous complaints made by the complainant.
- Scientific and scenes of crime findings which do not advance the prosecution case. In particular, scientific findings which indicate that the complainant had consumed alcohol or taken drugs prior to the alleged offence. (Note, however, that high consumption of alcohol or drugs might indicate that the complainant was lacking the capacity to consent in accordance with section 74 Sexual Offences Act 2003. It might, therefore, be evidence that the prosecutor will wish to adduce as part of the Crown's case).
- Telephone evidence and, in particular, the content of text messages passing between the complainant and the suspect/defendant at the relevant time.
- Previous convictions or cautions relating to the complainant or other prosecution witnesses.

Throughout the investigative and prosecution process, police and prosecutors should adopt a proactive approach in pursuing all reasonable lines of enquiry, whether these point towards or away from guilt. This may involve probing whether material set out in **Checklist 22: Unused Material Which Might Undermine the Prosecution Case or Assist the Case for the Defence** exists and examining how such material might be obtained if it is thought to exist. Full and complete

details of any such material (for example, the origin of DNA found at the scene, not relating to the suspect) will usually be required by the prosecutor in applying the disclosure test and in assessing the impact of the material on whether the case continues to meet the evidential test set out in ***CPS (2004) The Code for Crown Prosecutors***.

6.3.2 Third-Party Material

In the context of rape cases, a third party might be a social care department, forensic physician, school, hospital or CCTV operator. A third party has no obligation under the CPIA to reveal material to the police or to the prosecutor, nor is there any duty on the third party to retain material which may be relevant to the investigation. In some circumstances, the third party may not be aware of the investigation or prosecution.

Reasonable lines of enquiry may include investigating the existence of any relevant material in the possession of a third party. It is not necessary to make speculative enquiries, but frequently the existence of the material will usually be known or can be deduced from the circumstances. For example, where a child witness is in the care of the local authority, children's social care may have relevant material, eg, material relating to the credibility of the witness or records of interviews with the witness that are likely to have touched on the subject matter of the investigation.

In *R v Alibhai & others* [2004] EWCA Crim 681, the Court of Appeal held that before taking steps to obtain third-party material, it must be shown that there was not only a suspicion that the third party had relevant material but also a suspicion that the material held by the third party was likely to satisfy the disclosure test. Furthermore, *R v Alibhai* states that even if there is the necessary suspicion, the prosecutor has a 'margin of consideration' as to what steps to take in any particular case and is not under an absolute obligation to obtain material that is suspected to satisfy the disclosure test.

If the police believe that a third party holds material that may be relevant to the investigation, that person or body should be told of the investigation. They should be alerted to the need to preserve relevant material (***CPS (2005) Prosecution Team Disclosure Manual, 4.7***). If material relevant to the investigation comes to the knowledge of the IO and is then obtained from a third party, it will become unused material within the terms of the CPIA. This applies particularly to relevant information conveyed verbally by the third party. Any such material should be recorded in a durable or retrievable form (for example, potentially relevant information revealed in discussions at a MARAC attended by police officers). It will have to be recorded on the appropriate disclosure schedule and revealed to the prosecutor in the usual way.

Where, if after receiving a request from the investigator or prosecutor, the third party refuses to cooperate, the matter should not be left. If criminal proceedings have commenced, the prosecutor should consider whether to make an application for a witness summons under section 97 of the Magistrates' Courts Act 1980 or section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965. Part 28 Criminal Procedure Rules 2005 (as amended) sets out the procedure to be adopted in applying for a witness summons. The rules require the court to consider the rights of those to whom confidential information or documents relate before a witness can be required to give evidence about them.

Rule 28.5 covers applications for witness summonses. It requires the proposed witness to produce in evidence a document or item, or to give evidence about information apparently held in confidence that relates to another person (eg, application for a summons for a local authority to produce medical records relating to the complainant). This is designed to overcome the difficulties outlined in *R (on the application of TB) v Stafford Combined Court* [2006] EWCA 1645 (Admin), where the Divisional Court held that the medical records of a complainant (prosecution witness in a sexual offence case) were confidential between medical practitioners and patients. The patient had a right to respect for private and family life under Article 8 of the ECHR. It was not sufficient for the court to delegate her representations to the person in possession of the documents, ie, the NHS trust alone. Procedural fairness required that the complainant should have been given notice of the application and the opportunity to make representations (orally if she wished) before the witness summons order was made.

The application for a witness summons must, where the court directs, be served on the person to whom the confidential document relates, ie, the patient in the case of medical records, Rule 28.5(3)(b). The court must not issue a summons unless it is satisfied that it has been able to take adequate account of the duties and rights, including rights of confidentiality, of the proposed witness and of any person to whom the documents relate, Rule 28.5(4). Rule 28 has equal application in respect of applications by the defence to access such third-party material by way of witness summons.

Alternatively, where access to the material is declined or refused by the third party before a suspect is charged and the police believe the material is likely to be relevant evidence and of substantial value, the IO may consider making an application under Schedule 1 of PACE, (Special Procedure Material).

If the prosecutor is of the view that unused material obtained from a third party falls for disclosure to the defence (because it might reasonably be considered capable of undermining the prosecution case

or assisting the case for the accused), consultation with the third party should take place before disclosure is made. In determining whether to disclose the material to the defence, the prosecutor should take account of Article 8 ECHR rights of the person to whom the confidential material relates. See *R (on the application of TB) v Stafford Combined Court* [2006] EWCA 1645 (Admin). This will usually mean that the prosecutor must be satisfied that the person to whom the material relates consents to such disclosure.

There may be public interest reasons which justify withholding disclosure, in which case the prosecutor will seek a PII ruling from the court. Only material satisfying the disclosure test should be brought before the court for the purposes of seeking PII (see *R v H*; *R v C* [2004] UKHL 3).

6.3.3 Third-Party Family Proceedings Material

Material held by a third party (typically in this context a local authority) may relate to civil proceedings in the Family Court. Rule 10.20A Family Proceedings Rules 1991 prevents the communication (without the consent of the Family Court) of information and documents relating to family proceedings held in private and concerning children.

Prosecutors must ensure that Rule 10.20A above is not infringed. The sanction is contempt. Where it appears that relevant material (which should be obtained in pursuit of reasonable enquiries) relates to Family Proceedings, the prosecutor must consider making an application to the Family Court to access such material and to use it in the course of the criminal proceedings.

Rule 20.10A has exceptions; firstly, the text or summary of a judgment in Family Proceedings may be disclosed by a party (typically a local authority) to the CPS. The prosecutor can then use it to discharge his or her functions under any enactment. This will include disclosure to the defence, where appropriate, under the CPIA. Secondly, the Rule permits the communication of information relating to the proceedings (whether or not contained in a document filed with the court), not only where the court gives permission, but also where the communication is to (*inter alia*) 'a professional acting in furtherance of the protection of children', which is defined as including a police officer who is exercising powers under section 46 of the Children Act 1989 (police protection) or is serving in a CAIU or a paedophile investigation unit of a police force.

The investigation and prosecution of offences against a child is part of the protection of children and it is permissible to disclose documents relating to proceedings in addition to information contained therein (*Borough Council v A and others (Chief Constable intervening)* [2007] 1 All ER 293. However, the officer receiving the communication is not

permitted to make use of the document (as opposed to the information contained therein) without the permission of the Family Court (see *Borough Council v A and others* (Chief Constable intervening)), above.

It follows that the police may have accessed information relating to Family Proceedings under the above exception contained in Rule 20.10A. Although the police officer is permitted to discuss such information with the prosecutor, the use of any documents containing the information is prohibited without the consent of the Family Court. For further details on disclosure in rape cases, see ***CPS (2008) Rape Manual*** at http://www.cps.gov.uk/legal/p_to_r/rape_manual/rape_manual/#a15

6.4 Drafting Indictments

An indictment is a document which contains the charges against the defendant for a trial in the crown court. Each charge is known as a 'count'. An indictment must be signed by the proper officer of the crown court; until it has been signed, it is a 'bill of indictment'.

The draft indictment should be prepared at an early stage of the crown court case preparation process and only in exceptional circumstances should this document need to be re-drafted. The preparation of the draft indictment is part of the reviewing lawyer's function. It is only in complex or sensitive cases that counsel for the prosecution should be asked to draft the indictment. The count or counts to be included in the indictment should only be those which are supported by the evidence, in accordance with the requirements of ***CPS (2004) The Code for Crown Prosecutors***. The reviewing lawyer is responsible for the content of the indictment unless that lawyer is a crown prosecutor acting under supervision and is precluded from making the relevant casework decisions.

It is not appropriate to include more counts than are necessary in an effort to encourage a defendant to plead guilty to a few. Equally, it is not appropriate to include a more serious count in the indictment in anticipation that this will encourage the defendant to plead guilty to a less serious count. The type and number of counts to be included on the indictment will depend on the assessment of the evidence and the nature of the case. However, the indictment should not be overloaded with an unnecessarily large number of counts as this can detract from the serious nature of the offence(s).

6.4.1 Multiple Offending

The following guidelines, which are derived from the judgment of the Court of Appeal, Criminal Division in *R v Tovey and Smith* [2005] EWCA Crim 530, should be followed when charging allegations of multiple offending and drafting indictments in such cases. Where the allegation is of a number of similar acts on different occasions, the prosecution should not proceed on the basis that a very small number of charges

are said to be representative of the whole course of conduct. As Tovey and Smith confirms, the court may only sentence for offences in respect of which the defendant has been convicted, or which he or she has asked to be taken into consideration.

Checklist 23: Drafting Indictments in Multiple Offending Cases

The following principles should be applied:

- Sufficient counts should be included in the indictment, reflecting the full criminality alleged and enabling the sentencing judge, in the event of conviction, to impose a sentence which properly reflects that criminality;
- It will usually be sufficient for the counts on the indictment to reflect the overall period during which the offences occurred (as well as any variation in the type of offence);
- It will only rarely be necessary for all the alleged instances of offending to be indicted in order to reflect the full criminality demonstrated by the evidence, but this will usually require that more offences are indicted than had previously been the practice when sample counts were allowed;
- It is usually sufficient to indict three counts over each year for each type of offence that was committed (although this is not intended to set a hard and fast rule).

As an exception to the general rule, it is possible for a defendant who pleads guilty to specific counts on an indictment, but who accepts that their criminality is wider than those specific counts reveal (whether by formally asking for offences to be taken into consideration by a written basis of plea, or other clear indication), to be sentenced on that wider basis. This follows from the decision of the Court of Appeal, Criminal Division in (Re Attorney-General's Reference (No 82 of 2002) sub nom R v M [2003] EWCA Crim 1078.

Prosecutors will rarely be able to be sure that such a course will be taken by a defendant at the time of lodging the indictment. Therefore, even in cases where it is thought that a defendant may take such a course, the indictment should include sufficient counts to reflect the defendant's overall alleged criminality following the principles set out above.

For further information on drafting indictments and joinder, see http://www.cps.gov.uk/legal/p_to_r/rape_manual/rape_manual/#a17

6.5 Special Measures

6.5.1 Early Special Measures Meetings Between the Police and Crown Prosecution Service

An early special measures meeting is an opportunity for the IO and the rape specialist prosecutor to discuss the needs of the victim, who may be considered as vulnerable, intimidated or both. An early meeting should ensure that any applications made by the CPS are submitted in an effective and timely manner. The police should identify cases where an early special measures meeting is required. If the CPS, after reviewing the file, considers that the police have not identified the need for special measures, they may request an early special measures meeting. The meeting should take place as soon as possible after the need for the meeting has been identified by the IO or the rape specialist prosecutor. If the issues in the case are urgent or straightforward, a telephone consultation can take place (with the completion of a record of the meeting which should be signed by both the IO and the rape specialist prosecutor). It might be preferable for the victim to attend the early special measures meeting. If the IO has not had any contact with the victim, then the STO (who has had contact with the victim) should also attend the meeting.

It might also be necessary for an expert witness to attend an early special measures meeting; in these circumstances the police are responsible for meeting the costs. For further information see **ACPO, CPS and Home Office (2001) Early Special Measures Meetings between the Police and the Crown Prosecution Service and Meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses – Practice Guidance.**

6.5.2 Application for a Special Measures Direction

In reviewing video evidence of a victim interview and considering an application for a special measures direction, the prosecutor may need to consider the following:

- Views of the victim in determining whether any given special measure is required to allow them to give their best evidence. When obtaining the views of the victim, it is essential that the prosecutor is satisfied that those views are based upon full and accurate information. To this end, prosecutors should liaise with the IO and the local Witness Care Unit to ensure that the victim is made aware of all of the special measures that are available, and their respective advantages and disadvantages.
- All of the circumstances of the case and whether or not the special measure(s) is likely to inhibit the evidence being effectively tested by any party to the proceedings.

- Whether a special measures application should be made for any other prosecution witnesses.

Any application for a special measures direction should be made with the informed consent of the victim or witness. It should be noted that in circumstances where the victim has undergone a visually-recorded interview, it should not be presumed that it will be played as evidence-in-chief.

If the visual recording of the interview is not to be used as evidence-in-chief, it becomes 'unused material'. The evidence on it should be turned into a format acceptable to the criminal justice system, and the significant witness guidance set out in ***Office for Criminal Justice Reform (2007) Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures*** should be followed. The preferred method of exhibiting the evidence from the victim interview is by completing a brief MG11 with a transcript. Completing a full MG11 sometime after the interview may amount to conducting a full interview, which can cause recall difficulties.

When seeking the witness's views on the use of special measures, prosecutors should ensure that the witness understands that the defendant will be able to see them on the court monitor. It may be that the use of screens in the courtroom is more appropriate. Screens can also be partially covered to prevent the defendant from seeing the witness.

Where appropriate, arrangements should be made to build an individual 'witness profile'. This is information regarding the capacity and requirements of the witness (provided typically by carers, social workers and medical staff). The profile will include information on cognitive and linguistic ability, range of behaviours and emotional state. The profile will be used to make any decision to apply for special measures and, in particular, may indicate that the use of an intermediary (section 29 Youth Justice and Criminal Evidence Act 1999) at court may be appropriate (where available for vulnerable witnesses).

Where a recording is admitted under section 27 Youth Justice and Criminal Evidence Act 1999, the witness may not give evidence-in-chief other than by the recording (ie, additional live evidence-in-chief is not permissible) except in the limited circumstances permitted by section 27(5)(b) Youth Justice and Criminal Evidence Act 1999 (where permission is given by the court or the matter has not been dealt with adequately in the recorded interview). It follows that where issues require clarification or correction, or perhaps new issues are raised by the defendant in the preparation of their defence, the witness should be invited to provide further visually-recorded evidence at the earliest possible opportunity.

6.5.3 Use of Intermediaries

The use of intermediaries, established by section 29 of the Youth Justice and Criminal Evidence Act 1999, is to assist vulnerable witnesses to give their best evidence. The potential use of an intermediary should be considered as part of the broader consideration of special measures. The provision of an intermediary must be available to all eligible witnesses, subject to the court's discretion in deciding whether to make a special measures direction. The approval of appointment by the court may be retrospective. The absence of an intermediary at the police interview does not preclude the use of an intermediary at trial. See ***Office for Criminal Justice Reform (2007) Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures*** and ***Office for Criminal Justice Reform (2005) Intermediary Procedural Guidance Manual***, at http://lcjb.cjsonline.gov.uk/area15/library/intermediaries/Intermediary_Procedural_Guidance_Manual.pdf

6.5.4 Preparing to Use Visually-Recorded Evidence in Court

After full consultation with the victim, the STO and IO will have decided whether to visually record the interview and identified the type of victim or witness for the purposes of any future special measures application. Following a visually-recorded interview, the police should compile a ROVI. In addition to viewing the video, the prosecutor will use the ROVI for charging and case management purposes.

A full transcript of the visually-recorded interview will be required when a not guilty plea is entered. The CPS will be responsible for obtaining the transcript where there is statutory provision for playing the video as evidence-in-chief. The police will be responsible where there is no statutory provision.

While visually-recorded interviews are frequently used as evidence in criminal trials, they are, primarily, an important investigative tool. This dual purpose can result in recordings that are too long to be played in court. The recording is likely to have more impact with the court if it is not unnecessarily lengthy. It is essential that prosecutors, in consultation with counsel, ensure that interviews are edited so that they are of an acceptable length with all the important information left in. Inadmissible and irrelevant evidence (including sensitive information that does not form part of the case) should be edited out.

The rape specialist prosecutor should have regard to the technical quality of the video recording. Poor sound quality can result from the copying process; producing a fresh copy may solve the problem.

Sometimes sound quality can be enhanced. Where the sound quality is especially poor, subtitles may be added. It is important, however, to ensure that the latter can be readily removed as the leave of the court is likely to be required before the jury can view the recording with subtitles. (By analogy with *R v Welstead* [1996] 1 Cr App R 59, a judge will have a discretion whether to allow the jury to follow the video recording by referring to the transcript in front of them.)

If the picture quality is poor, it might be possible to enhance it or to rearrange the configuration or layout of the screen image in order to give more prominence to the face of the witness.

6.6 Section 41 Youth Justice and Criminal Evidence Act 1999

Section 41 places a restriction on evidence or questions about a complainant's sexual history. Its purpose is to ensure that undue stress is not caused to the victim and that inappropriate questioning of previous sexual behaviour is not permitted. Section 41 states that if at a trial a person is charged with a sexual offence, then, except with the leave of the court:

- a) No evidence may be adduced; and
- b) No question may be asked in cross-examination, by or on behalf of any accused at the trial, about any sexual behaviour of the complainant.

There are exceptions and they are contained in section 41(2), which says that the court may give leave in relation to any evidence or question only on an application made by, or on behalf of, an accused and may not give such leave unless it is satisfied that either section 41(3) or section 41(5) of the section applies and that a refusal of leave might have the result of rendering unsafe the conclusion of the jury or, as the case may be, the court on any relevant issue of the case.

Section 41(3) states that a question may be asked about the previous sexual behaviour of the complainant if the evidence or question relates to 'a relevant issue' in the case and either:

- a) That issue is not an issue of consent; or
- b) It is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the accused; or
- c) It is an issue of consent, and the sexual behaviour of the complainant to which the evidence or question relates, is alleged to have been in any respect so similar -

- i. to any sexual behaviour of the complainant which took place as part of the event which is the subject matter of the charge against the accused, or
- ii. to any other sexual behaviour of the complainant which took place at or about the same time as that event, that the similarity cannot be explained as coincidence.

Section 41(5) applies if the evidence or question relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant and in the opinion of the court would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by, or on behalf of, the accused. The evidence or question must relate to a specific instance of alleged sexual behaviour on the part of the complainant. Three matters need definition:

- ‘Relevant issues’ is defined in section 42 of the Act as meaning any issue failing to be proved by the prosecution or defence in the trial of the accused;
- ‘Issue of consent’ is defined as meaning any issue, whether the complainant in fact consented to the conduct constituting the offence with which the accused is charged;
- ‘Sexual behaviour’ is also defined as meaning any sexual behaviour or other sexual experience whether or not involving any accused or other person but excluding anything alleged to have taken place as part of the event which is the subject matter of the charge against the accused.

Section 41, therefore, provides a structured approach to the application of judicial discretion and sets out clearly when evidence of previous sexual history can be admitted in rape cases. In essence, courts may only give leave of the court if:

- a) The evidence or questions rebut evidence led by the prosecution; or
- b) The evidence or questions relate to a relevant issue at trial and that issue is not one of consent. If the issue is one of consent, the behaviour to which they relate is either alleged to have taken place at or about the same time as the alleged offence or is so similar to the complainant’s behaviour at that time that it cannot reasonably be explained as coincidence.

The court must also be satisfied that to refuse leave would result in the jury or the court reaching an unsafe conclusion on a relevant issue of trial. The court will also refuse permission if it considers that the main aim of evidence claimed to relate to a relevant issue is simply to

undermine the complainant's reliability. The legislation, therefore, affords complainants in sexual offence cases better protection against unnecessary cross-examination about their sexual behaviour.

Section 43 details the procedure for applications under section 41, supplemented by Criminal Procedure Part 36, which provides that all applications must be in writing. The defence must make an application seeking to admit the complainant's previous sexual history. The application needs to be properly considered by the prosecution and a full and proper reply formulated setting out the objections to the defendant's application. Each and every point must be answered separately. Experience shows that judges are likely to refuse the defence application, particularly if the prosecution have been robust in dealing with the points raised. However, if the parties are married or in a relationship or have had a former relationship, then it is more likely that the previous history will be admitted.

Under section 43, an application for leave shall be heard in private and in the absence of the complainant. Where an application has been determined, however, the court must state in open court in the absence of the jury, its reasons for giving or refusing leave and, if it gives leave, the extent to which evidence may be adduced or questioned. It must also set out the questions which may be asked in pursuance of the leave. In consideration of the Criminal Procedure Rules the court may also make provision enabling the court to request a party to the proceedings to provide the court with information which it considers will assist it in determining an application for leave.

The defence application must be received within twenty-eight days of the committal or service of papers. It must contain a summary of the evidence it is proposed to adduce and a full explanation of the reasons why it is considered that the evidence falls within section 41(3) or (5). The prosecution may make representations not more than fourteen days after receiving it.

Two cases are of particular importance: *R v A (No 2)* [2001] UKHL 25, which gives guidance as to when an application is likely to be successful and more recently *R v F* (2005) 2 Cr App R 13, which states that once an application is successful, the court cannot limit the extent to which evidence, properly admitted, can be excluded. Counsel must robustly represent the prosecution's position and must not simply leave the matter to the judge.

During the trial it is the responsibility of the court to ensure that defence counsel does not ask the victim inappropriate questions or repeatedly ask the same questions. Defence counsel should not be unnecessarily aggressive with the witness, although there is a need for a fair trial and the victim may have to be asked some potentially

embarrassing questions. It is for the judge to ensure a fair trial not only for the victim but also for the defendant, and to allow the defence to pursue all reasonable lines of cross-examination of the witnesses. It is recognised that there are boundaries which the defence cannot cross and it is the responsibility of the judge, assisted where appropriate by prosecution counsel, to ensure that this does not happen.

In *R v A*, the House of Lords had to consider whether the restrictions placed on the defendant by section 41 were incompatible with the right to a fair trial as provided for by Article 6 of the ECHR. It was held that section 41 should be read as being subject to the implied provision that evidence or questioning which is required to ensure a fair trial under Article 6 should not be treated as inadmissible; the admissibility of any particular episode of previous consensual experience should be left to the trial judge. The test of admissibility is whether the evidence and questioning in relation to it is so relevant to the issue of consent that to exclude it would endanger the fairness of the trial.

In *R v A*, four examples were given of issues which might fall within section 41(3)(a) which appeared to be of more practical value than the test in relation to 41(3)(c). These were:

- a) honest belief in consent;
- b) the complainant was biased against the accused or had a motive to fabricate the evidence;
- c) there was an alternative explanation for the physical conditions on which the prosecution relied to establish that sexual intercourse took place; and
- d) the detail of their account from some other sexual activity provided an explanation for their knowledge of that activity (this is especially applicable in the case of young complainants).

Nothing in the 'bad character' provisions of the Criminal Justice Act 2003 affects the exclusion of evidence under section 41 (section 112 (3) Criminal Justice Act). However, where it is sought to cross-examine a complainant about a previous sexual allegation and to suggest that the allegation was false, it will be necessary to obtain leave under section 100 of the Criminal Justice Act 2003 as well as considering section 41 of the Youth Justice and Criminal Evidence Act 1999.

For detailed information on section 41 Youth Justice and Criminal Evidence Act 1999, see

http://www.cps.gov.uk/legal/p_to_r/rape_manual/rape_manual/#a04

6.7 Victims Who Withdraw Support for the Prosecution

Victims of rape and serious sexual offences might wish to withdraw support for a prosecution for a number of reasons. This could be because of a fear of reprisals, intimidation or anxiety caused by a forthcoming court case. They may also withdraw their backing because they lack support and information about an impending court case. Efforts should, therefore, be made to ensure that Witness Care Units provide information and practical support to victims prior to their court appearances.

A request to withdraw support for the prosecution might be made directly to the police or via the CPS. If the CPS receives information that the victim wishes to withdraw support for the prosecution and has decided that they no longer wish to give evidence, this information should be given to the IO as soon as possible so that further enquiries can be made.

6.7.1 Taking a Statement of Withdrawal of Support

Any request from a victim to withdraw their support, either made directly to the police or via the CPS, should be communicated to the IO prior to any other action being taken. STOs should respond to such requests and document them in a comprehensive statement of withdrawal of support for the prosecution.

Statements of withdrawal of support can be used as evidence in current or future criminal proceedings or as evidence within the family court system. These statements should, therefore, be retained as information that might be relevant to future investigations. Risk assessments and safety plans should also be revised after a withdrawal. Statements of withdrawal should be taken by the police (STO) and then forwarded to the CPS accompanied by a report from the officer who took the statement, giving details of their observations on the reasons for the victim's withdrawal.

Checklist 24: Contents of Statements of Withdrawal of Support for the Prosecution

A statement should contain the following information:

- Confirmation of whether the original statement given to the police was correct (if the account given in the original statement has to be amended, an explanation for this should be included);
- Whether the victim has been put under pressure to withdraw or has been subject to threats or intimidation;
- Nature of the original allegation (if not fully covered in a previous statement);

- Victim's reasons for withdrawing support for the prosecution;
- With whom the victim has discussed the case - particularly anyone who has advised them (a solicitor, for example);
- Whether any related civil proceedings have been or are likely to be instigated (this is particularly relevant in domestic serious sexual offences);
- The likely impact on the victim's life and that of other witnesses or people affected if the case continues.

In cases of rape - as in all cases - the reviewing prosecutor must apply **CPS (2004) The Code for Crown Prosecutors** with regard to the determination of the evidential and public interest tests. The CPS prosecutes on behalf of the public and not merely in the interest of any particular individual. However, when considering the public interest test, prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim. In assessing the victim's statement of withdrawal of support for the prosecution, the rape specialist prosecutor should consider:

- Reasons given by the victim;
- How the victim would react if compelled to attend court;
- Future risks to the safety of the victim and their family;
- Impact on the wider community.

As a result of receiving the statement of withdrawal of support and the accompanying police report (detailing police views about the evidence in the case and how they think the victim might react if compelled to attend court), prosecutors may need to consider whether further charges of, for example, witness intimidation, are appropriate. The prosecutor should liaise closely with the Witness Care Officer to establish the support, if any, that has been provided to the victim and whether it would be appropriate to offer the victim further support, eg, from a specialist sexual violence service, if this has not already been done.

6.7.2 Continuing the Prosecution Without the Victim's Support

Prosecutors should assess at an early stage whether there is sufficient evidence to proceed without the victim's support, for example, by relying on statements from other witnesses, 999 call recordings, and

admissions in interview, CCTV evidence, scientific evidence, photographs and officers' statements. If there is sufficient evidence, and provided the public interest test continues to be met, there may not be any reason to consider a witness summons when the victim withdraws support. In addition, it is important for the perpetrators of rape to know that a prosecution will not simply rely on the victim's willingness to give evidence.

Special measures should always be considered by the police and the prosecutor at the earliest stage in the proceedings. In some cases, a special measures application may provide sufficient reassurance to the victim for them to decide to reconsider and to support a prosecution (see below for further information). If such an application is not possible or the victim remains unwilling to give evidence, consideration must be given to whether any of the following options are possible and appropriate:

- Proceeding without using the victim's evidence;
- Making a hearsay application under section 116 of the Criminal Justice Act 2003;
- Compelling the victim to give evidence;
- Discontinuing as a result of the victim withdrawing support for the prosecution.

When considering proceeding against the victim's wishes, all parties' human rights should be assessed and the rape specialist prosecutor should fully endorse the decision-making process on the file. This decision-making process should include the views of the rape specialist prosecutor, IO and STO and any ISVA or IDVA engaged on the case. Any decision should include consideration of future risk both to the victim and other members of the public. In addition to the evidence of the nature and seriousness of the offence, background information is crucial in helping a rape specialist prosecutor to make the correct decision about how to proceed in a case where the victim has withdrawn their support for the prosecution. Some factors that should be considered include:

- Ability of the victim to testify;
- Whether there is an ongoing relationship between the victim and the defendant;
- If there is an ongoing relationship, the history of that relationship, any previous incidents and any risk identification and assessment carried out on the case by the police or other agencies;
- Likelihood of the defendant offending again;

- Impact on the victim of proceeding or not proceeding with the case;
- Whether there have been any threats made since the incident.

Before taking a decision to issue a summons to require the victim to give evidence, prosecutors must make enquiries to satisfy themselves that, as far as possible, the safety of the victim will not be endangered by their decision. The safety of the victim and any witnesses should always be the prime consideration.

Checklist 25: Assessing the Safety of the Victim when Deciding To Issue a Summons for the Victim To Give Evidence

Rape specialist prosecutors should consider the following safety factors:

- Whether the victim has been put under any pressure to withdraw support for the prosecution or has been subject to witness intimidation;
- Views of the victim about the impact on their safety in proceeding with the prosecution;
- Details of any risk identification, assessment and management undertaken by the police and/or other agencies (these will usually be available in domestic abuse-related cases);
- Likelihood of future serious offences - rape is considered as a risk factor for homicide in domestic abuse cases;
- Whether a witness summons would make it safer for the victim to attend court by making it clear that the decision to proceed with the case is made by the CPS rather than the victim;
- Views of the IO and STO or ISVA/IDVA (where available) on the safety of the victim and the likelihood of further harm;
- Whether or not the victim is being supported by any specialist sexual violence service outside the criminal justice system.

If the reason for a victim or witness's withdrawal is based on fear or intimidation, the prosecutor needs to have evidence of this brought to their attention. This will allow the appropriate decisions to be made about any applications under section 116 (2)(e) Criminal Justice Act 2003. Such applications are only likely to succeed where there is other evidence to put before the court. Section 116 applications are often unsuccessful when the victim is the only witness to the offence; this is because it is very difficult to satisfy the court that justice is being served when the defence cannot cross-examine the only witness against them.

Checklist 26: Public Interest Considerations when Deciding To Issue a Summons for the Victim To Give Evidence

If there is insufficient evidence to continue the prosecution without the evidence of the witness or victim, and the prosecutor believes that the victim's safety will not be put at further risk, they should consider whether the facts of the case are sufficiently serious to require the victim or witness to attend court under a witness summons. Rape specialist prosecutors should take into account the following public interest factors:

- Whether the victim has been put under any pressure to withdraw support for the prosecution or has been subject to witness intimidation;
- Seriousness of the offence;
- Victim's injuries - whether physical or psychological;
- If the defendant used a weapon;
- If the defendant has made any threats before the attack;
- If the defendant planned the attack;
- Chances of the defendant offending again;
- Any continuing threat to the health and safety of the victim or anyone else who is, or may become, involved;
- Victim's relationship to the defendant;
- Defendant's criminal history, particularly any relevant previous offences;
- If the offence is widespread in the area where it was committed;
- Repeat victimisation by that defendant (reported or unreported).

The rape specialist prosecutor is responsible for making the final decision on whether to summons a victim. However, as the decision to compel a witness to give evidence may be construed negatively, every attempt should be made to regain the victim's or witness's support for the prosecution wherever possible.

If the rape specialist prosecutor considers it is possible to proceed without the victim, but decides that it would not be right to do so in the particular circumstances, the case will be discontinued, and the file should be marked as 'discontinued in the public interest'. See also http://www.cps.gov.uk/victims_witnesses/victims_code.pdf and http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

6.8 Accreditation and Briefing Counsel

6.8.1 Accreditation

The CPS ensures that each case of rape is prosecuted effectively by checking that only those advocates who possess the right skills are briefed to conduct such cases. The CPS Policy Directorate has worked with the Criminal Bar Association to devise an agreement and a programme of accreditation and monitoring of counsel who wish to prosecute rape cases (this agreement is referred to as the 'principles document'). CPS Area Rape Coordinators implement the agreement in their areas. The experience, local knowledge and networking of the Area Rape Coordinators is invaluable when implementing this agreement locally.

Checklist 27: Principles of Accreditation for Counsel in Rape Cases

The principles of the accreditation agreement are:

- Only counsel who have attended a CPS accredited training course and demonstrated the appropriate skills while being monitored will be allowed to undertake rape prosecutions.
- Accredited courses will be run by the various circuits, and CPS Policy will accredit each course according to the criteria in the principles document.
- Counsel will have to attend one such course every four years.
- Counsel will be monitored according to the criteria set out in the principles document. This monitoring can begin immediately using the appropriate form. It is important to note that the monitoring does not have to be completed on the basis of one case.
- Only those with relevant knowledge and experience should carry out the monitoring and, where necessary, it can be completed by more than one person.
- Counsel Monitoring Forms should be kept by the rape coordinator, for future reference.
- Counsel will have to be monitored on a regular basis (monitoring will be at the discretion of CPS Areas, although it is recommended this takes place every four years).
- The Rape Prosecutions Delivery Unit will keep a central list of all counsel who have attended courses and who have been monitored successfully. The list is available on the CPS Infonet.
- Counsel need only be monitored by one CPS Area if they are on several area lists.

6.8.2 Briefing Counsel

The brief to counsel should provide detailed information covering all relevant issues contained in the ***CPS (2008) Rape Prosecutions Advice/Review Checklist*** at http://www.cps.gov.uk/legal/p_to_r/rape_manual/annex_d_rape_prosecutions_advice_review_sheet/index.html

A pre-trial case conference with trial counsel, the IO, the forensic physician and any other expert witnesses should be arranged at the earliest possible stage. See **6.9 Pre-Trial Case Conference**. Counsel should be instructed to attend early special measures meetings to enable them to meet the witness. They should also be instructed to provide a written advice on lessons to be learned in the event of an acquittal. See **7.5.4 Crown Prosecuting Service Monitoring Counsel**. See also ***CPS (2008) Rape Prosecutions Advice/Review Checklist***.

Checklist 28: Briefing Counsel

Rape specialist prosecutors should consider the following as part of the brief to counsel:

- Analysis of the evidence;
- Confirmation of whether the visually-recorded interview has been viewed, commenting on quality, admissibility, transcribing and editing;
- Stating which behaviour is covered by which charge;
- Noting the acceptability of pleas (taking account of views expressed by the victim);
- Reminding them to introduce themselves and to provide explanations and updates to witnesses;
- Reminding them that any offensive and irrelevant cross-examination should be challenged;
- Reminding them to tackle any inappropriate cross-examination about previous sexual history;
- Contemplating sentencing and ancillary orders, including Sexual Offences Prevention Orders (SOPOs);
- Providing any information on third-party material with instructions that disclosure should only be made in accordance with the statutory tests;
- Reminding them to consider seeking an adverse inference where section 11 of CPIA allows;
- Requesting a written report on any case that results in an acquittal.

6.9 Pre-Trial Case Conference

A pre-trial case conference should be held for every rape prosecution, even though there may have been extensive liaison during the investigation stages. The IO, rape specialist prosecutor and prosecuting counsel should attend the conference with other experts such as the forensic physician, CSIs and forensic scientists, as appropriate. Consideration should also be given to STOs attending pre-trial case conferences.

The purpose of the conference is to ensure that the prosecution counsel fully understands the evidence from the investigation, and that the IO understands the prosecution strategy. Any evidential difficulties should be discussed and, where possible, the IO should identify ways of overcoming them. The opportunity should also be taken to ensure that the prosecuting counsel is aware of everything that has happened to the victim and any other key witnesses (eg, the victim may have received counselling or psychotherapy, and the potential impact of this on their evidence needs to be considered).

Management Issues

- Ensuring that a pre-trial case conference is held with counsel in all rape cases.
- Ensuring that early special measures meetings take place in all appropriate cases in a timely manner.
- Ensuring that only those members of the Independent Bar who have attended an accredited training course, have high-quality advocacy skills and perform satisfactorily in any monitoring undertaken by the CPS are instructed.

7

Trial and Post-Trial Joint Monitoring

This section is relevant to rape specialist prosecutors, Area Rape Coordinators, Crown advocates and police officers involved in rape trials and the monitoring of rape trials and their outcomes. It should be read in conjunction with *CPS (2008) Rape Manual*.

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7.1 Meeting the Needs of Victims at Court

CPS (2008) The Prosecutors' Pledge is a ten-point pledge setting out the level of service that victims (and witnesses) can expect to receive from prosecutors. It should ensure that:

- The specific needs of victims and witnesses are addressed at court;
- Victims are assisted at court to refresh their memory from their written or video statement;
- Victims are protected from unwarranted or irrelevant attacks on their character.

Counsel should be introduced to the victim before the trial. The purpose of this is to establish a link between the CPS and the victim, and to provide the victim with reassurance that their needs will be taken into account. An explanation of the court procedure and the roles of the various parties in the trial should also be given.

Before the trial begins, counsel should ensure that the victim has a clear understanding of what to expect at court in terms of the issues likely to be raised by the prosecution and the defence. The roles of the prosecution and defence and court procedures should also be explained. For further information on **CPS (2008) The Prosecutors' Pledge**, see http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

7.2 Newton Hearings

A Newton Hearing (also known as the trial of an issue) is held, following a plea of guilty, to resolve factual conflicts between the prosecution and defence. In *R v Newton* [1982] 4 Cr App R, section 388, Lord Lane CJ identified the methods by which such disputes can be resolved: in some cases by jury verdict, in others by the judge trying the issue or by hearing counsel (which generally means that the defence version would be accepted).

Case law has established situations when a court is not obliged to hold a Newton Hearing. These are:

1. The difference in the two versions of the facts is immaterial to sentence. If the sentencer does not hear evidence, they should proceed on the defendant's version.
2. The defence version can be described as manifestly false or wholly implausible.
3. Matters put forward by the defendant do not amount to a contradiction of the prosecution case, but rather to extraneous mitigation explaining the background of mitigating circumstances. Such matters are likely to be outside the knowledge of the prosecution. In such circumstances the

defendant may advance mitigation through counsel or by calling evidence. The prosecution is not bound to challenge such assertions, but may do so. The court is not bound to accept the truth of matters advanced, whether or not challenged by the prosecution. The civil burden of proof rests on the defence.

An example combining 2 and 3 above is *R v Broderick* [1993] 15 Cr App R, section 476, involving a cocaine smuggler's claims that she thought that the packages contained cannabis rather than cocaine and that she had been threatened with violence if she did not carry them.

7.2.1 Disputes Requiring a Newton Hearing

In *R v Underwood* [2005] 1 Cr App R, section 90, Judge LJ provided detailed guidance on this and other issues. The responsibility for alerting the prosecutor to areas of dispute rests with the defence. The Crown should not be taken by surprise, and if suddenly faced with a proposed basis of a guilty plea with important facts disputed, it should if necessary take time for proper reflection and consultation. Whatever view may be formed by the Crown on any proposed basis of plea is conditional on the judge's acceptance of it. If the Crown accepts the defendant's account of the disputed facts, the agreement should be put into writing, signed by both advocates and made available to the judge.

Many issues raised by the defence are outside the knowledge of the prosecution when the Crown lacks the evidence positively to dispute such assertions. In such cases the Crown should not normally agree the defendant's account unless supported by other material. Neither the prosecution nor the judge is bound to agree facts for this reason. After submissions from the advocates, the judge should decide how to proceed. Whether or not the basis of plea is agreed, the judge is not bound by any such agreement and is entitled to request evidence relevant to the facts in dispute to be called.

7.2.2 Disputes Arising From Pre-Sentence Reports

It was held in *R v Tolera* [1999] 1 Cr App R, section 25 that if the defendant wanted to rely on such an account by asking the court to treat it as the basis of sentence, it was necessary that the defence should expressly draw the relevant paragraphs to the attention of the court and ask that it be treated as the basis of sentence. The prosecution should be forewarned and the issue resolved. If necessary, evidence can be called. The court observed that a defendant describing an offence to a probation officer often glosses over, omits or mis-describes the more incriminating features.

7.2.3 Directing a Hearing After Parties Have Accepted the Facts

In *R v Beswick* [1996] 1 Cr App R, section 343 it was held that that a judge is not bound by a version of the facts agreed by the Crown and defence, and is entitled to direct a Newton Hearing. If they do so, this does not provide a basis for withdrawing a guilty plea, providing that it is clear that the defendant was admitting guilt. It is the duty of the prosecution to assist the court by calling evidence and testing any defence evidence. This role is not curtailed by earlier acceptance of a basis of plea, because such agreement is conditional on the approval of the sentencer.

7.2.4 Procedures During a Newton Hearing

R v Underwood (see **7.2.1 Disputes Requiring a Newton Hearing**) provides guidance. The advocates should call evidence. If the defendant does not give evidence, subject to any explanation proffered, the judge may draw such inferences they think it fit from that fact. Judges must direct themselves in accordance with ordinary principles, such as the burden and standard of proof. In short, their self-directions should reflect the relevant directions they would give to a jury. The judge must then decide the facts in dispute. They may reject assertions advanced by the defendant or their witnesses even if the Crown does not offer positive contradictory evidence. The judge's conclusions should be explained in a judgment. Limitations on the Newton Hearing procedure include any verdict of the jury or pleas to counts accepted by the Crown and approved by the court. From time to time a defendant, for example, in a drug case, asserting duress short of a defence, may give evidence. If there is nothing to support the contention, the judge is entitled to invite the defence advocate to call their client rather than depend on the unsupported assertions of the advocate.

7.2.5 Discount For Early Pleas and Co-Defendants

R v Underwood (see **7.2.1 Disputes Requiring a Newton Hearing**) also provides guidance on discount issues. If a Newton Hearing is resolved wholly in the defendant's favour, credit for pleading guilty should not be reduced. If the defendant is disbelieved or obliges the prosecution to call the victim who is then cross-examined which, because entirely unfounded, causes inappropriate distress to them, or where the defendant conveys to the judge a lack of any genuine remorse, the judge may reduce the discount for the guilty plea. There may be exceptional cases in which the normal credit for a guilty plea is wholly dissipated by the Newton Hearing. In such cases, the judge should explain their reasons for not giving credit.

If a defendant pleads guilty immediately before the trial is due to start, the best course of action will usually be for the judge to consider holding a Newton Hearing in accordance with the above principles. If a defendant pleads guilty during trial, on a different basis to the prosecution case, sentence should not be on the basis of the prosecution version without first hearing evidence from the defence. An example is *R v Mottram* [1981] 3 Cr App R, section 123.

A judge sentencing a defendant who has pleaded guilty is not bound by rules of admissibility applicable for a trial, and may take into account evidence given during the trial of a co-defendant and the contents of any witness statements.

However, in doing so:

- They must bear in mind that the evidence given during the trial was not tested by cross-examination on behalf of the defendant who pleaded guilty, and that self-serving statements are likely to be untrue;
- The defendant to be sentenced should be given an opportunity to give evidence of their version of the facts.

See *R v Patrick Smith* [1988] 10 Cr App R, section 271.

7.3 Sentencing

Rape carries a maximum penalty of life imprisonment and is a serious specified offence to which dangerous offender provisions apply (Part 2, Schedule 15 Criminal Justice Act 2003). For further detailed information on sentencing, see ***Sentencing Guidelines Council (2007) Sexual Offences Act 2003 – Definitive Guideline*** at http://www.sentencing-guidelines.gov.uk/docs/0000_SexualOffencesAct1.pdf

- These Guidelines are based on the guideline judgment on Rape, *R v Millberry and others* [2003] 2 Cr App R, section 31;
- The starting points in the Guidelines are a) for offenders who do not meet the dangerous offender criteria, and b) as the basis for setting a minimum term within an indeterminate sentence for those who do meet the criteria.

Checklist 29: Sentencing (Excluding Dangerous Offender Criteria)**Starting Points:**

- Single offence of rape by single offender – 5 years' custodial sentence (victim aged 16 or over), 8 years' custodial sentence (victim aged 13 or over but under 16), 10 years' custodial sentence (victim under 13);
- Rape accompanied by aggravating factor – 8 years' custodial sentence (victim aged 16 or over), 10 years' custodial sentence (victim aged 13 or over but under 16), 13 years' custodial sentence (victim under 13);
- Repeated rape of same victim by single offender or rape involving multiple victims – 15 years' custodial sentence.

Aggravating Factors:

- Abduction or detention;
- Offender aware that they were suffering from a sexually transmitted infection at the time of the offence;
- More than one offender acting together;
- Abuse of trust;
- Offence motivated by prejudice;
- Sustained attack;
- Pregnancy or infection results;
- Offender ejaculated or caused victim to ejaculate;
- Background of intimidation or coercion;
- Use of drugs, alcohol or other substance to facilitate the offence.

Mitigating Factors:

- Where the victim is aged 16 or over: the victim engaged in consensual sexual activity with the offender on the same occasion and immediately before the offence;
- Reasonable belief (by a young offender) that the victim was aged 16 or over.

7.3.1 Dangerous Offenders

These are defined by the Criminal Justice Act 2003 (sections 224 - 229) as amended by the Criminal Justice and Immigration Act 2008. The test for dangerousness is whether:

The court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

Section 225 Criminal Justice Act 2003.

In *R v Reynolds and others* [2007] EWCA Crim 538 the following principles on the approach to dangerous offender provisions emerge:

- a) The first question is whether or not the offence is a specified offence, and the second question is whether it is a serious offence;
- b) If it is a specified offence, whether serious or not, the court must determine whether the offender meets the criteria of dangerousness. In so doing, the sentencing judge will be guided by the decisions in *R v Lang and others* [2005] EWCA Crim 2864 and *R v Johnson and others* [2006] EWCA Crim 2486.

Principles Derived from *R v Lang and others* [2005] EWCA Crim 2864

- 'Significant' means noteworthy, of considerable importance.
- It is not enough, when assessing dangerousness, to show a significant risk of further specified offences being committed. An offender will only be dangerous if there is a significant risk and the consequence of the commission of those further specified offences would be serious harm.
- Serious harm means death or serious personal, physical or psychological injury as described in section 224 (3) Criminal Justice Act 2003. Previous authorities will be relevant.

Principles Derived from R v Johnson and others [2006] EWCA Crim 2486

- Although punitive in its effect, a sentence of imprisonment for public protection did not represent punishment for past offending but was concerned with future risk and public protection.
- The absence of previous convictions does not preclude a finding of dangerousness.
- The presence of previous convictions for specified offences does not automatically lead to a finding of dangerousness.
- Previous convictions for offences that are not specified may be taken into account when assessing dangerousness. For example, a pattern of minor previous offences gradually escalating into seriousness may be significant.
- It does not automatically follow that because the offender has not caused actual harm to date, that the risk of them causing serious harm in the future is negligible.
- Characteristics such as the offender being inadequate, suggestible or vulnerable may mitigate their culpability, and conversely, they may also serve to reinforce the conclusion that the offender is dangerous.
- The prosecution should be able to describe the facts of any previous specified offences that the offender has been convicted of, but failure to comply with this good practice does not normally preclude the imposition of sentence. Counsel for the defendant may be able to explain the circumstances of the previous offences on the basis of instructions. In addition, the sentence imposed for an earlier specified offence may enable the sentencer to draw inferences about its seriousness or otherwise.
- A court should not rely on a disputed fact in reaching a finding of dangerousness unless the dispute can fairly be resolved adversely to the defendant.
- The sentencing remarks should include an explanation of the reasoning which has led the sentencer to reaching the conclusion, although it is not obligatory to set out all the details of previous specified offences.

The approach to sentencing was considered in the case of *R v C and others* [2008] EWCA Crim 2790, in which the Court of Appeal set out the correct approach to take in determining which sentence might be appropriate in any given case.

The following considerations will apply when a defendant is sentenced for an offence of rape:

- The defendant will always ‘qualify’ for consideration of dangerousness as rape is a serious specified offence.
- The court must firstly consider if the defendant is dangerous within the meaning of section 225(1)(b).
- The court must then first consider whether life imprisonment is justified (section 225(2)) and if it is, it must impose life. This is the only mandatory part of the sentencing regime that remains. It must always be considered, as rape carries a discretionary life sentence.
- If a life sentence is not justified, the court must consider if either of the conditions are satisfied - that is, if the ‘notional term’ should be two years (ie, it is worth four years determinate) or if there is a previous conviction for a Schedule 15A offence (which includes most of the more serious sexual offences in the 2003 Act).
- If either of these conditions are met, then the court **may** (not must) impose a sentence of imprisonment for public protection (IPP), an extended sentence for public protection (EPP) or any other sentence.

More detailed information can be found in the ***Sentencing Guidelines Council (2008) Dangerous Offenders – Guide for Sentencers and Practitioners, Version 2***, at <http://www.sentencing-guidelines.gov.uk/docs/SGC%20Dangerous%20Offenders.pdf>

7.4 Ancillary Orders **7.4.1 Sexual Offences Prevention Order**

Sexual Offences Prevention Orders (SOPOs) are made under sections 104-110 of the Sexual Offences Act 2003. They apply in cases where:

- The court deals with a defendant in respect of an offence listed in Schedule 3 or 5 (Rape is listed in Schedule 3);
- Prohibitions are necessary in order to protect the public (or particular members of the public) from serious harm, ie, serious physical or psychological harm (section 104 Sexual Offences Act 2003).

The order lasts for a minimum of five years and a breach of a SOPO is an either way offence carrying a maximum penalty of five years' imprisonment on indictment.

7.4.2 Disqualification Order

These are made under sections 28 and 29 of the Criminal Justice and Courts Services Act 2000, as amended by Criminal Justice Act 2003 section 299 and schedule 30. A Disqualification Order disqualifies an offender convicted of an offence against a child from working with children. Rape is an 'offence against a child' and is included in the list of such offences in Schedule 4 (the Schedule includes section 1 Sexual Offences Act 1956, sections 5-26 and sections 47-50 Sexual Offences Act 2003). A qualifying sentence is essentially a custodial sentence of twelve months or more.

Disqualification Orders are not mandatory. Having regard to all the circumstances of the case, if the offender is aged 18 or over, the court must make the order unless 'it is unlikely that the individual will commit any further offences against a child.' The court must state its reasons for not making an order against an adult (section 28(6)). If the offender is under 18, a Disqualification Order will only be made if 'it is likely that the offender will commit a further offence against a child' (section 29(4)). The court is required to give reasons for making an order against a child (section 29(5)).

The provisions of the Criminal Justice and Courts Services Act 2000 are due to be repealed by the Safeguarding Vulnerable Groups Act 2006, which will introduce a barring scheme in relation to working with children or vulnerable adults. There will only be a limited role for the criminal courts, as inclusion in the scheme will be automatic in certain circumstances, and in no circumstances will it depend upon an order of the court.

7.4.3 Notification Requirements

Following conviction, the defendant's name is automatically included in the Sex Offenders Register and the defendant becomes subject to the notification requirements. A person sentenced to imprisonment for life or for a term of thirty months or more is subject to the requirements indefinitely. See Table on the Notification Period, section 82 Sexual Offences Act 2003,

www.legislation.gov.uk/ukpga/2003/42/section/82

7.4.4 Derogatory Assertions in Mitigation

When delivering a plea in mitigation, the defence counsel is under a duty not to 'make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy' either witnesses or some other person (Code of Conduct of the Bar, paragraph 708(g)). The Code of Conduct of the Bar, paragraph 10.8 gives guidance to prosecution counsel where the defence, in mitigation, assert facts which the prosecution believe to be untrue. Counsel's duty is first to draw the attention of defence counsel to the assertion in question. If the defence persists, prosecution counsel should invite the court to hold a Newton Hearing on the issue.

7.5 Performance Monitoring

7.5.1 Public Service Agreements

Public Service Agreements (PSAs) set out, for the public and practitioners, the government's delivery priorities and how the government will measure success. New performance management arrangements mean that the police have fewer targets mandated from central government and that local partners should establish priorities for improvement in their Local Area Agreements.

The two key PSAs for 2008-11 for the investigation and prosecution of rape are:

- PSA 23 - Making communities safer, which is broken down into four priority actions each reflecting the direction of the Crime Strategy see **Home Office (2007) Cutting Crime: A New Partnership 2008-11**, one of which is to reduce the most serious violence, including tackling serious sexual offences and domestic violence;
- PSA 24 - Delivering a more effective, transparent and responsive criminal justice system for victims and the public. This is also broken down into four indicators, the first of which specifically mentions the need to improve the way in which serious sexual offences are investigated and prosecuted. The third indicator requires improvements in victim satisfaction with the police.

The stronger focus on local flexibility to respond to local priorities within the context of national targets and on building public confidence in community partnerships and their response to local problems enables police forces and CPS Areas to develop local action plans to improve performance in the investigation and prosecution of rape, see **Home Office (2007) Cutting Crime: A New Partnership 2008-11**.

LCJBs have a key role in implementing local improvements, within the framework set by the government, but in ways which relate specifically

to the needs and priorities of their community. For further information on the delivery of the PSAs and the role of the LCJBs, see **HM Government (2007) Working Together to Cut Crime and Deliver Justice: A Strategic Plan for 2008-2011** at http://www.cjsonline.gov.uk/downloads/application/pdf/1_Strategic_Plan_ALL.pdf

7.5.2 Police Case Tracking

The ability of the police to track effectively the progress and quality of an investigation is both key to maintaining the dynamism of the case and to ensuring that victims are kept aware of the progress of a particular case at any given time. To this end, case management needs to be contemporaneous and intrusive, and requires a structured approach.

Case tracking criteria should include:

- Benchmarking the response against both the local policy and national standards;
- Timely and regular monitoring of the investigation;
- Compliance with **Prosecution Team (2008) A Protocol between the Police and Crown Prosecution Service in the Investigation and Prosecution of Allegations of Rape** and **ACPO/CPS (2009) Guidance on Investigating and Prosecuting Rape** (as agreed and implemented locally by police and the CPS)
http://www.cps.gov.uk/publications/agencies/rape_protocol_annex_a.html
- Review of undetected cases in line with national standards for serious crime review.

7.5.3 Crown Prosecution Service Monitoring

Rape specialist prosecutors and caseworkers have been provided with **CPS (2007) Essential Steps Checklist**, which sets out the process and policies to follow in all rape cases. Compliance with the checklist is monitored by individual Areas using **CPS (2007) Essential Steps Monitoring Form** at <http://www.cps.gov.uk/legal/assets/uploads/files/Annex%20B-%20Essential%20Steps%20monitoring%20form.doc>

Area Rape Coordinators also assess a sample of files from each CPS Area, using the **CPS (2007) Rape Prosecution Quality of Decision Making Monitoring Form**. This checks the quality of prosecutors' decisions to ensure that all evidential and other avenues are explored.

An Advice/Review Checklist has been circulated to remind rape specialist prosecutors of the many evidential, and other, issues to be considered when advising upon, or reviewing, rape cases, see http://www.cps.gov.uk/legal/p_to_r/rape_manual/annex_d_rape_prosecutions_advice_review_sheet/index.html

Area Rape Coordinators are also responsible for compiling a new quarterly report for their chief crown prosecutor and CPS headquarters, which provides a detailed summary of rape prosecutions locally. A template for the report is available on the CPS Infonet.

The report should identify local good practice and aspects for improvement, including recommendations. It should be used to make decisions about training and other issues both locally and nationally, and to enable specific problems to be targeted effectively.

7.5.4 Crown Prosecution Service Monitoring Counsel

The CPS Policy Directorate, with the Criminal Bar Association, has established a rolling programme of accreditation and monitoring of counsel who wish to prosecute rape cases. This framework agreement should be implemented by Area Rape Coordinators in their Areas. The experience, local knowledge and networking of the rape coordinators are invaluable when implementing this agreement locally. See **Checklist 27: Principles of Accreditation for Counsel in Rape Cases.**

Monitoring forms should be kept by the rape coordinator for reference. In addition to attending an accredited course, counsel should be monitored on a regular basis. This will be at the discretion of CPS Areas, although the CPS Policy Directorate recommends every four years. The CPS Rape Prosecutions Delivery Unit keeps a central list of all counsel who have attended courses and who have been monitored successfully. This list is available on the CPS Infonet. Counsel need only be monitored by one CPS Area if they are on several area lists.

7.5.5 Developing a Joint Rape Action Plan

Local police forces and CPS Areas should engage in regular reviews of progress and planning for future improvements. Joint police and CPS action plans may be used or, where the police and the CPS have individual plans, their compatibility should be checked regularly. Ideally, action plans should be developed jointly by the police and the CPS. They should also be monitored to ensure that any strengths are built upon, and weaknesses identified along with action taken to reduce them or their impact. Specialist sexual violence services (and ISVAs where in place) should be invited and encouraged to be involved with

this process, and representatives encouraged to exercise the institutional advocacy element of their role. This role involves helping to make institutional changes to support the safety and support of victims, eg, improving communication between agencies involved in a case.

The forum at which any joint rape action plan is discussed should also include representation from other service providers. This could, for example, be from forensic suppliers, managers of forensic examination services, SARCs (or their local equivalents) and any other organisation relevant to the improvement of the criminal justice response to rape and sexual violence.

Checklist 30: Developing a Joint Rape Action Plan

When considering possible elements of a joint plan, the following represent possible areas for review and/or areas for improvement:

- Any changes in the problem profile and strategic assessment for rape and any relevant local intelligence on prevalence rates and locations;
- Recent cases and whether police and the CPS met stated local requirements in terms of response and quality;
- Forensic opportunities and missed opportunities, including monitoring the use of EEKs;
- Compliance with the locally agreed protocol set by police and the CPS;
- Lessons learnt from recent cases, or feedback/institutional advocacy provided by other agencies;
- Police case tracking or CPS monitoring reports;
- Reports provided by counsel on any cases resulting in an acquittal;
- Rate of no criming (and comparison to most similar forces);
- Rate of sanctioned detections (and comparison to most similar forces);
- Rate of victim withdrawal of support for the prosecution between charge stage and court;
- Number of prosecutions;
- Rate of discontinuance;
- Rape trials resulting in a conviction.

Management Issues

- Carrying out case tracking of all reports of rape from the reporting stage to the conclusion of the case and benchmarking against local and national standards.
- Facilitating the carrying out of Essential Steps Monitoring.
- Facilitating the monitoring of counsel who prosecute rape cases.
- Using information from the various forms of monitoring to develop action plans to improve outcomes in rape cases.
- Involving agencies other than the police and CPS in any action planning activities.

8

Specialist Roles

This section outlines the specialist roles within both the police and CPS which have been created to improve the investigation and prosecution of rape. It is relevant to police officers investigating rape (IOs and STOs) and those managing the rape investigation policy within a police force. It is also relevant to CPS rape specialist prosecutors and Area Rape Coordinators. Staff working within SARCs (or similar facilities) may also find this section relevant to their role.

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8.1 Specially Trained Officers

Specially trained officers (STOs) are sometimes referred to as sexual offence liaison officers or sexual offences investigative techniques trained officers. Other terms may also be used. For consistency, such officers are referred to as STOs in this guidance.

8.1.1 Training and Development

The role of an STO has emerged over time to include most of the victim focused evidence gathering in rape cases. A national training programme, the NPIA Specially Trained Officer Development Programme, has been developed and all staff tasked with the STO role should have received this (or training to an equivalent standard), as a minimum. The NPIA Specially Trained Officer Development Programme is subject to review and update at the time of publishing this guidance.

When choosing candidates for the STO role, the focus should be on selecting the most appropriate officers who have some experience of responding to sexual violence and/or rape offences. Training should be provided at a relevant point in a police officer's career. Some forces select officers who have been trained to investigate serious and complex cases requiring an investigator to be competent in the National Occupational Standards defined within Level 2 of the Professionalising Investigation Programme. Other forces deploy STOs competent within Level 1 of the Professionalising Investigation Programme for conducting priority and volume investigations. Regardless of how forces have defined the role of the STO and the level of investigative competency within the force investigation policy, additional training should be provided to ensure that officers fully understand issues specific to the investigation of rape. STOs should be supported in their role to provide twenty-four-hour investigation and victim care, either as a first response or providing early advice and supervision to first response officers until a specialist is deployed.

Conducting an interview with a victim is a difficult and complex process. STOs should be competent to conduct interviews in serious and complex investigations (formerly Tier 2), as recommended by **ACPO (2009) National Investigative Interviewing Strategy**, before they enhance their skills by undertaking the NPIA Specially Trained Officer Development Programme, or equivalent. It should be noted that it is permissible for an established STO who has not been trained as an interviewer in serious and complex investigations to interview a victim of rape, provided that they have been properly assessed in the workplace as being competent to do so against the National Occupational Standards developed by Skills for Justice in unit CJ102.

In some cases, to be identified by the IO in conjunction with the STO, it might be appropriate for the STO to act as a second interviewer (supporting the IO) for the suspect interview. This may not always be possible owing to the dynamic of the investigation where the STO and

IO are carrying out related tasks contemporaneously. However, this joint approach should be a consideration so that the detailed knowledge of the victim's account, which was obtained by the STO, is available to the IO when interviewing the suspect. This joint approach to interviewing further emphasises the requirement for the STO to be trained to an appropriate level in terms of investigative standards, particularly regarding interviewing suspects in serious and complex cases.

8.1.2 Investigative Role of the Specially Trained Officer

The STO is not the IO but is an integral part of the investigation team. The STO acts on behalf of the IO, who should fully brief them prior to commencing duties. Where the STO provides the initial response to a report of a rape, the parameters of this response should be set within the STO role description. IOs should set boundaries for all aspects of the investigation undertaken by the STO. Decisions taken as part of the first and early response to reports of rape should be included in a policy file with details of the initial contact, first response, briefing provided by the IO and any actions or advice given by the STO.

The following responsibilities usually form part of the investigative role of the STO:

- Supervising the first response to a report of rape;
- Using or advising on the use of an EEK;
- Arranging the victim forensic medical examination;
- Briefing the forensic physician;
- Securing exhibits and samples from the victim;
- Briefing the IO and other members of the investigation team;
- Communicating forensic information to the CSI, crime scene managers and IOs;
- Updating the forensic physician on the progress of the investigation (as directed by the IO);
- Conducting the victim interview;
- Acting as a second interviewer with the IO for the suspect interview, as appropriate;
- Liaising with the relevant points of contact at the SARC (or similar facility) and monitoring reports of rape made to the SARC;
- Taking statements of withdrawal of support for the prosecution (as directed by the IO).

8.1.3 Victim Care Role of the Specially Trained Officer

The STO should ensure that victims of rape receive the appropriate care to meet their needs. Evidence shows that some victims withdraw their support for a prosecution if they feel unsupported by the police and other agencies providing a response to rape offences. Victim care provided by the police should focus on involving the victim in the investigation and ensuring that they are regularly updated about progress in the case. Longer-term support should be offered to victims through local or specialist professional outreach and counselling services, such as an ISVA (where available).

The following responsibilities usually form part of the victim care role of the STO (although the extent to which the STO should carry these out will depend upon the local outreach services available to victims):

- Ensuring that the immediate physical, mental and welfare needs of the victim are met;
- Transporting the victim to a SARC (or similar facility) and staying with the victim throughout the forensic medical examination and medical aftercare;
- Providing information to the victim (initially directly) by referral to other outreach or support agencies;
- Explaining the criminal justice process to the victim (note that any information given to the victim should be presented positively and carefully timed to avoid prompting the victim to withdraw support for a prosecution or lose confidence in the police investigation or criminal justice process);
- Updating the victim about the progress of the investigation (often carried out jointly with the IO);
- Coordinating pre-trial support and assessing any emerging support needs relating to a pending court hearing, in conjunction with Witness Care Units and ISVAs, where available;
- Assisting with criminal injuries compensation claims.

STOs should inform victims of details of the handbook, ***Rights of Women (2008) From Report to Court: A Handbook for Adult Survivors of Sexual Violence, Third Edition***, and provide copies or access to copies, where possible. This handbook provides information about the process of reporting and prosecuting sexual violence.

For further information see

<http://www.rightsofwomen.org.uk/publications.html>

8.1.4 Exit Strategies with Victims

An exit strategy should be planned for the point at which the STO will cease contact with the victim. This strategy should be developed by the IO (and any ISVA, where involved) in conjunction with the STO, according to the circumstances of each individual case. The exit strategy should be given consideration from the outset of the case but needs to be set out in detail as the end of the investigation approaches.

Contact may, in some cases, be needed for several months after the court hearing. In others a few weeks will be sufficient, but there should always be some contact post trial, perhaps to assist with any criminal injuries compensation claim or other process. There should be a final debrief session with the victim to ensure that nothing has been overlooked, to confirm that all other support agencies are providing appropriate services to them and to enable the Police Service to learn lessons for the future. In areas where ISVAs (or similar advocacy and support roles) are in place, longer-term contact should be provided by them, as required.

8.1.5 Subsequent Contact with the Victim

The STO should ensure that a victim is aware of how to contact the Police Service in the future should any new issues relating to the case arise. They should anticipate the victim's possible need for advice, guidance and support at the time of the offender's release from custody. Where it is suspected that an offender may attempt to contact the victim after their release, the STO should renew contact with the victim before the release date whether or not any issues have arisen. They should also ensure that any relevant information provided by the victim or their supporter(s) is included within MAPPA.

The overriding principle is that the victim should continue to feel that they are being supported by the Police Service at all times. The IO should also inform the victim of the possibility of future contact by the police if a similar fact case occurs, or if scientific progress enables further evidence recovery.

8.1.6 Welfare Issues and Risk Assessment of the Specially Trained Officer Role

Managers should establish systems to monitor the STOs' workload and any work-related stress. These systems should also ensure that STOs can manage their caseloads and exit strategies efficiently. Each police force should have an STO coordinator who regularly holds debriefings. The effects of secondary PTSD should not be underestimated and the IO (or an individual nominated by them) should pay particular attention to

the welfare issues of the STO. Consideration should be given to engaging specialist sexual violence services working with victims of rape offences, in the regular supervision of the welfare needs of STOs.

STO coordinators should ensure that STOs are selected for specialist training on the basis that they meet all of the following criteria. That they are:

- Police officers;
- Non-probationers with reasonable experience of policing and some experience of sexual violence investigations;
- Volunteers.

Assessments of a candidate's suitability for the post should be carried out prior to their being appointed. Their ongoing suitability for the post should be monitored. In addition, a system of risk assessment and vetting should be used to protect an STO from harm while carrying out their duties, and to prevent the organisation from employing an individual who may present risks. All risk assessments should be reviewed and conducted at locally agreed intervals.

8.2 Crown Prosecution Service Area Rape Coordinators

All CPS Areas have a rape coordinator. This is a rape specialist prosecutor who acts as a source of expertise and guidance for cases of rape and serious sexual assault. Their role includes:

- Ensuring that systems are in place to mentor and assist newly appointed rape specialists;
- Liaising and working closely with the Rape Prosecutions Delivery Unit, HQ Business Development Directorate and Rape and Serious Sexual Offences team, HQ Policy Directorate, attending Rape Coordinators' Seminars and disseminating casework guidance and good practice to rape specialist prosecutors and other colleagues;
- Systematically sampling rape files including those where no further action has been taken, live and finalised cases using ***CPS (2007) Rape Prosecution Quality of Decision Making Monitoring Form***, at <http://www.cps.gov.uk/legal/assets/uploads/files/Annex%20C%20-%20Quality%20of%20Decision%20Making%20Monitoring%20Form.doc>
- Analysing the results of the Essential Steps Monitoring and Quality of Decision Making Monitoring to capture trends and identify and disseminate good practice and aspects for improvement;

- Including the results of the analysis in a quarterly report for their Chief Crown Prosecutor and HQ using the Area Rape Coordinators' Report Template;
- Working closely with and assisting in training the police, other government and voluntary agencies, eg, Victim Support, SARCs and the WS to raise awareness in relation to general good practice and procedure on rape and serious sexual offences;
- Ensuring that a system has been put in place for monitoring the performance of prosecuting counsel;
- Advising and liaising with the Area Communications Officer on media handling to promote public confidence in the prosecution of rape cases.

8.3 Rape Specialist Prosecutors

Rape specialist prosecutors are CPS prosecutors of level C2/senior crown prosecutor or above, responsible for advising on, reviewing and conducting rape cases throughout the life of the case, in accordance with ***CPS (2009) CPS Policy for Prosecuting Cases of Rape***. They provide a second opinion to fellow specialists considering taking no further action, dropping a case or substituting lesser charges in a rape case. They also provide support and information to their Area Rape Coordinator, and undertake monitoring of counsel.

Rape specialist prosecutors should have completed training and development addressing the law and practice of prosecuting rape cases including:

- Sexual Offences Act 2003;
- Special measures and dealing with vulnerable and intimidated witnesses;
- Domestic violence;
- Communicating with victims and witnesses.

They are also required to complete updated national and local training and development designed for rape specialist prosecutors.

Rape specialist prosecutors should have:

- Substantial experience of advising on cases of rape or other serious sexual assault, and experience of satisfactorily acting as reviewing lawyer in contested cases in accordance with CPS policy and guidance; or
- Satisfactory conduct of at least three contested cases of rape or other serious sexual assault in accordance with CPS policy and guidance with the assistance of a mentor who is an existing rape specialist prosecutor or a specialist rape advocate; and

- Should have attended at least one contested rape trial at the crown court;
- Should have visited a local SARC if the CPS Area has one.

Crown advocates should be rape specialist prosecutors in order to prosecute rape trials.

Management Issues

- Developing a local force register of STOs, to improve investigations and provide a quality service to victims of rape offences.
- Ensuring STOs are appropriately assessed and monitored in terms of their welfare and ability to perform their role.
- Providing STOs with appropriate investigative training, role descriptions, regular briefings and updates about rape investigations and policy matters.
- Ensuring CPS Area Rape Coordinators are provided with appropriate time in which to carry out their role, including monitoring for quality of decision making and preparing quarterly reports.
- Providing rape specialist prosecutors with appropriate training and opportunities to develop their knowledge and expertise.

Appendix 1

Abbreviations and Acronyms

ACPO	Association of Chief Police Officers
ANPR	Automatic Number Plate Recognition
BCU	Basic Command Unit
CAIU	Child Abuse Investigation Unit
CCA	Comparative Case Analysis
CCTV	Closed-Circuit Television
CHIS	Covert Human Intelligence Source
CMS	Case Management System
CPS	Crown Prosecution Service
CSI	Crime Scene Investigator (also referred to as a Scene of Crime Officer)
DAO	Domestic Abuse Officer
DNA	Deoxyribonucleic acid
DVLA	Driver and Vehicle Licensing Agency
ECHR	European Convention on Human Rights
EEK	Early Evidence Kit
EPP	Extended Sentence for Public Protection
FIU	Financial Investigation Unit
GP	General Practitioner
HMRC	Her Majesty's Revenue and Customs
HOLMES	Home Office Large Major Enquiry System
IDVA	Independent Domestic Violence Advisor
INI	Impact Nominal Index
IO	Investigating Officer
IPP	Imprisonment for Public Protection
ISVA	Independent Sexual Violence Advisor
IT	Information Technology
LCJB	Local Criminal Justice Board
MAPPA	Multi-Agency Public Protection Arrangements
MARAC	Multi-Agency Risk Assessment Conference
NDNAD	National DNA Database
NPIA	National Policing Improvement Agency
OASys	Offender Assessment System
PACE	Police and Criminal Evidence Act
PDP	Potentially Dangerous Person
PII	Public Interest Immunity
PNC	Police National Computer
POCA	Proceeds of Crime Act 2002
PoISA	Police Search Adviser
PSA	Public Service Agreement
PTSD	Post-Traumatic Stress Disorder

QUEST	Querying Using Extended Search Techniques
RIPA	Regulation of Investigatory Powers Act 2000
ROTI	Record of Taped Interview
ROVI	Record of Video Interview
RSO	Registered Sexual Offender
SARC	Sexual Assault Referral Centre
SCAS	Serious Crime Analysis Section
SGM+	Second Generation Multiplex
SOPO	Sexual Offences Prevention Order
SPOC	Single Point of Contact
STO	Specially Trained Officer
ViSOR	Violent Offender and Sex Offender Register
VS	Victim Support
WS	Witness Service

Appendix 2

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