



ASSOCIATION OF  
CHIEF POLICE OFFICERS



# Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape

The Association of Chief Police Officers and the Crown Prosecution Service (CPS) has agreed to this revised protocol being circulated to, and adopted by, Police Forces in England, Wales & Northern Ireland.

It is NOT PROTECTIVELY MARKED under the Government Protective Marking Scheme and any referrals for advice and rationale in relation to Freedom of Information Act disclosure, should be made to the ACPO Central Referral Unit at [acpo.request@foi.pnn.police.uk](mailto:acpo.request@foi.pnn.police.uk).

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# Document information

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**This revised protocol has been produced and approved by the National Policing Crime Business Area. This protocol produced by ACPO and the CPS should be used by chief officers to shape police responses to ensure that the general public experience consistent levels of service. The implementation of all Protocols will require operational choices to be made at local level in order to achieve the appropriate police response. This protocol recognises that rape is one of the most serious and damaging offences and can result in significant and ongoing consequences for victims. It will be updated and re-published as necessary.**

**Any queries relating to this document should be directed to either the author detailed above or the ACPO Programme Support Office on 020 7084 8959/8958.**

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## **1. SECTION 1 – PARTIES**

1.1 The Parties to this Protocol are XXXX Police and the XXXX Crown Prosecution Service (CPS).

## **2. SECTION 2 – BACKGROUND**

2.1 This protocol recognises that rape is one of the most serious and damaging offences and can result in significant and ongoing consequences for victims. The protocol applies to rape and to all cases involving penetration regardless of the victim's age. The application of the protocol to other sexual offences and to child sexual abuse not amounting to rape or penetration is considered good practice to be achieved whenever it is practicable.

2.2 The CPS and the police are committed to working together to investigate thoroughly and prosecute effectively those responsible.

2.3 In 2008 ACPO and the CPS signed the first joint protocol for investigating and prosecuting rape, setting out a framework within which the Police and the CPS can work in partnership to build effective cases and for the benefit of victims of rape. This second edition recognises further developments including the introduction in 2013 of dedicated CPS Rape and Serious Sexual Offences (RASSO) Units across the CPS.

2.4 The objectives of this protocol are:

- To reflect National Police and CPS policy;
- To achieve improved and consistent performance in the investigation and prosecution of rape; and
- To improve the service to victims of rape and increase public confidence in the Police and CPS response to rape.

## **3. SECTION 3 – COMMUNICATION**

3.1 The Police will appoint a Rape Champion and the CPS will appoint a RASSO Unit Head who will ensure that the investigation and prosecution of rape is coordinated between the agencies.

## **4. SECTION 4 – FIRST RESPONSE**

4.1 XXXX Police will ensure that first response officers responding to reports of rape are sufficiently trained to:

- a) Present a supportive attitude to the victim;
- b) Take an initial account from the victim, in line with current guidance (currently the ACPO/NPIA CPS (2009) Guidance on Investigating and Prosecuting Rape but this will be replaced in 2015 by Authorised Professional Practice (APP) published by the College of Policing (CoP); and
- c) Demonstrate the necessary level of forensic and investigative awareness to secure early evidence including the use of early evidence kits.

## **5. SECTION 5 – INVESTIGATION AND THE USE OF VISUALLY RECORDED VICTIM INTERVIEWS**

5.1 The investigative team will include a specialist police officer or member of police staff, trained in sexual offence and/or child sexual abuse investigation techniques, who will be attached to the case

throughout the enquiry and any subsequent court proceedings. This officer will be responsible for taking key witness statements, whether visually recorded or in writing.

- 5.2 The investigative team will always be alert to any potential need for an assessment by an Intermediary in relation to witnesses who are vulnerable by reason of their age (under 18) or whose quality of evidence is likely to be diminished by reason of:
- A mental disorder within the meaning of the Mental Health Act 1983;
  - A significant impairment of intelligence and social functioning;
  - A physical disability or disorder.
- 5.3 There will be a presumption of assessment for all children under 18 in sex abuse cases.
- 5.4 Where such a need is identified the investigative team will ensure the engagement of a registered Intermediary as early as possible in the investigation and prior to the witness being interviewed. An Intermediary can be engaged by the prosecutor later in the process as this may still improve the quality of the witness's evidence.
- 5.5 Decisions by police officers to visually record victims will be taken on a case by case basis and not made automatically. Police officers will explain to victims and their supporters the available special measures and their advantages and disadvantages, including any potential impact on the proceedings. They will obtain victims' informed views and pass them to the CPS to inform any special measures application. This should include the name of any supporter, including any Independent Sexual Violence Advisor (ISVA) that the victim wishes to accompany them in the live link room in any special measures application. (The Police will be sensitive to the fact that victims may have personal reasons for rejecting a visually recorded interview, for example where they were recorded by the perpetrator in the course of a sexual offence.)
- 5.6 Visually recorded interviews should be taken in accordance with Achieving Best Evidence in Criminal Proceedings: [Guidance on Interviewing Victims and Witnesses and Using Special Measures](#). The Police will ensure that the sound and picture quality of the recording is fit for purpose. The Police practice will be the subject of revision next year.
- 5.7 Rapport building that lasts beyond the short exchange of pleasantries (for example in the case of young children or adults with learning disabilities) should be concluded during the planning phase when the witness is prepared for the interview, or be edited out of the version presented to the court. The same applies to background or other information that is not part of the evidence on which the prosecution relies at court. The police will be responsible for editing the recording under the reviewing prosecutor's guidance.

## 6. SECTION 6 – FORENSIC MEDICAL EXAMINATION

- 6.1 Any forensic medical examination of the victim should take place in a dedicated examination suite to maximise victim care and the integrity of the evidence. Special requirements for victims with special needs must be considered and may involve assistance with transportation or the use of hospital facilities for the medical examination.
- 6.2 All examinations should be carried out by an appropriately trained clinician, whether a Forensic Physician (FP), Forensic Nurse (FN) or paediatrician. Where practicable the wishes of the victim will be taken into account and met in terms of the gender and or ethnicity of the clinician. *(Areas will have to tailor this section to include the arrangements available locally).*
- 6.3 If a dedicated examination suite is not used, and or a FP, FN or paediatrician, the Police should explain why on form MG6.

- 6.4 Where requesting an expert opinion the Police will, as soon as is reasonably practicable, provide the clinician with all the prosecution evidence including the suspect's initial account, and with the defence statement when received. *(Investigating officers and rape specialist prosecutors need to be aware that many FPs lack the experience and expertise to provide expert opinion. In these circumstances consideration should always be given to instructing an expert to provide an opinion on the FP's findings. Local arrangements are required to ensure that this happens).*
- 6.5 The CPS will always include the FP in the conference with the prosecutor, trial advocate and the investigating officer (IO) unless there are particular reasons for not doing so which must be recorded on the CPS case management system (CMS).
- 6.6 The CPS will always call the FP as a live witness at trial unless there are considered reasons for not doing so which must be recorded on CMS.

## **7. SECTION 7 – FORENSIC SUBMISSIONS**

- 7.1 The Police will provide the forensic service provider with the victim's statement or a note of their visually recorded interview (MG15 ROVI) and with any MG3 provided by CPS to inform decisions around forensic submissions.
- 7.2 When requesting an expert opinion the Police will provide the forensic scientist with all prosecution evidence including the suspect's initial account, and with the defence statement when received.

## **8. SECTION 8 – RAPE SPECIALIST PROSECUTORS**

- 8.1 CPS XXXX will maintain a dedicated RASSO Unit and provide XXXX Police with the names and contact details of the rape specialist prosecutors (rape specialists) and paralegals working in the Unit. The CPS will allocate rape cases to rape specialists, responsible for their cases from beginning to end.

## **9. SECTION 9 – EARLY INVESTIGATIVE ADVICE**

- 9.1 Early investigative advice (also known as early consultation) between the Police and the CPS is essential in rape cases and is a requirement of the Director's Guidance on Charging.
- 9.2 Once a report has been properly considered by a police supervisor and meets the criteria for referral the IO will arrange a consultation with a rape specialist as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail.
- 9.3 Rape specialists will assist in making a provisional assessment of the case, and participate in discussion around lines of further 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. In addition the IO and rape prosecutor can discuss questions to be put to suspects in interview, any pre-charge court procedures and any strategy for a likely prosecution.
- 9.4 Any early consultation may be in writing, by telephone, digitally or face to face and in accordance with any SOP for Area based advice and charging. The Police will not have to provide an evidential report but will share with the rape specialist such information as they have about the case.

9.5 So that a proper record can be kept a URN, an MG3 and an MG5 should be provided by the Police wherever practicable. Where the rape specialist considers there is not enough evidence to proceed to charge but that further evidence could be obtained, they and the IO will agree an action plan and timescale on form MG3.

## 10. SECTION 10 – CHARGING

- 10.1 When submitting a case for a charging decision based on the Full Code Test only files that have been confirmed as meeting the required standard by an appropriate accredited supervisor will be accepted by the CPS. All cases not meeting this standard will be owned by the Police who will be responsible for any decision to take no further action.
- 10.2 With the exception of charging decisions taken by CPS Direct, charging decisions in rape cases will always be made by Area-based prosecutors in RASSO Units. Where a charging decision is made by CPS Direct, any MG3 must contain an action that the Police contact the local rape specialist within 3 working days to make an appointment for a consultation.
- 10.3 Statements supplied to the prosecutor at the pre-charge stage should contain the witness's details on the reverse of form MG11 and be accompanied, where required, by a completed MG2 to enable requirements for special measures to receive early informed consideration. Where a witness has provided a visually recorded interview a completed MG2 should always be supplied to the prosecutor.
- 10.4 The IO will always provide the prosecutor with the visually recorded interview and ROVI (MG15) for the purposes of the charging decision. The prosecutor will watch the visually recorded interview.
- 10.5 The pre-charge report supplied by the Police to the CPS for a charging decision based on the Full Code Test will consist of:
- The MG3 (to include any confidential information);
  - Key evidence including visually recorded witness interviews and accompanying ROVIs;
  - Relevant exhibits, CCTV and forensic and/or medical reports;
  - The DV checklist and DASH form in Domestic Violence cases;
  - PNC print of suspect and key prosecution witnesses' previous convictions (including any out-of-court disposals);
  - Any material identified as potentially undermining the prosecution case or assisting the defence; and;
  - Any available third party material including social services' records.
- 10.6 In addition the contact details of the IO and the age of the victim(s) in the case will be prominently recorded.
- 10.7 Where the suspect has made a full admission during interview the specific detail will be included in the case summary and accompanied by the key evidence required to set out the circumstances of the offence.
- 10.8 Where despite the suspect having answered questions the IO considers the interview overall to be of no evidential value, no record of interview need be provided. Nor is a detailed record of interview required where the suspect made no comment to all questions.
- 10.9 Where the Police request a charging decision based on the Threshold Test they will provide detailed information on form MG7 to enable the prosecutor to decide whether application of the Threshold Test is appropriate and to fully consider opposing bail. They will also provide details of the further evidence likely to be obtained which will have a significant impact on the case.
- 10.10 Decisions taken by prosecutors will be recorded on form MG3 with reasons. Unless there is no additional or outstanding work required from the Police the MG3 will contain an Action Plan with agreed action dates.

## **11. SECTION 11 – OUT-OF-COURT DISPOSALS**

- 11.1 Where a police decision-maker considers a simple caution or Conditional Caution to be a suitable disposal in relation to an Indictable Only offence (including rape) the case must be referred to a prosecutor to decide whether there is sufficient evidence for a realistic prospect of conviction and whether an out-of-court disposal satisfies the public interest.
- 11.2 A prosecutor will only confirm such a disposal as appropriate in exceptional circumstances and where it fully meets the justice of the case. Such decisions are invariably sensitive and should be referred to the Head of the RASSO Unit for approval prior to notifying the Police. A careful note of the reasons for the decision must be made.
- 11.3 The decision to authorise a Conditional Caution in any Indictable Only offence must be approved by a Deputy Chief Crown Prosecutor.

## **12. SECTION 12 – DISCLOSURE**

- 12.1 The IO or disclosure officer and rape specialist will handle unused material in accordance with the Criminal Procedure and Investigations Act 1996 (CPIA) as amended, the relevant Code of Practice, the Attorney General's guidelines on disclosure and the Disclosure Manual.
- 12.2 The Police will ensure that the IO or disclosure officer is adequately trained on CPIA Procedure.

## **13. SECTION 13 – THIRD PARTY MATERIAL**

- 13.1 The Police will be proactive in identifying and seeking access to relevant third party material as early as possible at the pre-charge stage.
- 13.2 In the context of rape and serious sexual offences relevant holders of third party material may include:
- Social services departments;
  - Schools;
  - Forensic physicians;
  - Counsellors/therapists;
  - Medical practitioners;
  - Hospital; and
  - Owners of CCTV.
- 13.3 Because the disclosure of medical/counselling records will engage the victim or witness's Article 8 right to privacy the police must obtain their informed consent to:
- Gain access to the records; and
  - Enable disclosure, where appropriate, to take place.
- 13.4 When obtaining consent the Police will make clear to the victim or witness the reasons for the request, and to the use to which the records may be put.
- 13.5 The victim/witness may provide one of the following responses:
- Consent to the Police/prosecution having access to the records and serving them as evidence or unused material where appropriate; or
  - Qualified consent to the Police/prosecution having access to the records but not to their being served on the defence whether as evidence or unused material; or
  - Withhold consent to access.

- 13.6 Whatever the victim/witness's response, it should be recorded and passed to the prosecutor.
- 13.7 In respect of cases involving child victims, access to and exchange of third party material held by a local authority will be dealt with in accordance with the local protocol signed between XXXX Police, XXXXCPS and the XXXX Local Authorities.
- 13.8 The rape specialist will make application to the Court for a witness summons or for third party material to be withheld on the grounds of public interest immunity where appropriate.

## **14. SECTION 14 – REVIEW AND CASE PREPARATION**

- 14.1 The rape specialist prosecutor will, in every case, consider holding a pre-trial witness interview and record their decision on CMS.
- 14.2 A conference with the trial advocate, the rape specialist, the IO, CPS caseworker and the FP (where appropriate) should be held in every rape case as soon as practicable after the advocate has received instructions. Prior to the conference the IO will contact any specialist support agency or Independent Sexual Violence Advisor (ISVA) for an update on the victim's situation and any recent developments.
- 14.3 When a victim withdraws their evidence or asks the Police not to proceed, the Police will take a statement from the victim to:
- Explain the reasons for withdrawing;
  - Say whether the original complaint was true; and
  - Say whether the complainant has been pressurised to withdraw by any person.
- 14.4 The presence of an ISVA or other supporter when taking a statement is recommended.
- 14.5 In addition the Police will provide a report setting out:
- What they think about the case, in particular the reasons for the withdrawal and its impact on the case;
  - Whether the victim is supported by any specialist support service or an ISVA and, where they are, the views of the ISVA or supporter on how the victim might react if required to attend court and whether they have been put under pressure not to support the prosecution;
  - The risks to the victim and any other person's safety; and
  - How the victim might react if required to attend court.
- 14.6 If they suspect that the victim has been pressurised or is frightened the Police will assess any support that has been offered and whether the intervention of a local specialist support service or an ISVA could make a difference. The CPS will, if appropriate, ask the Court to delay any hearing to enable this to be done.
- 14.7 If the victim confirms that the complaint is true but still wants to withdraw, the Police and CPS will consider the feasibility of continuing without the victim's evidence and whether to do so against the victim's wishes.
- 14.8 A decision to proceed and call the victim to give evidence against his or her wishes will only be taken by a rape specialist after consultation with the Police and the trial advocate.
- 14.9 Where the rape specialist proposes to discontinue the case or substantially reduce the charge they will consult the Police to ensure that there is no further action that can be taken.

## 15. SECTION 15 – VICTIMS AND WITNESSES

- 15.1 The Police are responsible for ensuring that all rape victims are referred to local specialist support services at the start of an investigation including, where available, ISVA services.
- 15.2 In every rape case the Police will obtain the victim's agreement on who is to be their single point of contact (SPOC) and their preferred means of contact (telephone, text, email or other). The identity of the SPOC should be shared with the CPS and the Witness Care Unit so that it is clear who is responsible for communicating with the victim and recording any actions arising.
- 15.3 There will be an early special measures discussion between the IO and the rape specialist in every case to discuss the views of the witnesses and inform any applications to the court. Prior to this discussion the IO will contact the specialist support service or ISVA for an update on the victim's situation and any recent developments. The name of any supporter, including any ISVA that the victim wishes to accompany them in the live link room must be passed to the rape specialist and included in the special measures application.
- 15.4 Holding a special measures meeting with the witness is good practice and provides an opportunity for the witness and the advocate to meet before the trial. The Police and the CPS should do their best to arrange such a meeting.
- 15.5 It is the responsibility of XXXX to arrange a court familiarisation visit for the victim. (*The name of the responsible agency should be inserted*). Where the victim requires additional assistance such as an interpreter or help to gain access to the premises due to disability, assistance will be provided. Wherever possible efforts will be made to coordinate the visit with the conference with counsel and the victim's special measures meeting.
- 15.6 The Police will ensure that victims in rape cases have the opportunity to make a victim personal statement (VPS), to enable the victim to describe the effect the offence has had and to express an opinion on bail and other issues. The Police will explain that if a suspect is found guilty a victim is entitled to say whether they wish to read their VPS aloud in court or to have it read, usually by the prosecutor. Where a VPS has been recorded it can be played to the court.
- 15.7 The Police and CPS will comply with their responsibilities as set out in the [Code of Practice for Victims of Crime](#). They include:
- Where the CPS decide not to prosecute during a charging consultation, including face-to-face meetings, area consultations, telephone and digital consultations, the Police will inform the victim of the decision, the reason for the decision, how they can access further information about the decision from the CPS and how they can seek a review of the decision if they are dissatisfied with it.
  - Where no charging consultation is held (or where the rape specialist otherwise agrees it is appropriate) the CPS will be responsible for notifying the victim of any decision not to prosecute, how they can access further information about the decision and how they can obtain a review of the decision if they are dissatisfied with it. The CPS will notify the victim within one working day and offer to meet the victim.
  - When a decision is taken by a rape specialist to substantially alter or discontinue a charge of rape the CPS will notify the victim of the decision within one working day and offer to meet the victim.
- 15.8 When a case is to be dropped or a charge reduced and the Police and CPS decide it is appropriate to do so, XXXX will personally deliver an explanatory letter to the victim. (*The identity of the relevant agency or individual will need to be inserted*). Any ISVA who is not tasked with delivering the letter should be informed at the same time to ensure counselling and crisis support, including any safety planning, is also offered.

- 15.9 Where the CPS decision is not to charge or ends all proceedings in relation to the victim, the victim should be informed of their right to have the case re-reviewed as part of the Victims' Right to Review (VRR) scheme.

## 16. SECTION 16 – TRIAL

- 16.1 The CPS will select an advocate with the necessary skills and expertise to prosecute every rape trial, whether from the CPS Advocate Rape Panel and Child Sexual Abuse List of accredited members of the self-employed Bar or from the CPS.
- 16.2 The trial advocate will attend all hearings including interlocutory hearings such as defence applications for bail except in exceptional circumstances, reasons for which will be recorded on the file. The trial advocate will also attend any ground rules hearing: a pre-trial meeting of the trial judge, trial advocates and Intermediary (if any) aimed at deciding how a witness who has communication needs or is otherwise vulnerable should be enabled to give their best evidence or participate effectively in the trial.
- 16.3 Trial advocates will introduce themselves to victims at court prior to the start of the trial and put nervous or vulnerable witnesses at ease. This is especially important where no special measures meeting with the victim has taken place. They will also explain what will happen in court, in accordance with CPS guidance, and keep victims informed about any delays.
- 16.4 The trial advocate will challenge offensive and seemingly irrelevant questioning and deal with inappropriate cross examination of the victim about previous sexual experience.
- 16.5 If a decision is taken at Court to offer no evidence or accept a lesser plea the views of the victim will be taken into account before a final decision is reached and the advocate will speak to the victim to explain the issues surrounding the decision. Any ISVA or court supporter should also be present to ensure the victim is able to give their views effectively.

## 17. SECTION 17 – SHARING LESSONS LEARNED

- 17.1 CPS will undertake regular monitoring of counsel who prosecutes rape cases in accordance with the principles agreed with the Bar Council.
- 17.2 Trial advocates will provide a written report in any case involving an allegation of rape which results in an acquittal, copied to the Police.
- 17.3 Feedback about good practice and aspects for improvement will be shared with the Police through regular meetings between the Police Rape Champion and CPS RASSO Unit Head. *(Areas may insert specific details about the form that such meetings will take and the items to be included on the agenda. It may be helpful for a representative from the force's forensic service provider and any local SARC and ISVA, or other specialist support service, to be included in the meetings).*
- 17.4 In particular feedback meetings should address:
- Arrangements for early consultation;
  - Quality of files referred by the Police;
  - Timeliness and effectiveness of decision making;
  - Rate of no criming;
  - Rate of sanction detections;
  - Rate of withdrawal between charge and Court;
  - Proportion of charge to NFA;
  - Number of prosecutions;
  - Rate of discontinuance; and
  - Rate of rape trials resulting in a conviction.

17.5 Such meetings will also include regular evaluation of the Protocol to identify levels of compliance, its effectiveness and any aspects for improvement.

## **18. SECTION 18 – IMPLEMENTATION**

18.1 This agreement will take effect in respect of all police investigations commencing on or after XXXXXXXXX.