

# RAPE CASES – POLICE REFERRAL TO THE CROWN PROSECUTION SERVICE FOR EARLY INVESTIGATIVE AND OTHER ADVICE:

## 1. INTRODUCTION

- Rape is an indictable only offence which must be tried in the Crown Court.
- Accordingly the decision to charge must be made by a Crown Prosecutor in accordance with the provisions of the Director's Guidance on Charging.
- This document provides further guidance for police and prosecutors about the existing requirements for early investigative and other advice as outlined in the Director's Guidance on Charging.
- Prior to any decision to refer to the CPS for a charging assessment, however, there are steps that must also be taken to assess whether the case should be referred for **Early Investigative Advice**

## 2. EARLY INVESTIGATIVE ADVICE

### **Referral Criteria for Early Investigative Advice:**

- Cases involving a death, rape or other serious sexual offence should **always** be referred by the police supervisor to a prosecutor at as early a stage as possible;
  - I. Upon identification of a suspect;
  - II. It appears that continuing investigation will provide evidence upon which a charging decision may be made.
  - III. In addition cases may be forwarded for early investigative advice (EIA) to ensure the early development of a joint strategy for the prosecution where they would benefit from CPS expertise and advice on the evidential picture, corroborative or supportive evidence, any additional enquiries/actions, any potential offences and the elements required to prove them. Cases involving vulnerable victims<sup>1</sup> may benefit from specific EIA.
- As cases will be referred for early investigative advice at a preliminary stage of the investigation the Full Code test will not be met as all the evidence will not be available.
- Accordingly, when referring a case for early investigative advice the police supervisor must believe that the case will **eventually** (through further investigation, action or evidence) be able to meet the Full Code test.
- What this means in practice, is that the police supervisor needs to assess the available evidence to ascertain whether:
  - I. There are any further lines of enquiry; and/or
  - II. The case can be strengthened in any way – e.g. by witness or forensic evidence, special measures, hearsay, bad character evidence or additional lines of enquiry, enquiries relating to the suspect, which will make it possible for the case to meet

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<sup>1</sup> Vulnerable victims include young victims or where there are drug, alcohol or mental health issues or learning difficulties.

the appropriate test. (Note that in either the Full Code or Threshold Test – the Public Interest test will almost invariably be met); and/or

- III. The case would benefit from CPS advice on issues such as the legal aspects of the case, the course of the investigation or the gathering of further evidence. This may be a particular consideration in cases involving vulnerable victims.
- Where a case is referred to CPS at an early stage the prosecutor may determine the information to be provided by the police, the stage at which the evidence will be reviewed and the test to be applied. An action plan will usually be developed by CPS.
  - 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.
  - All EIA advice should be recorded in writing by the police and CPS to ensure an audit trail.

### **3. CHARGING ADVICE**

#### **Referral Criteria for Charging Advice:**

- When making a decision that a case should be referred to the CPS for charging advice the police supervisor must, prior to referral, assess the available evidence to ensure that the Full Code Test or the Threshold Test can be met, dependent on the circumstances of the case.

#### **The Threshold Test:**

- The assessment of the evidence on the basis of the Threshold Test **MUST ONLY** be made by the supervising officer when the suspect is **not suitable for bail** and **not all the evidence** is available at the time when they must be released from custody unless charged.
- The test which must be applied in order to assess whether the threshold test is met is:
  - I. Is there a reasonable suspicion that the person charged has committed the offence and;
  - II. There are reasonable grounds for believing that further evidence will become available within a reasonable amount of time and;
  - III. The seriousness or the circumstances of the case justifies making an immediate charging decision and;
  - IV. There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so and;
- The Public Interest stage of the Threshold Test is based on the information at the time

#### **The Full Code Test:**

- In all cases other than those where it is intended to remand the suspect in custody the supervising officer must assess the available evidence to determine if the Full Code Test **is** met or **will be** met after any significant evidence awaited has arrived.

- The test which must be applied in order to assess whether the full Code Test is met is:
  - I. **Evidential Stage:** the supervising officer must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.
  - II. The finding that there is a realistic prospect of conviction means that an objective, impartial and reasonable tribunal properly directed and acting in accordance with the law is more likely than not to convict the defendant of the charge alleged. If the case passes the evidential stage, supervising officers must then go on to decide if a prosecution is needed in the public interest.
  - III. **Public Interest Stage:** A prosecution will usually take place in rape cases unless there are public interest factors tending against the prosecution which outweigh those tending in favour. The Public Interest test will, almost invariably, be met in such cases.
- Please note:
  - In order to satisfy the full code test the case does not have to meet the standard of proof applied by a jury; namely 'satisfied so that you are sure' but the evidential test as outlined above.
  - If the Police Supervisor is satisfied that the Full Code Test is met then the case must be referred to the CPS in order for a charging decision to be made.

#### **No Further Action:**

- Only if:
  - I. The Full Code OR Threshold Tests are not met **and**
  - II. The case cannot be strengthened by further investigation / early CPS advice **or**
  - III. The decision does not require the assessment of complex evidence or legal issue

will the police supervisor not refer the case to CPS and will make the decision to take no further action.
- This means that the Police decision to NFA only applies to any case that **clearly cannot and will not be able** meet the appropriate evidential standard (Full Code or Threshold Test) i.e. because all reasonable lines of enquiry have been exhausted, there is no prospect of further evidence / enquiries strengthening the case and the evidence is still insufficient for the case to **eventually** meet either stages of the Test.
- All rape cases (as with all Indictable only cases) and those matters listed in the Director's Guidance as exceptions to police charging decisions, must be referred to a prosecutor to consider whether a decision to NFA the cases should be made on Public Interest grounds.