

**A
CONSULTATION
ON THE
CPS POLICY FOR PROSECUTING
CASES OF RAPE**



CPS

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A CONSULTATION ON THE CPS POLICY FOR PROSECUTING CASES OF RAPE

THE CONSULTATION PROCESS

Introduction

The aim of this consultation paper is to seek a wide range of views to inform the policy and practice of the Crown Prosecution Service (CPS) in relation to prosecuting cases of rape.

The CPS has responsibility for reviewing cases of rape and applying the Code for Crown Prosecutors to decide whether or not there should be a prosecution. To assist prosecutors making that decision we intend to review our current policy and practice by consulting publicly and internally on the issues raised in this document. We welcome views from everyone with an interest in the topic. This document will be widely circulated and is available on the CPS website (www.cps.gov.uk).

How to respond

We welcome written and email responses to the consultation, especially, but not exclusively, to the questions set out in the document. A pro forma for responses is included at the back of this document. The pro forma is also available in electronic format in the consultations section on the CPS website (www.cps.gov.uk). Please feel free to provide comments on additional sheets of paper if there is not sufficient space.

Please include with your response: your name, organisation (if any), postal address and email address.

Closing date for responses: **29 October 2008**

Responses can be sent by post to:

Prosecuting Cases of Rape Consultation
Crown Prosecution Service
Policy Directorate, 50 Ludgate Hill, London EC4M 7EX

Or by e-mail to: rapepolicy.cpsconsultation@cps.gsi.gov.uk

Alternative formats

If you require a copy of this consultation paper in another format, e.g. audio, large print or Braille, you should contact the address above.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the CPS, the Government or related agencies. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information legislation (these are the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could briefly explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the CPS.

Please ensure your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The CPS will process your personal data in accordance with the Data Protection Act – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Next steps

A summary of the consultation responses will be published on the CPS website within three weeks of the close of the consultation exercise. The documents will be drawn to the attention of everyone who responds to the consultation. These responses will inform the CPS public policy statement on prosecuting cases of rape.

CPS POLICY FOR PROSECUTING CASES OF RAPE

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1. INTRODUCTION

- 1 This policy statement explains the way we, the Crown Prosecution Service (CPS), deal with cases in which an allegation of rape has been made. It gives advice on what the CPS does, how rape cases are prosecuted, and what victims can expect from the CPS. The document is particularly aimed at those who support victims of rape, whether professionally or personally, although it may be of interest to victims, witnesses and the general public.
- 2 This is the second edition of the policy statement and reflects the changes in the law and CPS procedures that have taken place since the publication of the first edition in 2005. Rape is one of the most serious of all criminal offences. It can inflict lasting trauma on victims and their families. We want people to know that our aim is to prosecute rape cases effectively, and we want people to know what they can expect from us.

- 3 We are aware that there is a general perception that most rapes are committed by a single man against a woman unknown to him. In fact, the majority of rape victims know their rapist. Rape can involve male and female victims of all ages. This policy statement covers the handling of all types of rape case, including marital and relationship rape, acquaintance and stranger rape, against male and female victims. All are equally serious and traumatic for the victim. Rape also has a devastating effect on families of victims.
- 4 We realise that victims of rape have difficult decisions to make that will affect their lives and the lives of those close to them.
- 5 We acknowledge that barriers exist, which mean that some people are less likely to report offences.
- 6 Victims who are or have been in a relationship with their attacker may blame themselves or feel that agencies will blame them, and may well face wider difficulties such as disruption to the lives of their children and extended families.
- 7 People from Black and minority ethnic communities may have experienced racism. They may fear that they will not be believed, or that they will not be treated properly. As a result they may be reluctant to report offences or support a prosecution. Cultural and religious beliefs may also prevent people from reporting offences or supporting a prosecution.
- 8 In cases involving rape within same sex relationships, victims may fear a homophobic reaction from the criminal justice system. They may also fear being "outed" by the process.
- 9 People with physical disabilities may fear reporting rape if the offender is a carer, or fear the loss of residential care.
- 10 Elderly people, in particular, may be deterred from reporting rape by feelings of shame or embarrassment.
- 11 People with learning difficulties or mental health problems may feel that they will not be believed if they report being raped.
- 12 We currently work with Independent Sexual Violence Advisors and a number of national and local organisations (for example the Witness Support Service), which offer support to victims throughout the proceedings. Special measures can be used to help a victim or witness to give evidence.
- 13 The CPS has just completed implementing a new scheme across England and Wales which will enable the prosecutor, in appropriate cases, to meet the victim or other witnesses at an early stage in the criminal process. The purpose of these pre-trial witness interviews is to

enable the prosecutor to reach a better informed decision about any aspect of the case. We will consider every case carefully and sensitively. Our decisions will be objective but made within a framework that promotes support for victims by keeping them informed.

- 14 Although this policy statement applies specifically to rape, we will strive to apply best practices and procedures to all other types of sexual offence prosecuted, and ensure that these cases are treated seriously and sensitively.

2. WHAT IS THE DEFINITION OF RAPE?

- 1 The definition of rape was substantially changed by the Sexual Offences Act 2003, which came into force on 1 May 2004.
- 2 Offences committed before 1 May 2004 will be prosecuted under the Sexual Offences Act 1956. Under the 1956 Act, the statutory definition of rape is any act of non-consensual intercourse by a man with a person, and the victim can be either male or female. Intercourse can be vaginal or anal. It does not include non-consensual oral sex. The courts had defined consent as having its ordinary meaning, and lack of consent could be inferred from the surrounding circumstances, such as submission through fear. It is a defence if the defendant believed that the victim was consenting, even if this belief was unreasonable, and this is a matter of fact for the jury.
- 3 Offences committed on or after 1 May 2004 are prosecuted under the Sexual Offences Act 2003. The Act extends the definition of rape to include the penetration by a penis of the vagina, anus or mouth of another person. The 2003 Act also changes the law about consent and belief in consent.
- 4 The word "consent" in the context of the offence of rape is now defined in the Sexual Offences Act 2003. A person consents if he or she agrees by choice, and has the freedom and capacity to make that choice. The essence of this definition is the agreement by choice. The law does not require the victim to have resisted physically in order to prove a lack of consent. The question of whether the victim consented is a matter for the jury to decide, although we consider this issue very carefully throughout the life of the case. The prosecutor will take into account evidence of all the circumstances surrounding the offence.
- 5 We are aware that the meaning of consent can be of particular relevance in rapes where there has been, or is, a pre-existing relationship between the defendant and the victim, or where domestic violence has existed prior to the rape. As the 2003 Act makes it clearer what is meant by the term "consent", it should help juries decide whether the victim was able to, and did in fact, give his or her consent at the time.

- 6 The Sexual Offences Act 2003 requires the defendant to show that his belief in consent was reasonable. In deciding whether the belief of the defendant was reasonable, a jury must have regard to all the circumstances, including any steps he has taken to ascertain whether the victim consented. In certain circumstances, there is a presumption that the victim did not consent to sexual activity and the defendant did not reasonably believe that the victim consented, unless he can show otherwise. Examples of circumstances where the presumption applies are where the victim was unconscious, drugged, abducted or subject to threats or fear of serious harm.
- 7 People who have consumed alcohol may reach such a level of drunkenness that they no longer have the capacity to give consent. The courts recognise that this stage may be reached well before they become unconscious.
- 8 Proving the absence of consent is usually the most difficult part of a rape prosecution and it is the issue which causes most cases to fail. Prosecutors will look for evidence such as injury, struggle, or immediate distress to help them prove that the victim did not consent, but frequently there may be no such corroborating evidence. This does not mean that these cases can never be successfully prosecuted, but it does mean that they are more difficult. In the absence of any other evidence to help prove the victim did not consent, there is the possibility that some cases may fail to meet the evidential stage of the Code for Crown Prosecutors (See Section 4, paragraph 2 below).

3. THE ROLE OF THE CPS

- 1 The CPS is one part of the criminal justice system, which includes other organisations such as the police, the courts, defence lawyers, National Offender Management Service, Youth Offender Teams (YOTs), the Witness Service and the Prison Service.
- 2 We are a public prosecution service for England and Wales, headed by the Director of Public Prosecutions. We were set up in 1986 to prosecute cases investigated by the police. Although we work closely with the police, we are independent of them. We are answerable to Parliament through the Attorney General, who is the senior Law Officer of the Crown and also a Government Minister.
- 3 We are a national organisation consisting of 42 Areas, plus an out-of-hours service called 'CPS Direct'. Each Area is headed by a Chief Crown Prosecutor and corresponds to a single police force area, with one Area covering London. The 42 Areas are now grouped into 14 Strategic Boards, excluding CPS London, which has a management team of its own, led by the Chief Crown Prosecutor of London. Each Strategic Board is led by a Group Chair Chief Crown Prosecutor.

- 4 The police are responsible for investigating allegations of rape and for gathering the evidence. Since 2004, we have had the responsibility for deciding (in all but the most minor cases) whether a suspect should be charged with a criminal offence, and, if so, what the charge(s) should be. The police do not refer every complaint of a criminal offence to us. However, when the police have a reasonable suspicion that a suspect has committed the offence of rape, they *must* refer that case to a Crown Prosecutor, who will make the decision whether to charge.
- 5 The CPS and the Police have signed a joint national protocol undertaking to adhere to best practice and policies in the investigation and prosecution of rape cases.
- 6 As part of our commitment to improve the prosecution of rape cases, we have established a network of specialist prosecutors in each CPS Area. The CPS has set down a standard for rape specialist prosecutors, as our specialist prosecutors in each of the 42 CPS Areas are expected to be trained and experienced in prosecuting rape and other sexual offence cases. The specialist network also provides mutual support to rape specialist prosecutors to reinforce each other's expertise and knowledge to assist future rape prosecutions.
- 7 An early consultation will take place between the specialist prosecutor and the police to ensure that all possible avenues of evidence are explored and that the correct charge is identified. The specialist prosecutor will be responsible for the case from advice stage to the end of the case and will work closely with the police throughout.
- 8 This degree of continuity is important. It enables us to ensure that the victim is provided with the best possible support throughout the progress of the case.
- 9 Since 1 October 2007, only prosecution advocates who have attended a CPS accredited course and have demonstrated the right skills whilst being monitored are able to undertake rape prosecutions in court. Efforts will be made, wherever possible, for the same prosecuting advocate to deal with the case throughout.

4. THE CODE FOR CROWN PROSECUTORS

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

The evidential stage

- 2 We must be satisfied first of all that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. This means that a jury or a bench of magistrates or a judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged charge.
- 3 For there to be a conviction, we have to prove the case so that the court is sure of the defendant's guilt.
- 4 If the case does not pass the first stage (the evidential stage) based on the strength of the evidence, it must not go ahead, no matter how important or serious it may be

The public interest stage

- 5 If the case does pass the evidential stage, we must decide if a prosecution is needed in the public interest. A prosecution will usually take place unless: "there are public interest factors tending against prosecution which clearly outweigh those tending in favour".
- 6 When considering the public interest stage, one of the factors that Crown Prosecutors should always take into account is: "the consequences for the victim of the decision whether or not to prosecute; and any views expressed by the victim or the victim's family": paragraph 5.12 of the Code. We always think very carefully about the interests of the victim when we decide where the public interest lies. But we prosecute cases on behalf of the public at large and not just in the interests of any particular individual. There can be difficulties in striking this balance. The views and interests of the victim are important, but they cannot be the final word on the subject of a CPS prosecution.

The Threshold Test

- 7 When a person has been arrested and is considered unsuitable to be granted bail pending the completion of the police enquiries, the prosecutor will make a decision whether or not that person should be charged based on whether there is a reasonable suspicion that he has committed the offence. This is called the 'Threshold Test'. If a person is charged on the Threshold Test then, when the police enquiries are complete, the case will only be allowed to proceed if it passes both stages of the test set out in the Code for Crown Prosecutors.

5. IS THERE ENOUGH EVIDENCE TO PROSECUTE?

- 1 Rape usually takes place in a private setting where the victim is the only witness. Unless the defendant pleads guilty, the victim will almost

certainly have to give evidence in court. Where there is conflicting evidence, the prosecutor has a duty to assess the credibility and reliability of the victim's evidence. This will always be done in a careful and sensitive way, using all the information provided to the prosecutor. A case may not proceed, not because the prosecution does not believe the victim, but because, when considering all the available evidence in the case, there is not enough to meet the evidential stage of the Code test.

- 2 There are rules about disclosing to the defence relevant material obtained during the investigation, which is not part of the prosecution case. The rules are complex, but broadly speaking, there is a duty to disclose to the defence any such material that might undermine the prosecution case or assist the defence.
- 3 The police will always look for corroboration or supporting evidence (such as medical or scientific evidence, CCTV evidence, or eyewitnesses to events prior to or after the incident) but it is not essential and a prosecution can still go ahead without it. However, the prosecution must always prove the defendant's guilt. Cases may fail because a jury cannot decide between what the victim says and what the defendant says. This is why it is essential to obtain all possible forensic and scientific evidence as soon as possible. The earlier a rape is reported, the higher the chance of this being done, and the higher the chance of building a strong prosecution case.
- 4 Where a victim has disclosed being raped to other persons prior to reporting it to the police, strict legal rules of evidence govern whether these disclosures can be used as evidence at court.
- 5 We are aware that there are myths and stereotypes surrounding the offence of rape. We will not allow these to influence our decisions and we will robustly challenge such attitudes in the courtroom.
- 6 We know that some victims will find it very difficult to give evidence and may need practical and emotional support. The specialist prosecutor will know about the emotional and psychological effects of rape and will be aware that some complaints of rape are not made immediately. Any delay could be attributed to a fear of reprisals, intimidation or a significant number of other factors. It is possible that the effect on rape victims may render them emotionally incapable of providing a written statement shortly after an attack, or even for days or weeks. Specialist agencies can provide support and advice.

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

- 7 Sometimes a victim may withdraw support for a prosecution and may no longer wish to give evidence. This does not mean that the case will automatically be stopped. If the victim has decided to withdraw support

for the prosecution, we have to find out why. This may involve delaying the court hearing to investigate the facts and decide the best course of action.

- 8 We will take the following steps:
 - if the victim decides to withdraw support, we will ask the police to take a written statement from the victim to explain the reasons for that withdrawal, to confirm that the original complaint was true and to find out whether the victim has been put under any pressure to withdraw support; and
 - we will ask the police to give their views about the evidence in the case and how they think the victim might react if they are compelled to attend court.
- 9 If the victim's statement, after withdrawing the complaint, is not the same as the earlier statement, we expect the police to ask the victim to explain why it has changed.
- 10 If the victim confirms that the original complaint is correct, we will consider first whether it is **possible** to continue with a prosecution without his or her evidence (the evidential stage) and then, if it is possible, whether we should continue the case without the support of the victim/against the victim's wishes (the public interest stage).
- 11 The prosecutor will want to know the reasons why the victim no longer wishes to give evidence. This may be because the victim is experiencing feelings of embarrassment or fears that s/he may not be believed. It may be because s/he lives in a place in which they feel isolated or particularly vulnerable (and we recognise that feeling isolated or vulnerable may have deterred or delayed the victim from reporting the incident in the first place), where supporting the prosecution may place the victim at further risk of harm. In such cases, the prosecutor must have regard to any special measures or other support available to the victim that may help them, at least in part, to overcome their concerns. [Note: The Prosecutor's Pledge commits the CPS to "Address the specific needs of a victim and where justified seek to protect their identity by making an appropriate application to the court." The Code of Practice for Victims of Crime Section 7.8 states that CPS prosecutors must consider applications for special measures for potentially vulnerable or intimidated witnesses.]
- 12 If we suspect that the victim has been pressurised, or frightened into withdrawing the complaint, we will ask the police to investigate further. The investigation may reveal new offences, such as, for example, harassment or witness intimidation, or that bail conditions have been breached. If necessary, we will ask the court to delay any hearing so that a thorough investigation may take place before we decide about

the future of the case. If the reason for a victim or witness's withdrawal is based on fear or intimidation, the prosecutor will consider that evidence and decide whether further charges, for example, of witness intimidation, should be brought.

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

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

- 14 Generally, the more serious the offence (for example, because of the level of violence used or the real and continuing threat to the victim or others), the more likely we are to prosecute in the public interest, even if the victim says they do not wish us to do so.
- 15 In cases where we have sufficient other evidence, we may decide to proceed without relying on the evidence of the victim at all.
- 16 If we decide that the case should continue and that it is necessary to rely on the victim's evidence to prove the case, we have to decide:
- whether we should apply to the court to allow us to use the victim's statement as evidence without the victim having to give evidence in court;
 - whether we can proceed with the prosecution by helping the victim to attend court by the use of special measures; and
 - whether we should compel the victim to give evidence in person in court.
- 17 Background information is crucial in helping a prosecutor to make the correct decision about how to proceed in a case where the victim has withdrawn their support for the prosecution.
- 18 The law allows us to use the victim's statement in court without calling the victim to give oral evidence but only in very limited circumstances. It is for the court to decide and it will only allow this if it is in the interests of justice to do so. If the victim is the only witness to the offence, it may be difficult to satisfy the court that justice is being served when the defence cannot cross-examine the principal witness in the case.
- 19 When victims and witnesses have to attend court to give evidence, we know that they will be worried and might need practical and emotional support. There are steps we can take to help them to overcome their fears and to give the best evidence they can.
- 20 The specialist rape prosecutor will only call a victim to give evidence against his or her wishes if he is satisfied, after consultation with the

police and any other interested party, that such a course of action is necessary.

Background information

Bad character

- 21 There are strict legal rules of evidence which govern whether a suspect's previous convictions or other evidence of bad character can be used in court. We have to bear these rules in mind when we are deciding whether we can proceed with a case.
- 22 Even if this type of evidence cannot be used to prove the defendant's guilt, it may be important background information that will enable the prosecutor to put the offence in context. The victim may, for example, have been subjected to repeated attacks and may be vulnerable to other consequences if the prosecution does not proceed.
- 23 Some information might need to come from other sources such as voluntary agencies. All this information must be collected by the police and given to the CPS prosecutor.

Victim Personal Statements

- 24 Another important source of information for the prosecutor and the court is the Victim Personal Statement. This is a statement made to the police by a victim of crime explaining the effect that the crime has had on them. In the statement, victims can describe how they have been affected by the crime. They can talk about their wishes or needs during the case and any concerns they may have as a result of the offence, for example, about safety, intimidation or bail. They can mention their support (or absence of support) for the prosecution and any requests they have for help from any of the support agencies. In this way, the court can better understand not only the crime but also the context in which it occurred and its effects and consequences. The statement is optional, and the victim should be asked whether or not they wish to make such a statement or if they need help to make a statement from a support worker or family member. This statement can be made at any time and it is possible to make more than one statement. The more information it contains about the long term impact of the crime upon the victim, the more helpful it is likely to be.
- 25 It should be clear in a victim's statement whether or not they have been told about the fact that they may make a Victim Personal Statement. Where it is not clear, the prosecutor will ask the police officer to go back to the victim and explain that they may make a Victim Personal Statement if they wish to do so. A leaflet is available which explains what Victim Personal Statements are and how they can be used. Copies of the leaflet can be found at:
<http://www.homeoffice.gov.uk/documents/victimstate.pdf>

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

6. BAIL ISSUES

- 1 Once a suspect has been charged with rape, the police will take the decision whether it is appropriate to release the suspect on bail to attend a court hearing within a short period of time. However because rape is such a serious offence, the decision may be taken to keep the suspect in custody so that he may appear at the next available court for a remand hearing.
- 2 At the bail hearing the magistrates decide whether bail is appropriate after they have heard representations from both the prosecution and the defence. A defendant has a right to bail. The court can only refuse bail if it is satisfied that the defendant would fail to surrender to custody, commit an offence while on bail, or would interfere with witnesses or otherwise obstruct the course of justice. Bail can also be refused if the offence was committed while the defendant was already on bail for another serious offence, or for the defendant's own protection. There is an exception to the right to bail for some serious repeat offenders including those previously convicted of rape. Then the court can only grant bail in exceptional circumstances.
- 3 At the hearing, the police will provide sufficient information to prosecutors to enable a decision to be made whether to oppose bail for the defendant.
- 4 Where there has been a relationship between the victim and the defendant, the police will provide as much background information as possible. This might include such information as the number and ages of the children and the proximity of the addresses of the relations of the defendant to that of the victim. It will also include details of any civil orders in force and any other relevant information.
- 5 The prosecutor will take into account the Victim Personal Statement, if the victim has decided to make one, in making decisions whether or not to oppose bail, and what conditions might be suitable. In the Victim Personal Statement, the victim can choose to describe the effects of the rape and any concerns about the defendant being granted bail. Any decision during the case will take account of the Victim Personal Statement.

- 6 To protect the victim or witnesses from the risk of danger, threats or pressure, which might obstruct the course of justice, we may ask that the defendant be kept in custody.
- 7 Magistrates are required to give reasons in open court if they grant bail to a defendant. If they do not give reasons, we will ask them to state their reasons. If the prosecutor opposes bail, but the magistrates grant bail, the prosecutor will make a decision whether or not to appeal that decision. If an appeal is made, the defendant will be kept in custody until a judge at the Crown Court hears the appeal.
- 8 We will work closely with the police to obtain the views of victims and witnesses about bail conditions and any proposed changes to them. We will work with the police and the courts to make sure that the victim or witness is kept informed, either by the police or by us, of any change to the bail conditions or custody status of the accused person.

7. HELPING VICTIMS AND WITNESSES TO GIVE EVIDENCE

Special measures

- 1 Giving evidence can be a particularly traumatic experience for victims of rape. Some find it difficult to give evidence in the sight of the defendant. If this is so, we can apply to the court for the victim to give evidence in another way so that he or she can give their best evidence. Examples of special measures include:
 - playing to the court the victim's or witness's video recorded statement (previously taken by the police during the investigation);
 - allowing the use of screens in a courtroom to prevent a victim or other witness and the defendant seeing each other;
 - giving evidence away from the courtroom through a live television link to prevent the victim or witness seeing the defendant (but the defendant will still be able to see them); and
 - clearing the public gallery in sexual offence cases or cases involving intimidation.
- 2 The need for special measures should be investigated first by the police and then by the prosecutor. The Witness Care Officer may also have an input following a needs assessment but it will be for the court to decide whether they should be granted. A victim of rape is automatically presumed to be eligible for special measures unless the court is informed that he or she does not require this.
- 3 We discuss with the police what special measures might assist the victim or witnesses to give evidence in court, and then make an

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application to the court to grant these. The views of the victim and witnesses are taken into account. It is important that the advantages and disadvantages of each of the available special measures are explained to the victim so that they can make an informed choice.

- 4 Ideally, early decisions should be taken about special measures to assist victims and witnesses; however, circumstances might change and it is always possible to apply at any stage of the proceedings. If necessary a meeting can be arranged with the victim or witnesses to discuss what special measures would be appropriate. If the victim or witness is a child, their evidence is video recorded and played in court unless the court considers that it is not in the interests of justice for this to be done, for example, where the video recording contains technical faults, improper questions, or other material prejudicial to a fair trial.
- 5 We will ensure that victims and witnesses are made aware that they can change their minds about special measures. In some cases victims initially state that they do not require special measures and may subsequently realise that they do but are afraid to say so.
- 6 It is important that we have all the available information that could help us to apply for special measures for a witness. Normally it will be the police or the Witness Care Officer who will pass on the information to us. Sometimes we may get the information by meeting the witness directly.

Using intermediaries for vulnerable witnesses

- 7 The use of an intermediary is a form of "special measure". An intermediary is someone who is approved by the court to provide a service which enables witnesses and the court to communicate. Professional intermediaries – usually speech and language therapists or deaf intermediaries who understand deaf culture – work with witnesses to make sure they are understood and can understand the questions put to them. Intermediaries can work with defence or prosecution witnesses and assist in the initial taking of their evidence and when they are in court so that they achieve their best evidence at the trial. Intermediaries come from a range of backgrounds including social work, speech and language therapy and psychology. They will normally be a specialist by training or possibly through a unique knowledge of the witness.

Meeting between the CPS and rape victims and witnesses

- 8 When we decide to make an application to the court for special measures, we will ask the police to find out if the witness would like to meet the prosecutor.
- 9 The purpose of such a meeting is to build trust and confidence and to enable us to reassure the witness that their needs will be taken into

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account. We will also offer such a meeting if we have decided not to apply for special measures so that we can explain that decision. The witness does not have to attend that meeting unaccompanied. They may bring a partner, a relative, a friend or other supporter. In order to facilitate communication with the victim, it may be appropriate for an interpreter or other similar person, to attend the meeting. Wherever possible, the CPS prosecutor will ensure that the advocate who will be conducting the trial attends the meeting between the CPS prosecutor and the witness. The CPS prosecutor will also offer the victim a court familiarisation visit.

- 10 Further information about meetings with vulnerable or intimidated witnesses is contained in the leaflet: "Witnesses, Your Meeting with the CPS Prosecutor". This leaflet is available from CPS Communications Branch, 50 Ludgate Hill, London EC4 7EX, or from our website: <http://www.cps.gov.uk/publications/prosecution/witnesseng.html>

Anonymity

- 11 Many victims and witnesses are concerned about personal safety and are particularly worried that personal details or information about them might become public knowledge and expose them to risk of further attack or harassment.
- 12 Generally, it is a fundamental principle of our criminal justice system that those accused of crimes are entitled to know the name of their accuser. Most criminal proceedings are held in public, and information about the identity of the witness will become a matter of public record.
- 13 However, victims of rape and serious sexual offences are entitled as a matter of law to anonymity in the media, even if their name has been given in court.
- 14 Furthermore, addresses of witnesses are not disclosed to the defendant and, unless already known (for example, where an offence is committed by a neighbour) or if required for evidential purposes, will not be mentioned in the court proceedings.
- 15 The court may, in some situations, allow witnesses not to give their name in open court. One consideration the court will take into account is whether the naming of an individual witness might make it more difficult to obtain evidence from other witnesses in similar cases in the future.
- 16 In other cases, the court has the power to forbid the media from reporting a witness's personal details if it considers that the quality of the witness's evidence or co-operation in the proceedings is likely to be reduced because the witness is afraid of being identified as a witness in the case. Media representatives have the right to object, in the

interests of open reporting, to a court order that prohibits publication of this information.

Support for victims and witnesses

- 17 The CPS is fully committed to taking all practicable steps to help victims and witnesses through the often difficult experience of becoming involved in the criminal justice system.
- 18 Initiatives such as special measures, meetings between the CPS and vulnerable and intimidated witnesses, and the creation of dedicated Witness Care Units staffed by CPS and police personnel are all designed to increase the confidence of victims within the criminal justice system. Support is also available at a very early stage from the police and other support agencies, which can continue throughout the life of the prosecution.
- 19 We make sure that appropriate arrangements are made to have an interpreter available for the court proceedings when one is needed.
- 20 When a witness attends court, the CPS prosecutor presenting the case or the CPS caseworker will introduce themselves and answer any general queries that a witness may have. They are not permitted to discuss the detail of the case with a witness.
- 21 Sometimes, the person prosecuting may be a barrister (also known as counsel) or a solicitor, who is not a member of the CPS but who has been employed by us to present the case in court. We expect every barrister or solicitor we employ to be familiar with our policies and procedures and to act in accordance with them.
- 22 We will pay reasonable expenses to a witness for attending court.
- 23 If witnesses are kept waiting, we will make sure they are told the reasons for the delay and the estimated time when they will be required to give evidence.
- 24 Wherever possible, we will try to make sure that separate waiting facilities are made available for prosecution witnesses so that they do not have to mix with the defendant or his or her friends or family, and vice versa.

The Witness Service and Victim Support

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

- 26 Members of the Witness Service may be able to arrange pre-court familiarisation visits if needed and are able to explain what might happen at court. They are not, however, allowed to discuss the details of the case.

Independent Sexual Violence Advisors

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

Witness Care Units

- 28 *No Witness, No Justice* is a joint programme between the police and the CPS and is aimed at being responsive to the individual needs of victims and witnesses through dedicated Witness Care Units.
- 29 We have Witness Care Units in all 42 CPS Areas and these are run jointly by the CPS and the police. Witness Care Officers provide a single point of contact and tailored support for each witness to ensure that they are able to give their best evidence. This tailored support is based on a needs assessment which includes consideration of what specialist support an older witness may need. For example, this support could take the form of accredited interpreters for hearing impaired witnesses; of enabling some older people to give their evidence whilst seated due to their frailty; or of allowing older witnesses to give their evidence via a live link, to avoid the need for them to be physically present in court.
- 30 Witness Care Units may also have links to specialist advocacy services for older people. Witness Care Officers will manage the care of the victim from the time a defendant is charged right up until the final hearing and will liaise with the Witness Service to arrange pre-trial visits.

The Prosecutor's Pledge

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

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- 32 The Prosecutor's Pledge can be obtained from our website:
http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

Other Decisions

- 33 Often, decisions about the progress of a case may be taken at court. Victims will be informed about those decisions when they are at court, either by us or by the prosecuting advocate we have instructed. If they are not at court, they will be informed as soon as possible afterwards either by us or by the police.
- 34 We are committed to instructing advocates who have the right skills to prosecute rape cases, including their ability to deal sensitively with victims and witnesses. We will instruct them to speak to victims and witnesses before they give evidence and try to put nervous witnesses at ease.
- 35 In most trials the defence advocate will seek to challenge the victim's account of the allegations. This is normal and permissible. The defence has a duty to challenge the victim about his or her account.
- 36 However, there are rules about inappropriate cross-examination and particularly questioning about a victim's previous sexual behaviour. This type of questioning can only take place with the permission of the judge. We will ensure that the prosecuting advocate is active in objecting to such questioning.
- 37 If the defence seeks to introduce such evidence or questioning and the judge considers that its real purpose is to undermine the victim, then it should not be allowed. We will instruct prosecuting advocates to challenge defence applications in all appropriate cases.
- 38 We will also object to allegations about the character or demeanour of the victim which are irrelevant to the issues in the case.
- 39 If the victim or witnesses agree, we will notify the Witness Care Unit and the Victim Support Witness Service of hearing dates so that they can offer court familiarisation visits and other support to victims and witnesses. We will provide details of the victim or witnesses, any special measures that have been agreed and the hearing dates.
- 40 If there are ISVAs or other local groups providing specialist support to victims of rape, we will work with them to develop good practice guidelines.

Pre-Trial Therapy

- 41 Rape victims may be undertaking or considering undertaking pre-trial therapy to help them recover from their experiences.
- 42 The best interests of the victim are paramount and men or women who have been raped should not feel unable to seek assistance because they believe receiving such therapy may undermine a prosecution. In fact, many forms of therapy will not have any adverse impact on the criminal case.
- 43 Whether a rape victim should receive therapy before a criminal trial is not a decision for the police or CPS. It is for the person or their carers, in conjunction with the professional agencies providing support, to decide whether or not to undertake therapy.
- 44 It is important, however, that the police and CPS are informed that therapy is either proposed, or being undertaken.
- 45 Full Guidance can be found in: "*Provision of Therapy for Child Witnesses Prior to a Criminal Trial (Practice Guidance)*" published in 2001 and in: "*Provision of Therapy for Vulnerable or Intimidated Adult Witnesses Prior to a Criminal Trial (Practice Guidance)*" published in 2002. Both these documents can be found at www.cps.gov.uk and www.homeoffice.gov.uk

8. ACCEPTING PLEAS

- 1 In some cases we may consider accepting a guilty plea from the defendant to a different charge. This might arise, for example, if a defendant pleads guilty to some but not all of the charges, or because the victim does not wish to proceed, or because new evidence comes to light.
- 2 When considering whether to accept a plea, we will, in accordance with our obligations under the 'Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise 2005 (revised 2007)', discuss the situation with the victim or the victim's family whenever possible, so that we can explain the position and take into account their views in order to help us to make the right decision. We will keep them informed and explain our decisions once they are made at court.
- 3 We will always take proper account of the victim's interests, and we will not accept a guilty plea which is put forward upon a misleading or untrue set of facts.

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9. SENTENCING

- 1 If the defendant is convicted of rape, the judge alone decides the sentence. There are guidelines for judges when sentencing defendants convicted of rape. The prosecution does not have any power to ask for a particular sentence.
- 2 The prosecuting advocate has a duty actively to assist the judge with the law and guidelines on sentencing including any ancillary orders that may be available to the court. He or she must also be alert to mitigation detracting from the character of a witness, and challenge anything which is misleading, untrue or unfair.
- 3 The guidelines state that relationship and acquaintance rapes should be treated by the courts as equally serious as stranger rape. Male rapes are as serious as those between a man and a woman and all types of rape are equally serious.
- 4 Before being sentenced, a defendant is entitled to make a plea in mitigation. We will challenge defence mitigation which unfairly attacks the victim's character. [Note: The Prosecutor's Pledge commits the CPS to "Protect victims from unwarranted or irrelevant attacks on their character and may seek the court's intervention where cross-examination is considered to be inappropriate or oppressive."]
- 5 If the defendant pleads guilty or is found guilty of an offence but disagrees with the prosecution version of events, the prosecution must decide whether to call witnesses to prove its version of events. In reaching this decision, the prosecutor will:
 - seek an indication from the judge whether it will result in a greater sentence if the prosecution version of events is proved;
 - consult the police;
 - obtain and consider the views of the victim.
- 6 This process of calling witnesses is called a "Newton Hearing". At the end of the hearing, the judge must announce whether the prosecution has proved its version of events beyond reasonable doubt.
- 7 If the judge passes a sentence which the prosecution considers is unduly lenient in that it does not reflect the seriousness of the offence, the CPS will ask the Attorney General to review the sentence.
- 8 If the prosecution does not consider the sentence unduly lenient but the victim disagrees, he or she can ask in person for the Attorney General to consider it, but this has to be done within 28 days of the sentencing decision. If the CPS decides not to submit the case for the consideration of the Attorney General, it must notify the complainant without delay so that the complainant's option of complaining direct to

the Attorney General is preserved, and so that the Attorney General will have sufficient time, if a complaint is made, to consider the case.

- 9 If the Attorney General thinks that the sentence is unduly lenient, s/he can refer it to the Court of Appeal.
- 10 The application to the Court of Appeal must be made within 28 days of the sentence. The Court of Appeal decides whether or not the sentence is unduly lenient and, if it is, whether to increase the sentence.
- 11 We will, through the police, keep victims informed of any appeals by the defence against conviction and sentence. We will also inform victims if a defendant is granted bail following a successful application for leave to appeal, or where an appeal is granted.

Victim Personal Statements

- 12 If there is a Victim Personal Statement, we will tell the court about it so that it can help the court to understand the effect of the crime upon the victim. In this way we will ensure that the court is able to come to a properly informed decision regarding sentence. (For details of Victim Personal Statements see section 5 paragraph 24 above.)

10. KEEPING VICTIMS INFORMED

- 1 We understand how important it is for victims to be kept informed about the progress of a case. Witness Care Units are responsible for letting victims and witnesses know about dates of court hearings or other important case developments. Witness Care Officers provide a single point of contact and tailored support for each witness to ensure that they are able to give their best evidence. This tailored support is based upon a needs assessment which should lead to the identification of any specialist support that the witness needs.
- 2 We are aware that some victims may prefer to nominate a friend, family member, ISVA or other member of the voluntary services to act as their point of contact, and we are happy to accommodate this.
- 3 Witness Care Officers will manage the care of a victim from the time when a defendant is charged right up until the final hearing.

The Code of Practice for Victims of Crime

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

directly to the victim. In some situations, a case can be dealt with very quickly and we may not always be able to give the explanation before the case is finished. However, the victim will still be given an explanation even if the case has finished. In a rape case we will notify the victim within one working day.

- 5 In a rape case, the prosecutor who made the decision to drop or substantially alter the charge will notify the victim within one working day and will also offer to meet the victim to explain personally the reasons for the decision. Where a prosecutor has made a decision not to charge during a face-to-face consultation with a police officer (that is, without a full, written evidential report), the police officer must notify the victim.
- 6 When a case is to be dropped or a charge reduced and the Police and CPS decide it is appropriate to do so, the Police will, in accordance with the CPS/ACPO Rape Protocol, personally deliver an explanatory letter to the victim.
- 7 Copies of the Code of Practice for Victims of Crime can be obtained from CPS Communications Branch at 50 Ludgate Hill, London EC4M 7EX or from our website:
http://www.cps.gov.uk/victims_witnesses/victims_code.pdf

11. COMMUNITY ENGAGEMENT

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

12. COMPLAINTS

- 1 Anyone who has a complaint about the way they have been treated by the Crown Prosecution Service, or who feels that the criminal justice system has let them down and does not know who may be responsible, can write to the Chief Crown Prosecutor for the CPS Area where they live. The Crown Prosecution Service has a complaints policy, and a

leaflet describing the procedure to follow can be obtained from the local CPS office.

- 2 Breaches of The Code of Practice for Victims of Crime should be referred initially to the Crown Prosecution Service to be dealt with under our complaints procedures. If the complainant remains dissatisfied, the complaint can be investigated and reported on by the Parliamentary Ombudsman.
- 3 Contact points for the CPS are printed on the back cover of this document.

13. CONCLUSION

- 1 We are committed to playing our part in improving the way that rape cases are dealt with in the criminal justice system. We want victims to have confidence in the way in which we review and progress cases.
- 2 We hope that this document will help victims of rape and their families to understand the work of the CPS, how we make our decisions and the different stages of the prosecution process.
- 3 We will continue to work with our colleagues in the criminal justice system and the third sector at national and local levels to help us develop best practice.
- 4 We will review this policy statement regularly so that it reflects current law and thinking. We welcome any comments and observations that help us to do this. Comments and suggestions can be made to the: Crown Prosecution Service, Policy Directorate, 50 Ludgate Hill, London EC4M 7EX. (hqpolicy@cps.gsi.gov.uk).

Consultation Questions Response Sheet

Please use this response sheet to answer the questions for the consultation. This document is also available online, at the CPS website: www.cps.gov.uk. Click on Media Centre. Use a separate sheet for further comment if required.

The deadline for replies is 29 October 2008.

When completed, please return your reply by post to:

Prosecuting Cases of Rape Consultation
Crown Prosecution Service
Policy Directorate, 50 Ludgate Hill, London. EC4M 7EX

Or send via email to: rapepolicy.cpsconsultation@cps.gsi.gov.uk

Please remember to let us know about any confidentiality or disclaimer issues.

Questions

1. Is there any part of the Rape Policy Statement you strongly disagree with? If so, please identify which paragraph and provide a brief explanation as to why you disagree.

2. Do you think the law has been explained adequately? If not, please identify which paragraph requires further clarification.

3. Do you agree with the way in which we have tackled myths and stereotypes?

4. Do you think the Rape Policy Statement adequately addresses the issues of victim support? If not please list the issues that need to be addressed.

5. Is there any further support we can offer victims for them to achieve their best evidence and prevent retractions?

6. Have you any other comments about the Rape Policy statement?

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