

Rape



**CROWN
PROSECUTION
SERVICE**

Policy for Prosecuting Cases of Rape

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1. INTRODUCTION

This document explains the way we deal with cases in which an allegation of rape has been made.

Rape is one of the most serious offences, and our aim is to prosecute each case effectively.

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 involves male victims too. 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.

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

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

Victims who are or have been in a relationship with their attacker may blame themselves or feel that agencies will blame them, as well as facing wider difficulties such as disruption to the lives of their children and extended families.

People from Black and minority ethnic communities may have experienced racism. They may fear that they will not be believed, or that they will not be treated properly. As a result they may be reluctant to report offences or support a prosecution. Cultural and religious beliefs may also prevent people from reporting offences or supporting a prosecution. In cases involving

rape within same sex relationships, victims may fear homophobic reactions from the CPS or the wider criminal justice system, as well as being “outed” by the process. Disabled people may fear reporting rape if the offender is a carer, or fear the loss of residential care. Lack of transport may also be a barrier to disabled people reporting rape.

We currently work with a number of national and local organisations, for example the Witness Support Service, which offer support to victims throughout the proceedings. Special measures that can be used to help a victim or witness to give evidence are discussed below at paragraph eight. 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.

2. WHAT IS THE DEFINITION OF RAPE?

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

Under the previous law as set out in the Sexual Offences Act 1956, the statutory definition of rape is any act of non-consensual intercourse by a man with a person; the victim can be either male or female. Intercourse can be vaginal or anal. It does not include non-consensual oral sex. Consent is given its ordinary meaning, and lack of consent can 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. Offences committed before 1 May 2004 will be prosecuted under the 1956 Act.

Offences committed on or after 1 May 2004 will be 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 new Act changes the law about consent and belief in consent.

The meaning of consent was not defined in previous legislation. Instead, the meaning was established in case law, which meant that the legal meaning of consent was not always clearly understood.

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. The question of whether the victim consented is a matter for the jury to decide, although we consider this issue very carefully when first reviewing the file. The prosecutor will take into account evidence of all the circumstances surrounding the offence.

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 will help juries in

deciding whether the victim was able to, and did in fact, give his or her consent at the time.

The defendant must now 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, it is presumed 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.

3. THE ROLE OF THE CPS

The police are responsible for investigating allegations of rape and for gathering the evidence. Recent changes in the law mean that the CPS will take over responsibility for deciding the charge in all but the most minor offences. This change is gradually being introduced from May 2004. It will mean that prosecutors will become involved at an early stage in advising on all aspects of cases.

As we are committed to improving the way that allegations of rape are handled we have established a network of specialist prosecutors in each CPS Area. Specialist prosecutors will work closely with the police to ensure that all possible avenues of evidence are explored and that the correct charge is identified. A specialist prosecutor will be responsible for the case from advice stage to the end of the case.

This degree of continuity is important. It will allow us to ensure that the victim is provided with the best possible support throughout the progress of the case.

We will ensure that the prosecuting advocate has the right skills for rape prosecutions and efforts will be made, wherever possible, for the same prosecuting advocate to deal with the case throughout.

Where we decide to drop or substantially reduce the charge the specialist will refer the case to a second specialist rape prosecutor before the final decision is made. In all cases of rape where a decision is taken not to proceed after charge, or to reduce the charge, the victim will be informed in writing of the decision and the reasons for it. The letter will offer the victim a meeting with the prosecutor. If the victim wishes, a meeting with the prosecutor will then be arranged to provide a fuller explanation.

4. THE CODE FOR CROWN PROSECUTORS

The *Code for Crown Prosecutors* provides guidance on how Crown Prosecutors make decisions about whether or not to prosecute. The *Code* is a public document. We review the cases referred by the police to us in accordance with the two tests set out in the *Code*.

First test – the evidential test

Crown Prosecutors must first be satisfied that there is enough evidence to provide a “*realistic prospect of conviction against each defendant on each charge*”. This means that a jury, properly directed in accordance

with the law, is more likely than not to convict the defendant of the charge alleged.

If a case does not pass the first test (the evidential test), it must not go ahead, no matter how important or serious it may be.

Second test – the public interest test

If a case does pass the evidential test, the Crown Prosecutor 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”*.

When considering the public interest test, one of the factors 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.

If the evidential test is passed, we believe that rape is so serious that a prosecution is almost certainly required in the public interest.

The burden and standard of proof

If a case passes the tests in the *Code*, and proceeds to trial, it is for the prosecution to prove the case so that the jury is sure that the defendant is guilty.

5. IS THERE ENOUGH EVIDENCE TO PROSECUTE?

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 the test in the *Code for Crown Prosecutors* indicates that there is not a realistic prospect of conviction.

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.

The police will always look for corroboration or supporting evidence, particularly any medical or scientific evidence, 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 a realistic prospect of conviction.

We know that some victims will find it very difficult to give evidence and may need practical and emotional support. The prosecutor will also be aware that some complaints of rape are not made immediately and that 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.

Contact details for some support agencies are given at Annex A.

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

Sometimes a victim will ask the police not to proceed any further with the case or will ask to withdraw the complaint. This does not necessarily mean that the case will be stopped – we will first consider what other evidence is available.

As a general rule we will prosecute all cases where there is sufficient evidence and there are no factors preventing us from doing so.

If the victim has decided to withdraw support we have to find out why. This may involve delaying a court hearing to investigate the facts and decide the best course of action.

We will take the following steps:

- if the information about the victim's decision to withdraw support has come from the defendant we will ask the police to find out from the victim whether this information is true; if the victim confirms that the information is true, we will ask the police to take a written statement explaining the reasons for withdrawing support, saying whether the original complaint was true and whether the victim has been put under pressure to withdraw support;

- we will ask the police what they think about the case and, in particular, to carry out a full assessment of the risks to the victim and any other person's safety so that we can decide whether the case should proceed or not;
- we will also ask the police how they think the victim might react to being required to attend court.

If the victim's statement after withdrawing the complaint is not the same as the earlier statement, the police will ask the victim to explain why it has changed.

If we suspect that the victim has been pressured or frightened into withdrawing the complaint, we will ask the police to investigate further. If necessary, we will ask the court to delay any hearing so that a thorough investigation can take place before we decide about the future of the case.

If the victim confirms that the complaint is true but still wants to withdraw that complaint, we will consider first whether it is possible to continue with the prosecution without that evidence (the evidential test) and then, if it is possible, whether we should continue with the case against the victim's wishes (the public interest test).

We will explore all of these options fully before we decide whether or not to proceed with a prosecution. The safety of the victim 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?

Some cases may be so serious, for example where there is a real and continuing danger to the victim, or others

that the public interest in going ahead with a prosecution has to outweigh the victim's wishes.

If we think that a case should continue and that it would be necessary to call the victim to prove the case, we have to decide:

- whether we should require the victim to give evidence in person in court; or
- whether we could apply to use the victim's statement as evidence without the victim having to give evidence in court.

The law allows us to use the victim's statement as evidence without calling the victim to court, but only in very limited circumstances. The court ultimately makes the decision whether to allow such a statement to be used in this manner and only if it is convinced that it is in the interests of justice to do so.

If the victim is the only witness to the offence it may be very difficult to satisfy the court that justice is being served when the defence cannot cross-examine the only witness against them.

In cases where it is necessary to call a victim against his or her wishes then the decision will only be taken by a specialist prosecutor after consultation with the police.

6. ACCEPTING PLEAS

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 may

not wish to proceed, or because new evidence comes to light. Again, in these circumstances, we will write to the victim informing him or her of the decision and offering a meeting.

We are committed to keeping victims informed and to taking their interests and views into account when considering accepting a plea.

Guidelines on the Acceptance of Pleas issued by the Attorney General in December 2000 emphasise the importance of ensuring that save in the most exceptional circumstances, the acceptance of pleas should be conducted in public with the prosecution able to explain their reasons for accepting the pleas in open court. If a defendant offers to plead guilty to a different, and possibly less serious charge, the prosecutor should only accept the plea if he or she thinks the court is able to pass a sentence that matches the seriousness of the offence, particularly where there may be aggravating features.

7. BAIL ISSUES

Once a suspect has been charged with rape the police will take the decision as to 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.

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.

At the hearing the police will provide sufficient information to prosecutors to enable a decision to be made on whether to oppose bail for the defendant. 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.

The prosecutor will take into account the Victim Personal Statement, if the victim has decided to make one, in making decisions as to whether or not to oppose bail, and what conditions could be agreed. 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.

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.

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 about 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.

We will work closely with the police to obtain the views of victims and witnesses about bail conditions and any proposed changes to them, before a decision is made to agree changes, or an application is made to the court if we do not agree. The police will also inform victims and witnesses of any changes.

8. HELPING VICTIMS AND WITNESSES TO GIVE EVIDENCE

Special measures

Giving evidence can be a particularly traumatic experience for victims of rape offences. Some find it difficult to give evidence in the sight of the defendant. If this is so, we can apply for the victim to give evidence in another way so that he or she can give their best evidence. Examples of special measures include screening of the victim from the defendant, or giving evidence by live television link. Evidence can also be given in private by clearing the public gallery.

The court makes the decision about whether special measures will be allowed. A victim of rape is automatically presumed to be eligible for the help of special measures unless the court is informed that he or she does not require this.

We discuss with the police what special measures might assist the victim or witnesses to give evidence in court, and then make an application to the court to grant these. The views of the victim and witnesses are taken into account. 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.

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.

Further information about meetings with vulnerable or intimidated witnesses is contained in the Statement on the Treatment of Victims and Witnesses which we have published together with the police. Copies can be obtained from the CPS website (www.cps.gov.uk).

Other decisions

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.

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.

In most trials the defence advocate will seek to challenge the victim's account of the allegations. This is normal and permissible. The defence have a duty to challenge the victim about his or her account.

However, there are rules about inappropriate cross-examination and particularly questioning about a victim's previous sexual behaviour. This type of questioning can only take place with the permission of the judge. We will ensure that the prosecuting advocate is proactive in objecting to such questioning.

If the defence seek 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.

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

When a decision to drop or substantially reduce the charge takes place we will write to the victim to explain why. In cases involving allegations of rape, we will also offer a meeting to provide a full explanation.

This meeting will be arranged as early as possible at the convenience of the victim.

If the victim or witnesses agree, we will notify 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.

If there are local groups providing specialist support to victims of rape, we will work with them to develop good practice guidelines.

9. SENTENCING

If the defendant is convicted of rape, the judge decides the sentence. There are guidelines for judges when sentencing defendants convicted of rape.

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.

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.

If the judge passes a sentence which the prosecution consider 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.

If the prosecution do 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 Law Officer consideration, it must notify the complainant without delay so that the complainant's option of complaining direct to the Law Officers is preserved, and the Law Officers will have sufficient time, if a complaint is made, to consider the case.

If the Attorney General thinks that the sentence is unduly lenient, he can refer it to the Court of Appeal.

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.

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.

10. CONCLUSION

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.

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.

We will continue to work with our colleagues in the criminal justice system and the voluntary and community sector at national and local levels to help us develop best practice.

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 Policy Directorate, 6th Floor, CPS, 50, Ludgate Hill, London, EC4M 7EX.

Annex A

National 24 Hour Domestic Violence Freephone Helpline

Run in partnership between Women's Aid and Refuge
0808 200 0247

Women's Aid Federation of England

A National Domestic Violence charity working with women and children

PO Box 391

Bristol

BS99 7WS

Tel: 0117 944 4411

Web: www.womensaid.org.uk

Refuge

A National charity which provides emergency accommodation and emotional and practical support for women and children who experience domestic violence

2-8 Maltravers Street

London

WC2R 3EE

Tel: 020 7395 7700

Web: www.refuge.org.uk

Southall Black Sisters

21 Avenue Road

Southall

Middlesex

UB1 3BL

Tel: 020 8571 9595 (Closed Wednesday)

E-mail: sbs@leonet.co.uk

Web: www.southallblacksisters.org.uk

Victim Support

Cranmer House
39 Brixton Road
London, SW9 6DZ
Tel: 020 7735 9166
Web: www.victimsupport.org.uk

Victim Supportline

Tel: 0845 30 30 90
9 am – 9 pm weekdays
9 am – 7 pm weekends
9 am – 5 pm bank holidays

ChildLine

UK-wide free 24 hour telephone helpline for children and young people in danger or distress
Tel: 0800 1111
Web: www.childline.org.uk

Women's Rape and Sexual Abuse Centre Cornwall

Free confidential support for women and teenage girls
Helpline: 01208 77 099
Helpline Hours: Monday to Thursday, 10 am – 1 pm
Monday Evenings, 7.30 pm – 10 pm
Plus 24 hour answerphone

Survivors UK Helpline

Supports and provides resources for men who have experienced any form of sexual violence
Tel: 0845 122 1201 (Helpline open Tuesday and Thursday 7pm - 10pm)
Web: www.survivorsuk.co.uk

National Child Protection Helpline

Tel: 0808 800 500 (24 hr)

The Crown Prosecution Service is a public service for England and Wales, headed by the Director of Public Prosecutions. It is answerable to Parliament through the Attorney General.

The Crown Prosecution Service is a national organisation consisting of 42 Areas. Each Area is headed by a Chief Crown Prosecutor, and corresponds to a single police force area, with one for London. It was set up in 1986 to prosecute cases instituted by the police. The police are responsible for the investigation of crime. Although the Crown Prosecution Service works closely with the police, it is independent of them.

Rape

This leaflet is a public document. It is available on the CPS Web site: www.cps.gov.uk

**Further copies may be obtained from:
CPS Communications Branch
50 Ludgate Hill
London EC4M 7EX
Tel: 020 7796 8442
Fax: 020 7796 8351
Email: publicity.branch@cps.gsi.gov.uk**

Translations into other languages and audio copies and Braille are available. Contact CPS Communications Branch for details.

The CPS Public Enquiry Point can provide general information on the CPS and advice on who to contact. The unit can't give legal advice but may be able to offer you practical information.

**CPS Public Enquiry Point:
Tel: 020 7796 8500.
Phone calls may be recorded
e-mail for enquiries and comments:
enquiries@cps.gsi.gov.uk
complaints can be sent to:
complaints@cps.gsi.gov.uk**