1.0 Summary of Changes

This procedure has been updated on its review as follows:

- The document has been put onto the new corporate template;
- Within section 3.1.1 the title of CPS Area Rape Coordinator has change to CPS Rape Specialist Prosecutor;
- Section 3.1.4 has been updated:
  - The OIC can refer the case to the SIO for the investigation as well as the relevant SOIT Detective Inspector or CAIT Detective Inspector;
  - If a case is discontinued, where the investigation is a defined Stranger offence, or otherwise considered complex it should then be forwarded to the Detective Inspector (or Detective Chief Inspector) to review the file.

2.0 What this Procedure is about

It details the procedure for successfully prosecuting rape and other serious sexual offences. It is aimed at investigators who have identified a suspect (or suspects) who may be guilty of such crimes. It encourages early liaison and joint case building with the Crown Prosecution Service (CPS). It also seeks to ensure that vulnerable victims of rape and other serious sexual offences, who may be required to give evidence, are dealt with in a professional and sensitive manner.

*Compliance with this procedure and any governing policy is mandatory.*

3.0 Detail the Procedure

3.1 Liaison with the Crown Prosecution Service (CPS)

3.1.1 Liaison with the CPS

In rape cases, where possible, there is a need for early liaison between the Senior Investigating Officer (SIO) and a CPS Rape Specialist Prosecutor so that advice may be given about the direction police enquiries should take. This allows for prosecution team case building in order to strengthen the evidence and enhance the prospects of conviction. Joint agreements exist that can be accessed via the Rape Investigations web site. These include the following:

- CPSD Rape Policy;
- Rape Prosecutions Advice/Review Checklist;
- Memorandum of Understanding between Essex CPS & Essex Police re Early Consultation in Rape Cases, plus Annex A & Annex B
3.1.2 Disposal other than Charge

In any case where a member of staff is contemplating disposal of a suspect for any indictable offence of rape or penetrative sexual offence, via a method other than charge or NFA, or where advice is received from the Crown Prosecution Service recommending a disposal other than charge, the appropriate Detective Chief Inspector (Line Command) and the Force Designated Decision Maker (DDM) for Serious Sexual Crime (D/Supt Public Protection) will be notified prior to the disposal being complete. The DCI/DDM will record their view on the disposal on the crime investigation log e.g. CrimeFile or Athena.

Additionally, any officer seeking to reclassify a recorded indictable serious sexual crime will seek authority to do so via the SIO for the investigation, or their Detective Inspector (Line Command). This authority will be recorded on the crime investigation log e.g. CrimeFile or Athena.

3.1.3 Quality of Evidence Files

The Sexual Offences Investigation Team (SOIT) Detective Inspectors will be accountable for ensuring the sufficiency of all evidence files submitted to the CPS. The CPS should be provided with as much information as possible so that they can make an informed decision about the case.

The CPS has dedicated prosecutors for serious sexual assault cases and a pre-trial case conference should be held with the SIO conducting the investigation where deemed appropriate and necessary.

The following checklist details the information and action required by the CPS: Checklist 18 'Police File Preparation and Associated Actions'.

It is the duty of the SIO conducting the investigation to ensure that the victim’s views are considered and that they are informed as soon as practicable of the decision to prosecute, or to take no further action. When a decision is made not to prosecute, the victim should be told the reasons for this decision and also informed that the evidence gathered may be useful in future cases.

It is important that the Police and the CPS properly consider the Unused Material that may either undermine the prosecution case or assist the defence case see Checklist 22 'Unused Material Which Might Undermine the Prosecution case or Assist the Case for the Defence.'
3.1.4 Discontinuance

Where a case is being considered for discontinuance the OIC should refer the case to the SIO for the investigation, or the relevant SOIT Detective Inspector or CAIT Detective Inspector as a matter of urgency. The SIO should speak personally to the CPS to make sure that discontinuance is absolutely necessary. They should also consider any further investigation which may prevent discontinuance. If, however, a case is discontinued, it should then be forwarded to the relevant SOIT Detective Inspector (or Detective Chief Inspector where the investigation is a defined Stranger offence, or otherwise considered complex) to review the file in terms of the quality of the investigation. In particular, the ‘footprint’ of the SIO who conducted the investigation, should be in evidence throughout the entire investigation.

3.1.5 Vulnerable / Intimidated Witness

A vulnerable witness is one who is under 18 years of age or has some type of mental health condition as defined by the Mental Health Act 1983, or a learning disability (significant impairment of intelligence and social functioning) or a physical disability or physical disorder.

These victims or witnesses are eligible for ‘Special Measures’ in accordance with Part II of the Youth Justice and Criminal Evidence Act 1999. Officers must obtain information/evidence in support of the witness’s vulnerability.

All victims of rape and attempted rape are to be classed as ‘intimidated witnesses’ due to the traumatic nature of the offence. From the outset of the investigation, the SIO conducting the investigation should involve the victim in determining whether ‘Special Measures’ are utilised, i.e. the ability to give evidence in court, use of screens, etc. An intimidated witness qualifies for ‘Special Measures’ by reason that the quality of their evidence is likely to be diminished through fear or distress of giving evidence.

They are eligible at this time to give ‘evidence-in-chief’ by video due to Section 27 of the Youth Justice and Criminal Evidence Act 1999 (as below). Officers should be aware that although ‘Special Measures’ can be applied for at Court prior to trial, they are not guaranteed and should not be promised to the witness.

See also B 0605 Procedure – Dealing with Vulnerable and Intimidated Witnesses for further information.
An Intermediary is someone who can help a vulnerable witness to understand questions they are asked and who can then communicate the witness’s responses. Section 29 of the Youth Justice and Criminal Evidence Act 1999, provides for the use of an Intermediary where the evidence of the witness would be diminished due to their communication difficulties caused by a learning disability, mental disorder or physical disability. They can help witnesses at each stage of the criminal justice process, from police investigations and interviews, through pre-trial preparations to court. The same Intermediary is used throughout the process. Intermediaries are registered and matched through a national system to ensure quality and independence. Any officer or member of staff seeking the services of an intermediary should contact the Inspector Protecting Vulnerable People within Public Protection Command.

When dealing with a person who may be suffering a mental illness, Section 1 Mental Capacity Act 2005 must be borne in mind. This provides the general principles ruling the interpretation and enforcement of the Act. In particular Section 1(2) says ‘A person must be assumed to have capacity unless it is established that he lacks capacity. Further advice is available from NPIA Guidance on the Responding to People with Mental Ill Health or Learning Disabilities 2010.

3.1.6 Record of Visual Interview (RoVI)

A summary of visually recorded interviews will be completed on a RoVI MG15. The overall function of a RoVI is to contribute towards the effective investigation and management of a case by guiding investigating officers and prosecutors through their viewing of the interview. It is not intended that a full transcript will be called for until it is clear that a case will be contested. Also Senior Investigating Officers have the discretion to opt for full transcription at an earlier stage for investigative purposes. See Guidance on the Completion of a Record of Video Interview (ROVI) which is intended to assist those completing RoVI’s to include all the relevant points and details.

3.2 Media/Anonymity of Victim

3.2.1 Press Releases

The use of the media can greatly assist the investigation of a rape or serious sexual offence. A press strategy, recorded as a policy decision by the SIO conducting the investigation, should be adopted. However, care needs to be taken when considering press releases to ensure that we do not breach the law relating to the anonymity of victims in sexual offence cases. The SIO conducting the investigation should comply with G 0601 Procedure – Managing External Media and seek advice of Headquarters Press Office, prior to any press releases being issued.
PROCEDURE – Prosecution of Rape and Serious Sexual Offences

Number: B 1003 Date Published: 6 April 2016

4.0 Equality Impact Assessment

- EIA

5.0 Risk Assessment

There are no generic or other risk assessments or health and safety considerations that specifically relate to this procedure for the prosecution of rape and serious sexual offences investigations.

6.0 Consultation

The following were included in the consultation during the formulation of this procedure:

- CAIU Chief Inspector
- BCU D/Chief Inspectors
- Federation

7.0 Monitoring and Review

This procedure will be monitored throughout its lifespan by the Force Rape Champion who is responsible for monitoring changes in legislation and procedure at a national level, force performance and any associated training issues. This procedure will be reviewed by or on behalf of the Head of Public Protection every 12 months to ensure that it complies with current legislation and accurately reflects best practice within both a national and local framework.

8.0 Governing Force policy.
Related Force policies or related procedures

- B 1000 Policy – Investigation of Rape and Serious Sexual Offences
- B 0605 Procedure – Dealing with Vulnerable and Intimidated Witnesses
- B 1001 Procedure – Definition and Management of Rape and Serious Sexual Offences;
- B 1002 Procedure – Investigation of Rape and Serious Sexual Offences
- B 1004 Procedure – Management and Deployment of Sexual Offences Trained Officers (SOTOs);
- B 1006 Procedure – Obtaining a Court Order
- B 1404 Procedure - Management of Potentially Dangerous Persons
PROCEDURE – Prosecution of Rape and Serious Sexual Offences

Number: B 1003 Date Published: 6 April 2016

9.0 Other source documents, e.g. legislation, Authorised Professional Practice (APP), Force forms, partnership agreements (if applicable)

- Ministry of Justice Circular 25/06/2007
- Guidance on Investigating and Prosecuting Rape (ACPO / NPIA 2009)
- Guidance on the Completion of a Record of Video Interview (ROVI)
- Guidance on the Response to People with Mental Ill Health or Learning Disabilities (NPIA 2010) – pending