LODR ADVOCATE’S GUIDELINES TO CHIEF CONSTABLES 
ON THE INVESTIGATION AND REPORTING OF SEXUAL OFFENCES

1. These guidelines are intended to provide police officers with guidance and instruction on the approach to be taken to the investigation of rape and other serious sexual offences. Police officers must have a sound knowledge and understanding of the provisions of the Sexual Offences (Scotland) Act 2009 which widens the definition of rape and creates several new Statutory Offences.

Background

2. Scots law presents particular evidential challenges in the proof of rape and other sexual offences. The nature of the offence of rape and the manner in which it is perpetrated means that the requisite standard of evidence is often not available and sources of corroboration, where available, are often weak. Thus, investigations into allegations require a rigorous approach using objective forensic and case building methods which are not influenced by value judgements about the complainer or their conduct.

3. The guidelines are prompted by specific findings of the COPFS Review of Sexual Offences relating to police functions, in particular Recommendation 8 which stipulates that Lord Advocate’s Guidelines on the investigation and reporting of rape and other sexual offences should be issued to all police officers in Scotland.

4. The guidelines follow extensive consultation between the Crown Office and Procurator Fiscal Service and ACPOS and are intended to support investigating officers and to ensure that investigations and reports meet the highest standards.

Training and Guidance

5. All police staff who are directly involved in the investigation and reporting of serious sexual offences should be provided with training and guidance which meets the National Standards for Training on Sexual Offences set by ACPOS. Those standards are intended to ensure that officers are equipped with the understanding, knowledge and skills required to investigate these offences rigorously and sensitively.

6. It is important that criminal investigations are appropriately focussed from the outset. Therefore, investigating officers must have a sound knowledge and understanding of the evidential and legal requirements of rape and other sexual offences and, in particular, must be familiar with the available Guidance on the law and evidential requirements of sexual offences. Investigating officers should specifically follow the agreed standards of investigation detailed in the ACPOS Scottish Investigators’ Guide to Serious Sexual Offences and the ACPOS Scottish Investigators’ Guide to Child Protection.

Directions on Aspects of the Investigation

Supervision
7. Investigations into allegations of rape and other serious sexual offences should be supervised by an officer of the rank of Detective Inspector or above. The supervising officer will provide appropriate advice and direction to investigating officers throughout the investigation and will approve the submission of a standard prosecution report to the Procurator Fiscal or any decision not to submit a report to the Procurator Fiscal.

Support and Guidance

8. It is essential that victims of sexual crime are treated with the utmost sensitivity and respect from the outset. In all serious sexual offence cases the supervising officer should ensure that a specially trained sexual offences liaison officer is given responsibility for liaising with the victim, providing them with appropriate information and support throughout the investigation of the case. In particular, the sexual offences liaison officer should ensure that the support services available locally are explained to all victims and that they are provided with a copy of the Scottish Government publication: “Information and help after rape and sexual assault”.

Vulnerable Witnesses

9. The nature of sexual crime is such that victims of such crime will often be regarded as vulnerable in the context of criminal proceedings. It is important that when reporting sexual crime to the Procurator Fiscal the fullest possible information is provided to allow consideration to be given to the question of the appropriate measures which may require to be taken to allow the victim to give their best evidence should the case proceed to trial. The Procurator Fiscal should discuss the available measures at precognition, however the provision of available information in the police report should ensure that such discussions are focussed and well informed. Officers should follow the guidance contained in the Lord Advocate’s Guidelines to the Police on Providing Information on Vulnerable Adult Witnesses.

Interviewing Children

10. The interview of a child witness should only be undertaken by investigating officers who have skill and experience in this area. Interviews should always be conducted by officers who have undertaken the national Joint Investigative Interview Training course and in accordance with the Scottish Government Guidance on Interviewing Child Witnesses in Scotland. This requirement does not, however, preclude officers who are not specialists in this area from speaking with children for the purposes of assessing the immediate risk which is posed to the child and the wider public and ensuring that the child’s immediate safety and wellbeing are safeguarded.

11. Officers should be alert to the possibility of seeking the specialist advice of an expert on the approach which should be taken in a particular case. Where it is intended to interview a child who has particular needs or who has experienced sustained abuse at the hands of multiple abusers, consideration should be given to the need to seek the advice of a child psychologist or other suitably qualified expert who will be able to ensure that the conduct of the interview is informed by expert opinion on the particular needs of the child.

The Inter-agency Referral Discussion
12. In all cases of suspected child sexual abuse there should be a tri-partite discussion, known as an Inter-agency Referral Discussion (IRD), involving the police, social work and health professionals. The medical practitioner should be suitably skilled in the field of child sexual abuse. The IRD should take place prior to the medical examination of the child victim being considered. The purpose of the IRD should be to assess whether it will be beneficial to the child to have a medical examination and to consider how likely it is that relevant evidence will be provided as a result of the examination. Other issues to be considered at the IRD are the health needs of the child, the urgency of the examination and where the examination should take place. Only once it has been agreed that a medical examination is appropriate should a joint paediatric-forensic medical examination of the child be instructed. In cases of doubt, investigating police officers may seek the advice and direction of the Procurator Fiscal when assessing the investigative need for a joint paediatric-forensic medical examination to be undertaken.

Medical Examination of the Victim

13. Medical evidence is often essential to the proof of sexual crime. It is vital that medical examinations are undertaken with the utmost professionalism and sensitivity. Chief Constables should seek to ensure that minimum standards are agreed for the examination of victims of sexual crime with those providing medical examinations within their force areas. Medical professionals undertaking examinations should be skilled in the examination of victims of sexual crime (including children) and should have an ability to communicate clearly and sensitively with vulnerable victims. Wherever possible the victim should be given the opportunity to be examined by a medical professional of the same gender.

14. It is important that examinations are undertaken within facilities which are equipped and maintained to meet the needs of vulnerable adults, children and young people. Every effort should be made to ensure that the victim is made to feel as safe, relaxed and comfortable as possible. Examination facilities should provide the opportunity for the victim to relax and prepare for the examination; afford the victim adequate privacy; and provide the victim with time and facilities to wash and change their clothing at the completion of the examination. It also essential that clear procedures are in place to ensure that examination facilities are cleaned and replenished between examinations to ensure that the potential for cross-contamination of evidence is eliminated.

Medical Examination of Children

15. Where it is alleged that a child has been the victim of a sexual crime very careful consideration should be given to the nature and extent of the medical examination required. Even where it is thought that, due to the passage of time since the offence, examination is unlikely to disclose physical signs of recent injury, a joint paediatric and forensic examination should still be considered as the first option. In such circumstances the examination may disclose signs of healed injuries the significance of which should be considered and commented upon by the medical expert. Furthermore, even where there are no physical signs of injury which are of evidential significance, a medical examination is an important means of safeguarding the child’s ongoing welfare and ensuring that the child’s clinical needs (for example, the need for counselling or sexual health services) are assessed and an appropriate care and treatment plan determined.
16. Where examination is appropriate a joint paediatric and forensic medical examination should take place in accordance with the Scottish Government Guidance: Protecting Children: A Shared Responsibility, Guidance for Health Professionals in Scotland.

17. Medical examinations of children and young people should take place only within a proper framework and at a suitable location by doctors fully qualified in this area of work. Chief Constables should maintain a list of suitably qualified medical professionals within their force area.

18. Medical practitioners engaged in these cases should be skilled in the field of child sexual abuse and the securing of forensic evidence e.g. experienced paediatricians and suitably trained police surgeons. Chief Constables should seek to ensure that, as a minimum, medical examiners:
   a. are trained in the fine differential diagnoses of paediatric problems and those related to sexual abuse;
   b. have undergone specialised training in the collection of forensic medical evidence;
   c. are involved in ongoing local and national training and updating of knowledge in this field; and
   d. have the capacity to take a sensitive medical, paediatric and social history from victims.
   e. undertake their examination and provide full written report of their examination, findings and conclusions in accordance with the Royal College of Paediatrics and Child Health publication: The Physical Signs of Child Sexual Abuse – an evidence based review and guidance for best practice.

19. The medical examination should be a comprehensive medical examination into the general health of the child and should not be carried out only for the purpose of gathering evidence. Except in cases of urgency, the examination should be deferred until a full history is available for the doctor, which history should include details of the investigation to date. Any medical examination should take place at the child's pace and in a child-centred manner. As with adult victims, the child should, wherever possible, be given a choice as to whether the examination is carried out by a male or female doctor.

20. The colposcope is an optical instrument which is used by medical professionals when examining genitalia. Whereas in general medicine the colposcope is used to undertake internal examinations of adult patients, it can also be used unobtrusively to provide a close-up, magnified and illuminated view of the external genitalia of children who are suspected victims of sexual abuse and provide a recording of the examination and any injuries present (photo-documentation on DVD or video). There is also the subsequent advantage that the recording of the examination can be made available for viewing by a defence expert if there is any dispute about the nature or interpretation of the injuries. Wherever possible, examinations of children should be undertaken using the colposcope with facilities for photo-documentation.

**Liaison with the Procurator Fiscal**
21. From the outset officers should be alert to the issues which will require the advice or direction of the Procurator Fiscal. It is essential that the necessary legal advice and direction are obtained at the earliest opportunity ensuring that the investigation proceeds on a sound legal footing and remains properly focussed.

22. Requests for legal advice and direction should be submitted to the supervising officer in the first instance, and where it becomes necessary to contact the Procurator Fiscal the following routes are available:

*By telephone or email*

23. Investigating officers should be aware of the Procurator Fiscal points of contact for rape and sexual offence cases in their jurisdiction. Area Procurators Fiscal should make these details available to all Divisional Commanders.

*By submission of an Advice and Direction Form*

24. Where advice and direction are required in relation to a matter which is complex or may require detailed consideration by the Procurator Fiscal, a request should be submitted to the Procurator Fiscal using an Advice and Direction Request. This should be done by selecting “Advice and Direction (Sexual)” as a case category, in accordance with the SPR 2 business rules.

25. When completing an advice and direction request the reporting officer should state clearly the specific question on which advice or direction is being sought and provide sufficient background information to allow the Procurator Fiscal to consider the matter and advise accordingly.

26. Officers should not submit a subject sheet for this purpose.

*Out of hours advice*

27. The on call Procurator Fiscal should be contacted for any urgent legal advice and direction required outwith office hours.

**Reporting to the Procurator Fiscal**

*Cases in which there is Insufficient Evidence*

28. Where there is a patent insufficiency of evidence the victim must be advised of this fact at the earliest possible opportunity. In line with the reporting of all other crimes, a report should not be submitted to the Procurator Fiscal where there is a patent insufficiency of evidence. (Submitting a report merely serves to delay intimation to the victim of the inevitable decision to take no proceedings). Similarly, subject sheets or occurrence reports should not be submitted in such cases.

*Uncorroborated allegations and the Moorov Doctrine*
29. The investigating officer is responsible for interrogating intelligence systems to make any connections between allegations by two or more victims and a single accused. This is particularly important where the Moorov doctrine may apply. Two or more offences which may be linked by applying the Moorov doctrine should be reported together on a single police report.

30. Regardless of whether a report is submitted to the Procurator Fiscal, or whether criminal proceedings are commenced, investigating officers have a responsibility to ensure that relevant intelligence information about the crime, suspect and, where appropriate, the victim is recorded in intelligence databases.

31. Officers should ensure that any available risk assessment information and any circumstantial evidence or other information which may support the allegation is highlighted in the police report. This will be critical in cases dependant on the application of the Moorov doctrine.

**Cases where there is Sufficient Evidence**

32. For the avoidance of doubt, where there is sufficient evidence, a report must always be submitted to the Procurator Fiscal for consideration. This includes cases in which there is a technical sufficiency but there are doubts over the quality of the evidence. While the process of gathering sufficient evidence and making appropriate links between cases is a function of the investigating officer, the ultimate decision in rape cases rests entirely with the Procurator Fiscal. Where there is sufficient evidence to raise a prosecution for rape, there is a strong presumption that the Procurator Fiscal will proceed to investigate by precognition.

**Cases where the Question of Sufficiency of Evidence is Finely Balanced**

33. The circumstances of many rapes and the high standard of evidence required by Scots law can make it difficult to determine whether there is sufficient evidence to prosecute. In cases where the evidence is marginal, the decision about sufficiency in law rests with the Procurator Fiscal.

**Feedback from the Procurator Fiscal**

34. The findings of the Review of Sexual Offences indicate that better communication is required between the police and the Procurator Fiscal following a decision to take no proceedings in cases where a police report has been submitted. Accordingly, where a police report has been submitted in anticipation of criminal proceedings, the Procurator Fiscal will provide the reporting officer with an explanation for any decision not to proceed.

35. The provision of feedback is pivotal to the ongoing development of a sound and concerted approach to the investigation of rape in Scotland. Effective feedback gives investigating officers an insight into the reasons for decisions enabling them to improve/adapt existing practices and identify areas for development. Officers should be encouraged to contact the Procurator Fiscal to discuss any decision further, whether formal feedback has been offered or not.